

## **Legal Disputes**

### **ARBITRATION AGREEMENT; JURY TRIAL WAIVER; CLASS ACTION WAIVER; JURISDICTION AND VENUE.**

PLEASE READ THIS SECTION CAREFULLY. IT CONTAINS AN ARBITRATION AGREEMENT. THIS SECTION MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR YOUR CLAIMS. THIS SECTION ALSO CONTAINS PROCEDURES FOR FINAL BINDING INDIVIDUAL ARBITRATION AND A WAIVER OF ANY AND ALL RIGHTS TO PROCEED IN A CLASS, COLLECTIVE, CONSOLIDATED, PRIVATE ATTORNEY GENERAL, OR REPRESENTATIVE ACTION (COLLECTIVELY, "CLASS ACTION") IN ARBITRATION OR LITIGATION.

THIS SECTION ALSO ADDRESSES THAT YOU AND WAYFAIR ARE GIVING UP THE RIGHT TO HAVE A JURY TRIAL TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW AND TO FILE OR PARTICIPATE IN A CLASS ACTION SUBJECT TO THE LIMITED EXCLUSION BELOW. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR, NOT A JUDGE OR JURY, AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

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. Unless expressly limited by this arbitration provision, 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. In arbitration you may be entitled to recover attorneys' fees from us to the same extent as you would be in court.

For purposes of this Section, the terms "Wayfair," "our," "we," or "us" include Wayfair LLC, its parent and affiliates, as well as any of their respective present or future affiliates or subsidiaries, and any persons or entities (including agents, representatives, or employees) related to Wayfair or its present or future affiliates or subsidiaries.

#### **a) Arbitration Agreement**

YOU AND WAYFAIR AGREE THAT ANY DISPUTE (DEFINED BELOW) SHALL BE RESOLVED BY FINAL AND BINDING INDIVIDUAL ARBITRATION EXCEPT AS OTHERWISE PROVIDED HEREIN. NOTWITHSTANDING THE FOREGOING, EITHER PARTY MAY ELECT TO HAVE INDIVIDUAL CLAIMS HEARD IN SMALL CLAIMS

COURT IF THOSE CLAIMS QUALIFY FOR SMALL CLAIMS COURT AND SO LONG AS THE MATTER REMAINS IN SUCH COURT AND IS NOT REMOVED OR APPEALED TO A COURT OF GENERAL JURISDICTION AND ADVANCES ONLY ON AN INDIVIDUAL (NON-CLASS ACTION BASIS). ANY DISPUTE OVER WHETHER CLAIMS QUALIFY FOR SMALL CLAIMS COURT IS FOR THE SMALL CLAIMS COURT TO DECIDE IN THE FIRST INSTANCE AND, IF NECESSARY, FOR A COURT OF COMPETENT JURISDICTION TO DECIDE.

You and Wayfair agree that these Terms of Use affect interstate commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and federal arbitration law apply to this Arbitration Agreement and govern all questions as to whether a Dispute is subject to arbitration. Where otherwise applicable, the laws of the Commonwealth of Massachusetts apply. Should any action proceed in court (other than in small claims court), we and you each irrevocably consent to the exclusive jurisdiction and venue of the federal and state courts of the Commonwealth of Massachusetts for the adjudication of all non-arbitral claims.

For purposes of this Section, "Dispute" shall include, but is not limited to, any claims or controversies between you and Wayfair that are related in any way to these Terms of Use, including, but not limited to, your use of the Site, sales, returns, refunds, cancellations, defects, policies, privacy, advertising, and/or any communications between you and Wayfair, whether occurring on the Site, in-store, or otherwise, even if the Dispute arises after the termination of your relationship with Wayfair. "Dispute" also includes, without limitation, claims that: (a) you bring against Wayfair; (b) Wayfair brings against you; (c) in any way relate to or arise out of any aspect of the relationship between you and Wayfair, whether based in contract, tort, statute, fraud, misrepresentation, advertising claims, or any other legal theory; (d) are for mental or emotional distress or injury not arising out of physical bodily injury (e) arose before you entered into these Terms of Use or out of a prior agreement with Wayfair (including, without limitation, claims relating to advertising); (f) are subject to ongoing litigation where you are not a party or a member of a certified class; and/or (g) arise after the termination of these Terms of Use.

