

## Resolution of Disputes by Arbitration

PLEASE READ THIS PROVISION OF THE AGREEMENT ("Arbitration Agreement") CAREFULLY. IT REQUIRES ALL CLAIMS BETWEEN YOU AND US TO BE RESOLVED BY BINDING ARBITRATION WHENEVER YOU OR WE CHOOSE TO SUBMIT A CLAIM TO ARBITRATION. BY ACCEPTING THIS ARBITRATION AGREEMENT, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO A SMALL CLAIMS COURT) AND TO BRING OR PARTICIPATE IN ANY CLASS OR OTHER REPRESENTATIVE ACTION IN A COURT PROCEEDING.

**Agreement to Arbitrate.** Either you or we may elect, without the consent of the other, to arbitrate any Claim (as defined below) through the binding arbitration process set forth in this Arbitration Agreement. For purposes of this Arbitration Agreement, "we," "our," and "us" FIBT and its employees, officers, directors, parents, agents, controlling persons, subsidiaries, affiliates, predecessors, acquired entities, successors, and assigns.

**Claims Covered by Arbitration.** "Claims" subject to this Arbitration Agreement include all of the following: (1) claims related to or arising out of this Terms and Conditions of Your Account (the "Account Agreement") or any prior or later versions of the Account Agreement, as well as any changes to the terms of the Account Agreement; (2) claims related to or arising out of any aspect of any relationship between you and us that is governed by the Account Agreement; (3) claims related to or arising out of your account or any services provided to you under the Account Agreement; and (4) claims related to the interpretation, scope, applicability, or enforceability of the Account Agreement or Arbitration Agreement. Claims are subject to arbitration whether they are based in contract, tort, federal or state statute, constitution, regulation, or any other legal theory, or whether they seek legal or equitable remedies (except as provided in the "Public Injunctive Relief Waiver" section below). All claims are subject to arbitration whether they arose in the past, may currently exist, or may arise in the future. Claims include claims or disputes that arose before the parties entered into the Agreement (such as claims related to advertising) or after termination of the Agreement or your account is closed.

**Claims Not Covered by Arbitration.** Claims filed by you or by us in a small claims court are not subject to arbitration, so long as the dispute remains in such court and advances only an individual claim for relief. The "Class and Representative Action Waiver" and "Public Injunctive Relief Waiver" sections below set forth additional claims not subject to arbitration.

**Commencing an Arbitration.** Unless the parties agree to select a different arbitration administrator, the arbitration shall be administered by the American Arbitration Association ("AAA") under AAA's Consumer Arbitration Rules, except as modified by this Arbitration Agreement. AAA's rules may be obtained from [www.adr.org](http://www.adr.org) or 1-800-778-7879 (toll-free). If AAA is for any reason unable to serve and the parties are unable to agree on an alternative arbitration administrator, then a court of competent jurisdiction shall appoint an arbitration administrator. Either you or we may start an arbitration by giving written notice to the other party. This notice may be given before or after a lawsuit has been filed concerning the Claim and it may be given by papers filed in the lawsuit such as a motion to compel arbitration. The party asking for arbitration must file a notice with the arbitration administrator pursuant to its rules.

**Arbitration Procedure.** Unless you and we agree otherwise in writing, the arbitration shall be decided by a single, neutral arbitrator, who shall be a retired judge or a lawyer with at least ten years of experience, selected in accordance with the chosen arbitration administrator's rules.

The arbitrator will decide the Claim or Claims in accordance with the terms of the Agreement and applicable substantive law, including the Federal Arbitration Act, 9 U.S.C. 1 et seq. (the "FAA"), and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. Except as provided in the "Public Injunctive Relief Waiver" section below, the arbitrator may award damages or other relief (including injunctive relief) available to the individual claimant under applicable law. The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. An award in arbitration shall determine the rights and obligations between the named parties only, and only in respect to the Claim(s) in arbitration and shall not have any bearing on the rights and obligations of any other persons, or on the resolution of any other dispute. The arbitrator will take reasonable steps to protect customer account information and other proprietary or confidential information. Any arbitration hearing shall take place in the county in which you reside, unless the parties agree in writing to a different location or the arbitrator so orders.

If all Claims are for \$15,000 or less, 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 in accordance with the arbitration administrator's rules. At your or our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator's award shall be final and binding except that any party may appeal any award relating to a Claim for more than \$100,000 or for injunctive relief to a three-arbitrator panel appointed by the arbitration administrator, which will reconsider de novo any aspect of the appealed award. The panel's decision will be final and binding. In either event, you or we may seek to have the award vacated or confirmed and entered as a judgment in any court having jurisdiction.

**Arbitration Costs.** If permitted by the rules of the selected arbitration administrator, you agree to pay any initial filing fee charged to you by the arbitration administrator for any arbitration you commence. We will pay the entire initial filing fee if: (1) you claim to be unable to afford it; and (2) you seek but cannot obtain a waiver of that fee from the arbitration administrator. To the extent allowed by applicable law and our agreements, the arbitrator may award arbitration costs and attorneys' fees to the prevailing party.

**Jury Waiver and Limitation of Rights.** You and we agree that, by entering into this Arbitration Agreement, the parties are each waiving the right to a trial by jury or a trial before a judge in court (except for matters that may be taken to a small claim court). You and we acknowledge that arbitration will limit our legal rights, including the right to participate in a class action, the right to a jury trial, the right to conduct full discovery, and the right to appeal.

**Class Action and Representative Action Waiver.** You and we agree that each may bring claims against the other only in an individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. Further, unless mutually agreed to by you and us, claims of two or more persons may not be joined, consolidated, or otherwise brought together in the same arbitration (unless those persons are joint account holders or beneficiaries on your account and/or related accounts, or parties to a single transaction or related transaction). The arbitrator shall have no authority to conduct any class, private attorney general or other representative proceeding. This section does not apply to requests for public injunctive relief, which are addressed in the section below entitled "Public Injunctive Relief Waiver."

**Public Injunctive Relief Waiver.** Neither you nor we will have the right to seek public injunctive relief as a remedy for any Claim against one another (a "Public Injunctive Relief Request") in arbitration, if such a waiver is permitted by the FAA. If such a waiver is deemed unenforceable, you and we agree that the Public Injunctive Relief Request shall be severed from any other Claims and/or remedies you have. The Public Injunctive Relief Request must be adjudicated by a court after all your other Claims to be decided in arbitration under this Arbitration Agreement are resolved in arbitration. The validity, enforceability, and effect of this section shall be determined exclusively by a court, and not by any arbitration administrator or arbitrator.

**Severability.** Notwithstanding any section in the Agreement to the contrary, if any section of this Arbitration Agreement (except for the "Class Action and Representative Action Waiver" above) is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this Arbitration Agreement. However, if the "Class Action and Representative Action Waiver" section is deemed invalid or unenforceable in whole or in part, then this entire Arbitration Agreement shall be deemed invalid and unenforceable.

**Enforceability.** If you challenge or dispute the enforceability of this Arbitration Agreement, the threshold issue of the validity of this Arbitration Agreement shall be decided by an arbitrator.