

**F ECTIVE**  
**PLATFORM TERMS OF USE**  
**FOR CANDIDATES**

Last updated on May 22, 2017

Welcome, and many thanks for using F ECTIVE's Platform! Our mission is to match business people. When you access or use our Platform as a candidate who is an independent contractor or a candidate currently employed by a third-party, you're agreeing to our Platform Terms of Use for candidates below, so please take a few minutes to read them over. They constitute a legal agreement between you and F ECTIVE. If you have any question about these Platform Terms of Use, please do not hesitate to contact us; we will be happy to address your questions.

**1. GENERAL PRINCIPLES**

- 1.1. These Platform Terms of Use govern access and use by candidates of the platform made available online by F ECTIVE (the "**Platform**"). The Platform comprises software, content, infrastructure and storage space, which enable (i) companies to find the best suitable candidates for their projects and/or define their employees to be registered as candidates in order to be available for own or third-party projects, and (ii) candidates to offer their services to third-party companies.
- 1.2. When accessing and using the Platform, you represent and warrant that you provide correct and accurate information about your current working status and, in particular, that you indicate correctly whether you are an independent contractor or whether you are currently employed by a third-party. If you are currently employed by a third-party, you represent and warrant either (i) that you have informed your employer about your intention to register on the Platform as an independent contractor and that your employer has not opposed to such registration, or (ii) if your employer is registered with the Platform and has invited you to register, that you register according to the invitation made by your employer. In case these conditions are not met, you may not access and use the Platform as a candidate.
- 1.3. You acknowledge that your ability to offer your services through access and use of the Platform does not establish an employment agreement between F ECTIVE and you.
- 1.4. F ECTIVE is allowed to amend these Platform Terms of Use at any time. The amended Platform Terms of Use enter into force on the date decided by F ECTIVE. If you do not accept the amendment, as communicated to you by F ECTIVE, you or F ECTIVE may terminate these Platform Terms of Use with effect on the date of entry into force of the amendment.

**2. ACCESS AND USE OF THE PLATFORM**

- 2.1. You may access and use the Platform upon account subscription as per the online subscription process made available by F ECTIVE.
- 2.2. Account subscription requires you to submit to F ECTIVE certain personal information, as well as at least one valid payment method supported by F ECTIVE. If your subscription is free of charge, you will not be requested to submit a valid payment method. You agree to maintain true, accurate, complete, and up-to-date information in your account. Please note that if you do not maintain such information, you may no longer access or use the Platform. You are responsible for all activity that occurs under your account.
- 2.3. Please acquire compatible hardware or devices necessary to access and use the Platform and any updates thereto, it being specified that it is not F ECTIVE's responsibility to provide you with such equipment. F ECTIVE does not guarantee that the Platform, or any portion thereof, will function on any particular hardware or devices. In addition, the Platform may not work without any interruption and may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.
- 2.4. You acknowledge that your subscriptions are not contingent on the delivery of any future functionality or features relating to the Platform, or dependent on any oral or written public comments made by F ECTIVE regarding future functionality or features relating to the Platform.
- 2.5. At its sole discretion, F ECTIVE may make available the Platform or, from time to time, functionalities to you to try at your option at no additional charge which are clearly designated as beta or pilot, or by a similar description (the "**Pilot and Beta Services**"). You may choose to try such Pilot and Beta Services or not in your sole discretion. Pilot and Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Pilot and Beta Services are provided "as is", exclusive of any warranty whatsoever. These Platform Terms of Use shall apply to the use of Pilot and Beta Services, with the exception of the following: (i) unless otherwise stated, any Pilot and Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Pilot and Beta Services becomes generally available without the applicable Pilot and Beta Services designation; (ii) F ECTIVE may discontinue Pilot and Beta Services at any time in its sole discretion and may never make them generally available; and (iii) F ECTIVE will have no liability for any harm or damage arising out of or in connection with a Pilot and Beta Service.

