



TERMS OF SERVICE

Your use of the Paytiva, LLC ("Paytiva") Services (as defined below) is controlled by these Terms of Service and as agreed by you from your electronic signature. Your agreement for us to provide you services remains effective until you revoke your agreement by emailing us or providing other written notice as described in the Notices, Errors, Revocations or Questions section below ("Notices Section"). Read that section for more information about revocation. Knowing these terms is important! You are agreeing to these terms by your use of the Services. In addition to these terms, we also publish a Privacy Notice on our website: www.paytiva.com/privacy/. We encourage you to read it to better understand how we use and store your financial and other information.

Fees. For any Service (defined below), you will pay a fee, based on the transaction amount, that you request to be directly deposited or sent from your bank account or debit card on the Schedule provided to you when you engage our Services. Payments and Funds transactions have different fees from each other. You will be charged the fee (subject to any applicable discount) each time you use the Service.

Services. The Paytiva "Services" shall mean and refer to all services, products, and offerings provided by Paytiva and the Paytiva Network. The Paytiva Network, utilizing Sponsor Banks, payment processors, gateways and other service providers, provides real time payment processing, payments, and account funding. For those Payees who are integrated with Paytiva, you make payments to your Account using your debit card ("Payments") (i) in person at an authorized Distributor, (ii) over the phone by calling call a Payee's customer service toll free telephone number, or (iii) online using your Payee's website portal. Services include funds that may also be "pushed" funds from a Payee to your bank account, debit card or other electronic means as expressly authorized by you ("Funds" transactions). Your Funds are cleared and directed to (or from) your Payee through a bank account owned by Sponsoring Bank or such other account to administer the payment process through which the Service is offered. The Paytiva Network and the Distributor reserves the right to decline any processing request.

NOTICE OF AGREEMENTS RESOLVING DISPUTES AND ARBITRATION

Before accepting these Terms and Conditions, you should carefully review the Disputes Resolution and Arbitration Agreements ("Resolution Agreements") below which include the Arbitration Provision. These Resolution Agreements, to which agreed, are incorporated herein by reference as if fully set forth at this point, and specifically include Paytiva, Sponsoring Bank, the Distributors, Payee, vendors and service providers of these companies, and each of their affiliates, assigns, officers, directors, managers, members, employees, agents, without limitation, and provide that all transfers and claims arising from or relating to these Terms and Conditions must be resolved by binding arbitration if the person or entity against whom a claim is made elects to arbitrate the claim. Thus, if the person or entity against whom the claim is made elects to arbitrate the claim, then you will not have the following important rights:

- You may not file or maintain a lawsuit in any court except a small claims court.
- You give up your right to have a jury decide your claim.
- You will not be afforded the procedural, pre-trial discovery, and appellate rights in an arbitration proceeding that you would enjoy in a court or judicial proceeding.
- You may not join or participate in a class action, act as a class representative or a private attorney general or consolidate your claim with the claims of others.
- You will have to pay certain fees to commence an arbitration proceeding unless you ask us to pay those fees for you.

The Resolution Agreements survive your use of these Services, your revocation of the agreement to provide you payment processing or the termination of these Terms and Conditions. If you do not want to arbitrate all claims as provided in the Resolution Agreements, then you have the right to reject the Arbitration Provision by delivering a US Postal Service written notice to us at the Notices Section, listed below, within thirty (30) days following the date you accepted these Terms and Conditions.

Paytiva Access. Your use of the Paytiva Services may not be fulfilled if we cannot verify your identity or obtain requested Account information. You authorize us to obtain personal and financial information regarding your Account from a Payee to help accurately handle your processing request and provide you information from your Account.

Effective Date of the Payment. The Payees with whom we contract agree to credit your Payment on your Account effective on the date it is processed at the authorized Distributor locations (where available) or through your Payee's approved website portal or by telephone. While it is anticipated that most transactions will be posted immediately to Payee via the Paytiva system, it is understood that due to circumstances beyond our control, some transactions may take a day or even a few days longer to be credited by your Payee to your Account. Contact your Payee if you feel a payment is not timely posted to your Account.

