



## TERMS OF USE

**Updated: March 18, 2019**

The app.laborchart.com application (the "Application") and related mobile application (collectively, with the Platform, the "Platform") are provided and operated by Labor Chart, LLC ("LaborChart," "we" or "us"). The Platform allows registered users to utilize the Platform's workforce management communications and capabilities (collectively, the "Services"). These terms and conditions of use (the "Terms and Conditions"), the Master Services Agreement (the "MSA") between us and the entity, individual, or organization who subscribes and pays for the Services on your behalf (the "Subscriber"), and the [Privacy Policy](#) available on the Site as amended from time to time (collectively the "Agreement") constitute a binding legal agreement between LaborChart and you and includes the terms which govern your use of the Platform. In the event of conflict between the agreements, the MSA shall govern, then these Terms and Conditions, then the Privacy Policy.

We reserve the right, at any time, to add to, change, update or modify these Terms and Conditions, simply by posting such change, update, or modification on the Platform and without any other notice to you. Any such change, update, or modification will be effective immediately upon posting on the Platform. Changes that impact the provision of the Services will generally be announced and communicated to registered users via email and through our website. Accordingly, it is your responsibility to review the Agreement from time to time to ensure that you continue to agree with them and the content, functionality and output of the Platform and Services. Each time you access and/or utilize the Platform and Services, you agree to be bound by the then-current Agreement.

### **LICENSE GRANT:**

In exchange for the payment of the subscription fees by the Subscriber, we hereby grant you, as a third-party beneficiary, a revocable, non-exclusive, non-transferable, non-sublicensable, limited license to access and use the Platform solely to perform labor scheduling and management and provide notifications related thereto for the benefit of the Subscriber. All rights not expressly granted to you are reserved by LaborChart and its licensors. Should the Subscriber fail to pay the subscription fee, your use of the Service may be terminated without your knowledge and without notice to you. LaborChart shall not be liable for any loss incurred by you due to such termination of the Services for nonpayment or other breach of the Agreement.

The Platform and all materials available on it or through the use of the Services are the property of LaborChart or its licensors and are protected by copyright, trademark and other intellectual property laws. You may not use the contents of the Platform in any manner or for any purpose that is inconsistent with the intended use of the Services or that would otherwise constitute infringement of LaborChart's or its licensors' intellectual property rights. You may download and/or print one copy of individual pages of the Platform or documents made available to you through the use of the Services. You may not reproduce or distribute any materials obtained from the Platform or the Services except for reproductions or distribution of the materials as provided by LaborChart through your use of the Services solely for your internal business purposes.

### **Use of the Platform:**

The Platform is intended solely for use as dictated by LaborChart, including users accessing and using the Platform to perform scheduling and management of staff, or other Platform functionality offered now or in the future through LaborChart and the Platform. You will be required to register in order to access certain



features and Services of the Platform. During registration, you will establish a username and password through the Platform's registration process. You are responsible for keeping your username and password confidential. LaborChart cannot and will not be liable for any loss or damage arising from your failure to keep your account information protected. You will: (i) notify LaborChart immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) not impersonate another user or provide false identity information to gain access to or use the Platform.

You represent and warrant through your registration and your use of the Platform that you have the authority of the Subscriber to participate and use the Platform on its behalf as a Permitted User as the term is defined in the MSA. You and the Subscriber are jointly responsible for all activity occurring under your account and you represent and warrant that you will abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Platform including those related to data privacy, international communications and the transmission of personal data.

By registering on the Platform, you represent and warrant that your information is true and accurate to the best of your knowledge. You agree not to submit false information such as name, email, address, and or telephone number when registering on the Platform. By registering with the Platform, you consent to receive periodic communication from LaborChart regarding the status of your account or other information associated with your account or the services provided.

The Platform shall not be used by anyone under the age of eighteen (18). By accessing or using the Platform or its resources you represent and warrant that you are eighteen (18) years of age or older.

The Platform may allow you to submit feedback or comments to LaborChart. By posting, uploading, inputting, providing or otherwise submitting feedback or comments to LaborChart, you represent and warrant that your submission is truthful and that you own or otherwise control all of the rights to your submission. You hereby grant LaborChart an unlimited, worldwide, and royalty free license to use any content included in your feedback or comments submitted to LaborChart.

All data entered into your profile during registration, through the use of the Platform, or data or information generated by the Platform is subject to these Terms and Conditions and LaborChart's Privacy Policy.

#### **User Content:**

LaborChart provides the Platform to allow you to perform workforce management tasks and activities. You are responsible for entering necessary employee information, which may include name, title, email address, mobile phone number, a photo of the staff, and the staff member's emergency contact and their phone, and email address (collectively, the "User Content"). The proper and efficient functioning of the Platform relies on this User Content and you hereby provide LaborChart a license to use the User Content to provide and enhance the Services and otherwise in accordance with the Privacy Policy as amended from time to time. LaborChart assumes no responsibility regarding the accuracy of the User Content, or any information that is provided by you through the Platform and use of such information is at your own risk. LaborChart shall have no property right in or to the User Content other than the license granted herein.

#### **User Conduct:**

You represent and warrant that no materials of any kind submitted to or through the Platform will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights, or contain libelous, defamatory or otherwise unlawful material.



You represent and warrant that you have obtained all necessary consents from your field staff to use their mobile phone numbers to send notification SMS texts or emails to your field staff's mobile phone or email address.