### 3. RESTRICTIONS ON USE

- 3.1. F ECTIVE makes its best effort to make available a unique and well-functioning Platform which provides useful functionalities to its users. In order to reach that goal, certain uses of the Platform must be avoided. Thus, the use of the Platform shall be restricted as follows:
  - 3.1.1. You shall not grant access to the Platform or make the Platform otherwise available to any third-party.
  - 3.1.2. You shall not share your username and password with any other individual.
  - 3.1.3. You shall not reproduce, modify, prepare derivative works based upon, sell, resell, license, sublicense, distribute, make available, rent or lease the Platform or any of its components, feature, function or interface, or include the Platform in a service or outsourcing offering.

3.1.4. You shall not (i) permit direct or indirect access to or use of the Platform in a way that circumvents a contractual usage limit, (ii) attempt to gain unauthorized access to the Platform or its related systems or networks, (iii) use the Platform to access or use any of F ECTIVE's intellectual property except as permitted under these Platform Terms of Use, (iv) access the Platform in order to build a competitive product or service, (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of the Platform, or (vi) decompile, reverse engineer or disassemble the Platform (to the extent such restriction is permitted by law).

3.1.5. You shall not use the Platform or a Platform component in a way which threaten the security, integrity or availability of F ECTIVE's Platform or other services; you shall in particular not use the Platform or a Platform component in particular to (i) store or transmit infringing, libelous, or otherwise unlawful or tortious material, (ii) store or transmit material in violation of third-party privacy rights, (iii) store or transmit malicious code, (iv) interfere with or disrupt the integrity or performance of the Platform or third-party data contained therein.

3.2. You shall notify F ECTIVE promptly if you are aware of any non-compliance with the restriction on use of the Platform.

#### **4. THIRD-PARTIES**

4.1. The Platform may comprise third-party applications and services. For instance, when you use our profile pre-fill function on our Platform, you will be using CVlizer, an application made available by joinvision (<http://www.joinvision.com/en/products/cvlizer/>). Terms of services of third-party vendors are reserved. F ECTIVE does not endorse such third-party applications and services and in no event shall F ECTIVE be responsible or liable for any applications and services of such third-parties.

4.2. The Platform may contain features designed to interoperate with third-party applications. To use such features, you may be required to obtain access to such third-party applications from their vendors, and may be required to grant F ECTIVE access to your account(s) on such third-party applications. F ECTIVE cannot guarantee the continued availability of such Platform features, and may cease providing them without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of a third-party application ceases to make the third-party application available for interoperation with the corresponding Platform features in a manner acceptable to F ECTIVE.

4.3. The Platform contains information provided by third-party companies and candidates. Even if F ECTIVE may verify part of such information or carry out background checks, you further acknowledge that you are solely responsible for verifying the information provided by third-parties, in particular the fact that information relating to companies is correct and accurate.

#### **5. FEES AND PAYMENT**

5.1. Fees. In consideration of the access and use of the Platform, you shall pay the sign-up fee indicated on the Platform (if applicable), it being specified that (i) fees are based on the subscription and not actual usage, and (ii) cancellation of payment obligations and refund of fees are at F ECTIVE's sole discretion.

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- 5.2. Taxes. You are responsible for paying all taxes associated with the access and use of the Platform. If F ECTIVE has the legal obligation to pay or collect taxes for which you are responsible under this Section, F ECTIVE will invoice you and you will pay that amount unless you provide F ECTIVE with a valid tax exemption certificate authorized by the appropriate taxing authority. For the sake of clarity, F ECTIVE is solely responsible for taxes assessable against it based on its income, property and employees.
- 5.3. Invoicing and Payment. F ECTIVE shall invoice you upon subscription by you to the Platform. Invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to F ECTIVE and notifying F ECTIVE of any changes to such information.
- 5.4. Overdue Charges. If any invoiced amount is not received by F ECTIVE by the due date, then without limiting F ECTIVE rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) F ECTIVE may condition future subscription renewals on payment terms shorter than those specified in this Section.
- 5.5. Suspension of Service. If any amount owing by you for F ECTIVE services is 30 or more days overdue, F ECTIVE may, without limiting F ECTIVE other rights and remedies, accelerate your unpaid fee obligations so that all such obligations become immediately due and payable, and suspend F ECTIVE services to you until such amounts are paid in full. F ECTIVE will give you at least 10 days' prior notice that your account is overdue before suspending services to you.
- 5.6. Payment Disputes. F ECTIVE will not exercise its rights under this Section if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

## 6. DATA MANAGEMENT AND SECURITY

- 6.1. F ECTIVE Privacy Policy is part of these Platform Terms of Use.

