

# Snagajob Shifts Terms

## Effective Dates:

**For users new to Snagajob on or after July 23, 2021: Immediately**

**For all other users: August 6, 2021**

**Last Updated Date: July 23, 2021**

Please read these Snagajob Shifts Terms (the “**Shifts Terms**”) to the [Snagajob General Terms of Use](#) (these “**General Terms of Use**”) carefully.

These Shifts Terms apply to all client employers who are accessing the Website or using the Services to post solicitation of Snagajob Workers (as defined below) to fill shifts (“**Shifts Clients**”) or otherwise access any Services designed for Shifts Clients (“**Shifts Services**”). These Shifts Terms do not apply to the posting of job openings for Job Seekers (which Services are governed by the [Employer Terms](#)). These Shifts Terms also govern any Sales Order (as defined below) entered into between you, the Shifts Client, and Snagajob.

**THESE SHIFTS TERMS, AS INCORPORATED INTO THE [GENERAL TERMS OF USE](#), AND COMBINED WITH ANY AND ALL SALES ORDERS ENTERED INTO BY SNAGAJOB AND YOU, THE EMPLOYER (“SALES ORDERS”) SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE WEBSITE AS A SHIFTS CLIENT OR RELATED TO SHIFTS SERVICES (COLLECTIVELY, THE “AGREEMENT”). THESE SHIFTS TERMS REPLACE THE SHIFTS TERMS OF USE AS OF THE EFFECTIVE DATE SET FORTH ABOVE AND ALL REFERENCES TO THE SHIFTS TERMS OF USE SHALL BE DEEMED TO BE REFERENCES TO THESE SHIFTS TERMS. THESE SHIFTS TERMS SHALL NOT APPLY TO A SALES ORDER IF THE SHIFTS CLIENT AND SNAGAJOB HAVE MUTUALLY EXECUTED A MASTER SERVICE AGREEMENT OR SIMILAR DOCUMENT THAT DOES NOT INCORPORATE THESE SHIFTS TERMS OR THE SHIFTS TERMS OF USE (AN “MSA”) AND ANY PROVISION OF THE GENERAL TERMS THAT IS INCONSISTENT WITH THE MSA WILL BE OF NO FORCE OR EFFECT.**

These Shifts Terms are hereby incorporated into the [General Terms of Use](#). To the extent that there is any conflict between these Shifts Terms and the [General Terms of Use](#), the provision(s) in these Shifts Terms will prevail, but solely to the extent such conflict exists. To the extent that there is any conflict between these Shifts Terms and a Sales Order, the provision(s) in the Sales Order will prevail, but solely to the extent such conflict exists. Capitalized terms not otherwise defined herein will have the meaning set forth in the [General Terms of Use](#). We may at our sole discretion modify these Shifts Terms on a going-forward basis. We will post notice of date of the most recent update by revising the header at the top of this document.

EVERY TIME SHIFTS CLIENT USES THE SHIFTS SERVICES, SHIFTS CLIENT ACKNOWLEDGES AND AGREES TO THESE SHIFTS TERMS AND THE [GENERAL TERMS OF USE](#)

## 1. Shifts Services.

1.1 Shifts Client and Snagajob agree that Snagajob will provide or make available to Shifts Client, and Shifts Client will purchase and pay for, the Shifts services which include recruitment, onboarding, an online platform where Client may post ads for available shifts and where Snagajob Workers may accept assignments to work such posted shifts (“**Shifts Services**”).

1.2 **"Snagajob Workers"** means workers recruited, screened, background checked and employed by Snagajob who are available to fill shifts that Shifts Client posts to the Snagajob application (the **"App"**).

1.3 Provision of the Shifts Services is subject to the Scheduling Code of Conduct, attached as Exhibit A to these Shifts Terms.

## **2. Payments and Fees.**

2.1 Shifts Client agrees to pay for all of the Shifts Services at the prices and rates specified in the Sales Order without offset or deduction.

2.2 Hourly Position Market Wage, Worker Costs, Service Fees and Hiring Fees will be billed to Shifts Client's credit card weekly or paid by Snagajob initiated automatic ACH payment transfer weekly.