In addition to the above, you represent and warrant you will not:

- sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Platform without LaborChart's express written consent except as otherwise provided herein;
- modify or make derivative works based upon the Platform;
- create Internet "links" to the Service except for access to the home page, or "frame" or "mirror" any Site or Platform content on any other server or wireless or Internet-based device;
- reverse engineer or access the Platform in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service;
- you may not share user licenses as each user must register to use the Services;
- use the Platform in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Platform;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; and
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law.

### **Links to Third Party Platforms:**

The Platform may contain links to other websites ("Third Party Websites"). We do not control or monitor such Third Party Websites and we are not responsible for any Third Party Websites accessed through the Platform. Inclusion of, linking to or permitting the use or installation of any Third Party Website does not imply approval or endorsement thereof by us. If you decide to leave the Platform and access the Third Party Website, you do so at your own risk and you should be aware that the Agreement no longer applies to your usage of such Third Party Websites.

### **FEDERAL AND STATE LAWS:**



When using the Platform, or on the Platform, you represent and warrant you will obey and comply with all applicable federal, state and local laws. The Platform was created and will be operated from the United States. Any use of the Platform that violates any applicable laws will be grounds for discontinuing your rights to access the Platform.

**Relationship of the Parties:**

You agree that nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales relationship, or employment relationship between you and LaborChart. You have no authority to make or accept any offers or representations on our behalf.

**Termination:**

LaborChart may terminate your access to the Platform and the Services for any reason, at any time, and in LaborChart's sole discretion, with or without notice.

**Disclaimer:**

THE INFORMATION AND SERVICES OFFERED ON OR THROUGH THE PLATFORM AND ANY REFERENCED THIRD-PARTY SITES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THIS INCLUDES ANY LISTING OF ANY THIRD PARTY GOODS OR SERVICE PROVIDER INCLUDED IN THE PLATFORM. YOU ASSUME THE RISK OF ANY AND ALL DAMAGE OR LOSS FROM USE OF, OR INABILITY TO USE, THE PLATFORM. ANY THIRD PARTY GOODS OR SERVICE PROVIDER IS SUPPLIED AS A CONVENIENCE TO THE USER AND LISTING DOES NOT CONSTITUTE SPONSORSHIP, AFFILIATION, PARTNERSHIP, OR ENDORSEMENT. LABORCHART DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT OF THE LAW, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. LABORCHART DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PLATFORM, OR ANY MATERIAL ON THE PLATFORM IN TERMS OF ITS CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY OR OTHERWISE. LABORCHART DOES NOT WARRANT THAT THE PLATFORM WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE.

**Limitation on Liability:**

LABORCHART'S LIABILITY TO YOU IS LIMITED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL LABORCHART OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO YOU FOR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE PLATFORM OR ANY OTHER MATERIALS OR SERVICES PROVIDED TO YOU BY LABORCHART. This limitation shall apply regardless of whether the damages arise out of breach of contract, tort, or any other legal theory or form of action. LABORCHART'S AGGREGATE LIABILITY TO YOU FOR ANY REASON SHALL NOT EXCEED THE FEES SUBSCRIBER HAS PAID TO LABORCHART FOR YOUR USE OF THE PLATFORM WITHIN THE SIX (6) MONTHS PRIOR TO THE INCIDENT OR ACTION ASSERTED AS SUBJECTING LABORCHART TO LIABILITY.

**Indemnity:**



You agree to indemnify, defend, and hold harmless LaborChart, its affiliates, officers, directors, employees, consultants, agents, and representatives from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from your access to or use of the Platform, your violation of these Terms and Conditions, or your infringement, or infringement by any other user of your account, of any intellectual property or other right of any person or entity. We will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

**Governing Law:**

These Terms and Conditions shall be construed in accordance with and governed by the laws of the State of Kansas, and you hereby irrevocably consent to the exclusive jurisdiction of the state or federal courts in Kansas City, Kansas for all disputes arising out of or related to the use of the Platform.

**Severability; Waiver:**

If, for whatever reason, a court of competent jurisdiction finds any term or condition in this Agreement to be unenforceable, all other terms and conditions will remain unaffected and in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**Change of Control:**

In the event of a change of control of LaborChart or the sale of substantially all of LaborChart's assets, all rights of LaborChart hereunder shall be transferable without notice to you.

**Copyright Infringement:**

LaborChart has in place certain legally mandated procedures regarding allegations of copyright infringement occurring on the Platform. Our policy is to investigate any allegations of copyright infringement brought to our attention. If you have evidence, know, or have a good faith belief that your rights or the rights of a third party have been violated and you want LaborChart to review, delete, edit, or disable the material in question, you must provide LaborChart with all of the following information:

- a. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- b. Description of the copyrighted work that you claim has been infringed;
- c. The location of the material that you claim is infringing is located on the Platform;
- d. Your address, telephone number and e-mail address;
- e. A statement that your claim of infringement is based on a good faith belief; and
- f. A statement made under penalty of perjury that the information you have provided is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

For this notification to be effective, you must direct your correspondence to LaborChart's designated agent: Ben Schultz – [ben@laborchart.com](mailto:ben@laborchart.com)



**Entire Agreement:**

This Agreement constitutes the entire agreement between LaborChart and you regarding the use of the Platform, superseding any prior agreements between LaborChart and you relating to your use of the Platform.

**Contact Us:**

For inquiries regarding the Agreement, or to remove or change your contact information in our database, or to not receive future mailings or other communications, as well as for all other inquiries, please contact us at any time using one of the options below:

**By Phone:**

(913) 800-8225

**By Email:**

[info@laborchart.com](mailto:info@laborchart.com)

**By Mail:**

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