



## Website Terms of Use

Shiftly FX (Pty) Ltd trading as "Shiftly"  
Reg. No. 2019/338591/07  
FSP 51806

Last update: 28 November 2023

## SHIFTLY'S WEBSITE TERMS OF USE

By accessing or using [www.shiftly.co.za](http://www.shiftly.co.za) or any of its related blogs, websites, applications or platforms (collectively, "**the Website**"), owned by Shiftly FX (Pty) Ltd (Reg. No. 2019/338591/07) ("**Shiftly**") or any of its Services, you agree that you have read, understood and agree to be bound to the terms and conditions contained herein ("**Terms**"), in conjunction with any additional Shiftly terms particularly applicable to you and the Services you utilise. All rights in and to the content of the Website remain at all times expressly reserved by Shiftly.

Please see Shiftly's distinct sections on Privacy, Intellectual Property, and Disclaimers & Indemnities.

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**Please pay specific attention to the BOLD paragraphs of the Shiftly Terms. These paragraphs limit the risk or liability of Shiftly, constitutes an assumption of risk or liability by you, impose an obligation by you to indemnify Shiftly or is an acknowledgement of any fact by you.**

**PLEASE SEE CLAUSE 3 BELOW DETAILING THE INHERENT AND UNIQUE RISK IN TRADING IN UNREGULATED CRYPTOCURRENCIES.**

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**Please read these terms carefully before accessing or using the Website or Services. Shiftly will assume you have read and understood these terms should you continue to access or make use of the Website.**

**It is important to note the following:**

- The terms "**user**", "**you**" and "**your**" are used interchangeably in these Terms and refer to all persons accessing the Website or using the Services for any reason whatsoever. Accordingly, the terms "**us**", "**our**" or "**we**" refers to Shiftly or its possession.
- Not all terms are necessarily defined in order.

**Shiftly's functions:**

- **Shiftly is a Financial Services Provider with FSP No 51806 and is accordingly regulated by the Financial Sector Conduct Authority and under the rules of the *Financial Advisory and Intermediary Services Act, 37 of 2002*.**
- **Shiftly does not provide any regulated payment services and is therefore not subject to the *National Payment System Act, 78 of 1998*.**
- **Shiftly does not take monetary deposits nor investments from any user, but rather facilitates users' access to third-parties and platforms as your limited intermediary to trade various cryptocurrencies on your behalf as you have instructed herein. As such, Shiftly is not a bank nor deposit-taking institution, but is strictly a provider of limited intermediary and software services.**

**Please see clause 3 below detailing the inherent and unique risk in trading in unregulated cryptocurrencies.**

## 1. INTRODUCTION TO THE WEBSITE AND SERVICES

- 1.1. Shiftly provides a software service, including but not limited to, the automated buying and selling of cryptocurrencies in order to profit from price differences between international and local cryptocurrency exchanges (collectively, the “**Services**”).
- 1.2. These Terms explain the conditions applicable to how users must make use of the Website and the core provisions applicable to a user’s use of any Services derived from Shiftly.
- 1.3. These Terms expressly supersede prior agreements or arrangements with you. **Shiftly may immediately terminate these Terms or any Services with respect to you, or generally cease offering or deny you access to the Services or any portion thereof, at any time, for any reason.**
- 1.4. In return for using some of the Services available, the user may have to pay a fee to Shiftly or another third party (“**Fee**”), but same Fee will be detailed to you on the Website before you incur such a Fee, or in any further Service-specific agreement you may conclude with Shiftly or another third party. Please see clause 6 below or visit our FAQ page for a breakdown of the Fees.
- 1.5. In order to use the Services, users must register on the Website using the prompted methods and submit any required information.
- 1.6. The Website and these Terms are subject to change without notice. These Terms are updated or amended from time to time and will be effective upon Shiftly uploading the amended Terms to the Website. Your continued access or use of the Website constitutes your acceptance to be bound by the Terms, as amended. It is your responsibility to read these Terms periodically to ensure you are aware of any changes.
- 1.7. Unauthorised use of the Website and/or Services may give rise to a claim for damages and/or be a criminal offence.