2.3 If any such payment is not paid when due hereunder Snagajob may suspend the delivery of Shifts Services to Shifts Client until payment is made. Shifts Client agrees to pay Snagajob interest on such overdue payment at the rate of 1.5% per month, or the highest rate permitted by applicable law, whichever is lower, and to reimburse Snagajob on demand for all costs of collection incurred by Snagajob, including, without limitation, reasonable attorneys' fees and costs.

2.4. Snagajob may, not more than once every 12 months, and upon 60 days written notice to Shifts Client, increase the Service Fee by not more than 5 percentage points (example: from 20% to 25%) and charge a Worker Costs fee of up to 20%.

## **3. Term and Termination of Sales Orders**

3.1 Unless otherwise stated in a Sales Order, the term of this Agreement will be one year, and the term will automatically renew for additional one-year terms unless either party gives written notice of termination at least 30 days before the date of renewal.

3.2 Shifts Client may terminate a Sales Order prior to the applicable scheduled termination date(s) if (i) Snagajob ceases its business activities, makes a general assignment for the benefit of creditors, or becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding or (ii) Shifts Client gives 30 days written notice of termination to Snagajob.

3.3 Snagajob may terminate a Sales Order prior to the applicable scheduled termination date(s) if: (i) Shifts Client breaches any provision of the Agreement; (ii) Shifts Client ceases its business activities, makes a general assignment for the benefit of creditors or becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding; or (iii) Snagajob gives 30 days written notice of termination to Shifts Client.

3.4 Shifts Client will pay all fees owed for Shifts Services performed, or Hiring Fees incurred, through the termination date of a Sales Order.

## **4. Snagajob Obligations.** Snagajob will:

4.1 comply with all applicable federal, state and local laws and regulations that apply to Snagajob as the employer of the Snagajob Workers under this Agreement, including (i) applicable worker's compensation laws, (ii) applicable unemployment insurance laws, (iii) applicable benefit continuation coverage requirements of the Consolidated Budget Reconciliation Act of 1986, as amended, and (iv) the Fair Labor Standards Act;

4.2 be responsible for recruiting, screening and obtaining background checks on all Snagajob Workers;

4.3 provide employee benefits and timely pay Snagajob Workers for all Services they perform for Shifts Client pursuant to the Agreement and be solely responsible for the withholding and payment and recording of any payroll deductions and taxes;

4.4 be responsible for all hiring, compensation, scheduling, discipline, and termination decisions with respect to Snagajob Workers;

4.5 be responsible for compliance with the Affordable Care Act ("ACA") as it may pertain to the Snagajob Workers;

4.6 treat all Snagajob Workers as non-exempt, in order to ensure accurate calculation of fees and proper withholding and reporting of taxes;

4.7 not offer to settle or compromise any claim brought by a Snagajob Worker against Shifts Client except with Shifts Client's advance written consent.

4.8 Cooperate with Shifts Client in the investigation and remediation of complaints involving Workers.

**5. Shifts Client Obligations.** Shifts Client will:

5.1 comply with all applicable federal, state and local laws and regulations that apply to Shifts Client and the worksite and premises to which Workers are assigned (the "Worksite") and while the Snagajob Worker is on the job;

5.2 not permit its managers to cause a Snagajob Worker to work time that is not recorded to Snagajob or is otherwise "off the clock" and not pay any wages or salaries directly to any Snagajob Worker without first (i) informing Snagajob in writing of such payment (ii) obtaining Snagajob's prior written consent;

5.3 be solely responsible for the direction, supervision and control of the Snagajob Workers, including the sole and exclusive right to control working conditions and day-to-day job duties while the Snagajob Worker is on the job. Shifts Client expressly absolves Snagajob of any responsibility for matters under Shifts Client's direction, supervision and control;

5.4 provide, at its own cost, all tools, safety and work equipment, supplies, and specialized clothing, in good condition, that may be required for the performance of work by Snagajob Workers in the normal course of the job (but not equipment required by Snagajob Workers due to their individual needs);

