

## ESHYFT Terms of Use

*Last Updated: 05/16/19*

Welcome and thank you for your interest in Shiftster LLC dba ESHYFT (“**ESHYFT**,” “**we**,” or “**us**”) and our website at ESHYFT.com, along with our related websites, networks, mobile applications, and other services provided by us (collectively, the “**Application**”). These Terms of Use govern your use of the ESHYFT proprietary nurse scheduling platform on your mobile device or via your web browser on your computer. The Application is licensed, not sold, to you. These terms are legally binding between you and ESHYFT regarding your use of the Application.

### **PLEASE READ THE FOLLOWING TERMS CAREFULLY.**

**BY CLICKING “I ACCEPT,” OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING ANY PART OF THE APPLICATION,** YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE APPLICATION, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ESHYFT’S PRIVACY POLICY (TOGETHER, THESE “**TERMS**”). IF YOU ARE NOT ELIGIBLE UNDER, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE APPLICATION.

1. **ESHYFT Overview.** The Application matches hospitals, nursing facilities, rehabilitation centers, and other health care facilities (“**Care Centers**”) with nurses or nurse assistants (“**Nurses**”) who are available to provide nursing services (“**Nursing Services**”), and facilitates scheduling and payment of such Nurses by such Care Centers.
2. **Eligibility.** You must be at least 18 years old to use the Application. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Application; and (c) your registration and your use of the Application is in compliance with any and all applicable laws and regulations. If you represent an entity, organization, or company, then by accepting these Terms, you represent and warrant that you have authority to bind such entity, organization, or company to these Terms and you agree that such entity, organization, or company is bound by these Terms. If you intend to provide Nursing Services facilitated by the Application to Care Centers, you represent and warrant that you have graduated from a nursing program and that you have met (a) all applicable legal requirements to provide such Nursing Services, including that you possess a valid nursing license, and (b) all other requirements posted on the Application or otherwise specified by the Care Center for the Nursing Services you wish to provide.
3. **Accounts and Registration.** To access most features of the Application, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept

responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at support@ESHYFT.com.

4. **Profile.** If you are a Nurse, you may create a profile on the Application offering your Nursing Services to Care Centers (your “**Profile**”). To create a Profile, you will be required to provide certain information about your work experience and the Nursing Services you are qualified to provide. You represent and warrant that all information that you publish in your Profile is complete and accurate, and you acknowledge and agree that if such information changes, you will promptly update your Profile to ensure that it remains complete and accurate.

## 5. Licenses

5.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, ESHYFT grants you, solely for your personal use, a limited, non-exclusive, non-transferable, non-sub licensable, revocable license to: (a) install and use one object code copy of any mobile application associated with the Application obtained from a legitimate marketplace (whether installed by you or pre-installed on your mobile device by the device manufacturer) on a mobile device that you own or control; and (b) access and use the Application.

5.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Application; (b) make modifications to the Application; or (c) interfere with or circumvent any feature of the Application, including any security or access control mechanism. If you are prohibited under applicable law from using the Application, you may not use it.

5.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Application (“**Feedback**”), then you hereby grant ESHYFT an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Application and create other products and services.

6. **Ownership; Proprietary Rights.** The Application is owned and operated by ESHYFT. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Application (“**Materials**”) provided by ESHYFT are protected by intellectual property and other laws. All Materials included in the Application are the property of ESHYFT or its third party licensors. Except as expressly authorized by ESHYFT, you may not make use of the Materials. ESHYFT reserves all rights to the Materials not granted expressly in these Terms.

## 7. Third Party Terms

7.1 **Care Center Policies.** You acknowledge and agree that in order to provide Nursing Services to Care Centers, such Care Centers may require that you comply with certain policies and procedures of such Care Centers, including policies and procedures related to protection of confidential information (including Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)),

and policies and procedures related to the health and safety of patients, your colleagues, and yourself. To the extent that you schedule Nursing Services through the Application, you agree to abide by all reasonable policies and procedures of the Care Centers to which you will be providing such Nursing Services, and acknowledge and agree that failure to abide by such policies and procedures will be grounds for ESHYFT to terminate your account on the Application and prohibit you from using the Application, in addition to all other rights and remedies of ESHYFT.

**7.2 Third Party Services and Linked Websites.** ESHYFT may provide tools through the Application that enable you to export information to third party services, including through features that allow you to link your account on ESHYFT with an account on the third party service or through our implementation of third party buttons (such as “like” or “share” buttons). By using one of these tools, you agree that ESHYFT may transfer that information to the applicable third party service. Third party services are not under ESHYFT’s control, and, to the fullest extent permitted by law, ESHYFT is not responsible for any third party service’s use of your exported information. The Application may also contain links to third party websites. Linked websites are not under ESHYFT’s control, and ESHYFT is not responsible for their content.

**7.3 Third Party Software.** The Application may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components (“**Third Party Components**”). Although the Application is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.