## 2. RELATIONSHIP BETWEEN THE PARTIES AND LIMITED INTERMEDIARY STATUS

- 2.1. **For all Services provided, Shiftly only provides software and does not have an employment, agent, advisory, representative nor broker relationship with any user. Your use of the Website or the Services is entirely at your own risk and based on your own volition and expertise.**
- 2.2. **When using the Services, you are instructing Shiftly to operate as your limited intermediary by trading your funds on cryptocurrency exchanges on your behalf. Shiftly’s mandate as your intermediary is set out in these Terms, and will automatically terminate when the user terminates their use of the Services.**
- 2.3. **Your personal financial situation is unique, and it is your responsibility, given your financial and other individual circumstances, to use any information obtained through the Services appropriately and responsibly when implementing your decisions. Before making any financial decisions or implementing any financial strategy, you should obtain advice from your accountant or other financial advisor who are fully aware of your individual circumstances.**

### **3. INHERENT RISK OF TRADING IN CRYPTOCURRENCIES**

- 3.1. **HOLDING AND TRADING CRYPTOCURRENCIES IN WHATEVER FORM CARRIES A HIGH LEVEL OF RISK AND MAY NOT BE SUITABLE FOR ALL INVESTORS. BEFORE DECIDING TO HOLD OR TRADE CRYPTOCURRENCIES YOU SHOULD CAREFULLY CONSIDER YOUR OBJECTIVES, FINANCIAL SITUATION, NEEDS AND INVESTMENT EXPERIENCE. THE VALUE OF CRYPTOCURRENCIES MAY RISE OR FALL AND WILL BE AFFECTED BY MATTERS OUTSIDE OF SHIFTLY'S CONTROL. BY TRADING OR HOLDING CRYPTOCURRENCIES, YOU COULD SUSTAIN LOSSES OF ALL OF YOUR INVESTED FUNDS.**
- 3.2. Cryptocurrencies and the trade in, or possession thereof, are not regulated by South African regulators or laws, and as such, these cannot be approached for relief should a loss be sustained by you as a result of using the Services and/or trading in cryptocurrencies. Therefore, it is vital that you properly understand the risk associated with trading in cryptocurrencies and/or using the Services.
- 3.3. You confirm that you have sufficient knowledge of cryptocurrencies to enter into transactions, and understand that you are solely responsible for determining the nature, potential value, suitability, and appropriateness of the Services. As such, you acknowledge that Shiftly has not advised you to, nor recommended to you that you should, use the Services or deal in cryptocurrencies.
- 3.4. You also accept and agree that you are exclusively responsible for understanding and complying with all laws, regulations and requirements of the jurisdiction in which you live that may be applicable to your use of the Website and/or Services, including but not limited to, those related to export or import activity, taxes and/or foreign currency transactions. Depending on your country of residence, you may not be able to use all the functions of the Services and/or Website.
- 3.5. Users expressly understand and agree that all trades for cryptocurrencies actioned by Shiftly will be executed at prevailing market conditions, which may fluctuate depending on various conditions and factors outside of Shiftly's control.

### **4. USER REGISTRATION PROCESS**

- 4.1. In order to make use of the Services, you must complete the necessary registration process detailed on the Website. Each user shall be allocated only one (1) profile which Shiftly shall use for your actions and agrees to provide accurate, current and complete information during the registration process and to update such information as and when it changes.
- 4.2. Shiftly requires you to submit your personal information, including but not limited to, full name, email address, ID number, proof of address, source of funds documentation, "selfie"-photograph with your ID and phone number when registering to use the Services.
- 4.3. By entering your personal information on the Website, you warrant that the person using the Website is you. You are responsible for your Service-actions performed on the Website and all actions perpetrated therewith and thereon.
- 4.4. Please see Shiftly' Privacy Policy regarding more details on how Shiftly uses and processes your personal information.

- 4.5. Please take note that any use of an authorised service provider's services by a user, may be subject to that service provider's own terms and conditions of use and service, which the relevant user understands and will adhere to.

