

## Casper Dispute Resolution, Arbitration Agreement, and Class Action Waiver

References to “Casper”, “you”, “we”, and “us” in this Arbitration Agreement include our respective predecessors in interest, successors, and assigns, as well as our respective past, present, and future parents, subsidiaries and affiliates; those entities and our respective agents, employees, licensees, licensors, and providers of content as of the time your or our claim arises. If any Dispute (defined below) is determined not to be subject to arbitration or resolution in small claims court, the exclusive jurisdiction and venue for proceedings concerning such Dispute shall be the federal or state courts of competent jurisdiction in New York, New York.

### A. Mandatory Individual Arbitration

**Any dispute, claim, or controversy arising out of or relating in any way to: (i) your visit to, or use of, the Website(s), Mobile Application(s), or Casper Store(s); (ii) the Product(s) or your purchase thereof; (iii) the Terms, including those relating to the formation, breach, termination, enforcement, interpretation, validity, scope, or applicability of the Terms and this Arbitration Agreement (collectively, “Dispute” or “Disputes”), whether such Disputes arose before, on, or subsequent to you entering these Terms, and if not resolved through the informal dispute resolution procedure set forth below, shall be exclusively resolved by individual, binding arbitration in accordance with this Arbitration Agreement.** The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any Disputes relating to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether these Terms are unconscionable or illusory, in whole or in part, and any defense to arbitration, including waiver, delay, laches, or estoppel.

Notwithstanding the foregoing and the Class Action/Jury Trial Waiver below, you and Casper each retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party’s copyrights, trademarks, trade secrets, patents, or other intellectual property rights. Any legal action by Casper against a non-consumer or its interactions with governmental and regulatory authorities shall not be subject to arbitration. Either party may also elect to have Disputes heard in small claims court seeking only individualized relief, so long as the action is not removed or appealed to a court of general jurisdiction.

If any court or arbitrator determines that this Arbitration Agreement is void or unenforceable for any reason as to Disputes arising before the date of posting of this Arbitration Agreement, then you may still be bound to previous versions of this Arbitration Agreement by reason of your separate agreement to those previous versions.

B. Class Action / Jury Trial Waiver

**You and Casper agree that, to the fullest extent permitted by law, each party is waiving the right to a trial by jury or to participate as a plaintiff, claimant, or class member in any class, collective, consolidated (other than any batching procedures conducted by the arbitral forum), private attorney general, or representative proceeding.** This means that you and Casper may not bring a claim on behalf of a class or group and may not bring a claim on behalf of any other person unless doing so as a parent, guardian, or ward of a minor or in another similar capacity for an individual who cannot otherwise bring their own individual claim. This also means that you and Casper may not participate in any class, collective, consolidated (other than any batching procedures conducted by the arbitral forum), private attorney general, or representative proceeding brought by any third party.

Unless both you and Casper agree in writing, any arbitration will be conducted only on an individual basis and not in a class, collective, consolidated (other than any batching procedures conducted by the arbitral forum), or representative proceeding. If any court or arbitrator determines that this Class Action/Jury Trial Waiver is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the Arbitration Agreement shall be deemed null and void in its entirety, and you and Casper shall be deemed not to have agreed to arbitrate Disputes.

To the extent that any claims are allowed to proceed on a class, collective, consolidated (other than any batching procedures conducted by the arbitral forum), or representative basis, such claims must be litigated in a federal or state court of competent jurisdiction in New York County, New York, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

Notwithstanding the foregoing, you or Casper may participate in a class-wide settlement.

C. Opt-Out Procedures

To opt out of this Arbitration Agreement, you must send us a written opt-out notice (“Opt-Out Notice”) by email at [legal@casper.com](mailto:legal@casper.com) within 30 days from the earlier of the date that you: (1) first purchased a Product; (2) first accessed the Website(s) or Mobile Application(s); or (3) first provided information to the Website(s) or Mobile Application(s) after the posting of these Terms (“Opt-Out Period”). The Opt-Out Notice must contain your full legal name, your complete mailing and email address and phone number, a clear statement that you wish to opt out of this Arbitration Agreement, and your signature. If your Opt-Out Period has passed, you are not eligible to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other provisions of the Terms will continue to apply to you. Additionally, if you opt out of this Arbitration Agreement, you may still be bound to previous versions of this Arbitration Agreement by reason of your separate agreement to those previous versions. In other words, opting out of this Arbitration Agreement shall have no effect on any previous, other, or future arbitration agreements you may enter into with Casper. As stated above, if you

do not opt out of this Arbitration Agreement within the Opt-Out Period, then you will be bound to the terms and conditions of this Arbitration Agreement which shall supersede and replace in its entirety all previous versions of Casper's arbitration agreements and class action provisions.