5.5 not change the job description a Snagajob Worker is asked to perform or the risks associated with that job description without Snagajob's prior written approval and not request or permit a Snagajob Worker to use any vehicle or heavy equipment in performing the job;

5.6 direct, control, supervise and safeguard its premises, systems and valuables (including cash, check, credit cards, keys and merchandise) and assign Snagajob Worker only to attended premises;

5.7 cooperate with Snagajob in the investigation and remediation of complaints involving Workers and maintain policies prohibiting discrimination, harassment and retaliation against Snagajob Workers and to provide reasonable avenues to permit Workers to complain about any such actual or perceived violation;

5.8 provide Snagajob Workers with a work environment free from recognized hazards that are causing or likely to cause serious illness or injury in compliance with all applicable Occupational Safety and Health Act ("OSHA") and other workplace safety requirements and be responsible for reporting incidents with regard to Snagajob Workers in compliance with the requirements of OSHA and provide Snagajob Workers with information and training with respect to any hazardous substances or conditions to which Snagajob Workers may be exposed at the Worksite and on the job, as required by law.

**6. Independent Contractor Relationship.**

6.1. The relationship between Snagajob and Shifts Client is that of independent contractors. Nothing herein is intended to or will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose, or to impose upon the parties any of the duties or responsibilities of partners, joint venturers, or agents. Neither party has the authority to make any representation, contract or commitment on behalf of the other unless otherwise expressly authorized in a written document signed by both parties.

6.2 Nothing in the Agreement will prohibit Snagajob from performing similar services for entities other than Shifts Client during the term of this Agreement, so long as Snagajob's actions do not otherwise violate the terms of this Agreement.

## 7. Snagajob Workers.

7.1 It is the express intent of the parties that Snagajob Workers will be employees of Snagajob.. The parties further agree that Snagajob Workers dictate their own availability, and the Snagajob Workers have full discretion as to whether to accept shifts offered by Shifts Client through Snagajob

7.2 If Shifts Client hires a Snagajob Worker for a full or part-time employment position with Shifts Client, Shifts Client agrees to notify Snagajob immediately and pay Snagajob the Hiring Fee specified in the Sales Order. Notwithstanding anything to the contrary in the Agreement if Shifts Client hires a Snagajob Worker for either a full time or part time position, Snagajob will be released of all legal and financial responsibilities with respect to that Snagajob Worker and its relationship with Shifts Client, effective the date the Snagajob Worker is hired by the Shifts Client.

7.3 Shifts Client agrees that it will not place any Snagajob Worker in a position covered by an employment security clause under a collective bargaining agreement.

## 8. Confidentiality.

8.1 Snagajob and Shifts Client each (a "**Receiving Party**") will hold in confidence, and will use solely for purposes of or as provided in the Agreement, any Confidential Information received by it from the other (a "**Disclosing Party**") or derived from Confidential Information received from the other, and will protect the confidentiality of such with the same degree of care that it exercises with respect to its own information of like import, but in no event less than reasonable care, for a period of three years from the date of termination of the Agreement.

8.2 If a Receiving Party is required by legal, judicial or administrative process or applicable laws (including federal securities laws) to disclose Confidential Information of the other party, the party required to disclose such information will give the other party notice of the required disclosure and cooperate, at the expense of the other party, in seeking to quash or limit the disclosure.

8.3 All material containing Confidential Information of the other party will at the request of the other party be returned or destroyed upon termination of the Agreement, excluding materials that a Receiving Party is required to retain by applicable law or internal retention policies, or that are automatically retained as part of a computer back-up, recovery or similar archival or disaster recovery system.

8.4 Any breach of the restrictions on use of Confidential Information hereunder will cause irreparable injury and the party disclosing such Confidential Information has, without limitation, the right to seek injunctive relief, without bond and without prejudice to any other rights and remedies that may be available at law or equity for a breach or threatened breach of such restrictions.

8.5 "Confidential Information" means proprietary or trade secret information which, if disclosed in tangible or electronic form bears a confidentiality legend and if disclosed orally is identified as confidential at the time of disclosure or is information of a type that a reasonable person would understand is confidential or proprietary.