Commercially reasonable efforts will be made to deliver all your payments in accordance with your payment instructions. However, you agree we shall incur no liability because of any delay in having your Payment reach your Payee or being timely credited to your Account. The existence of any one or more of the following circumstances may cause a delay for which we are not responsible:

- The Internet or network payment infrastructure is not working properly;
- The Payee mishandles or delays processing a payment instruction;
- You have not provided us with the correct name, Account information for the Payee, or you have not provided us with accurate personal information, or you have otherwise provided incomplete payment instructions; or
- Circumstances beyond our control (such as, but not limited to, fire, weather, epidemic, government order or interference from an outside force) prevent the proper execution of the transaction and we have taken reasonable precautions to avoid those circumstances.

PAYMENTS ARE NON-REFUNDABLE. Paytiva nor the authorized Distributor can adjust your Account balance, provide a refund, provide customer service with the Payee or resolve disputes on your Account. Payees are responsible for resolving disputes and maintaining accurate outstanding Account or balances. If you dispute a payment made to a Payee, you must resolve the matter directly with the Payee. If we are brought into or you involve us in a dispute with your Payee, bank, or other third party, which is not the result of our failure to fulfill or to faithfully discharge our obligations under these Terms and Conditions, you will be required to reimburse our costs, including attorneys' fees.

Debit Card Authorization. By presenting your debit card to the authorized Distributor, online through a Payee's customer portal or over the telephone to a Payee's call center agent, you authorize the charge and/or deposit funds to your card in the amount you authorize each time, including the Paytiva Service fees. The amount debited from your bank account or debit card will include our fee and the amount pushed to you will have our fee deducted from the funds. Each authorization is separate and is not a pre-authorized transaction under Regulation E. Your authorization to process the contemplated transaction continues until you revoke this authority in writing and there is sufficient time to act upon your revocation, given that your revocation does not affect processing and transactions commenced prior to receipt of the revocation. There may be additional attempts of the transaction with your debit card if the payment or transfer does not clear or the debit card charge is reversed. We are not responsible for any fees from your bank for insufficient funds or over-drafts by your use of the Service. You warrant that you have the right to use the debit card presented.

Returned Items. Multiple transaction attempts may be made to your debit card or bank account if the Payment or transaction does not clear or the transaction is reversed. You agree not to dispute or reverse any charge to your debit card or bank account for these transactions or re-attempts, provided that the terms and amount of such transaction are the amount to be debited or credited at that time.

Error Correction. If there is an error concerning the debit card or ACH transfer, you authorize the payment processor or bank to initiate debit or credit entries to your debit card or bank account in order to correct a debit or credit entry made in error. If there is any missing or erroneous information regarding the debit card or bank account, then you authorize us to verify and correct such information, including, but not limited to, the debit card number, the bank account number, and the routing number.

Limitations and Exclusions. Payments may not exceed \$2,000. Any transaction you direct may be refused or not otherwise honored for security or other reasons. Limits or other restrictions may be imposed to curb or address suspicious, illegal or unauthorized activity. We will notify you promptly if it is decided that a Payee designated by you will be refused and we will make arrangements to promptly return the funds.

THE FOLLOWING PAYMENTS ARE PROHIBITED THROUGH THE PAYTIVA SERVICE:

1. Tax payments and other governmental fees;
2. Court ordered payments, alimony and child support payments;
3. Payments to Payees outside of the United States;
4. Payments for gambling, gaming, or to lenders not State or Federally licensed or regulated; and