D. Rules and Governing Law

**Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures:** You and we agree that good-faith, informal efforts to resolve disputes often can result in a prompt, cost-effective and mutually beneficial outcome. Therefore, in the event of a Dispute, you and Casper each agree to send the other party a written Notice of Dispute ("Notice of Dispute" or "Notice"). A Notice of Dispute from you to Casper must be emailed to [legal@casper.com](mailto:legal@casper.com) ("Notice Address"). Any Notice of Dispute must include (i) the claimant's full legal name, complete mailing address, and email address; (ii) a description of the nature and basis of the claim or dispute; (iii) any relevant facts regarding claimant's use of the Website(s) or Mobile Application(s), including whether claimant receives any emails associated with the Website(s) or Mobile Application(s), whether claimant has made a purchase from Casper, and if so, the date(s) of the purchase(s); and (iv) a personally signed statement from the claimant (and not their counsel) verifying the accuracy of the contents of the Notice. The Notice must be individualized, meaning it can concern only your dispute and no other person's dispute. Casper will send any Notice of Dispute to you at the email address or mailing address it has for you, if any.

After receipt of a Notice of Dispute, the parties shall engage in a good faith effort to resolve the Dispute for a period of 60 days (which can be extended by agreement). You and we agree that, after receipt of the Notice of Dispute, the recipient may request an individualized telephone or video settlement conference (which can be held after the 60-day period) and both parties will attend (with counsel, if represented). You and we agree that the parties (and counsel, if represented) shall work cooperatively to schedule the conference at the earliest mutually-convenient time and to seek to reach a resolution.

Compliance with this Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures section is a condition precedent to initiating arbitration. Any applicable limitations period (including statute of limitations) and any filing fee deadlines shall be tolled while the parties engage in the informal dispute resolution procedures set forth in this subsection. All of the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures are essential so that you and Casper have a meaningful opportunity to resolve disputes informally. If any aspect of these requirements has not been met, the parties agree that a court of competent jurisdiction may enjoin the filing or stay the prosecution of an arbitration. Nothing in this paragraph limits the right of a party to seek damages for non-compliance with these Procedures in arbitration.

If the parties cannot resolve the Dispute through the Informal Dispute Resolution Procedures above, you and Casper each agree that all Disputes shall be resolved exclusively through final and binding individual arbitration, rather than in court. The parties may agree to waive hearings

and resolve Claims through submission of documents. Any arbitration hearing will be conducted remotely by telephone or video conference to the extent possible, but if the arbitrator determines, or the parties agree, that a hearing should be conducted in person, the arbitration hearing will take place as close to your residence as practicable, or another agreed upon locale, and shall be before one arbitrator.

All Disputes shall be submitted to National Arbitration and Mediation (“NAM”), [www.namadr.com](http://www.namadr.com), for arbitration before one arbitrator. The arbitration will be administered by NAM in accordance with its rules and procedures, including any supplementary rules and fee schedules, then in effect (the “Rules”), except as modified by this Arbitration Agreement. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the Rules. A form for initiating arbitration proceedings is available on NAM’s website at <https://www.namadr.com/resources/rules-fees-forms/>. You and we agree that the party initiating arbitration must submit a certification that they have complied with and completed the Mandatory Pre-Arbitration Notice and Informal Dispute Resolution Procedures requirements referenced above, and that they are a party to the Arbitration Agreement enclosed with or attached to the demand for arbitration. The demand for arbitration and certification must be personally signed by the party initiating arbitration (and their counsel, if represented). The parties agree that submission of the certification shall be required for the claim to be deemed properly filed. For additional information on how to commence an arbitration proceeding, you can contact NAM at [customerservice@namadr.com](mailto:customerservice@namadr.com).

If NAM determines that 25 or more substantially similar arbitration demands presented by or with the assistance, coordination, or cooperation of the same law firm, group of law firms, cooperating law firms, or organization are allowed to be submitted for arbitration, NAM’s mass filing fee structure shall apply and the parties agree that the arbitrations will proceed in accordance with the batching process as follows: (i) NAM shall administer the arbitration demands in batches of at least 25 claims, with the discretion to create additional batches if NAM finds that they are necessary to facilitate the efficient resolution of demands; (ii) NAM shall provide for the resolution of each batch as a single consolidated arbitration with one procedural calendar and one hearing (if any) and one final award; and (iii) NAM shall apply a single initial filing fee and administrative fee per batch for each side with respect to the fees set forth in NAM’s fee schedule. You agree to cooperate in good faith to implement this batch approach to facilitate the efficient resolution of these Claims. All parties agree that arbitrations are of a “substantially similar nature” for purposes of this batching procedure for claims administered by NAM if they arise out of or relate to the same event or factual scenario and raise the same or similar legal issues and seek the same or similar relief. This batching procedure for claims administered by NAM shall in no way be interpreted as authorizing class arbitrations of any kind. Casper reserves all rights and defenses as to each and any demand and claimant. If any court or arbitrator determines that this batching procedure for claims administered by NAM and the ADR Services Batching Procedure (see below) are both void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the Arbitration Agreement shall be deemed null and void in its entirety, and you and Casper shall be deemed not to have agreed to arbitrate Disputes.