"Dispute," however, does not include disagreements or claims concerning patents, copyrights, trademarks, and trade secrets and claims of piracy or unauthorized use of intellectual property, which shall not be subject to arbitration or the notice and informal process described below.

The arbitrator shall decide all issues **except for**: (a) those that are specifically reserved for a court herein; (b) those issues relating to the scope, validity, and enforceability of the Arbitration Agreement or any of the provisions of this Section; (c) any issues arising

from or relating to the arbitrability of any Dispute; and (d) whether the arbitration administrator cannot or will not administer the arbitration in accordance with this Arbitration Agreement—all of which are for a **court of competent jurisdiction to decide**.

These Terms of Use and this Arbitration Agreement do not prevent you from bringing your Dispute to the attention of any federal, state, or local government agency.

**You agree that, by entering into this Agreement, you and we are each waiving the right to a trial by jury or to participate in a class action and to a trial by jury to the fullest extent permitted by applicable law.**

### **(1) Mandatory Pre-Arbitration Informal Dispute Resolution**

You and Wayfair agree to engage cooperatively to try to resolve any Dispute informally prior to you or Wayfair initiating an arbitration proceeding. You or Wayfair must first send a written notice to the other party providing a detailed description of the Dispute; your or our name and contact information (address, telephone number, email address, and account number if applicable); sufficient information to enable you or us to identify any transaction at issue (including any receipts or purchase details); and a detailed description of: (a) the nature and basis of the Dispute and any claims and (b) the nature and basis of the relief sought (including a detailed calculation of any damages). Your notice to us must be personally signed by you (and your attorney if you are represented by legal counsel). The notice must be individualized, meaning it can only concern only your dispute and no other person's dispute. Our notice to you must be personally signed by a Wayfair representative (and our attorney if we are represented by legal counsel).

**Your notice to Wayfair must be sent by email to [legal@wayfair.com](mailto:legal@wayfair.com).**

Our notice to you must be sent to the most recent contact information that you have provided to us.

For a period of 60 days from the date of receipt of a completed notice from the other party, you and we will work together using reasonable efforts to try to resolve the Dispute. If requested by us in connection with a notice initiated by you, you agree to personally participate in an individualized telephone settlement conference (and if you are represented by an attorney, your attorney may also participate) to discuss a potential early resolution of the matter. If requested by you in connection with a notice initiated by us, we agree to have a Wayfair representative personally participate in an individualized, telephone settlement conference (and if we are represented by an attorney, our attorney may also participate). If the Dispute is not resolved within this

60-day period (which can be extended by agreement of the parties), you or we may commence arbitration consistent with the process set forth below. **Compliance with this informal dispute resolution process is mandatory and a condition precedent to initiating arbitration.**

**Any applicable limitations period (including statutes of limitations) shall be tolled while the parties engage in this informal dispute resolution process.**

All of the Mandatory Pre-Arbitration Informal Dispute Resolution Procedures set forth in this section are essential so that you and Wayfair have a meaningful opportunity to resolve disputes informally. If the sufficiency of a notice or compliance with this informal dispute resolution process is at issue, such issue may be raised with and decided by a court of competent jurisdiction at either party's election, and any arbitration shall be stayed pending resolution of the issue. If any aspect of these requirements has not been met, a court of competent jurisdiction may enjoin the filing or prosecution of an arbitration. In addition, unless prohibited by law, the arbitration administrator may not accept, administer, assess or demand fees in connection with an arbitration that has been initiated without completion of the Mandatory Pre-Arbitration Informal Dispute Resolution Procedures. If the arbitration is already pending, it shall be administratively closed. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

## **(2) Arbitration Rules and Procedures; Individualized Relief; Fees**

To begin an arbitration proceeding, you must send an arbitration demand to National Arbitration and Mediation ("NAM") with a copy to Wayfair's Legal Department via email at [legal@wayfair.com](mailto:legal@wayfair.com), or we must send an arbitration demand to NAM with a copy sent to you at the most current address or email address we have on file. The arbitration demand must be accompanied by a certification of completion of the informal dispute resolution process and a copy of the notice. The arbitration demand and certification must be personally signed by you or your attorney, if you are represented by legal counsel (if you are initiating arbitration) or by a Wayfair representative or our attorney, if we are represented by legal counsel (if we are initiating arbitration). By filing the arbitration demand, the party and its attorney initiating the arbitration represent that to the best of their information, knowledge, and belief, formed after a reasonable inquiry that: (a) the arbitration demand is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of dispute resolution; (b) the claims or other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (c) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after reasonable opportunity

for further investigation or discovery. The arbitrator is expressly authorized to impose any sanctions available under Federal Rule of Civil Procedure 11 on represented parties and their counsel.