5. Payments for illegal substances, alcohol, firearms and those payments otherwise prohibited by applicable law.

Consent to Use Transaction Data

1. **Consent to Collect Your Transaction Data.** You authorize Paytiva and its affiliates to access or collect data from your supplied bank accounts, including, for example and without limitation, account balances, transaction dates, the merchants involved, the transaction types and the amounts, other information, passwords, data from other third-party websites and databases that may be necessary to provide the services or other content (collectively "Transaction Data"). By providing this content to Paytiva, you represent that you are entitled to provide it to Paytiva for use for this purpose, without any obligation by us to pay any fees or other limitations. We make no effort to review such information for any purpose, including, but not limited to, accuracy, legality, or non-infringement. You agree that our third-party service providers and the operators and owners of the third-party websites will be entitled to rely on the foregoing authorization granted by you.
2. **Consent to Use Transaction Data.** Subject to the restrictions described in the Privacy Notice, you authorize Paytiva, its affiliates, and its service providers to use and store such Transaction Data for the Services and to operate, provide, administer, develop, and improve the Services. You authorize Paytiva, its affiliates, and its service providers to use Transaction Data in order to determine (i) Your eligibility for other services, offers or benefits that may, from time to time, be provided by Paytiva or its affiliates; and (ii) whether and in what amount to debit your bank account or debit card for Payments to Payees and for other amounts to be paid by you. Paytiva, its affiliates, and its service providers may use, modify, display, distribute and create new material using the Transaction Data to provide services to you. Paytiva, its affiliates, and its service providers may also use, sell, license, reproduce, distribute, disclose and aggregate any information about you, your activities and behavior which do not identify you or would be used to contact you, and that is derived through your use of the services. You agree that, without any particular time limit, and without the payment of any fees, Paytiva, its affiliates, and its service providers may use the Transaction Data for the purposes set out above.
3. **Removal and Deletion of Transaction Data.** Paytiva reserves the right to remove, delete, block, edit or modify any Transaction Data in its possession at any time, subject to applicable regulatory retention requirements, without prior notice and in its sole discretion for any reason or no reason. Paytiva has no obligation to retain or delete any of Your Transaction Data beyond any applicable regulatory retention periods to which Paytiva is subject.
4. **Withdraw of Consent to Use Transaction Data.** You may withdraw consent to use Transaction Data by contacting us at the Notices Section below.

YOU ACKNOWLEDGE AND AGREE THAT WHEN PAYTIVA IS PROVIDED WITH ACCOUNT INFORMATION FROM YOUR BANK ACCOUNTS AND THIRD-PARTY SITES, PAYTIVA IS ACTING AS YOUR AGENT, AND NOT AS THE AGENT OF OR ON BEHALF OF ANY THIRD PARTY.

Privacy Notice. Federal law requires us to tell you how we collect, share, and protect your personal information. You acknowledge that you have reviewed and expressly agree to the terms of our Privacy Notice, which is updated periodically, located on our website: www.paytiva.com/privacy/. You consent and agree to our Privacy Notice, as amended from time to time.

Choice of Law. Paytiva's operations and service providers are located in Ohio and these Terms and Conditions are substantively conducted in Ohio. You agree the provisions of these Terms and Conditions will be governed by federal banking and payments laws and the laws of the state of Ohio, without regard to any principle of conflicts of laws that would require or permit the application of the laws of any other jurisdiction.

Interstate Commerce. Part of our operations, banking transfers and other activities relating to these Terms and Conditions are performed outside your state. You agree that for all purposes, these transactions involve interstate commerce.

Anti-Money Laundering / Bank Secrecy Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person under various circumstances. What this means for you: When you request Services, you may be asked for your name, address, date of birth, and other information that will allow you to be identified. You may also be asked to provide your driver's license or other government-issued identification.

Amendments to these Terms and Conditions . We reserve the right to amend these Terms and Conditions at any time without notice to you, but we will use reasonable efforts to make each amendment available to you before such amendment becomes effective. We will ensure that the latest, fully amended version of these Terms and Conditions

is published and available to you. You are responsible for regularly reviewing these Terms and Conditions to obtain timely notice of such amendments. If any amendment is unacceptable to you, you may terminate your use of the Services between you and us as set out in these Terms and Conditions. If you continue to use the Services after the effective date of each amendment, you will be conclusively deemed to have accepted such amended version of these Terms and Conditions.

Telephone Recording. You understand and agree that, subject to applicable law, we may monitor and/or record any of your phone conversations with any of our representatives for training, quality control, evidentiary, and any other purposes. However, we are not under any obligation to monitor, record, retain, or reproduce such recordings, unless required by applicable law.

