

OPSHIFTS TERMS OF SERVICE

1. Introduction

- 1.1. OpShifts provides a technology service that facilitates communications between venues and their staff. By registering your establishment with the OpShifts service or using the OpShifts system, you confirm that you have read, understood and agree to these Terms, including the Privacy Policy, without modification by you. If you do not agree to these Terms, you must not register for or use the OpShifts service.
- 1.2. These Terms and Conditions, together with our Privacy Policy and Acceptable Use Policy made available to you, constitute the agreement between you and OpShifts (collectively, the "Terms"). Please ensure that you read and understand these policies, which deal with various aspects of our relationship with you.
- 1.3. No representative, officer or employee of OpShifts has the authority to change or modify these Terms, except pursuant to an official revised version of these Terms, and you may not rely on any such change or modification. These Terms cannot be changed by you and our activation or provision of any services to you does not indicate our acceptance of any changes made by you to our Terms.

2. Definitions

- 2.1. **Business Day** means Monday to Friday, but excludes a day which is an official public holiday in the Republic of South Africa;
- 2.2. **Business Hours** means the hours between 08h30 and 17h00 on a Business Day;
- 2.3. **CPA** means the Consumer Protection Act 68 of 2008;
- 2.4. **Effective Date** means the date on which you accepted the terms and conditions for a service or product, be that in writing or by way of electronic medium, for example by clicking "I agree" on a web page or via your mobile phone, including telephonic acceptance;
- 2.5. **ECT Act** means the Electronic Communications and Transactions Act, 2002;
- 2.6. **Intellectual Property Rights** means the copyright in any work in terms of the Copyright Act, No. 98 of 1978, and includes without limitation the right to reproduce that work, the rights in respect of a trade mark conferred by the Trade Marks Act, No. 194 of 1993, the rights in respect of a design conferred by the Designs Act, No. 195 of 1993, and the rights in respect of a patent conferred by the Patents Act, No. 57 of 1978;
- 2.7. **Marks** means any trademarks, logos, brand names, domain names or other marks of OpShifts;
- 2.8. **OpShifts**, we, us and our means OpShifts (Pty) Limited, registration number [insert registration number]; and
- 2.9. **Services** means the OpShifts staff rostering services as made available to you and as amended from time to time;
- 2.10. **Staff** means an individual working at the Venue from time to time; and
- 2.11. **Venue**, you and your means the entity utilising the OpShifts service.

3. Conclusion of Agreement and ECT Act

- 3.1. You warrant that you have the contractual capacity to enter into this Agreement with us. If the Agreement is signed by a person acting in a representative capacity on behalf of you, the signing party hereby warrants that all of the information relating to the entity, partnership, association or other person whom he/she represents and which he/she has supplied to OpShifts at any time will be true, accurate and complete. OpShifts reserves the right to treat all misrepresentations by you as a fraud and you indemnify OpShifts against any loss or damage that OpShifts may sustain resulting from such misrepresentation.

- 3.2. You acknowledge that OpShifts will provide you with an opportunity in respect of all electronic transactions to:
 - 3.2.1. review the entire electronic transaction;
 - 3.2.2. correct any mistakes; and
 - 3.2.3. withdraw from the transaction, before finally placing the order.
- 3.3. In terms of section 43 of the ECT Act, OpShifts is required to make its contact details, domicilium citandi et executandi and certain other information available to you when you enter into electronic transactions with OpShifts. This information is available on our website at [insert website address] or on request at [insert email address].

4. Cooling Off Periods

- 4.1. If section 44 of the ECT Act or section 16 of the CPA applies to this agreement, you may cancel this agreement without reason and without penalty within 5 (five) business days after the date on which it is concluded, subject to the applicable statutory exclusions and conditions.