## **8. User Content**

**8.1 User Content Generally.** Certain features of the Application may permit users to upload content to the Application, including messages, reviews, photos, images, data, text, and other types of works (“**User Content**”) and to publish User Content on the Application. You retain any copyright and other proprietary rights that you may hold in the User Content that you post to the Application.

**8.2 Limited License Grant to ESHYFT.** By providing User Content to or via the Application, you grant to ESHYFT a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any media formats and through any media channels now known or hereafter developed.

**8.3 Limited License Grant to Other Users.** By providing User Content to or via the Application to other users of the Application you grant those users a non-exclusive license to access and use that User Content as permitted by these Terms and the functionality of the Application.

**8.4 User Content Representations and Warranties.** ESHYFT disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the

consequences of providing User Content via the Application. By providing User Content via the Application, you affirm, represent, and warrant that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize ESHYFT and users of the Application to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by ESHYFT, the Application, and these Terms;
- b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) contain any Protected Health Information as defined by HIPAA; (ii) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (iii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iv) cause ESHYFT to violate any law or regulation;
- c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate; and
- d. your User Content, including any content in a Profile or in communications to a Care Center, contains only complete, true, and accurate information.

**8.5 User Content Disclaimer.** We are under no obligation to edit or control User Content that you or other users post or publish, and will not be in any way responsible or liable for User Content. ESHYFT may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You understand that when using the Application you will be exposed to User Content from a variety of sources and acknowledge that User Content may be inaccurate, offensive, indecent, or objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against ESHYFT with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, ESHYFT does not permit copyright-infringing activities on the Application.

**8.6 Monitoring Content.** ESHYFT does not control and does not have any obligation to monitor: (a) User Content; (ii) any content made available by third parties; or (iii) the use of the Application by its users. You acknowledge and agree that ESHYFT reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Application for operational and other purposes. If at any time ESHYFT chooses to monitor the content, ESHYFT still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

**9. Prohibited Conduct.** BY USING THE APPLICATION YOU AGREE NOT TO:

- a. use the Application for any illegal purpose or in violation of any local, state, national, or international law;
- b. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- c. interfere with security-related features of the Application, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Application except to the extent that the activity is expressly permitted by applicable law;
- d. interfere with the operation of the Application or any user's enjoyment of the Application, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Application; (iii) collecting or disclosing personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Application;
- e. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Application account without permission, or falsifying your age or date of birth;
- f. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials; or
- g. attempt to do any of the acts described in this Section 9 or assist or permit any person in engaging in any of the acts described in this Section 9.

## 10. Digital Millennium Copyright Act

**10.1 DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. §512, as amended). If you have an intellectual property rights-related complaint about material posted on the Application, you may contact our Designated Agent at the following address:

Shiftster LLC dba ESHYFT  
ATTN: Legal Department (Copyright Notification)  
5140 U.S. Highway 9 South, Howell, NJ 07731  
Email: [copyright@ESHYFT.com](mailto:copyright@ESHYFT.com)

Any notice alleging that materials hosted by or distributed through the Application infringe intellectual property rights must comply include the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;

- b. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the Application;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of the materials on the Application of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

**10.2 Repeat Infringers.** ESHYFT will promptly terminate the accounts of users that are determined by ESHYFT to be repeat infringers.

**11. Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time upon 7 days' notice. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, you will be required to accept the modified Terms in order to continue to use the Application. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

## **12. Term, Termination and Modification of the Application**

**12.1 Term.** These Terms are effective beginning when you accept the Terms or first download, install, access, or use the Application, and ending when terminated as described in Section 12.2.

**12.2 Termination.** If you violate any provision of these Terms, your authorization to access the Application and these Terms automatically terminate. In addition, ESHYFT may, at its sole discretion, terminate these Terms or your account on the Application, or suspend or terminate your access to the Application, at any time for any reason or no reason, with or without notice.

**12.3 Effect of Termination.** Upon termination of these Terms: (a) your license rights hereunder will terminate and you must immediately cease all use of the Application; (b) you will no longer be authorized to access your account or the Application; (c) if you owed any amounts to ESHYFT prior to termination, you must pay ESHYFT any unpaid amount; and (d) all payment obligations accrued prior to termination and Sections 5.3, 6, 8, 12.3, 13, 14, 15, 16 and 18 will survive.

**12.4 Modification of the Application.** ESHYFT reserves the right to modify or discontinue the Application at any time (including by limiting or discontinuing certain features of the Application), temporarily or permanently, without notice to you. ESHYFT will have no liability for any change to the Application or any suspension or termination of your access to or use of the Application.

