

# Terms of Use

**Effective October 18, 2019**

## 1. Terms and Conditions of Use

Please carefully read these terms and conditions (the “**Terms**”) as they apply to the website owned, operated and controlled by Brighter Financial, Inc., doing business as Starship (“**Starship**”), at [www.starshiphsa.com](http://www.starshiphsa.com) (the “**Website**”). These terms also apply to Your use of the mobile application [Starship] (the “**Application**”) and the services provided through the Website or Application. By using the Website or the Application, You agree to these Terms. If You do not agree to these Terms, do not use the Website or the Application. You cannot register or use the Application until You have agreed to these Terms and Conditions. In these Terms, “we”, “us” and “our” means Starship and “You” and “Your” means the Website or the Application user.

## 2. About Starship

Starship is a corporation formed in the State of Delaware, and provides Health Savings Accounts (HSA). Accounts are held through Starship’s bank partnership at nbkc bank. For more information about Starship’s services and HSAs please review the information provided [here](#).

## 3. Eligibility

By accessing the Website and registering to use the Application, You represent that you are a citizen or permanent resident of the fifty United States (“**U.S.**”) and the District of Columbia who is at least 18 years of age, 19 in Alabama and Nebraska, and 21 in Mississippi and Puerto Rico with a valid Social Security number or Tax Identification Number and You have the legal ability to agree to these Terms. You also agree that You will only use the Website and the Application in accordance with these Terms. Additional eligibility requirements apply, which can be found [here](#).

## 4. Privacy

Your privacy is very important to us. Please review our Privacy Policy, which also governs Your use of the Website and the Application. Our Privacy Policy describes how we collect and use Your information, including nonpublic personal information. Our Privacy Policy is hereby incorporated into these Terms.

## 5. Using Your HSA

Your HSA is also governed by the terms of Your HSA Deposit Account Agreement, which can be found [here](#). **Please note that Starship is not responsible for denying or approving Your HSA distributions. You are solely responsible to the Internal Revenue Service (“IRS”) for ensuring that all distributions from Your HSA are for qualified medical care expenses. For information on qualified medical care expenses please see [IRS Publication 969](#) and [IRS Publication 502](#).**

## 6. General Terms and Conditions

You agree: (a) You meet all of the eligibility requirements; (b) Your use of the Website and the Application is solely for Your personal use; and (c) You are solely responsible for maintaining any and all equipment necessary for Your access to and use of the Website and the Application, including internet access, computer equipment for accessing the internet, mobile phones, and mobile data plans with carriers.

## 7. Account Registration

To use certain parts of the Website and the Application, You will be required to create an account. Your account provides you access to your HSA via the Application. To create an account You will be required to provide Your full name, phone number, email address, and create a password. By creating an account, You agree that Your employer may share information with us to allow us to validate certain information that You provided in Your application for an HSA.

## **8. Accuracy of Information**

When creating an account or applying for an HSA on the Website or when utilizing the Application, You agree to provide current, complete and accurate information about Yourself. If any information You provide is untrue, inaccurate, not current or incomplete, we may deny Your application or suspend or terminate Your existing account.

## **9. Communications**

When You visit the Website, utilize the Application or send emails to us, You are communicating with us electronically. By accepting these Terms, You expressly consent to receive communications from us electronically to the extent permissible by law. Such electronic communications may include emails, messages through the Application or other electronic communications. Your consent to receive electronic communications from us does not mean that we must provide all communications electronically. You further expressly consent to be contacted by Starship and our employees, representatives and agents, or anyone contacting You on our behalf for any and all purposes arising out of or relating to Your account or HSA, at any telephone number, or any physical, email or other electronic address You provide or at which You may be reached. It is Your responsibility to provide us with current and accurate contact information. You represent that You are permitted to receive calls at each of the telephone numbers You have provided to us. You agree to promptly alert us whenever You stop using a particular telephone number.

## **10. Security**

You are responsible for safeguarding Your account login information, including maintaining the security of Your user identification, password and other confidential information relating to Your HSA . If You believe Your account or login information has been compromised, contact us immediately by email at [support@starshiphsa.com](mailto:support@starshiphsa.com) or by telephone at (415) 662-0381.