LIMITATION OF LIABILITY. We are not responsible or liable for any damages, costs or expenses to you if your payment is not on time, provided we performed according to these Terms and Conditions. We are not liable for any damages, costs or expense, of any type, if: (i) your payment was late or not delivered due to a failure or problem with the banking payment networks; (ii) your payment was declined by your bank; (iii) the payment did not complete due to you being overdrawn or the amount exceeded your overdraft limit; (iv) your bank account or debit card is suspended or closed; (v) the payment is rejected, returned, misapplied or other problem arising from the Payee; and (vi) any other issue arising out of a circumstance out of our control or that is not substantially caused by our negligence, omission or intentional act.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL Paytiva BE LIABLE FOR DAMAGES WHETHER CAUSED BY NEGLIGENCE ON THE PART OF ITS EMPLOYEES, DISTRIBUTORS OR AGENTS OR OTHERWISE, BEYOND THE SUM OF \$500 (in addition to refunding the transfer amount and transfer fee and except as provided in California Financial Code § 2102); AND (II) IN NO EVENT SHALL Paytiva OR ITS AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR THE LIKE. THESE TERMS AND CONDITIONS STATE OUR ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY AS IT RELATES TO YOUR USE OF THE Paytiva SERVICE.

WARRANTIES DISCLAIMER. THE Paytiva SERVICE AND RELATED DOCUMENTATION IS PROVIDED "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS) AS TO THE Paytiva SERVICE AND ALL INFORMATION, PRODUCTS AND OTHER CONTENT (INCLUDING THIRD PARTY INFORMATION, PRODUCTS AND CONTENT) INCLUDED IN OR TANGENTIAL TO THE SERVICE PROVIDED.

Notices, Errors, Revocations or Questions. In case of notices, errors or questions about your Paytiva Service:

- Call Paytiva at 800-971-3820
- Send us an electronic message at customerservice@paytiva.com
- Write to us at Paytiva, 8275 S Eastern Ave, Ste 200, Las Vegas, NV 89123

You may revoke your use of the Services or authorization to process a transaction at the Notice Section listed above. Revocation notices must be received by us at least three (3) full business days prior to the scheduled payment date to be effective. Revocation of your consent to process payments or for us to provide you Services shall not affect the legal enforceability of the remainder of the Terms and Conditions, or Services, provided to you before the effective date of revocation. A revocation does not revoke or terminate the Resolution Agreements, below, which has a separate process.

Copies of Authorizations. You agree to print or download a copy of these Terms and Conditions and the authorizations and retain them for your records. Upon request, Paytiva will provide you a printed copy of your Terms and Conditions.

Miscellaneous. The parties acknowledge that there are no third-party beneficiaries to these Terms and Conditions (other than lenders and service providers to Paytiva). Any waiver of a breach of any provision of these Terms and Conditions will not be a waiver of any other subsequent breach. Failure or delay by either party to enforce any term or condition of these Terms and Conditions will not constitute a waiver of such term or condition. You may not assign or transfer any of your rights or delegate any of your duties related to these terms.

Definitions. Capitalized terms in these Terms and Conditions have certain meanings described below:

Account. Account means your account, amount owed or debt, or funds to be sent to you, with your Payee.

Distributor. Distributor is an authorized agent of Paytiva, banks and payment processors, and has contracted to enter debit card information to facilitate the processing of your Payment for transmission to your Payee via the Sponsoring Bank's bank account referenced above. Distributors who may accept cash payments will be authorized agents or

delegates of a licensed money transmitter or agents of federally insured bank.

Payee. Payee means the entity to whom you want to direct or be sent your Payment or the entity that now owns the Account. **Payment.** Payment means the funds provided to the Distributor or amount of the debit card authorization, minus the Service fee, to be applied to your Account with your Payee. Payment also includes the amount of funds to be processed to your bank account or debit card from your Payee.

Services. Services means the processing services to facilitate making payments on your Account or requesting transmissions of funds into your bank account or debit card in accordance with these Terms and Conditions.