## 5. SERVICES

- 5.1. Once registered on the Website, the user may opt for either the Standard or Premium service option.
- 5.2. Users making use of the **Standard service**:
- 5.2.1. Must provide at least R500,000 of their own capital.
- 5.2.2. Must perform their own Application for International Transfer (AIT) submissions on SARS eFiling.
- 5.2.3. Must book their trades on the Shiftly Website.
- 5.3. Users making use of the **Premium service**:
- 5.3.1. Must provide at least R250,000 of their own capital.
- 5.3.2. Agree that they will only be able to withdraw their profits during the first week of each month.
- 5.3.3. Agree that they will only be able to withdraw their capital only once their trading for the calendar year is completed in accordance with their Trading Mandate.
- 5.3.4. Provide Shiftly with any unused Tax Clearance Status (TCS) PINs.
- 5.3.5. Agree not to perform their own AIT submissions on SARS eFiling as Shiftly performs this action for them.
- 5.3.6. Agree that Shiftly will book their trades in accordance with the Trading Mandate which they sign prior to trading commences.
- 5.4. **You agree and understand that any financial or general information provided to any user on the Website or as part of the Services, is general in nature and is not specific to any particular user for any specific financial need of that user. A user is at all times responsible for their own decisions and actions relating to the Website and Services, where any such information provided by Shiftly is only ever general in nature.**

## 6. PAYMENT FOR SHIFTLY SERVICES

- 6.1. Shiftly will charge the Fee to the user making use of the Services on the following basis:
- 6.1.1. Shiftly charges a 0.20% foreign exchange conversion fee ("**Fee**") on the user's capital amount which is converted to foreign currency in order to execute the arbitrage trade.
- 6.2. After every trade, the user will receive a trading statement from Shiftly via email which will contain the profit/loss calculation for their trades, as well as the Fee charged by Shiftly for that statement period.

- 6.3. All amounts stated on the Website or in relation to Services shall include Value Added Tax (“VAT”), and will be exclusive of any other applicable taxes/fees, unless otherwise stated and required by law. If any such taxes/fees apply to your use of the Services and the Fee charged, the same will be indicated to you before you enact any transactions.
- 6.4. You may contact Shiftly via email at support@shiftly.co.za to obtain a full record of your transactions with Shiftly.

## 7. REFERRAL PROGRAM

- 7.1. The referral program is exclusively available to fully onboarded clients who are capable of trading through Shiftly.
- 7.2. A Fee Reduction of 0.05% will apply to each client that is referred who continues to sign up for and make use of Shiftly’s Premium service.
- 7.3. Referred clients will only be allocated if they signed up using the email invite link or by entering the referrer’s code upon signup. Regrettably, no referrals will be allocated otherwise.
- 7.4. By accepting a referral invite, you agree that the progress information pertaining to your sign-up may be shared with your referrer.
- 7.5. The Fee Reduction will only apply for each referral who remains actively engaged in trading. If your referred client becomes non-tax compliant or requests us to stop their trading, the Fee Reduction will no longer apply for that referral.
- 7.6. There is no limit to the number of people you can refer.
- 7.7. Shiftly reserves the right to change the terms and conditions of the referral program at any time.

## 8. USER RESPONSIBILITIES AND WARRANTIES

- 8.1. By using the Website and/or the Services, you warrant that:
  - 8.1.1. **you expressly understand the volatile nature of trading in cryptocurrencies and expressly accept all inherent dangers and risks associated therewith;**
  - 8.1.2. you have read and agreed to these Terms and will use the Website and Services in accordance with them;
  - 8.1.3. you understand and agree that Shiftly is not a regulated financial, advisory, banking nor payments service provider and you take all responsibility for the financial and other decisions you make via the Website and/or Services;
  - 8.1.4. **you expressly understand that Shiftly, as your limited service intermediary, will use the independent and distinct services of authorised and regulated third-party service providers to actually transact on exchanges for cryptocurrencies on your behalf, where you will be subject to the additional terms and conditions of use and service from those authorised service providers, which you understand and explicitly agree to adhering to at all times;**
  - 8.1.5. you have not made any misrepresentations and the information provided in the registration process about you and/or your status is true, accurate and complete in every aspect;