The arbitration will be administered by NAM under its applicable rules, including the Comprehensive Dispute Resolution Rules and Procedures and/or the Supplemental Rules for Mass Arbitration Filings, as applicable ("NAM Rules"), as modified by this Arbitration Agreement. The NAM Rules and fee information are available at [www.namadr.com](http://www.namadr.com) or by calling NAM at 1-800-358-2550. If NAM is unavailable or unwilling to administer the arbitration consistent with the NAM Rules as modified by this Arbitration Agreement, the parties shall agree on an administrator that will do so. If the parties cannot agree on an administrator, they shall jointly petition a court of competent jurisdiction to appoint an administrator that will administer the arbitration consistent with the NAM Rules as modified by this Arbitration Agreement. Payment of all arbitration fees will be governed by the NAM Rules as modified by this Arbitration Agreement. Wayfair will consider a request to reimburse the consumer filing fee upon a demonstration of hardship. You and we agree that the parties have a shared interest in reducing the fees and costs and increasing the efficiencies associated with arbitration. Therefore, you or we may elect to engage with NAM regarding fees, and you and we agree that the parties (and your and our counsel, if you and we are represented) will work together in good faith to ensure that arbitration remains cost-effective for all parties.

You may choose to have the arbitration conducted by a phone, video, or in-person hearing, or through written submissions, except any Dispute seeking \$25,000 or more or injunctive relief shall have an in-person or video hearing. You and Wayfair reserve the right to request a hearing in any matter from the arbitrator. You and Wayfair agree that you and a Wayfair representative will personally appear at any hearing (along with your and our respective legal counsel, if the parties are represented by counsel). If an in-person arbitration hearing is required, then it will be conducted at a location that is reasonably convenient to you or at another mutually agreed-upon location.

The arbitration will be conducted by a single arbitrator who will apply these Terms of Use as a court would and will adjudicate any Dispute according to applicable law and facts based upon the record only. The arbitrator shall issue a reasoned written award. The cost-shifting provisions of Federal Rule of Civil Procedure 68 shall apply and be enforced by the arbitrator after entry of an award. The arbitration award shall have no preclusive effect in any other arbitration or proceeding that does not involve you and Wayfair. An award that has been satisfied may not be entered in court.

UNLESS BOTH YOU AND WE AGREE OTHERWISE, ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS, REPRESENTATIVE, COLLECTIVE, OR PRIVATE ATTORNEY GENERAL BASIS. CLAIMS OF MORE THAN ONE PERSON CANNOT BE ARBITRATED JOINTLY OR BE CONSOLIDATED WITH THOSE OF ANY OTHER PERSON. ADDITIONALLY, YOU AND WAYFAIR AGREE THAT THE ARBITRATOR MAY AWARD INDIVIDUAL RELIEF AVAILABLE IN COURT (INCLUDING, WITHOUT LIMITATION, DAMAGES, DECLARATORY, INJUNCTIVE, OR OTHER EQUITABLE RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S PARTICULAR CLAIM. THE ARBITRATOR MAY NOT ISSUE A "PUBLIC INJUNCTION." THE ARBITRATOR DOES NOT HAVE THE POWER TO VARY THESE CLASS ACTION WAIVER PROVISIONS. IF, FOR ANY REASON, A COURT OF COMPETENT JURISDICTION HOLDS THAT THESE RESTRICTIONS ARE UNENFORCEABLE WITH RESPECT TO A PARTICULAR CLAIM OR REQUEST FOR RELIEF (SUCH AS A REQUEST FOR PUBLIC INJUNCTIVE RELIEF), AND ALL APPEALS FROM THAT DECISION HAVE BEEN EXHAUSTED (OR THE DECISION IS OTHERWISE FINAL), THE PARTIES AGREE THAT THE PARTICULAR CLAIM OR REQUEST FOR RELIEF MAY PROCEED IN A COURT OF COMPETENT JURISDICTION BUT SHALL BE STAYED PENDING ARBITRATION OF ALL REMAINING CLAIMS AND REQUESTS FOR RELIEF.