Sponsoring Bank. Sponsoring Bank means the bank or banks sponsoring the debit card processing services for the Services, including any sub-payment processor(s) involved in processing

You / Your. The lower-case version of these words, where appropriate, means the person requesting and utilizing the Services and responsible for fees incurred or with actual, apparent or ostensible authority operating on Your behalf.

DISPUTES RESOLUTION AGREEMENTS and ARBITRATION

These Disputes Resolution Agreements and Arbitration ("Resolution Agreements") set forth how you and we will resolve disputes concerning "Claims" that we cannot resolve informally and cover all the services and programs that our "related parties" provide for you. The Pre-Dispute Resolution Procedure, Arbitration Provision and Jury Trial Waiver set forth below govern "Claims" you assert against us or any "related party" of ours and "Claims" we or any related party assert against you.

For purposes of these Resolution Agreements, "we", "us" or "our" refer to the Paytiva that is providing you the services. Our "related parties" include all parent companies, subsidiaries, sister subsidiaries and affiliates of ours (including any Payee, merchant, program manager, service provider and collection agency utilized to collect sums owed the lender or any successor), and our and their employees, directors, officers, shareholders, managers, members and agents. Our "related parties" also include third parties that you bring a Claim against, irrespective of whether we are joined as a party, near the time you bring a Claim against us or any other related party.

The term "Claim" means any past, present or future claim, dispute or controversy between you and us (or our related parties), whether or not presently known, that arises from or relates in any way to the Paytiva Services or Paytiva Network or any services, programs, payments, loan proceeds, investments or other financial services you request or we provide to you or on your behalf ("Services"); any of our marketing, advertising, solicitations and conduct relating to your request for Services; any application for Services; our collection of any amounts you owe; oral or written communications between or concerning you and us; our disclosure of or failure to protect any information about you; or the relationship(s) between you and us that result from any of the foregoing. "Claim" is to be given the broadest possible meaning and includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, cross-claims and third-party claims, and claims based on any constitution, statute, regulation, ordinance, common law rule (including rules relating to contracts, torts, negligence, fraud or other intentional wrongs) and equity. It includes disputes that seek relief of any type, including damages and/or injunctive, declaratory or other equitable relief.

Notwithstanding the foregoing, "Claim" does not include any individual action brought by you or us in small claims court or your or our state's equivalent court, unless such action is transferred, removed, or appealed to a different court (in which case it is subject to arbitration). After a case is filed with the arbitration administrator, but before the arbitrator is formally appointed to the case, a party can send a written notice to the opposing party and the administrator that the dispute is within the jurisdiction of the small claims court (or an equivalent court) and that it wants the case decided by said court. After receiving this notice, the administrator will administratively close the case without requiring the payment of filing or any other administrative fees. In addition, except as set forth in the immediately following sentence, "Claim" does not include disputes about the validity, enforceability, coverage or scope of the Arbitration Provision or any part thereof (including, without limitation, Sections 5(C), (D) and/or (E) of the Arbitration Provision (the "Class Action and Multi-Party Claim Waiver"), the clause in the second sentence of Section 10 of the Arbitration Provision beginning with the words "provided, however," and/or this sentence); all such disputes are for a court and not an arbitrator to decide. However, any dispute or argument that concerns the validity or enforceability of these Terms of Service and Resolution Agreements as a whole is for the arbitrator, not a court, to decide. "Claim" also does not include any "self-help remedy" (that is, any steps taken to enforce rights without a determination by a court or arbitrator, for example, repossession and/or re-titling of a motor vehicle) or any individual action by you or us to prevent the other party from using any self-help remedy, so long as such self-help remedy or individual judicial action does not involve a request for monetary relief of any kind.

"Proceeding" means any judicial or arbitration proceeding regarding any Claim. "Complaining Party" means the party who threatens or asserts a Claim in any Proceeding and "Defending Party" means the party who is a subject of any threatened or actual Claim. "Claim Notice" means written notice of a Claim from a Complaining Party to a Defending Party.