By accepting these Terms, You expressly agree that You will not, nor attempt to: (a) access data outside of the public aspects of the Website or the Application; (b) access any nonpublic personal information relating to any other user of the Website or the Application; (c) probe, scan or test the vulnerability of the Website or the Application; or (d) interfere with or disrupt the Website, Application or any aspect therein, including, without limitation, via means of submitting a virus to the Website or Application, or overloading, "flooding," "spamming," "mail bombing," or "crashing" the Website. Violations of system or network security may result in civil or criminal liability.

## **11. Fees**

You agree to pay all subscription, service and user fees, if any, that You are charged by Starship for using the Website or Application or in connection with Your HSA, and You agree that such fees may be upon providing thirty (30) days prior notice to you on the Website or through the Application. Our current schedule of fees can be found [here](#). You agree to pay all costs (including attorneys' fees), if any, incurred by Starship in collecting overdue fees from You. You also agree to pay all federal, state and local taxes applicable to Your use of the Website or Application.

## **12. Restrictions and Termination**

We reserve the right at any time to modify or discontinue, temporarily or permanently, Your account, the Website or the Application with or without notice and with or without cause. You agree that we shall not

be liable to You or to any third party for any modification, suspension or discontinuance of Your account, the Website or the Application. Further, we reserve the right to suspend, close or deny access to Your account, the Website or the Application if we believe there is a legitimate reason to do so. Such reasons shall include, without limitation:

- Any actual or suspected breach of these Terms;
- Any actual or suspected or actual criminal activity; and
- Any actual or suspected misuse of, or damage to, the Website or the Application.

In the event access to Your account or the Website or the Application is suspended or terminated, please see your HSA Deposit Account Agreement to access your HSA funds. Any suspension, modification or termination of your HSA will be handled in accordance with your HSA Deposit Account Agreement.

### **13. Modification**

We may change, limit or otherwise modify these Terms, including, without limitation, the Privacy Policy, at any time by informing You of any such changes through the Website or the Application. Any change shall be effective upon receipt, unless otherwise stated, or as required by law. You will be deemed to agree if You affirmatively accept the change, or if You continue to access or use the Website or the Application after the effective date of the change.

### **14. Links**

Our Website may contain links to third party websites providing services and resources. We do not control the availability or content of such third party websites. We are not responsible for examining or evaluating any third party website, and we do not make any representations regarding the quality or accuracy of the content on any such third party website. We cannot be held responsible or liable for the content on, or the actions of, any third party website.

### **15. No Warranty and Limitation on Liability**

WE DO NOT GUARANTEE THAT THE WEBSITE OR THE APPLICATION OR THE ADEQUACY, COMPLETENESS OR ACCURACY OF ANY CONTENT, DOCUMENT OR FEATURE OF THE WEBSITE OR APPLICATION WILL BE ERROR-FREE, THAT THE WEBSITE OR ANY FEATURE OF THE WEBSITE OR APPLICATION WILL BE UNINTERRUPTED, OR THAT ANY ERRORS, INTERRUPTIONS OR DEFECTS WILL BE CORRECTED. THE WEBSITE, APPLICATION AND THE CONTENT ON THE WEBSITE AND THE APPLICATION ARE MADE AVAILABLE ON AN "AS-IS" AND "WITH ALL FAULTS" BASIS. STARSHIP EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ALTHOUGH STARSHIP WILL TAKE REASONABLE PRECAUTIONS TO PROTECT THE WEBSITE AND THE APPLICATION AND AVOID DELETION, CORRUPTION OR UNAUTHORIZED MODIFICATION OF OR ACCESS TO THE WEBSITE AND THE APPLICATION, WE MAKE NO REPRESENTATION OR WARRANTY THAT SUCH EFFORTS WILL BE SUCCESSFUL, AND TO THE EXTENT PERMITTED BY LAW, WE SPECIFICALLY DISCLAIM ALL LIABILITY WHATSOEVER WITH RESPECT TO ANY FAILURE TO PROTECT THE WEBSITE OR THE APPLICATION, OR TO AVOID DELETION, CORRUPTION OR UNAUTHORIZED MODIFICATION OF OR ACCESS TO THE WEBSITE OR THE APPLICATION. STARSHIP MAKES NO REPRESENTATION OR WARRANTY THAT THE WEBSITE, APPLICATION OR ANY DOWNLOADABLE MATERIAL IS FREE FROM COMPUTER VIRUS.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, STARSHIP, ITS EQUITY OWNERS, SUBSIDIARIES, AFFILIATES, AND EACH OF THEIR RESPECTIVE MANAGERS, EMPLOYEES, REPRESENTATIVES, AGENTS, LICENSORS, SUCCESSORS, AND ASSIGNS SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE

