



## TERMS OF SERVICE

These Terms of Service (the “**User Terms**”) govern your access and use of the PickaShift mobile application (the “**App**”) and the website (the “**Site**”). Please read them carefully as these apply to you whether or not you are a visitor to the Site or a prospective user of the App, and whether or not you are a care or home facility providing a shift for someone to work or you are a care worker who is looking for shifts to work.

### **These User Terms are legally binding**

These User Terms are a legally binding contract between you and us, which is entered into on the date you click “I AGREE” at the bottom of this page to signify that you have read the User Terms, and that you agree to be bound by the User Terms with respect to your use of the App and the Site.

### **1. WHO WE ARE AND WHAT THESE USER TERMS DO**

1.1 The terms “we”, “our” and “us”, currently refers to FL&M LTD of 9 Shinn Road, Newry, Co. Down, Northern Ireland, BT34 1PF. We hereby license you to use:

- 1.1.1 the App including the mobile application software, content supplied with the App and any updates or supplements to it; and
- 1.1.2 the services we provide, through the App, the Site and the content provided through both media (**the Service**).

as permitted in these terms.

1.2 We reserve the right to refuse provision of the Service for any reason at any time.

### **2. ACCURACY OF ACCOUNT INFORMATION**

2.1 You agree to provide current, complete and accurate account information upon registration and maintain the accuracy and completeness of that information throughout your dealings and involvement with PickaShift. You agree to ensure that you maintain the necessary qualifications, registrations and credentials at all times to provide a shift as a care or home facility or alternatively to undertake to work a shift as a care worker.

### **3. ACCEPTABLE USE**

3.1 You represent that you are over the age of 16. You may not access or use the App, the Site or the Service for any purpose if this representation is not true.

3.2 You must:

- 3.2.1 not use the App, the Site or the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently, recklessly, or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App, the Site, the Service or any operating system which feeds into or out of these;
- 3.2.2 not infringe our intellectual property rights or those of any third party in relation to your



use of the App, the Site, or the Service, including by the submission or extraction of any content;

- 3.2.3 not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App, the Site or the Service;
  - 3.2.4 not use the App, the Site or the Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
  - 3.2.5 not collect or harvest any information or data from the Service or our systems or attempt to decipher any transmissions to or from the servers running the App, the Site or the Service.
- 3.3 A breach of clause 3.2 will result in an immediate termination of your use of the App and the Service and could lead to legal action against you.

#### **4. MODIFICATIONS TO THE APP OR THE SERVICE**

- 4.1 From time to time we may automatically update the App and change the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively, we may ask you to update the App for these reasons.
- 4.2 If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Services.
- 4.3 We shall not be liable to you or to any third-party for any modification, price change, suspension or discontinuance of the App or the Service.

#### **5. YOUR PRIVACY**

- 5.1 We only use any personal data we collect through your use of the App, the Site and the Service in the ways set out in our Privacy Policy (found at <http://pickashiftapp.com/>)
- 5.2 Please be aware that internet transmissions are never completely private or secure and that any message or information you send using the App or the Site or the Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

#### **6. OPERATING SYSTEM REQUIREMENTS**

- 6.1 The App requires the following (which may be updated from time to time):
  - 6.1.1 Browser: IE 11, Chrome 45, Safari7+; or
  - 6.1.2 Mobile OS/ browser: iOS 9.0.1+ (iPhone 5, 6 and 7) / Android 4.4+ (Samsung Galaxy S6, J1 Ace, Tab 2).

#### **7. SUPPORT FOR THE APP AND HOW TO TELL US ABOUT PROBLEMS**

- 7.1 **Support:** If you want to learn more about the App or the Service or have any problems using them please take a look at our support resources at <http://pickashiftapp.com/>.
- 7.2 **Contacting us (including with complaints):** If you think the App or the Site or the Service are



faulty or incorrectly described or wish to contact us for any other reason please email our customer service team at [support@pickashiftapp.com](mailto:support@pickashiftapp.com).

**7.3 How we will communicate with you:** If we have to contact you we will do so by email, or by messaging you through the App, using the contact details you have provided to us when you registered your interest with us. Depending on the permissions of your device you may also receive push notifications regarding new job listings which match your skill set.

## **8. YOU MAY NOT TRANSFER THE APP TO SOMEONE ELSE**

8.1 We are giving you personally the right and licence to use the App and the Service as set out above at clause 1. You may not otherwise transfer the App or the Service to someone else, whether for money, for anything else or for free. **Remember you must remove the App if you sell any device on which the App is installed.**

## **9. CHANGES TO THESE TERMS**

9.1 We may change these User Terms to reflect changes in law or best practice or to deal with additional features which we introduce.

9.2 If we make a material change to the User Terms, we will provide you with reasonable notice prior to the change taking effect either by emailing the email address associated with your account, by posting an update message on the Site, or by messaging you through the App or the Service. You can review the most current version of these User Terms at any stage by visiting this page.