## 9. Insurance.

During the term of this Agreement, Snagajob will continuously maintain insurance coverage of the following types and in the following amounts:

9.1 Worker's Compensation insurance as required by local laws and regulations.

9.2 General (Public) Liability insurance with a limit not less than US \$2,000,000 each occurrence and aggregate covering liability arising from bodily injury, property damage, independent contractors, products completed operation advertising liability and liability assumed under an insured contract.

9.3 Professional Liability Insurance with a limit of not less than US \$2,000,00 each occurrence and aggregate.

9.4 Cyber Liability Insurance with a limit of not less than US \$2,000,000 each occurrence and aggregate covering liability arising from

website media content and electronic activities, including but not limited to a data breach, data loss or destruction, computer fraud, funds transfer loss and cyber extortion.

9.5 The insurance required above may be satisfied by any combination of primary, umbrella and/or excess insurance policies.

## **10. Indemnification.**

10.1 Each party (each an "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other party, including its subsidiaries, affiliates, and related companies and its respective directors, officers, agents, and employees (the "**Indemnified Parties**") from and against any and all loss, cost, damage and expense, including reasonable attorney's fees, incurred in defending or satisfying a claim by an unrelated third party that arises out of the Indemnifying Party's breach of any term or obligation contained in this Agreement, violation of law, gross negligence or willful misconduct (a "Third Party Claim"). Any provision of this Agreement to the contrary notwithstanding: (i) the Indemnifying Party will not be obligated to indemnify the Indemnified Parties from any Third Party Claim arising out of the other party's breach of this Agreement; and (ii) Snagajob will not be obligated to indemnify the Indemnified Parties for any Third Party Claim arising out of Client's supervision, direction or control of a Snagajob Worker at the Worksite or on the job.

10.2 Without limiting the generality of section 10.1, above, and except as provided therein, Snagajob will indemnify, defend and hold harmless the Indemnified Parties from and against any loss, cost, damage and expense, including reasonable attorney's fees, incurred in defending or satisfying a Third Party Claim that arises out of Snagajob's breach of any of its obligations contained in Section 4 above or elsewhere in this Agreement.

10.3 Without limiting the generality of section 10.1, above, and except as provided therein, Client will indemnify, defend, and hold harmless the Indemnified Parties from and against any and all loss, cost, damage and expense, including reasonable attorneys' fees, incurred in defending or satisfying a Third Party Claim that arises out of Client's breach of any of its obligations contained in Section 5 above or elsewhere in this Agreement.

10.4 Each party will inform the other within 15 days of the receipt of any claim, demand or notice for which indemnification hereunder may be sought.

10.6. The Indemnifying Party will have the right to control the defense of any Third Party Claim for which it is required to provide indemnification, including the right to select counsel. The Indemnified Party will provide reasonable cooperation to the indemnifying party in investigating and defending against any Third Party Claim for which indemnification is sought. The Indemnifying Party will not settle any such claim without the Indemnified Party's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

## **11. Disclaimer of Warranties.**

THE REPRESENTATIONS AND WARRANTIES MADE BY SNAGAJOB IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED

## **12. Exclusions; Limitation of Liability.**

THE PARTIES AND THEIR AFFILIATES WILL NOT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY OF THE FOLLOWING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (I) ANY INCIDENTAL, PUNITIVE, SPECIAL EXEMPLARY, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND; OR (II) ANY PROPERTY DAMAGE OR LOSS OR INACCURACY OR DATA, OR LOSS OF BUSINESS, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE, EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS CONTAINED IN THIS AGREEMENT. IN NO EVENT WILL THE LIABILITY OF EITHER PARTY OR THEIR AFFILIATES UNDER

THIS AGREEMENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID OR DUE HEREUNDER IN THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

### **13. Notices.**

All notices or other communications required or permitted under this Agreement will be in writing and will be effective either when delivered personally to the party for whom intended, or three days following the deposit of the same into the United States mail (certified mail, return receipt requested, or first-class postage prepaid), addressed to such party at the address set forth in the Sales Order. A copy of any notice to Snagajob will be sent to legal@snagajob.com.