- 8.1.6. you are not considered a United Nations “Specially Designated National” and/or on the United Nation’s “Blocked Persons List” and/or are not confirmed by any government or other national authority to be a person or entity who has any restrictions on their capacity to trade freely and/or internationally, for whatever reason;
- 8.1.7. you are above the age of 18 (eighteen) years old and have the legal capacity to understand, agree with and be bound with these Terms;
- 8.1.8. you lawfully possess and submit all information to the Website and/or Shiftly for the use of it or the Services;
- 8.1.9. **you are aware of and will adhere to any limits applicable to you relating to your foreign capital allowances as prescribed by the South African Reserve Bank from time to time;**
- 8.1.10. **all funds used by the user to trade using the Services is lawfully theirs to possess and subsequently use, where same funds are not encumbered in any way, and/or are not the subject of a personal loan from another individual;**
- 8.1.11. you will not post, upload, replicate or transmit any abusive content on the Website that is or could reasonably be considered to be threatening, harassing, defamatory, abusive, racist, sexist, discriminatory, in breach of confidence, in breach of privacy or restrict any user in any way from properly using the Website;
- 8.1.12. you will not send any unsolicited electronic messages or use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the Website including but not limited to uploading or making available files containing corrupt data or viruses via whatever means or deface, alter or interfere with the front end ‘look and feel’ of the Website or the underlying software code;
- 8.1.13. you are solely responsible for withholding, collecting, reporting and remitting the correct amounts of tax to the appropriate tax authorities emanating from any transactions or actions you have performed on the Website and/or through the Services;
- 8.1.14. you understand that when using the services of any third party connected to the Services that they may have their own terms and conditions of service for their services provided to you, and that you may be simultaneously bound by them;
- 8.1.15. you will not infringe the intellectual property or other rights of any third party or the Website or transmit content that the user does not own or does not have the right to publish or distribute;
- 8.1.16. you will not use the Website platform for any commercial purpose other than as expressly provided for by Shiftly herein;
- 8.1.17. you will not use the Website to breach any applicable law or regulation or perform or encourage any illegal activity including (without limitation) promoting or facilitating money laundering or financial crimes; and/or
- 8.1.18. you will not facilitate or assist any third party to do any of the above.
- 8.2. The Website is only available on compatible devices connected to the internet. It is your responsibility to obtain these devices and any data network access necessary to utilise the

Website. The network's data and messaging rates and fees may apply if you use the Website and you shall be responsible for such rates and fees.

- 8.3. **Without prejudice to any of Shiftly' other rights (whether at law or otherwise), Shiftly reserves the right to deny you access to the Website or the Services where Shiftly believes (in its reasonable discretion) that you are in breach of any of these Terms.**
- 8.4. **Shiftly does not guarantee that the Website, or any portion thereof, will function on any particular hardware or device, or in any and all jurisdictions.**

## **9. AML/CFT/PF REQUIREMENTS**

- 9.1. A user's ability to make use of various parts of the Website or particular Services, may be regulated by applicable know-your-customer ("KYC") and/or anti-money laundering, countering the financing of terrorism and proliferation financing ("AML/CFT/PF") laws and the respective rules and regulations.
- 9.2. Shiftly may, at various times and depending on a range of factors in its sole discretion, including the amount of a transaction actioned and/or the exact nature of the user, require that a user submit certain information to Shiftly and/or its authorised third-party service providers in order for the user to be verified as not infringing any of Shiftly's AML/CFT/PF requirements and/or local or foreign laws. This information may include identity documents, passport documents and/or bank account information. Shiftly reserves the right to limit or terminate a user's access and use of the Services should the user fail to adhere to these requirements to the standard required by Shiftly. Shiftly also reserves the right to share this information with any legal authority when required under applicable laws.
- 9.3. Shiftly may restrict user transactions that may violate laws or Shiftly's internal AML/CFT/PF conditions herein and as updated from time to time.
- 9.4. Please see our specific AML/CFT/PF Policy, detailing our exact AML/CFT/PF processes and requirements, here.

## **10. RECEIPT AND TRANSMISSION OF DATA MESSAGES**

- 10.1. Data messages, including email messages, sent by you to Shiftly will be considered to be received only when acknowledged or responded to.
- 10.2. Data messages sent by Shiftly to you will be regarded as received when the complete data message enters an information system designated or used for that purpose by the recipient and is capable of being retrieved and processed by the recipient.
- 10.3. Shiftly reserves the right not to respond to any email or other data message which contains obscene, threatening, defamatory or otherwise illegal, unlawful or inappropriate content, and to take appropriate action against the sender of such email or data message where necessary.
- 10.4. Messages sent over the internet cannot be guaranteed to be completely secure as they can be intercepted, lost or corrupted. Shiftly is therefore not responsible for the accuracy or safety of any message sent by email or automated systems over the internet, whether from Shiftly to a user, between users or from a user to Shiftly.