9.3 Any material revisions to these User Terms will become effective on the date provided in our notice (the "effective date").

9.4 If you use the App or the Service after the effective date, that use will constitute your acceptance of the revised terms.

9.5 If you do not accept the notified changes you may continue to use the App and the Service in accordance with the existing terms but certain new features may not be available to you.

## **10. IF SOMEONE ELSE OWNS THE PHONE OR DEVICE YOU ARE USING**

10.1 If you download or stream the App onto any phone or other device not owned by you, you must have the owner's permission to do so. You will be responsible for complying with these terms, whether or not you own the phone or other device.

## **11. WE MAY COLLECT TECHNICAL DATA ABOUT YOUR DEVICE**

11.1 By using the App or any of the Services, you agree to us collecting and using technical information about the devices you use the App on and related software, hardware and peripherals to improve our products and to provide any services to you.



## **12. WE MAY COLLECT LOCATION DATA (BUT YOU CAN TURN LOCATION SERVICES OFF)**

12.1 The App may make use of location data sent from your devices. You can turn off this functionality at any time by turning off the location services settings for the App on the device. If you use the Services, you consent to our transmission, collection, retention, maintenance, processing and use of your location data and queries to provide and improve location-based and road traffic-based products and services. You may stop us collecting such data at any time by turning off the location settings for the App on your device.

## **13. WE ARE NOT RESPONSIBLE FOR OTHER WEBSITES YOU LINK TO**

13.1 The App or any Service may contain links to other independent websites which are not provided by us. Such independent sites are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any).

13.2 You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.

## **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 All intellectual property rights in the App, the Site and the Services throughout the world belong to us and the rights in the App and the Services are licensed (not sold) to you. You have no intellectual property rights in, or to, the App, the Site or the Service other than the right to use them in accordance with these terms.

## **15. DISCLAIMER OF WARRANTIES AND OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

15.1 We do not guarantee, represent or warrant that your use of the App, the Site or the Service will be uninterrupted, timely, secure or error-free.

15.2 We do not warrant that the results that may be obtained from the use of the App, the Site or the Service will be accurate or reliable.

15.3 In no event will we be liable under these User Terms or in connection with its subject matter for any incidental, special, indirect, or consequential damages whatsoever, including, without limitation, damages for loss of profits, loss of data, business interruption, or any other commercial damages or losses, arising out of or related to your use of or inability to use the licensed App, however caused, regardless of legal theory, whether in tort, negligence, contract or otherwise.

15.4 Regardless of whether a claim for such damages is based in contract, tort and/or any other legal theory, in no event shall the Licensor's aggregate liability to you for all damages (other than as may be required by applicable law, see clause 18.4) exceed the amount of total fees paid or payable by you for the App giving rise to the claim.

15.5 The foregoing limitations will apply even if the above stated remedy fails of its essential



purpose.

15.6 Nothing in these User Terms shall limit or exclude our liability for:

15.6.1 death or personal injury resulting from our negligence;

15.6.2 fraud or fraudulent misrepresentation; or

15.6.3 any other liability that cannot be excluded or limited by Northern Ireland law.

## **16. WE MAY TERMINATE YOUR RIGHTS TO USE THE APP AND THE SERVICE IF YOU BREACH THESE TERMS**

16.1 We may terminate your rights to use the App and Service at any time if you breach these terms in a serious way. If what you have done can be put right we will give you a reasonable opportunity to rectify and make suitable amends.

16.2 If we end your rights to use the App and Service:

16.2.1 you must stop all activities authorised by these terms, including your use of the App and the Service;

16.2.2 you must delete or remove the App from all devices in your possession and immediately destroy all copies of the App which you have and confirm to us that you have done this; and

16.2.3 we may remotely access your device and remove the App and cease providing you with access to the Service.

## **17. ASSIGNMENT**

17.1 You may not assign any of your rights or delegate your obligations under these User Terms, whether by operation of law or otherwise, without prior consent of us.

17.2 We may assign these User Terms in their entirety (including all terms and conditions incorporated herein by reference), without your consent, to another organisation. We will always notify you if this happens and we will ensure that the transfer will not affect your rights under the contract.

## **18. NO RIGHTS FOR THIRD PARTIES**

18.1 These User Terms do not give rise to any rights, and do not permit the existence or exercise of any such rights, under the Contracts (Rights of Third Parties) Act 1999 for anyone who is not a party to this licence to enforce any clause in these User Terms.

## **19. SEVERABILITY**

19.1 These User Terms will be enforced to the fullest extent permitted under applicable law. If any provision of these User Terms is found by a court or relevant authority to be unlawful, the



provision will be modified and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law and the remaining provisions of the User Terms will remain in full force and effect.

## **20. GOVERNING LAW AND JURISDICTION**

20.1 These User Terms, their subject matter and formation, are governed by Northern Irish law. You and we both agree that the courts of Northern Ireland will have non-exclusive jurisdiction.