PRE-DISPUTE RESOLUTION PROCEDURE

Before a Complaining Party asserts a Claim in any Proceeding (including as an individual litigant or as a member or representative of any class or proposed class), the Complaining Party shall give the Defending Party: (1) a Claim Notice (sent on your behalf and not on behalf of any other person) providing at least thirty (30) days' written notice of the Claim and explaining in reasonable detail the nature of the Claim and any supporting facts; and (2) a reasonable good faith opportunity to resolve the Claim on an individual basis without the necessity of a Proceeding. If you are the Complaining Party, you must send the Claim Notice to Paytiva, LLC, Attn: Legal Department, 8275 S Eastern Ave, Ste 200, Las Vegas, NV 89123 (or such other address as we shall subsequently provide to you). If you are the Defending Party, we will send the Claim Notice to you at your address appearing in our records or, if you are represented by an attorney, to your attorney at his or her office address. Any statute of limitations applicable to the Claim described in the Claim Notice shall be tolled during the period between the date that the Claim Notice is sent by mail and the later of: (1) 60 days after receipt of the Claim Notice, or (2) 30 days after either the Complaining Party or the Defending Party informs the other that good faith efforts to resolve the Claim informally have ceased. **If the Complaining Party and the Defending Party do not reach an agreement to resolve the Claim, the Complaining Party may commence a Proceeding, subject to the terms of the Arbitration Provision. Neither the Complaining Party nor the Defending Party shall disclose in any Proceeding the amount of any settlement demand made by the Complaining Party or any settlement offer made by the Defending Party until after the arbitrator or court determines the amount, if any, to which the Complaining Party is entitled (before the application of Section 7 of the Arbitration Provision). No settlement demand or settlement offer may be used in any Proceeding as evidence or as an admission of any liability or damages.**

A lawsuit or arbitration proceeding may not be commenced unless the Complaining Party has complied with this Pre-Dispute Resolution Procedure provision. A court will have authority to enforce this provision, including the power to enjoin the filing or prosecution of arbitrations without first complying with said provision. Unless prohibited by applicable law, the arbitration administrator is without authority to accept or administer any arbitration proceeding unless the Claimant has complied with this Pre-Dispute Resolution Procedure provision.

ARBITRATION PROVISION

VERY IMPORTANT. READ THIS ARBITRATION PROVISION CAREFULLY. IT SETS FORTH WHEN AND HOW CLAIMS (AS DEFINED ABOVE UNDER THE CAPTION "AGREEMENTS FOR RESOLVING DISPUTES") WILL BE ARBITRATED INSTEAD OF LITIGATED IN COURT. IF YOU DON'T REJECT THIS ARBITRATION PROVISION IN ACCORDANCE WITH SECTION 1 BELOW, UNLESS PROHIBITED BY APPLICABLE LAW, IT WILL HAVE A SUBSTANTIAL IMPACT ON THE WAY IN WHICH YOU OR WE RESOLVE ANY CLAIM NOW OR IN THE FUTURE.

Unless prohibited by applicable law and unless you reject the Arbitration Provision in accordance with Section 1 below, you and we agree that either party may elect to require arbitration of any Claim under the following terms and conditions:

1. RIGHT TO REJECT ARBITRATION. If you do not want this Arbitration Provision to apply, you may reject it within thirty (30) days after the date of you first entered into the Terms of Service and these Resolution Agreements by delivering to us at Attn: Legal Department, a written rejection notice which: (a) provides your name and address and the date you agreed to the Terms of Service; and (b) states that you are rejecting the Arbitration Provision in the Terms of Service. If you want proof of the date of such a notice, you should send the rejection notice by "certified mail, return receipt requested." If you use such a method, we will reimburse you for the postage upon your request. Nobody else can reject arbitration for you (except an attorney at law you have personally retained); this is the only way you can reject arbitration. Your rejection of arbitration will not affect your right to Services or the terms of an agreement for Services (other than this Arbitration Provision).