## 11. HYPERLINKS, DEEP LINKS, FRAMING

- 11.1. The Website may include links to other internet sites ("**the other sites**"). Shiftly does not own or endorse the other sites and is not responsible for the information, material, products or services contained on or accessible through the other sites. Any such hyperlinks do not imply any endorsement, agreement on or support of the content or products of such target sites.
- 11.2. Shiftly does not purport to own the content on other sites which may be shown on the Website. Should the owner of any content showcased on the Website want the content to be removed, please write to support@shiftly.co.za to request the removal of such content.
- 11.3. The user's access and use of the other sites remain solely at the user's own risk and on the terms set by the relevant third-party operator of the other sites.

## 12. ADVERTISING AND SPONSORSHIP

- 12.1. The Website may contain advertising and sponsorship. Advertisers and sponsors are responsible for ensuring that material submitted for inclusion in the Website complies with all applicable laws and regulations.
- 12.2. Shiftly, its members, employees, suppliers, partners, affiliates and agents accordingly exclude, to the maximum extent permitted in law, any responsibility or liability for any error or inaccuracy appearing in advertising or sponsorship material.

## 13. INTELLECTUAL PROPERTY PROTECTION

- 13.1. All website layout, website content, material, information, data, software, icons, text, graphics, layouts, images, sound clips, advertisements, video clips, user interface design and layout, trade names, logos, trade marks, designs, copyright and/or service marks, together with the underlying software code and everything submitted by a user to the Website and Shiftly in use of the Services, ("the intellectual property") are owned (or co-owned or licenced, as the case may be) by Shiftly, its shareholders, associates and/or partners, whether directly or indirectly, and as such, are protected from infringement by domestic and international legislation and treaties.
- 13.2. Subject to the rights afforded to you in these Terms, all other rights to all intellectual property on the Website are expressly reserved. **You may not copy, download, print, modify, alter, publish, broadcast, distribute, sell or transfer any intellectual property, editorial content, graphics or other material on the Website or the underlying software code whether in whole or in part, without the written consent of Shiftly first being granted, which consent may be refused at the discretion of Shiftly. No modification of any intellectual property or editorial content or graphics is permitted. Should you breach these provisions, Shiftly and/or the rightful intellectual property rights owner may launch legal proceedings against you for a breach of contract, resulting in a claim of damages against you.**
- 13.3. Shiftly reserves the right to make improvements or changes to the intellectual property, information, artwork, graphics and other materials on the Website or to suspend or terminate the Website, at any time without notice; provided that any transactions or functions already concluded through the Website, will not be affected by such suspension or termination (as the case may be).

- 13.4. Where any of the Website intellectual property has been licensed to Shiftly or belongs to any third party, other than that which has been submitted by a user to the Website in the use of the Services, all rights of use will also be subject to any terms and conditions which that licensor or third party imposes from time to time and you agree to comply with such third party terms and conditions.
- 13.5. Subject to adherence to the Terms, Shiftly grants to users a personal, non-exclusive, non-assignable and non-transferable license to use and display all content and information contained in the Website on any machine of which the user is the primary user. However, nothing contained on the Website or in these Terms should be construed as granting any licence or right to use any intellectual property without the prior written permission of Shiftly.
- 13.6. Any enquiries regarding any of the above relating to intellectual property must be directed to Shiftly at [support@shiftly.co.za](mailto:support@shiftly.co.za).

## 14. DATA PRIVACY AND PROTECTION

- 14.1. We respect your privacy and your personal information, and will take reasonable measures to protect it, as more fully detailed in our Privacy Policy.