If NAM notifies the parties in writing that it is not available to arbitrate any Claim, or if NAM is otherwise unable to arbitrate any Claim, that Claim shall be submitted to ADR Services, Inc. (“ADR Services”), [www.adrservices.com](http://www.adrservices.com), for final and binding individual arbitration before one arbitrator. The arbitration will be administered by ADR Services in accordance with its rules and procedures, including any supplementary rules and fee schedules, then in effect (the “Rules”), except as modified by this Arbitration Agreement. If there are 20 or more substantially similar Claims that are allowed to be submitted for arbitration but cannot be arbitrated by NAM, and are presented to ADR Services by or with the assistance, coordination, or cooperation of the same law firm, group of law firms, cooperating law firms, or organization, ADR Services shall (i) administer those Claims in at least 20 batches, with the discretion to create additional batches if ADR Services finds that they are necessary to facilitate the efficient resolution of demands; and (ii) apply a single initial filing fee and administrative fee per batch for each side with respect to the fees set forth in ADR Services’ then-current Mass Consumer Non-Employment Arbitration Fee Schedule. You agree to cooperate in good faith to implement this batch approach (the “ADR Services Batching Procedure”) to facilitate the efficient resolution of these Claims. This ADR Services Batching Procedure shall in no way be interpreted as authorizing class arbitrations of any kind. Casper reserves all rights and defenses as to each and any demand and claimant.

Notwithstanding any choice of law or other provision in these Terms, the parties 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 any proceedings under it. It is the intent of the parties that the FAA and the Rules shall preempt all state laws to the fullest extent permitted by law. If the FAA and the Rules are found to not apply to any issue that arises under this Arbitration Agreement, then that issue shall be resolved under the laws of New York.

At the conclusion of the arbitration proceeding, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. An arbitrator’s award that has been fully satisfied shall not be entered in any court.

As in court, you and Casper agree that any counsel representing a party in arbitration certifies when initiating and proceeding in arbitration that they are complying with the requirements of Federal Rule of Civil Procedure 11(b) and any applicable state laws of similar import, including certification that the claim or relief sought is neither frivolous nor brought for an improper purpose. The arbitrator is authorized to impose any sanctions under NAM or ADR Services’ Rules (as applicable), Federal Rule of Civil Procedure 11, or applicable federal or state law, against all appropriate represented parties and counsel.

Except as expressly provided in the Arbitration Agreement, the arbitrator may grant any remedy, relief, or outcome that the parties could have received in court, including awards of attorneys’ fees and costs, in accordance with applicable law.

**Arbitrator's Fees:** You and we agree that arbitration should be cost-effective for all parties and that any party may engage with NAM, ADR Services (as applicable), and/or the arbitrator to address the apportionment of the arbitrator's fees.

**Confidentiality:** The parties agree that the arbitrator is authorized to 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.

**Requirement of Individualized Relief:** The parties agree that the arbitrator is authorized, upon either party's request, to 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. If any of the prohibitions on non-individualized declaratory or injunctive relief, class, representative, and private attorney general claims, or consolidation set forth under this Arbitration Agreement are found to be unenforceable with respect to a particular claim or with respect to a particular request for relief (such as a request for injunctive relief sought with respect to a particular claim), then, after exhaustion of all appeals, the parties agree such a claim or request for relief shall be decided by a court of competent jurisdiction, after all other arbitrable claims and requests for relief are arbitrated.

You agree that any arbitrations between you and Casper will be subject to this Arbitration Agreement and not to any prior arbitration agreement you had with Casper, and, notwithstanding any provision in these Terms to the contrary, you agree that this Arbitration Agreement amends any prior arbitration agreement you had with Casper, including with respect to claims that arose before this or any prior arbitration agreement.

E. Opt-Out of Future Changes to Arbitration Agreement

Notwithstanding any provision to the contrary, if Casper makes any future change to this Arbitration Agreement (other than a change to the Notice Address), you may reject any such change by sending Casper an email to [legal@casper.com](mailto:legal@casper.com) within 30 days of the posting of the amended arbitration agreement that provides: (i) your full legal name, (ii) your complete mailing address, (iii) your phone number, (iv) the change you are rejecting, (v) and, if applicable, the username or email address associated with any purchase from Casper. It must include a statement, personally signed by you, that you wish to reject the specified change to the Arbitration Agreement. This is not an opt out of arbitration altogether.

F. Severability & Survival

If any provision of this Arbitration Agreement, or a portion thereof, is found to be void, invalid, or otherwise unenforceable, then that portion shall be deemed to be severable and, if possible, superseded by a valid, enforceable provision, or portion thereof, that matches the intent of the

original provision, or portion thereof, as closely as possible. The remainder of this Arbitration Agreement shall continue to be enforceable and valid according to the terms contained herein. Notwithstanding the foregoing, if any court or arbitrator determines that the batching procedure for claims administered by NAM (set forth above) and the ADR Services Batching Procedure are both void or unenforceable for any reason or that an arbitration can proceed on a class basis, then, after exhaustion of all appeals, the Arbitration Agreement shall be deemed null and void in its entirety.

This Arbitration Agreement shall survive termination of these Terms. Except as provided in the opt-out provisions set forth in Sections C and E above, the terms and conditions of this Arbitration Agreement shall supersede and replace any and all previous arbitration and class action/jury waiver agreements you may have entered into with Casper.