2. ARBITRATION ELECTION. A Proceeding may be commenced after the Complaining Party complies with the Pre-Dispute Resolution Procedure. The Complaining Party may commence the Proceeding either as a lawsuit or an arbitration by following the appropriate filing procedures for the court or the arbitration administrator selected by the Complaining Party in accordance with this Section 2. If a lawsuit is filed, the Defending Party may elect to demand arbitration under this Arbitration Provision of the Claim(s) asserted in the lawsuit. If the Complaining Party initially asserts a Claim in a lawsuit on an individual basis but then seeks to assert the Claim on a class, representative or multi-party basis, the Defending Party may then elect to demand arbitration. A demand to arbitrate a Claim may be given in papers or motions in a lawsuit. If you demand that we arbitrate a Claim initially brought against you in a lawsuit, your demand will constitute your consent to arbitrate the Claim with the administrator of our choice, even if the administrator we choose does not typically handle arbitration proceedings initiated against consumers. Any arbitration Proceeding shall be conducted pursuant to this Arbitration Provision and the applicable rules of the arbitration administrator in effect at the time the arbitration is commenced. The arbitration administrator will be the American Arbitration Association ("AAA"), 120 Broadway, 21st Floor, New York, NY 10271, www.adr.org; National Arbitration and Mediation ("NAM"), 122 East 42nd Street, Suite 803, New York, NY

10168, www.namadr.com; or any other company selected by mutual agreement of the parties. If both AAA and NAM cannot or will not serve and the parties are unable to select an arbitration administrator by mutual consent, the administrator will be selected by a court with jurisdiction. Notwithstanding any language in this Arbitration Provision to the contrary, no arbitration may be administered, without the consent of all parties to the arbitration, by any arbitration administrator that has in place a formal or informal policy that is inconsistent with the Class Action and Multi-Party Claim Waiver. The arbitrator will be selected under the administrator's rules (including any rules governing mass arbitrations such as, for example, AAA's Supplementary Rules for Multiple Case Filings), except that the arbitrator must be a lawyer with at least ten years of experience or a retired judge unless the parties agree otherwise.

3. NON-WAIVER. Even if all parties have elected to litigate a Claim in court, you or we may elect arbitration with respect to any Claim made by a new party or any new Claim asserted in that or any related or unrelated lawsuit (including a Claim initially asserted on an individual basis but modified to be asserted on a class, representative or multi-party basis), and nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision. This Arbitration Provision will apply to all Claims, even if the facts and circumstances giving rise to the Claims existed before the effective date of this Arbitration Provision. This Arbitration Provision will not apply to any Claim that was already pending in court before this Arbitration Provision took effect, although it will apply to new parties or new Claims that are added subsequently in the court action.

4. LOCATION AND COSTS. The arbitrator may decide that an in-person hearing is unnecessary and that he or she can resolve the Claim based on the papers submitted by the parties and/or through a telephone hearing. However, any arbitration hearing that you attend will take place in a location that is reasonably convenient for you. Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules or rules of the other administrator. However, we will consider any good faith written request you make individually for us to pay the administrator's or arbitrator's filing, administrative, hearing and/or other fees if you cannot obtain a waiver of such fees from the administrator and we will not seek or accept reimbursement of any such fees we agree to pay. We will also pay any fees or expenses we are required by law to pay or that we must pay in order for this Arbitration Provision to be enforced. We will not have to advance or reimburse your filing, administrator's or arbitrator's fees or charges in situations where the arbitrator(s) determines that law firm representing you (or group of law firms) are filings arbitration cases against us or related parties that are similar (but not necessarily exactly the same) in nature, make similar claims, or are decided on similar conclusions of law. The parties shall bear the fees and expenses of their own attorneys, experts and witnesses. However, we will pay the reasonable fees and costs you incur for your attorneys, experts and witnesses if and to the extent you are the prevailing party in an arbitration Proceeding or if we are required to pay such amounts by applicable law or by the administrator's rules. The arbitrator shall not limit the attorneys' fees and costs to which you are entitled because your Claim is for a small amount. Notwithstanding any language in this Arbitration Provision to the contrary, if the arbitrator finds that any Claim or defense is frivolous or asserted for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the arbitrator may award attorneys' and other fees related to such Claim or defense to the injured party so long as such power does not impair the enforceability of this Arbitration Provision.