5. Payment

- 5.1. Each Venue shall be solely liable for the monthly subscription fee for each of its outlets under the applicable pricing tier, plus VAT and any other applicable taxes:
 - 5.1.1. Starter (R349 per month);
 - 5.1.2. Growth (R549 per month);
 - 5.1.3. Pro (R949 per month); or
 - 5.1.4. Enterprise (R1,599 per month).
- 5.2. Fees for the Services are payable monthly in advance by the applicable Venue on the date notified by OpShifts or, if no date is notified, on the monthly anniversary of the Effective Date. OpShifts shall be entitled to increase the fees by CPI on the anniversary of the Effective Date (and each subsequent anniversary).
- 5.3. The Venue authorises OpShifts, or its third-party payment processor Paystack, to collect all fees due under these Terms through recurring charges against the payment method or account nominated by that Venue. The Venue must maintain a valid payment method and promptly update its payment details if they change.
- 5.4. If you fail to pay any amount on its due date, including where a fee cannot be successfully collected through Paystack when due, OpShifts may, without prejudice to any of its other rights and subject to applicable law:
 - 5.4.1. take all such further steps as may be necessary to recover the outstanding amount (including all legal costs actually incurred by us in recovering or attempting to recover the sums outstanding) from you, including without limitation the use of debt collection mechanisms; and if the debt arises from an agreement which is a credit agreement, then in accordance with the collection and repayment practices as prescribed in the NCA;
 - 5.4.2. charge interest on the overdue amount at a rate of 2% above the prime overdraft rate published by OpShifts's bankers from time to time, calculated from the due date until the date of payment (both dates inclusive), subject to any maximum rate permitted by applicable law;
 - 5.4.3. suspend a Venue's access to the rostering services with immediate effect; or
 - 5.4.4. terminate this agreement with immediate effect.

6. Responsibilities

- 6.1. The Venue is solely responsible for:
 - 6.1.1. creating, maintaining and publishing accurate staffing requirements, shift details, role descriptions, qualification requirements, rates, locations, working hours and rostering information;
 - 6.1.2. selecting, engaging, supervising, directing, paying and managing Staff, and ensuring that its use of the Services, its engagement of Staff and its workplace comply with all applicable laws, including worker-classification, payroll, employment, tax, health, safety, immigration and data protection laws;
 - 6.1.3. agreeing, calculating and paying all compensation owed to Staff for shifts performed at that Venue. You are solely responsible for the safety, supervision and management of all Staff at your establishment premises and during their shifts.

- 6.2. OpShifts provides the functionality as a technology platform only and is not the employer, agent, representative or guarantor of any Venue or Staff member, and does not guarantee the availability, suitability, conduct, performance or attendance of any Staff member.
- 6.3. Nothing in these Terms or the use of the Services creates or shall be construed as creating any employment, agency, labour-broking, recruitment, partnership or joint-venture relationship between OpShifts and any Venue.
- 6.4. The Venue acknowledges and agrees that any engagement for a shift is concluded directly between that Venue and that Staff member. OpShifts acts solely as a facilitator and is not a party to any such shift engagement.
- 6.5. OpShifts is not responsible or liable for any Staff conduct, attendance, performance, or any dispute arising out of or relating to a shift engagement. Any such matter must be resolved directly between the relevant Venue and Staff member.

7. User Name and Password

- 7.1. You will need a user name and password in order to enable you to gain access to and/or use a service. You will not be able to access and/or use a service without a user name and password.
- 7.2. You agree that:
 - 7.2.1. you will use your user name and password for your own personal use only;
 - 7.2.2. you will not disclose your user name and password to any other person for any reason whatsoever and that you will maintain the confidentiality thereof;
 - 7.2.3. in the event that your password is compromised, you will immediately notify OpShifts and change your password;
 - 7.2.4. you, as the holder of the user name and password, acknowledge that you are responsible for all transactions conducted through your account, except to the extent caused by OpShifts's breach of these Terms or failure to maintain reasonable security measures, and accordingly the entire amount outstanding on your account will be deemed to have arisen from or relate to your access to and/or use of the Services;
 - 7.2.5. you agree to cause all persons who use any Services under your account or with your authorization to comply with these Terms and acknowledge that the acts or omissions of all persons who use services under your account or with your authorization will be treated for all purposes as your acts or omissions;
 - 7.2.6. you will not attempt to circumvent OpShifts's user authentication processes, interfere with OpShifts's systems, accounts or security controls, engage in attempts to access OpShifts's network where not expressly authorised to do so, or collect, disclose or use any user information without authorisation.