LOSS, OR DAMAGE ARISING FROM OR RELATED TO ANY USE OF THE WEBSITE OR THE APPLICATION, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL OR LOSS OF USE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR ANY CLAIM BY ANY THIRD PARTY. YOUR SOLE REMEDY AGAINST STARSHIP, ITS EQUITY OWNERS, SUBSIDIARIES, AFFILIATES, AND EACH OF THEIR RESPECTIVE MANAGERS, EMPLOYEES, REPRESENTATIVES, AGENTS, LICENSORS, SUCCESSORS, AND ASSIGNS IN CONNECTION WITH YOUR USE OF THE WEBSITE OR THE APPLICATION OR FOR DISSATISFACTION WITH THE WEBSITE OR THE APPLICATION OR ANY CONTENT ON THE WEBSITE OR THE APPLICATION IS TO STOP USING THE WEBSITE AND THE APPLICATION.

## **16. Intellectual Property**

You acknowledge and agree that Starship or our licensors own all legal right, title and interest in and to the Website and the Application, including, without limitation, any trademark (including, for example, “bank on your health”, copyright, patent, trade secret or any other intellectual property right which subsist in the Website, whether those rights are registered or not, and wherever in the world those rights may exist (“IP”). You agree not to (a) take any action that would jeopardize, limit or interfere with our or our licensors’ rights in or to the IP, (b) copy, translate, publish or create derivative works of the IP or any component thereof, or (c) resell, distribute, trade or make any other commercial use of, modify, reverse engineer, decompile or disassemble the IP or any component thereof.

Under no circumstances will anything appearing on the Website or the Application be construed as granting, whether by implication, estoppel, or otherwise, any form of license or authorization to use, reproduce, or distribute the IP displayed on Website or the Application. Licenses to use IP appearing on the Website or the Application may be obtained with Starship’s prior written consent, which Starship may withhold in its sole discretion. Misuse of IP or any materials comprising the Website or the Application is strictly prohibited. You agree to abide by any and all trademark and service mark notices, information, or restrictions contained on the Website or the Application. Starship permits You to make a single copy of the content appearing on the Website and the Application solely for the purpose of obtaining information of its products and services provided that You are not otherwise authorized to display, distribute, download, modify, print, store, transmit, or use any materials or content appearing on the Website or the Application.

## **17. Indemnification**

By using the Website or the Application, You agree to defend, indemnify, and hold harmless Starship, its equity owners, subsidiaries, affiliates, and each of their respective, managers, employees, representatives, agents, licensors, successors and assigns from and against any and all losses, claims, damages, costs and expenses (including reasonable legal and accounting fees) that any of them may become obligated to pay arising or resulting from (a) Your use or misuse of the Website, the Application or any feature of the Website or the Application, (b) Your breach of these Terms, or (c) any violation of applicable law.

## **18. No Waiver**

The waiver of a breach of or default under these Terms, or the failure or delay by Starship to exercise any right in respect of any breach of or default under these Terms, shall in no event constitute a waiver of any other breach or default of these Terms, whether similar or dissimilar in nature, or operate as a waiver of any other right or remedy available to Starship.

## **19. Severability**

If any one or more of the provisions of these Terms should be ruled wholly or partly invalid or unenforceable by final judgement of a court of competent jurisdiction, then: (a) the validity and enforceability of all provisions of these Terms not ruled to be invalid or unenforceable shall be unaffected;

(b) the effect of the ruling shall be limited to the jurisdiction of the court making the ruling; and (c) if the judgement and/or the controlling principle of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislature, judicial, or administrative action, then the provision(s) in question as originally set forth in these Terms shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

