

## 12. Dispute Resolution.

**12.1 Dispute Resolution by Binding Arbitration.** If you have not received any reimbursement to which you believe you are entitled or are otherwise dissatisfied with service under this Agreement, please call our customer service department at (888) 636-1794. **In the unlikely event that Company's customer service department is unable to resolve a complaint you may have to your satisfaction (or if Company has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** For any non-frivolous claim that does not exceed \$75,000, Company will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from Company to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below in Section 12.2), Company will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what Company has offered you to settle the dispute.

### 12.2 Arbitration Agreement.

(A) Company and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior agreement (including, but not limited to, claims related to advertising);
- claims that are currently the subject of pending litigation, including claims that are currently the subject of purported class action litigation in which you are, or are not, a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "Company", "we", "our", "you", and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services under this or prior agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies. Such agencies can, if the law allows, seek relief against Company on your behalf. **You agree that, by entering into this Agreement, you and Company are each waiving the right to a trial by jury or to participate in a class action.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(B) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Company should be addressed to: General Counsel, Home Solutions, 1751 W Diehl Rd, Suite 200, Naperville, IL 60563 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). If Company and you do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, you or Company may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Company or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Company is entitled. You may download or copy a form Notice and a form to initiate arbitration at [www.nicorhomesolutions.com/dispute](http://www.nicorhomesolutions.com/dispute).

(C) After Company receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000 (if you are unable to pay the filing fee, Company will pay it directly upon receiving a written request at the Notice Address). The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. You may obtain information that is designed for non-lawyers about the arbitration process at [www.nicorhomesolutions.com/dispute](http://www.nicorhomesolutions.com/dispute). The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless Company and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, Company agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, Company will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, 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 such fees will be governed by the AAA Rules. In such case, you agree to reimburse Company for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

(D) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of Company's last written settlement offer made before an arbitrator was selected, then Company will:

- pay you the amount of the award or \$5,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If Company did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits.

(E) The right to attorneys' fees and expenses discussed in paragraph (D) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws Company may have a right to an award of attorneys' fees and expenses if it prevails in arbitration, Company agrees that it will not seek such an award.

(F) The arbitrator may award declaratory or injunctive relief 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. **YOU AND COMPANY 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 Company 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. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(G) Notwithstanding any provision in this Agreement to the contrary, we agree that if Company makes any future change to this arbitration provision (other than a change to the Notice Address) during the term of your Agreement, you may reject any such change by sending Company written notice within thirty (30) days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.