**13. Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Application, and you will defend and indemnify ESHYFT and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**ESHYFT Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Application; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any Care Center or other third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

**14. Disclaimers; No Warranties**

THE APPLICATION AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE APPLICATION ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. ESHYFT DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE APPLICATION AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE APPLICATION, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. ESHYFT DOES NOT WARRANT THAT THE APPLICATION OR ANY PORTION OF THE APPLICATION, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE APPLICATION, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND ESHYFT DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE APPLICATION OR ESHYFT ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE APPLICATION WILL CREATE ANY WARRANTY REGARDING ANY OF THE ESHYFT ENTITIES OR THE APPLICATION THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE APPLICATION AND YOUR DEALING WITH ANY OTHER APPLICATION USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE APPLICATION AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE APPLICATION) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. ESHYFT DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT ESHYFT IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

## 15. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE ESHYFT ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE APPLICATION OR ANY MATERIALS OR CONTENT ON THE APPLICATION, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY ESHYFT ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 16.4(ii) AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE ESHYFT ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE APPLICATION OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF: (A) THE TOTAL APPLICATION FEES PAID TO ESHYFT IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE APPLICATION IN THE 12 MONTHS PRIOR TO THE EVENT OR CIRCUMSTANCE GIVING RISE TO CLAIM; OR (B) \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## 16. Dispute Resolution and Arbitration

**ARBITRATION NOTICE.** Except for certain kinds of disputes described in this Section, you agree that all disputes arising under or in connection with your use of the Application, including these terms, will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND ESHYFT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury.

**16.1 Generally.** In the interest of resolving disputes between you and ESHYFT in the most expedient and cost effective manner, and except as described in this Section, you and ESHYFT agree that every dispute arising in connection with your use of the Application, including these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether



based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND ESHYFT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- 16.2 Exceptions.** Despite the provisions of this Section, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 16.3 Arbitrator.** Any arbitration between you and ESHYFT will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules if you are using the Application as an individual or its Commercial Arbitration Rules if you are using the Application on behalf of another business or organization (collectively, “AAA Rules”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting ESHYFT. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 16.4 Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). ESHYFT’s address for Notice is: Shiftster LLC dba ESHYFT, c/o Link Home Care, 5140 U.S. Highway 9 South, Howell, NJ 07731. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“Demand”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or ESHYFT may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or ESHYFT must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by ESHYFT in settlement of the dispute prior to the award, ESHYFT will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.
- 16.5 Fees.** If you commence arbitration in accordance with these Terms, ESHYFT will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New Jersey, if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse ESHYFT for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules.

Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**16.6 No Class Actions.** YOU AND ESHYFT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and ESHYFT agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

**16.7 Modifications to this Arbitration Provision.** If ESHYFT makes any future change to this arbitration provision, other than a change to ESHYFT's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to ESHYFT's address for Notice of Arbitration, in which case your account with ESHYFT will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

**16.8 Enforceability.** If this Section is found to be unenforceable or if the entirety of this Section is found to be unenforceable, then the entirety of this Section will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 17 will govern any action arising out of or related to these Terms.

**17. General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and ESHYFT regarding your use of the Application. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to". If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

**17.1 Governing Law.** These Terms are governed by the laws of the State of New Jersey without regard to conflict of law principles. You and ESHYFT submit to the personal and exclusive jurisdiction of the state courts and federal courts located within New Jersey, for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Application from our offices in New Jersey, and we make no representation that Materials included in the Application are appropriate or available for use in other locations.

- 17.2 **Privacy Policy.** Please read the ESHYFT Privacy Policy carefully for information relating to our collection, use, storage, disclosure of your personal information. The ESHYFT Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 17.3 **Additional Terms.** Your use of the Application is subject to all additional terms, policies, rules, or guidelines applicable to the Application or certain features of the Application that we may post on or link to from the Application (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 17.4 **Consent to Electronic Communications.** By using the Application, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 17.5 **Contact Information.** The Application is offered by Shiftster LLC dba ESHYFT, located at 5140 U.S. Highway 9 South, Howell, NJ 07731. You may contact us by sending correspondence to that address or by emailing us at support@ESHYFT.com.
- 17.6 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Application or to receive further information regarding use of the Application.
- 17.7 **No Support.** We are under no obligation to provide support for the Application. In instances where we may offer support, the support will be subject to published policies.
- 17.8 **International Use.** The Application is intended for visitors located within the United States. We make no representation that the Application is appropriate or available for use outside of the United States. Access to the Application from countries or territories or by individuals where such access is illegal is prohibited.
18. **Notice Regarding Apple.** This Section only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these Terms are between you and ESHYFT only, not with Apple Inc. (“**Apple**”), and Apple is not responsible for the Application or the content thereof. Apple has no obligation to furnish any maintenance and support services with respect to the Application. If the Application fails to conform to any applicable warranty, you may notify Apple and Apple will refund any applicable purchase price for the mobile application to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Application. Apple is not responsible for addressing any claims by you or any third party relating to the Application or your possession and/or use of the Application, including: (a) product liability claims; (b) any claim that the Application fails to conform to any applicable legal or regulatory requirement; or (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim

that the Application and/or your possession and use of the Application infringe a third party's intellectual property rights. You agree to comply with any applicable third party terms when using the Application. Apple and Apple's subsidiaries are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.