### **(3) Additional Procedures for Mass Filings**

If 25 or more similar Disputes (including yours) are asserted against Wayfair by the same or coordinated counsel or are otherwise coordinated ("Mass Filing"), consistent with the definition and criteria of Mass Filing set forth in the NAM Rules, **you understand and agree that by choosing to be part of a Mass Filing, these additional procedures shall apply, and the resolution of your Dispute might be delayed and ultimately proceed in court if not resolved through the process set forth below.** The parties agree that throughout this process, their counsel shall meet and confer in an effort to informally resolve the Disputes, streamline procedures, address the informal exchange of information, modify the number of Disputes to be adjudicated and to promote efficiency, conservation of resources, and the resolution of claims.

**If your claim is part of a Mass Filing, any applicable limitations periods (including statutes of limitations) shall be tolled for your Dispute from the time that the Mass Filing is first submitted to NAM until your Dispute proceeds in arbitration or is**

**settled, withdrawn, otherwise resolved, or opted out of arbitration pursuant to this Section.**

**STAGE ONE:** Your counsel and our counsel shall each select 25 Disputes (per side) to proceed as cases in individual arbitration proceedings as part of an initial staged process. Alternatively, either side's counsel may elect to have their 25 cases selected randomly. The number of Disputes to be selected to proceed as part of this initial staged process can be increased by agreement of counsel for the parties (and if there are fewer than 50 Disputes, all shall proceed individually in Stage One). Each of the 50 (or fewer) cases shall be assigned to a different arbitrator and proceed in individual arbitrations. If a case is withdrawn without the consent of both parties, then another Dispute shall be selected consistent with the selection process referenced above to proceed as part of this Stage One. The remaining Disputes shall not be filed or deemed filed in arbitration nor shall any arbitration fees be assessed or collected in connection with those claims until they are selected to proceed to individual arbitration proceedings as part of a staged process. If after this initial set of proceedings the parties are unable to informally resolve the remaining Disputes, they shall participate in a global mediation session with a retired federal or state court judge to be jointly selected by counsel for the parties in an effort to resolve the remaining Disputes (as informed by the adjudications of cases in Stage One), and Wayfair shall pay the mediator's fee.

**STAGE TWO:** If the remaining Disputes have not been resolved at the conclusion of Stage One, counsel for the claimants and counsel for Wayfair shall each select 50 Disputes per side to be filed and to proceed as cases in individual arbitrations as part of a second staged process, subject to any procedural changes the parties agree to in writing following mediation or through continuing, good faith discussions. Alternatively, either side's counsel may elect to have their 50 Disputes selected randomly. The number of Disputes to be selected to proceed as part of this second staged process can be increased by agreement of counsel for the parties (and if there are fewer than 100 Disputes, all shall proceed individually in Stage Two). Each of the 100 cases shall be assigned to a different arbitrator and proceed in individual arbitrations. If a case is withdrawn without the consent of both parties, then another Dispute shall be selected consistent with the selection process referenced above to proceed as part of this Stage Two. The remaining Disputes shall not be filed or deemed filed in arbitration nor shall any arbitration fees be assessed or collected in connection with those claims. After this second set of staged proceedings is completed, the parties shall engage in a global mediation session of all remaining Disputes with a retired federal or state court judge to be jointly selected by counsel for the parties in an effort to resolve the remaining Disputes (as informed by the adjudications of cases in Stages One and Two), and Wayfair shall again pay the mediator's fee.