## 15. DISCLAIMERS AND WARRANTIES

- 15.1. **The Website and Services, including any intellectual property appearing therein, are provided "as is" and "as available". Shiftly makes no representations or warranties, express or implied, including but not limited to warranties as to the accuracy, correctness or suitability of either the Website, the Services or the information contained in it.**
- 15.2. All information or opinions of users made available on the Website in relation to any of the Services are those of the authors and not Shiftly. While Shiftly makes every reasonable effort to present such information accurately and reliably on the Website, Shiftly does not endorse, approve or certify such information, nor guarantee the accuracy or completeness of such information on the Website.
- 15.3. **SHIFTLY, ITS SHAREHOLDERS, EMPLOYEES AND PARTNERS, ACCEPT NO LIABILITY WHATSOEVER FOR ANY LOSS, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL OR ARISING FROM INFORMATION MADE AVAILABLE ON (OR BY MEANS OF) THE WEBSITE AND/OR TRANSACTIONS OR ACTIONS RESULTING THEREFROM OR FROM THE SERVICES OFFERED, INCLUDING THE INFORMATION ABOUT ANY PARTICULAR USER.**
- 15.4. **SHIFTLY, ITS SHAREHOLDERS, EMPLOYEES, PARTNERS AND AFFILIATES, ACCEPT NO LIABILITY WHATSOEVER FOR ANY COSTS, EXPENSES, FINES OR DAMAGES, INCLUDING BUT NOT LIMITED TO DIRECT OR INDIRECT LOSS OR DAMAGES, INCLUDING ANY ECONOMIC LOSS, CONSEQUENTIAL LOSS, LOSS OF PROFITS OR ANY FORM OF PUNITIVE DAMAGES, RESULTING FROM THE FACILITATION AND OFFERING OF THE SERVICES, AND ACCESS TO, OR USE OF, THE WEBSITE IN ANY MANNER.**
- 15.5. Shiftly takes reasonable security measures to ensure the safety and integrity of the Website and to exclude viruses, unlawful monitoring and/or access from the Website. However, Shiftly does not warrant or represent that your access to the Website will be uninterrupted or error-free or that any information, data, content, software or other material accessible through the Website will be free of bugs, viruses, worms, trojan horses or other harmful

components. **The user's access to and use of the Website remains solely at the user's own risk and the user should take their own precautions accordingly.**

## **16. INDEMNITIES**

- 16.1. **THE USER INDEMNIFIES AND HOLDS HARMLESS SHIFTLY, ITS SHAREHOLDERS, EMPLOYEES, AND PARTNERS FROM ANY DEMAND, ACTION OR APPLICATION OR OTHER PROCEEDINGS, INCLUDING FOR ATTORNEYS' FEES AND RELATED COSTS SUCH AS TRACING FEES, MADE BY ANY THIRD PARTY AND ARISING OUT OF OR IN CONNECTION WITH THE USER'S USE OF THE WEBSITE AND/OR SERVICES OFFERED OR CONCLUDED THROUGH THE WEBSITE IN ANY WAY.**
- 16.2. **THE USER AGREES TO INDEMNIFY, DEFEND AND HOLD SHIFTLY HARMLESS FROM ANY DIRECT OR INDIRECT LIABILITY, LOSS, CLAIM AND EXPENSE (INCLUDING REASONABLE LEGAL FEES) RELATED TO THE USER'S USE OF THE SERVICES, WEBSITE AND/OR BREACH OF THESE TERMS.**
- 16.3. **THIS CLAUSE WILL SURVIVE TERMINATION OF THIS AGREEMENT.**

## **17. COMPANY INFORMATION**

- 17.1. **Site owner: Shiftly FX (Pty) Ltd**
- 17.2. **Legal status: Private Profit Limited Liability Company**
- 17.3. **Registration number: 2019/338591/07**
- 17.4. **Directors: Lourens Coetzee; Marijus Šmigelskis**
- 17.5. **Description of main business: Cryptocurrency arbitrage service provider**
- 17.6. **Email address: support@shiftly.co.za**
- 17.7. **Website address: www.shiftly.co.za**
- 17.8. **Registered address: S8, 2nd Floor, The Sanctuary, % De Beers Ave & Broadway Blvd, Somerset West, 7130**
- 17.9. **Postal address: same as above**

## **18. DISPUTE RESOLUTION AND GOVERNING LAW**

- 18.1. **The user's access and/or use of the Website and/or Services, any downloaded material from it and the operation of these Terms (including any transaction concluded pursuant thereto) shall be governed by and construed in accordance with the laws of the Republic of South Africa only.**
- 18.2. **Should any dispute, disagreement or claim arise between a user and Shiftly concerning the use of the Website or the Services, these parties shall endeavour to resolve the dispute amicably, by negotiation, and with the best interests of both parties in mind.**
- 18.3. **Should these parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to in their negotiation, the parties will approach an**

independent industry expert who shall mediate the discussions between them in order to find a mutually beneficial solution.

