



Dispute Resolution

All issues and questions between Blue Cross and Blue Shield of Texas (BCBSTX), our licensors and you, arising out of, relating to, or in connection with the Terms of Use, their interpretation, application, performance, nonperformance or breach, or any information received or otherwise relied on (collectively, "Dispute" or "Disputes") shall be resolved using alternative dispute resolution mechanisms as set forth in the Mediation/Arbitration Provisions delineated below.

Mediation/Arbitration Provisions

1. Initial Resolution by Meeting or Mediation of Dispute.

- a. Blue Cross and Blue Shield of Texas (BCBSTX) or Authorized User (the "Notice Party"), as the case may be, shall deliver written notice to the other party (the "Receiving Party"), via certified mail, return receipt requested, of the existence of a Dispute (the "Initial Notice"), as follows:

If to BCBSTX:

Blue Cross and Blue Shield of Texas
ATTN: Legal Department
1001 E. Lookout Dr., Bldg. B, 15th Floor
Richardson, TX 75082

If to Authorized User: At the last known address of record.

- b. The Receiving Party has thirty (30) calendar days following the Notice Party's delivery of such notice to provide a prompt and effective remedy.
- c. If the Receiving Party has failed to provide a prompt and effective remedy within thirty (30) calendar days following delivery of such notice, and the Receiving Party and Notice Party mutually agree that a meeting to attempt to resolve the Dispute would be advantageous, representatives of both parties shall meet not later than thirty (30) calendar days after delivery of the Initial Notice in order to attempt to resolve the Dispute. Subsequent meetings may be held, upon mutual agreement of the parties.
- d. If such a meeting has not been mutually agreed upon within thirty (30) calendar days of delivery of the Initial Notice, or if the Dispute has not been resolved within thirty (30) calendar days of commencement of any such meetings, the Notice Party shall submit the Dispute (the "Mediation Submission") to mediation by an organization or company specializing in providing neutral, third-party mediators. The mediation process shall be coordinated by the Notice Party with the mediator and shall be subject to the following agreed-upon conditions:
 - i. The parties agree to participate in the mediation in good faith;
 - ii. The parties agree to have present at the mediation one or more individuals with decision-making authority regarding the Dispute;
 - iii. Either party may, at its option, be represented by counsel;
 - iv. The mediation shall be conducted in English;
 - v. The mediation shall be held at a mutually agreed upon venue location in or near Richardson, TX, within sixty (60) days of the Mediation Submission, unless the parties mutually agree on a later date or an alternate venue location; and
 - vi. The parties shall each bear their own costs and shall each pay one-half of the venue location fee and the mediator's fees and costs, unless the mediator subsequently determines that one party did not participate in the mediation in good faith, in which case that party shall pay all of the venue location fee and mediator's fees and costs.

2. Binding Arbitration.

- a. Any Dispute or portion thereof that remains unresolved thirty (30) calendar days after a Submission, either BCBSTX or Authorized User, on Authorized User's own behalf and not as a representative of a purported class, shall submit the Disputes to final and binding arbitration (the "Arbitration Submission") under the commercial rules and regulations of the JAMS/Endispute, subject to the following:



- i. The arbitration shall be conducted by a single arbitrator selected by the parties from a list furnished by the JAMS/Endispute (the "Arbitrator"), provided that in the event of a conflict with the terms of these Mediation/Arbitration Provisions, the terms of these Mediation/Arbitration Provisions shall control. If the parties are unable to agree on such Arbitrator from the list, such Arbitrator shall be appointed by the JAMS/Endispute or in the alternative, each party shall select one arbitrator who, in turn, shall together select the Arbitrator who shall arbitrate the Dispute.
 - ii. The Arbitrator shall be required to render a written decision resolving all Disputes with the reasons therefore, and designating one party as the "Prevailing Party" within sixty (60) days from the date of the Arbitration Submission.
 - iii. The costs of arbitration, including the venue location fee, Arbitrator's fee and any reporting or other costs, but excluding lawyers', consultants' and witness fees, shall be borne by the non-Prevailing Party unless the Arbitrator subsequently determines as part of his or her award that such allocation is inequitable under the totality of the circumstances.
 - iv. The arbitration hearing shall be conducted in English and held at a mutually agreed to venue location in or near Richardson, TX, unless BCBSTX and Authorized User mutually agree to an alternate location.
 - v. Except with respect to any Dispute or portion thereof involving actual or alleged violation of BCBSTX's or any of BCBSTX's supplier's intellectual property, the Arbitrator shall not have power to award (A) damages inconsistent with the Terms of Use; or (B) punitive damages or any other damages not measured by the Prevailing Party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum.
 - vi. Any determination by the Arbitrator with respect to any Dispute shall be final and binding on each party. Judgment upon the award of the Arbitrator may be entered in any court having competent jurisdiction thereof.
- b. Authorized User acknowledges that this Mediation/Arbitration Provisions preclude Authorized User from filing an action at law or in equity and from having any Dispute covered by this agreement resolved by a judge or a jury. Authorized User further acknowledges that these Mediation/Arbitration Provisions preclude Authorized User from participating in a class action or class arbitration filed by any other Authorized User or any other plaintiff claiming to represent Authorized User or Authorized User's interest. Authorized User agrees to opt-out of any class action or class arbitration filed against BCBSTX that raises claims covered by these Mediation/Arbitration Provisions, including, but not limited to, class actions or class arbitrations that are currently pending.
- c. Notwithstanding the foregoing, each of the parties hereto retains the right to seek judicial assistance to obtain interim measures of protection pending arbitration for alleged or imminent breaches of intellectual property rights, confidentiality restrictions or security obligations. In the event that either party seeks judicial assistance to obtain interim relief, or in the event that any dispute arises relating to arbitration, the sole jurisdiction and venue for such actions shall be the U.S. District Court, District of Texas in Richardson, TX, or if there is no federal jurisdiction, in the state courts located in Texas. Each of the parties to this Terms of Use hereby consents to exclusive personal jurisdiction, service of process and venue in the Texas courts for such interim measures of protection and for disputes relating to arbitration.