

## **Standard provisions: Resolving a dispute with Arbitration**

**PLEASE READ THIS SECTION CAREFULLY. IF YOU DO NOT REJECT IT BEFORE SURGERY, THIS SECTION WILL APPLY TO YOUR SURGERY AND FOLLOW UP CARE AND IF SURGERY IS FINANCED WITH IN-HOUSE FINANCING, THIS SECTION WILL APPLY TO YOUR ACCOUNT AND MOST DISPUTES BETWEEN YOU\* (THIS ARBITRATION AGREEMENT SHALL ALSO BIND YOUR SPOUSE, AND YOUR HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) AND US WILL BE SUBJECT TO INDIVIDUAL ARBITRATION. THIS MEANS THAT: (1) NEITHER A COURT NOR A JURY WILL RESOLVE ANY SUCH DISPUTE; (2) YOU WILL NOT BE ABLE TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING; (3) LESS INFORMATION WILL BE AVAILABLE; AND (4) APPEAL RIGHTS WILL BE LIMITED.**

### **What claims are subject to arbitration**

1. If either you or we make a demand for arbitration, you and we must arbitrate any dispute or claim between you or any other user of your account, you and us, our affiliates, agents and/or providers that accept the in-house program if it relates to your account, and any dispute (breach of contract, any kind of negligence, malpractice etc.) that involves Washington Vita Surgical Group or Vita Surgical Group or its employees or doctors or Dr. Araya must be resolved with arbitration except as noted below.
2. We will not require you to arbitrate: (1) any individual case in small claims court or your state's equivalent court, so as it remains an individual case in that court; or (2) a case we file to collect money you owe us. However, if you respond to the collection lawsuit by claiming any wrong doing we may require you to arbitrate.
3. Notwithstanding any other language in this section, only a court, not an arbitrator, will decide disputes about the validity, enforceability, coverage or scope of this section or any part thereof (including, without limitation, the next paragraph of this section and/or this sentence). However, any dispute or argument that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator, not a court, to decide.

### **No Class Actions**

**YOU AGREE NOT TO PARTICIPATE IN A CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION AGAINST US IN COURT OR ARBITRATION. YOU MAY NOT BRING CLAIMS AGAINST US ON BEHALF OF ANYONE.**

If a court determines that the above paragraph is not fully enforceable, only this sentence will remain in force and the remainder will be null and void, and the court's determination shall be subject to appeal.

This paragraph does not apply to any lawsuit or administrative proceeding filed against us by a state or federal government agency even when such agency is seeking relief on behalf of a class of borrowers, including you. This means that we will not have the right to compel arbitration of any claim brought by such an agency.

- **How to start an arbitration, and the arbitration process**

1. The party who wants to arbitrate must notify the other party in writing; the standard 90 day notice for negligence or malpractice still applies. An affidavit of an expert report must be included with the notice. Such notice must be given within 9 months of surgery. **CONTRARY TO LAW, ALL CLAIMS/ISSUES MUST BE RAISED AND FILED WITHIN 12 MONTHS FROM THE DATE OF SURGERY OR CAUSE OF ACTION.** Any other notice can be given after the beginning of a lawsuit or in papers filed in the lawsuit. Otherwise, your notice must be sent to Washington Vita Surgical, 908 New Hampshire av nw, suite 400, Washington DC 20037, ATTN:

ARBITRATION DEMAND. The party seeking arbitration must select an arbitration administrator, which **cannot** be the American Arbitration Association or JAMS. If an administrator is unable or unwilling to handle the dispute, then the court will appoint an arbitrator.

2. If a party files a lawsuit in court asserting claim(s) that are subject to arbitration and the other party files a motion with the court to compel arbitration, which is granted, it will be the responsibility of the party asserting the claim(s) to commence the arbitration proceeding. If the motion to compel arbitration is granted at any time after the filing of the law suit, the other party who filed the suit will pay ALL the legal fees for the defendant.
  3. The arbitration administrator will appoint the arbitrator and will tell the parties what to do next. The arbitrator must be a lawyer with at least ten years of legal experience. Once appointed, the arbitrator must apply the same law and legal principles, consistent with the FAA, that would apply in court, but may use different procedural rules. If the administrator's rules conflict with this Agreement, this Agreement will control. Defendant or plaintiff can be represented by counsel or can be represented by officers of the company.
  4. The arbitration will take place at a reasonably convenient location in the district of columbia.
  5. **Legal Fees:** Each party is responsible for its legal fees **except** when a party files for a negligence or malpractice suit without giving the required expert report prior to filing any suit, then the plaintiff pays all the legal fees of the defendant. The plaintiff gives the defendant unconditional consent to dismiss any case filed without an affidavit of an expert report prior to filing any suit. ALL Arbitrators fees are divided equally between both parties unless the party filed suit without giving the expert report prior to filing suit, then the plaintiff is responsible for all arbitrators' fees.
  6. Malpractice insurance: Vita surgical or subsidiaries or dr araya or physicians or staff **DONOT** carry any malpractice insurance and are not covered by any medical malpractice insurance.
- **Governing Law for Arbitration**  
This Arbitrations section of your Agreement is **governed** by the Federal Arbitration Act (FAA). DC law shall apply. The arbitrator's decision will be final and binding, except for any appeal right under the FAA or DC law. Any court with jurisdiction may enter judgment upon the arbitrator's award.
  - **How to reject this section**  
**You may reject this Arbitration section of your Agreement PRIOR to surgery ONLY.**