- 18.4. If the dispute is still not resolved after such mediation, the parties will commence and be party to binding and confidential arbitration in terms of the expedited rules of the Arbitration Foundation of Southern Africa (“**AFSA**”), with an arbitrator selected by Shiftly. Arbitration proceedings shall be conducted in Somerset West in English.
- 18.5. Notwithstanding the above, both parties consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa, even in the event where the quantum in the dispute may be less than the monetary jurisdiction of that court. Either party may also always use the dispute resolution services of any applicable legislative tribunal or ombud, as provided for in applicable legislation.
- 18.6. The parties both agree that in no circumstance will either party publicize the dispute on any social media or other public platform. The parties understand that any publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim against the infringing party.

## **19. TERMINATION OF USE OF WEBSITE OR SERVICES**

- 19.1. **IN ADDITION TO ITS OTHER RIGHTS HEREIN, SHIFTLY RESERVES THE RIGHT TO TERMINATE AND CANCEL YOUR ACCESS TO AND USE OF THE WEBSITE AND/OR SERVICES IF YOU BREACH ANY OF THE TERMS, OR FOR ANY OTHER REASON IN ITS SOLE DISCRETION WITHOUT GIVING NOTICE TO YOU.**
- 19.2. If you wish to terminate the agreement with Shiftly, or end your use of the Services, you may do so by sending an email to support@shiftly.co.za. **Such deregistration from the Website will however not have any effect on the continued and comprehensive functioning or legitimacy of any lawful rights which the parties may have at the time of said termination with the Website.**
- 19.3. In the event of cancellation of your agreement with the Terms and with Shiftly, Shiftly will remove you from the Website, and return all your remaining funds back to you.

## **20. NOTICES AND SERVICE ADDRESS**

- 20.1. Each of the parties chooses their service address for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from these Terms as being:
  - 20.1.1. in the case of Shiftly, at S8, 2nd Floor, The Sanctuary, % De Beers Ave & Broadway Blvd, Somerset West, 7130; or
  - 20.1.2. in the case of the user, at the e-mail and addresses provided by the user to Shiftly in the registration process.
- 20.2. Each of the parties will be entitled from time to time, by written notice to the other, to vary its service address to any other address which is not a post office box or poste restante, provided that the change will become effective only 14 (fourteen) days after service of the notice in question.

20.3. Notwithstanding the above, any notice given in writing in English, 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.

## 21. GENERAL

21.1. This document contains the entire agreement between the parties in relation to the subject matter hereof. Save as contemplated in clause 1.6 above, no alteration, cancellation, variation of, or addition hereto will be of any force or effect unless reduced to writing and signed by all the parties to these Terms or their duly authorised representatives.

21.2. No indulgence, leniency or extension of time granted by Shiftly shall constitute a waiver of any of Shiftly' rights under these Terms and, accordingly, Shiftly shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the user which may have arisen in the past or which might arise in the future.

21.3. Words importing the singular will include the plural and vice versa. Words importing one gender will include the other genders, and words importing persons will include partnerships, trusts and bodies corporate, and vice versa.

21.4. The headings to the paragraphs in the Terms are inserted for reference purposes only and will not affect the interpretation of any of the provisions to which they relate.

21.5. The user's access and/or use of the Website and/or the Services, any downloaded material from it and the operation of these Terms (including any transaction concluded pursuant thereto) shall be governed by and construed in accordance with the laws of the Republic of South Africa.

21.6. Should you have any complaints or queries, kindly address an email to Shiftly at support@shiftly.co.za.

21.7. In the event of the user failing to pay any amount timeously or breaching these Terms, the user shall be liable for all legal costs (on the scale as between attorney and client) (including collection commission) which may be incurred by Shiftly in relation to the payment failure or breach.

21.8. Each sentence, paragraph, term, clause and provision of these Terms and any portion thereof shall be considered severable and if, for any reason, any such sentence, paragraph, term, clause or provision is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation or in terms of a final, binding judgment issued by any court, it shall to that extent be deemed not to form part hereof and shall not impair the operation of, or have any effect upon such other sentence, paragraph, term, clause or provision hereof as may otherwise remain valid or intelligible, which shall continue to be given full force and effect and bind the parties hereto.

21.9. No term or condition of these Terms is intended to breach any peremptory provisions of any consumer protection legislation and any regulations thereto ("**Prohibited Provision**"). Any breach of any such Prohibited Provision shall be governed by the provisions of clause 20.8.