8. Service Delivery and Interruptions

- 8.1. You consent to OpShifts sending you service-related communications, shift notifications and rostering messages through WhatsApp and any other electronic channels nominated by you. You warrant that you have obtained, and will maintain, all notices, consents and other lawful grounds required for OpShifts to send such communications to each Staff member through WhatsApp and any other electronic channels nominated by that Staff member.
- 8.2. OpShifts will use reasonable endeavours to make the Services available to you and to maintain their availability for your use. However, the Services are provided "as is" and "as available", and, to the maximum extent permitted by applicable law, OpShifts does not warrant or guarantee that the Services will at all times be free of errors or interruptions, always available, fit for a particular purpose, non-infringing of third-party rights, secure, reliable or compliant with your delivery timeline requirements.
- 8.3. OpShifts will use reasonable endeavours to notify you in advance of planned maintenance and repairs that may result in the unavailability of a Service, where reasonably practicable, but cannot guarantee advance notice in all circumstances.
- 8.4. OpShifts shall not be responsible or liable for the availability, security, delivery, functionality, content, or policies of WhatsApp or any other third-party communication service, including for any interruption, delay, failure, loss, unauthorised access, or other issue arising from your use of such service.

9. Support

All support will be on a best efforts basis. We will endeavour to assist you as soon as is commercially reasonable but cannot guarantee any specific turn around times.

10. Breach

10.1. If you breach any provision of these Terms, OpShifts may investigate the breach and, without prejudice to any other rights it may have and subject to applicable law, may:

- 10.1.1.afford you a reasonable opportunity to remedy the breach; or
- 10.1.2.suspend or restrict your access to a service; or
- 10.1.3.cancel all agreements concluded between us; or
- 10.1.4.claim immediate performance and/or payment of all your obligations in terms hereof.

11. Warranties and Indemnity

11.1. You hereby warrant the following:

- 11.1.1.You have the right to enter into this agreement;
- 11.1.2.You will at all times act in a lawful manner and ensure compliance with all applicable laws and regulations, including specifically all laws applicable to your engagement of Staff, including worker classification, tax, payroll, employment, health-and-safety and licensing requirements, and your obligations towards consumers as set out in the Consumer Protection Act, No 68 of 2008; and
- 11.1.3.All information provided by you is accurate, current and complete.

11.2. You indemnify and hold OpShifts harmless against all losses, damages, claims, liabilities and costs reasonably incurred by OpShifts or asserted against OpShifts to the extent arising from:

- 11.2.1.your use of the Services in breach of these Terms or applicable law;
- 11.2.2.your failure to comply with these Terms or any agreement concluded between us;
- 11.2.3.any shift engagement or workplace conduct by you or your Staff;
- 11.2.4.your failure to comply with any applicable law or regulation, including laws applicable to your engagement of Staff, including worker-classification, tax, payroll, employment, health-and-safety and licensing requirements; and
- 11.2.5.any claim by a Staff member or third party arising from your acts or omissions in connection with the Services, except to the extent caused by OpShifts's negligence, wilful misconduct or breach of these Terms.

11.3. You authorise OpShifts to process Personal Information relating to your Venue and your Staff as required to provide, operate, administer, secure and improve the Services, in accordance with applicable data protection law and OpShifts's Privacy Policy. You warrant that you have provided all required notices and obtained all necessary authority or other lawful grounds for OpShifts to process such Personal Information for these purposes.

12. Disclaimer and Limitation of Liability

12.1. To the maximum extent permitted by applicable law, neither party shall be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this agreement, whether resulting from negligence, breach or any other cause. OpShifts's aggregate liability to you for all claims arising out of or relating to this agreement shall not exceed the fees paid or payable by you to OpShifts for the Services in the 3 (three) months preceding the event giving rise to the claim. Nothing in these Terms limits or excludes liability that cannot lawfully be limited or excluded.

13. General

13.1. **Amendments:** OpShifts may amend these Terms from time to time by giving you reasonable notice through the Services, by email or by posting the updated Terms on its website. The amended Terms will take effect on the date specified in the notice, provided that no amendment will apply retrospectively to a dispute or claim that arose before that date. If you do not agree to an amendment, you must stop using the Services before it takes effect.

13.2. **Intellectual Property:** Nothing contained in this agreement shall, unless the contrary is expressly stated elsewhere in this agreement, be construed as an express or implied license of, or transfer of any rights

in or to, any copyright, trademark, trade names, logos, devices, patents or other intellectual property owned or used by each party and each party shall respectively retain all such rights.