## **20. Law and Venue**

These Terms and the relationship between You and Starship with regard to the use of the Website or the Application shall be governed by the laws of the State of California without regard to its conflicts of law provisions. [Subject to Section 21 below,] You agree to the personal jurisdiction by and venue in the state and federal courts in Clara County, California, and agree and consent that such courts are the exclusive forum for litigation of any claim or cause of action arising out of or relating to Your use of the Website or the Application or the content on the Website or the Application. [Subject to Section 21 below,] [I]f any action or proceeding is commenced to enforce or interpret these Terms or any right arising in connection with these Terms, the prevailing party in such action or proceeding shall be entitled to recover from the other party all reasonable attorneys' fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding. The prevailing party shall be the party that most nearly obtains the relief sought. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or relating to Your use of the Website or the Application or the content on or services provided through the Website or the Application must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **21. WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT**

**PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS HOW DISPUTES, IF ANY, BETWEEN YOU AND STARSHIP WILL BE RESOLVED.**

Applicability and Right to Opt-Out: This provision applies to You, unless You have opted-out by following the steps set forth herein. You may opt-out of the agreement to arbitrate disputes but only if we receive from You a written notice of opt-out within thirty (30) days after You have accepted these Terms. You must send the notice of opt-out to: Starship, 54 King Street, New York, NY 10014, Attn: Privacy. Your opt-out notice must include your name, address, phone number, and personal signature. Opting-out of arbitration will not affect your other rights or responsibilities under these Terms. If You opt-out of arbitration, neither You nor we will be subject to an agreement to arbitrate.

Agreement to Arbitrate: In the event of any claim, counterclaim, cross-claim, complaint, cross-complaint, controversy, or dispute ("Dispute") between You and Starship arising under, out of, or in any way related to Your account or HSA or the Website or the Application, or the interactions between You and Starship, either You or Starship may choose to require the other to resolve the Dispute by binding arbitration on an individual basis instead of in court provided, however, that the obligation to arbitrate shall not be binding upon any party with respect to (a) any suit to compel arbitration, stay proceeding pending arbitration or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator, (b) requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute, (c) any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights, or (d) actions to collect payments not subject to a bona fide Dispute. The term "Dispute" includes any (i) claim related to the validity in general of the Terms; (ii) claim, defense or dispute concerning the making, cancellation, existence, validity, enforceability, revocation or scope of these Terms; (iii) claim, controversy or dispute without regard to when it arose, whether it is based in contract, tort, statute, regulation, common law, or equity, or whether the remedy sought is legal or equitable, including claims for compensatory, monetary and/or punitive damages, restitution and/or disgorgement, or injunctions; (iv) claim or controversy or dispute with respect to validity, rescission, revocation, enforceability, coverage or scope of this agreement to arbitrate;

and (v) disagreement or controversy regarding whether You effectively opted-out of this agreement to arbitrate. The arbitrator shall decide all Disputes. The term "Dispute" DOES NOT include any claim regarding the making of this agreement to arbitrate. You agree that this agreement to arbitrate may be enforced by Starship or our affiliates, subsidiaries, or parents, and each of their officers, directors, employees, and agents and any third-party co-defendant of a claim subject to this agreement to arbitrate.

No Jury Trial, No Consolidation, No Class Action. If You or Starship require arbitration, neither party shall have the right to litigate a Dispute in court or to have a jury trial with respect to a Dispute. Instead, any Dispute will be determined by an arbitrator in accordance with the terms of this agreement to arbitrate. Also, discovery and appeal rights are limited in arbitration. Further, in arbitration, only Your individual demands for damages, injunctive relief, restitution or disgorgement can be resolved in arbitration, and neither You nor Starship may join or consolidate disputes in arbitration by or against other sellers or litigants, or litigate in court (whether individually or as part of class action), or arbitrate any disputes as a representative or member of a class or in a representative or private attorney general capacity. However, this arbitration agreement shall not be construed to prevent You from seeking in the arbitration the remedy of public injunctive relief.

Governing Law. This agreement to arbitrate is made pursuant to a transaction involving interstate commerce. The Federal Arbitration Act (9 U.S.C. §§1-16) ("FAA") shall govern this arbitration agreement, including without limitation, all issues relating to the making, cancellation, rescission, validity, revocation, enforceability, scope, or revocation of this agreement to arbitrate, and any issue of whether a particular claim or dispute is arbitrable or whether You effectively opted-out of this agreement to arbitrate. The FAA shall also govern any issue related to the confirmation of the arbitral award.