5. NO CLASS ACTIONS OR SIMILAR PROCEEDINGS; SPECIAL FEATURES OF ARBITRATION. IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (A) HAVE A COURT OR A JURY DECIDE THE CLAIM; (B) OBTAIN INFORMATION PRIOR TO THE HEARING TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT; (C) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT; (D) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (E) UNLESS ALL PARTIES OTHERWISE AGREE IN WRITING, JOIN OR CONSOLIDATE CLAIM(S) INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON. (SPECIAL PROCEDURES APPLY TO PUBLIC INJUNCTIVE RELIEF CLAIMS AS SET FORTH IN SECTION 10(b) OF THIS ARBITRATION PROVISION). THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.

6. GETTING INFORMATION. In addition to the parties' rights under the administrator's rules to obtain information prior to the hearing, either party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other party the opportunity to object.

7. EFFECT OF ARBITRATION AWARD. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's award will be final and binding, except for: (1) any appeal right under the Federal Arbitration Act, 9 U.S.C. §1, et seq. (the "FAA"); and (2) Claims involving more than \$50,000 (including Claims that may reasonably require injunctive relief costing more than \$50,000). For Claims involving more than \$50,000, any party may appeal the award to a three-arbitrator panel appointed by the administrator, which will reconsider anew any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Costs in connection with any such appeal will be borne in accordance with Section 4 of this Arbitration Provision. No arbitration award involving the parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a party to the arbitration, nor will an arbitration award in prior disputes involving other parties have preclusive effect in an arbitration between the parties to this Arbitration Provision.

8. GOVERNING LAW. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not Federal or state rules of civil procedure or evidence or any state laws that pertain specifically to arbitration. To the extent that state law bears on the enforceability of this Arbitration Provision, Nevada law shall govern. The arbitrator is bound by the terms of this Arbitration Provision. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and applicable privilege rules, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive and other equitable relief (but only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual Claim), and attorneys' fees and costs. The arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

9. SURVIVAL, SEVERABILITY, PRIMACY, AMENDMENTS. This Arbitration Provision shall survive the full payment of any amounts made or sent under this Terms of Service or Resolution Agreements; any rescission or cancellation of this Terms of Service; any breach or default; any termination or cessation of Services, any exercise of a self-help remedy; our sale or transfer of this Terms of Service or our rights under these Resolution Agreements; any legal proceeding by us to collect a debt owed by you; and your (or our) bankruptcy. If any part of this Arbitration Provision cannot be enforced, the rest of this Arbitration Provision will continue to apply; provided, however, that (a) if Section 5(C), (D) and/or (E) is declared invalid in a proceeding between you and us with respect to a claim other than public injunctive relief and all appeals from that ruling have been exhausted, this entire Arbitration Provision (other than this sentence) shall be null and void in such proceeding, and (b) if a claim is brought seeking public injunctive relief and a court determines that this Arbitration Provision is unenforceable with respect to such claim and all appeals from that ruling have been exhausted, the public injunctive relief claim will be determined in court and any individual claims seeking monetary relief will be arbitrated, in which case the parties will ask the court to stay the public injunctive relief claim until the arbitration award pertaining to individual relief has been entered in court. In the event of any conflict or inconsistency between this Arbitration Provision and the administrator's rules or the rest of these Terms of Service, this Arbitration Provision will govern. We will not amend this Arbitration Provision in a manner that adversely affects your rights in a material manner unless we give you a right to reject the amendment and/or the Arbitration Provision in its entirety.

JURY TRIAL WAIVER

YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, YOU AND WE, AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS TERMS OF SERVICE. THIS JURY TRIAL WAIVER SHALL NOT AFFECT OR BE INTERPRETED AS MODIFYING IN ANY FASHION ANY SEPARATE ARBITRATION PROVISION BETWEEN YOU AND US, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.