- 13.3. Whole Agreement: This agreement constitutes the sole record of the agreement between the parties with regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 13.4. Non-Variation: No addition to, variation of, or agreed cancellation of, this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties, except for amendments made by OpShifts in accordance with the Amendments clause.
- 13.5. Waiver: No relaxation or indulgence which any party may grant to any other shall constitute a waiver of the rights of that party and shall not preclude that party from exercising any rights which may have arisen in the past or which might arise in future.
- 13.6. Certificate of Indebtedness: Subject to applicable law, a certificate signed by an authorised director or officer of OpShifts stating the amount due and payable by you to OpShifts under any agreement between us shall constitute prima facie proof of that amount, unless proved otherwise. The signatory's appointment, qualification and authority need not be proved. Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgment, provisional sentence and/or any other judgment against you.
- 13.7. Notices: All notices required in connection with this Agreement will be in writing and deemed effectively given: (a) upon personal delivery to the party to be notified; (b) any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day; or (c) one (1) business day after deposit with a nationally/internationally recognized overnight courier that provides tracking and verification of delivery. All notices shall be sent to the address set forth on the cover page of this Agreement. Either party may change its address by giving notice of the new address to the other party in writing. The date of successful transmission of the email. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
- 13.8. Dispute Resolution:
- 13.8.1. Should any dispute, disagreement or claim arise between the parties (called hereafter the dispute) concerning this agreement the parties shall endeavour to resolve the dispute by negotiation. This entails one of the parties inviting the other or others in writing to meet and to attempt to resolve the dispute within 7 (seven) days from date of written invitation.
- 13.8.2. If the dispute has not been resolved by such negotiation within seven (7) days of the commencement thereof, then the parties shall:
- 13.8.2.1. submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa, upon such terms as agreed between the parties and the secretariat of the Arbitration Foundation of Southern Africa; and
- 13.8.2.2. failing agreement as aforesaid within seven (7) days of the dispute being submitted to mediation, the parties shall refer the dispute to arbitration as provided in terms of clause 13.8.3 below.
- 13.8.2.3. The decision of the mediator shall become final and binding within seven (7) days of delivery thereof to the parties, unless one or either of the parties disputes the mediator's decision by written notice to the other party within the aforesaid seven (7) day period, in which event the dispute shall be referred to arbitration in accordance with the provisions of clause 13.8.3 below.
- 13.8.3. Failing agreement as referred to in clause 13.8.2 above or in the event of either of the parties furnishing its notice of dispute within seven (7) days of the mediator's decision as envisaged in terms of clause 13.8.2 above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of the Arbitration Foundation of Southern Africa by an Arbitrator or Arbitrators appointed by the Foundation.
- 13.8.4. Any such negotiation, mediation or arbitration shall be held in Cape Town.
- 13.9. Jurisdiction: You hereby consent to the jurisdiction of the Magistrate's Court in the Republic of South Africa in respect of any proceedings that may be initiated by us arising out of this Agreement, provided that we shall be entitled, in its sole discretion, to institute such proceedings in the High Court of South Africa and, in such event, you consent to the jurisdiction of such court and agree that costs shall be calculated in accordance with the tariff of such court.

- 13.10. Costs: If OpShifts instructs an attorney as a result of your breach of, or failure to perform, any obligation under these Terms, or is required to send correspondence to you regarding that breach or failure, then, without prejudice to any other rights OpShifts may have and subject to applicable law, OpShifts shall be entitled to recover from you its reasonable legal costs, including tracing fees and collection commission, on the attorney-and-own-client scale, whether or not legal proceedings are instituted.
- 13.11. Domicilium Citandi et Executandi: You hereby select the address of the Venue as your address for the service of legal documents. Either Party shall be entitled from time to time by written notice to the other to vary its given address to any other address which is not a post office box or to vary its other domicilium contact details.
- 13.12. Termination: Either party may terminate this agreement at any time by giving the other party 30 (thirty) days' written notice. OpShifts may suspend or terminate the Services immediately if you materially breach these Terms, fail to pay any amount due, or if required by applicable law. On termination, you must pay all fees accrued up to the termination date, and the provisions which by their nature are intended to survive termination, including those relating to payment, intellectual property, indemnities, limitations of liability and dispute resolution, will survive.