## 7. INTELLECTUAL PROPERTY

- 7.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, F ECTIVE and its licensors and content providers reserve all of their rights, titles and interests in and to the Platform, including all of their related intellectual property rights. No rights are granted to you under these Platform Terms of Use other than as expressly set forth in these Platform Terms of Use.
- 7.2. License to Use User Content. You grant F ECTIVE a worldwide, perpetual, irrevocable, royalty-free license to use, sublicense or otherwise exploit any suggestion, enhancement request, recommendation, correction, post or feedback provided by you ("**User Content**") relating to the operation of F ECTIVE' services.
- 7.3. You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or have all rights, licenses, consents and releases necessary to grant F ECTIVE the license to the User Content as set forth above; and (ii) neither the User Content, nor your submission, uploading, publishing or otherwise making available of such User Content, nor F ECTIVE's use of the User Content as permitted herein will infringe, misappropriate or violate a third-party's

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intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

- 7.4. You agree not to provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by F ECTIVE in its sole discretion, whether or not such material may be protected by law. F ECTIVE may, but shall not be obligated to, review, monitor, or remove User Content, at F ECTIVE's sole discretion and at any time and for any reason, without notice to you.

## **8. LIMITATION OF LIABILITY**

- 8.1. F ECTIVE shall not be liable for any damages, liability or losses arising out of: (i) your use of or reliance on the Platform, in particular information made available on the Platform by third-parties, (ii) your inability to access or use the Platform; or (iii) any transaction or relationship between you and any third-party, even if F ECTIVE has been advised of the possibility of such damages.
- 8.2. In any event, F ECTIVE shall not be liable for indirect, incidental, special, exemplary, punitive, or consequential damages, including lost profits, lost data, personal injury, or property damage related to, in connection with, or otherwise resulting from any access or use of the Platform, regardless of the negligence (either active, affirmative, sole or concurrent) of F ECTIVE, even if F ECTIVE has been advised of the possibility of such damages.

## **9. DURATION AND TERMINATION**

- 9.1. These Platform Terms of Use enter into force the first time you access the Platform for a period of one year. They will then automatically renew for additional periods of one year each, unless terminated by either party upon two-month prior written notice for the end of a one year contractual period.
- 9.2. Any other provision of these Platform Terms of Use that must survive to fulfill its essential purpose will survive any termination.

## **10. JURISDICTION AND APPLICABLE LAW**

- 10.1. Any dispute arising out of or in connection with these Platform Terms of Use, including disputes on their conclusion, binding effect, amendment and termination, shall be submitted to and finally settled before the Courts of the Canton of Zurich.
- 10.2. These Platform Terms of Use shall be governed by and construed in accordance with Swiss law.

## **11. MISCELLEANOUS**

- 11.1. Notices. Any notice under these Platform Terms of Use or related to F ECTIVE's services should be addressed to: F ECTIVE Ltd, Attn. General Counsel, Rebberg 21, 8484 Weisslingen, Switzerland. All notices related to these Platform Terms of Use will be in writing and will be effective upon (a) personal delivery, (b) the third business day after mailing, or (c), on the day of sending by email. All notices to you will be addressed to the relevant billing contact designated by you.

- 11.2. Force majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of these Platform Terms of Use to the extent caused by (i) an earthquake, hurricane, other natural disaster, (ii) war, act of terrorism, act of cyberterrorism, and other man-made disaster, or (iii) other causes beyond the performing party's reasonable control.
- 11.3. Entire Agreement. These Platform Terms of Use are the entire agreement between you and FECTIVE regarding your access and use of the Platform and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of these Platform Terms of Use will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.
- 11.4. Assignment. Neither party may assign any of its rights or obligations under these Platform Terms of Use, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign these Platform Terms of Use, without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, these Platform Terms of Use will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.5. Relationship of the Parties. The parties are independent contractors. These Platform Terms of Use do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 11.6. Waiver. No failure or delay by either party in exercising any right under these Platform Terms of Use will constitute a waiver of that right.
- 11.7. Severability. If any provision of these Platform Terms of Use is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of these Platform Terms of Use will remain in effect.

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