**STAGE THREE:** If the remaining Disputes have not been resolved at the conclusion of Stage Two, counsel for the claimants and counsel for Wayfair shall each select 100 Disputes per side to be filed and to proceed as cases in individual arbitrations as part of a third staged process, subject to any procedural changes the parties agree to in writing following mediation or through continuing, good faith discussions. Alternatively, either side's counsel may elect to have their 100 Disputes selected randomly. The number of Disputes to be selected to proceed as part of this third staged process can be increased by agreement of counsel for the parties (and if there are fewer than 200 Disputes, all shall proceed individually in Stage Three). No more than 3 cases may be assigned to a single arbitrator to proceed individually unless the parties agree otherwise. If a case is withdrawn without the consent of both parties, then another Dispute shall be selected consistent with the selection process referenced above to proceed as part of this Stage Three. The remaining Disputes shall not be filed or deemed filed in arbitration nor shall any arbitration fees be assessed or collected in connection with those claims. After this third set of staged proceedings is completed, the parties shall engage in a global mediation session of all remaining Disputes with a retired federal or state court judge to be jointly selected by counsel for the parties in an effort to resolve the remaining Disputes (as informed by the adjudications of cases in Stages One, Two and Three), and Wayfair shall again pay the mediator's fee.

**Upon the completion of the global mediation session set forth in Stage Three, each remaining Dispute (if any) that is not settled or not withdrawn shall be opted out of arbitration and may only proceed in a court of competent jurisdiction consistent with these Terms of Use. Notwithstanding the foregoing, counsel for the parties may mutually agree in writing to proceed with the adjudication of the remaining Disputes in individual arbitration proceedings consistent with the process set forth in Stage Three (except Disputes shall be randomly selected and mediation shall be elective by agreement of counsel for the parties) or through another mutually-agreeable process.**

A court of competent jurisdiction shall have the authority to enforce the Additional Procedures for Mass Filings section of the Arbitration Agreement, including by enjoining the Mass Filing, the prosecution or administration of arbitrations, and the assessment or collection of arbitration fees.

The Additional Procedures for Mass Filings section of the Arbitration Agreement and each of its requirements are essential parts of this Arbitration Agreement. If, after exhaustion of all appeals, a court of competent jurisdiction decides that this section applies to your Dispute and is not enforceable, then your Dispute shall not proceed in arbitration and shall only proceed in a court of competent jurisdiction consistent with the remainder of the Terms of Use.

#### **(4) Opt-out**

You have the right to opt out of arbitration by sending your personally signed, written notice of your decision to opt out to [legal@wayfair.com](mailto:legal@wayfair.com) within 60 days of the first time you agreed to terms with Wayfair that included an arbitration agreement. You must include: (a) your name and residential address; (b) the email address and/or telephone number associated with your account; and (c) a clear statement that you want to opt out of arbitration and seek to have any Dispute addressed in a court of competent jurisdiction consistent with these Terms of Use. By opting out of arbitration, all other provisions in these Terms of Use, including the class action waiver and jury trial waiver, remain in effect to the fullest extent permissible by applicable law.

#### **(5) Severability and Survival**

Except as specifically provided in the Arbitration Agreement, if any part or parts of this Arbitration Agreement is/are found by a court of competent jurisdiction to be invalid or unenforceable as to your Dispute, then such specific part or parts shall be of no force and effect and shall be severed, and the remainder of the Arbitration Agreement shall continue in full force and effect. This Arbitration Agreement will survive the termination of these Terms of Use.

#### **(6) Future Changes to Arbitration Agreement**

If we make any future changes to this Arbitration Agreement (other than a change to our mailing address), you may reject any such change by sending your personally signed, written notice to [legal@wayfair.com](mailto:legal@wayfair.com) within 30 days of the change. Such written notice does not constitute an opt-out of arbitration altogether. By rejecting any future change, you are agreeing that you will arbitrate any Dispute between you and Wayfair in accordance with this version of the Arbitration Agreement.

#### **(7) Confidentiality**

Upon either party's request, the arbitrator will issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award and that any permitted court filing of confidential information must be done under seal to the furthest extent permitted by law.

#### **b) Waiver of Jury Trial; Waiver of Class Actions.**

TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, YOU AND WAYFAIR WAIVE THE RIGHT TO A JURY TRIAL. YOU AND WAYFAIR ALSO WAIVE ANY RIGHT TO BRING OR PARTICIPATE IN A CLASS ACTION IN ARBITRATION OR

IN LITIGATION IN COURT. NOTWITHSTANDING THE FOREGOING, THE PARTIES  
RETAIN THE RIGHT TO PARTICIPATE IN A CLASS-WIDE SETTLEMENT.