Administration of the Arbitration. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules (the "Rules"), as modified by this arbitration provision. A copy of the JAMS Streamlined Arbitration Rules can be obtained from JAMS at <https://www.jamsadr.com/rules-streamlined-arbitration> or (800) 352-5267. The arbitrator shall be selected from the JAMS panel of neutrals then active on the roster maintained by the JAMS office located in or nearest to Clara County, California and the arbitrator shall be a retired federal judge, a retired state appellate judge, or a retired state trial judge in that order of preference. In the event that the parties do not agree on the identity of the arbitrator, JAMS shall appoint an arbitrator in accordance with the identified rules and the arbitrator qualifications set forth herein. If JAMS is completely unavailable, and if You and Starship cannot agree on a substitute, then either You or Starship may request that a court appoint a substitute administrator.

Fees and Costs of Arbitration. Each party shall bear the expense of its own counsel, experts, witnesses and preparation and presentation of proofs. If You lose the arbitration, and applicable law allows Starship to recover our attorney's fees, the arbitrator will decide whether You must reimburse Starship for such fees. If You win the arbitration, and applicable law authorizes an award of costs and fees to the prevailing party, the arbitrator may decide that You are entitled to be reimbursed your reasonable attorneys' fees and costs (if actually paid by You).

Arbitration Decisions and Appeals. A single arbitrator will be appointed. The arbitrator must: (a) follow the FAA including (without limitation) with respect to the issues governed by the FAA (identified above); (b) subject to the FAA, apply federal law including the FAA to any other issues related to the Dispute that would be governed by federal law in court; (c) subject to the FAA, apply the law of the state of your residence set forth in this contract to any other issues related to the Dispute that would be governed by state law in court; (d) apply the JAMS Rules identified in this agreement to arbitrate to the extent not inconsistent with the FAA, other applicable law, or the terms of this arbitration agreement; (e) apply applicable statutes of limitations; (f) honor valid assertions of privilege under applicable law; (g) issue a written decision stating the reasons for the award; and (h) the arbitrator is authorized to grant any relief authorized by law, this Agreement, and the JAMS Rules. The arbitrator's decision will be final and, except as provided herein, for appeals, any court of competent jurisdiction may enter judgment upon the arbitral award issued by a single arbitrator pursuant to the FAA. However, if more than \$100,000 was genuinely in dispute, or there is a claim for public injunctive relief as allowed under California law, then either You or Starship may choose to appeal to a new panel of three arbitrators selected in the same manner as set

forth above. Upon a timely appeal, the appellate panel is completely free to accept or reject the entire original award or any part of it. The appeal must be filed with the arbitration administrator not later than thirty (30) days after the original award issues. Any court of competent jurisdiction may enter judgment upon the arbitral award of the appellate panel.

Survival of this Provision. This agreement to arbitrate provision shall survive the termination of Your account or HSA, if applicable.

Severability Provision Applicable to this Agreement to Arbitrate. If any portion of this arbitration agreement cannot be enforced, the unenforceable portion will be severed and the rest of this arbitration agreement will continue to apply, except that if a court or the arbitrator decides that a Dispute can be heard on a class or representative basis, and that decision is not reversed on appeal, then the agreement to arbitrate shall be void.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF YOU RESIDE IN CALIFORNIA AND YOU DO NOT OPT-OUT OF ARBITRATION, YOU MAY SEEK PUBLIC INJUNCTIVE RELIEF IN ARBITRATION TO THE EXTENT PERMITTED BY APPLICABLE LAW. Alternatively, if Your Dispute involves a claim for public injunctive relief under California law, You may bring that claim in court. If You bring such claim in court, You further agree that We may treat such a claim as a Dispute within the meaning of the arbitration agreement set forth in this Section 21, and that Starship would then have the right to demand arbitration, and if You refuse such demand, to move to enforce arbitration in accordance with the terms of the foregoing arbitration agreement pursuant to the FAA. If Starship loses the motion to compel arbitration, You agree to stay Your claim in court for public injunctive relief pending (a) exhaustion of Starship's right to appeal in court from the ruling against it, and (b) completion of arbitration of all other Disputes. If Starship wins its motion to compel arbitration, Your claims for injunctive relief will be decided in arbitration in accordance with the terms of the foregoing arbitration agreement, inclusive of the requirement that the arbitration may award injunctive relief only as is necessary to remedy Your own alleged injury or to prevent future injury to You alone.