

Sample Arbitration Clause



You may want to include a clause like this early in your terms of service, before other terms:

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY. THE TERMS BELOW INCLUDE AN ARBITRATION AGREEMENT, WHICH MEANS THAT YOU AND [Your Company Name] AGREE TO WAIVE THE RIGHT TO GO TO COURT, AND INSTEAD, DISPUTES SHALL BE RESOLVED ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. ARBITRATION MEANS THERE WILL BE A PRIVATE, FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY. BY ENTERING THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

You may want to have a section entitled “Arbitration Agreement” which can appear later in the agreement, or add some of the below language to any other arbitration clause:

By agreeing to the Terms, you and [Your Company Name] agree that all disputes, claims, or controversies between us, or between you and other [Users], or in any way arising out of relating to this agreement shall be resolved on an individual basis in binding arbitration, as set forth below. By agreeing to arbitrate, you and [Your Company Name] are each waiving the right to go to court. [By agreeing to arbitrate, you and [Your Company Name] are also agreeing that arbitration will be conducted only on an individual basis, and you and [Your Company Name] are each waiving the right to bring, to participate in, or to recover relief through any class, collective, coordinated, consolidated, or representative proceedings or any other kind of group, multi-plaintiff, joint, or mass action.]

Opt-out of Agreement to Arbitrate. You can decline this agreement to arbitrate by emailing [Your Company Email Address] and saying “I opt out of arbitration” in the email within 30 days of first registering your account.

You and [Your Company Name] agree that any dispute, claim, or controversy [under \$X in value – you can limit the dollar value of claims subject to arbitration if you like] (i) between you and [Your Company Name]; or (ii) between you and other [Users]; or (iii) arising out of or relating to [[this agreement] -OR- [these Terms]] in any way; or (iv) involving the existence, formation, breach, termination, enforcement, interpretation, validity, or scope of this agreement to arbitrate, shall be settled by binding arbitration administered by FairClaims (www.FairClaims.com) and not by a court or jury, in

accordance with FairClaims' applicable arbitration rules and procedures effective at the time a claim is made. These rules and procedures are available at www.FairClaims.com. You further agree that judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

You consent to electronic service of process, with service to be made to the email address we have on record for your account.

Some companies include a clause waiving the right to bring or participate in any type of class proceedings:

By agreeing to arbitrate, you and [Your Company Name] are also agreeing that arbitration will be conducted only on an individual basis, and you and [Your Company Name] are each waiving the right to bring, to participate in, or to recover relief through any class, collective, coordinated, consolidated, or representative proceedings or any other kind of group, multi-plaintiff, joint, or mass action.

You can decide to pay for the arbitration or have each party pay part of it. (But please note that if you have other parties pay, it may slow things down and/or effectively keep the arbitration from moving forward if one party doesn't pay.)

[[Your Company Name] will pay the arbitrator's fees and administrative fees of the FairClaims arbitration for you and, if applicable, another party to the arbitration. -OR- You and [Your Company Name] agree to split evenly the arbitrator's fees and administrative fees of the FairClaims arbitration.]

The following clause covers costs of judicial proceedings in case one party refuses to comply voluntarily with an arbitrator's award:

You and [Your Company Name] agree that if one party refuses to comply with an arbitrator's award and the other party obtains judicial confirmation or enforcement of the arbitrator's award, then the party that refused to comply shall pay the other party the costs, attorney's fees, court fees, and any other fees incurred in obtaining such confirmation or enforcement.

The following clause helps ensure that the Federal Arbitration Act, which sets forth arbitration-friendly legal principles and broadly preempts conflicting state law, governs the arbitration agreement:

Notwithstanding any choice of law or other provision in [[this agreement] -OR- [these Terms]], you and [Your Company Name] agree and acknowledge that this arbitration agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), will govern its interpretation and

enforcement and proceedings pursuant thereto. You and [Your Company Name] agree that the FAA and the arbitration rules of FairClaims shall preempt all state laws to the fullest extent permitted by law.

In addition to the above, you may consider doing the following-

- Adding a check box highlighting the arbitration clause in your click through when users agree to your terms of service
 - It may say something like “I have read and understand the arbitration clause included in the terms of service, and hereby agree to be bound by it. I know I can opt-out by emailing [Your Company Email] but have chosen not to do so.”
 - Even if the text of an arbitration agreement is crystal clear, a court may refuse to enforce the agreement if there is a flaw or defect in connection with the making of the agreement, such as a lack of conspicuous notice of the arbitration terms, or a failure of a company to provide a court with proof of a customer’s assent. See, e.g., *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014) (refusing to enforce arbitration agreement on Barnes & Noble’s website because a hyperlink did not provide constructive notice of an arbitration agreement).

And we of course recommend you consult with an attorney on all of this. This is just sample language but not a specific recommendation or warranty of any kind since all business and legal needs may of course vary.