### **14. Miscellaneous.**

14.1 Any right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement will survive any expiration or termination.

14.2 Client grants to Snagajob a limited, non-exclusive, non-transferable, royalty free right and license during the term to use Client's tradename and logo (collectively, the "Client Marks") on its website or customer list to identify Client as a client of Snagajob and in a mutually approved press release to announce that Client is a customer of Snagajob. Snagajob will comply with Client's trademark usage guidelines in using client's Marks. Snagajob will not use Client Marks in a manner that dilutes, tarnishes or blurs the value of the Client Marks. Any goodwill accrued as a result of Snagajob's use of the Client Marks inures solely to the benefit of Client.

Neither party may assign any Sales Order, in whole or in part, without the prior written consent of the other party, which consent will not be unreasonably withheld; provided that Snagajob may assign its rights and obligations under this Agreement, in whole or in part, without the Shifts Client's consent, as follows: (i) to any Snagajob affiliate; or (ii) in connection with the sale of a subsidiary, business segment, division, business unit, or product line or other divestment or sale or disposition of assets or any merger, stock purchase, or other acquisition involving Snagajob. Any attempted assignment by a party not in accordance herewith will be null and void and of no force or effect.

14.3 ALL DISPUTES RELATED TO THIS AGREEMENT MUST BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION AND SHALL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

14.4 Any waiver or failure to enforce any provision of the Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14.5 If any portion of this Agreement is held invalid or unenforceable, that portion will be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions will remain in full force and effect.

14.6 The Agreement constitutes the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

### **EXHIBIT A: SCHEDULING CODE OF CONDUCT**

1. A "Posted Shift" is defined as one where a Shifts Client, using the Website or App confirms a location, date, start and end time, and position for which Shifts Client needs Snagajob to find a qualified Snagajob Worker. A "Scheduled Shift Amount" is the amount of money due per the terms of the Posted Shift and the Sales Order
2. Snagajob will offer the Posted Shifts to the Snagajob Workers.
3. If Snagajob has not confirmed a Snagajob Worker for Shifts Client's Posted Shift, no payment will be due from Shifts Client for such

Posted Shift and Snag will have no responsibility or liability to Shifts Client for such Posted Shift.

4. If Snagajob has confirmed a Snagajob Worker for Shifts Client's Posted Shift and the shift is not scheduled to begin within 24 hours, Shifts Client may cancel the Posted Shift without penalty.
5. If Snagajob has confirmed a Snagajob Worker for Shifts Client's Posted Shift and the shift is scheduled to begin within 24 to 2 hours and Shifts Client wishes to cancel the Posted Shift, Shifts Client will pay 50 percent of the Scheduled Shift Amount. If Shifts Client cancels the confirmed Posted Shift within 2 hours of shift start, Shifts Client will pay 100 percent of the Scheduled Shift Amount.
6. In the event that a Snagajob Worker has begun working a Posted Shift and Shifts Client sends the Snagajob Worker home before the Posted Shift is scheduled to end, Shifts Client will pay 100 percent of the Scheduled Shift Amount.
7. If Shifts Client wishes to extend a Posted Shift for a Snagajob Worker after the Snagajob Worker has begun working and the Snagajob Worker has agreed to the extension, Shifts Client will pay for the total amount worked by the Snagajob Worker instead of the Scheduled Shift Amount, as determined by the number of hours actually worked and the terms of the Sales Order. Snagajob Worker is under no obligation to work beyond the end time set forth in the Posted Shift.
8. Within 24 hours of receipt of notification to approve a Snagajob Worker's hour, Shifts Client will review, revise as needed, and approve the Snagajob Worker's hours. If Shifts Client does not review and approve a Snagajob Worker's hour within 36 hours, the Snagajob Worker's reported hours will be deemed to reflect actual hours worked, will bill Shifts Client accordingly, and Shifts Client will accept the charges.

END OF SHIFTS TERMS