



## **Vayama Terms and Conditions**

### **Welcome:**

Welcome to the Vayama website located at [www.vayama.com](http://www.vayama.com) (the "**Site**") provided by Travix Travel USA, Inc. ("**Vayama**," "**we**," or "**us**"). Please read these Terms of Service (the "**Terms**") carefully because they govern your use of our Site and our services accessible via our Site or our call center. To make these Terms easier to read, the Site and our services are collectively called the "**Services**."

Vayama is a registered seller of travel in California. California registration number: 2081741-40.

### **Vayama Helps You Gather Travel Information and Make Reservations**

The sole purposes of the Services are to gather and provide travel information for you and to help you determine the availability of travel-related products and services ("**Travel Products**") provided by Suppliers, and make reservations or enter into other transactions with Suppliers. We don't provide any of the Travel Products that you can access or that you purchase through our Services and Vayama doesn't endorse, verify or vouch for any Suppliers or their products or services. Vayama's responsibilities under these Terms are limited solely to facilitating the availability of the Services and administering payments on behalf of users. For purposes of these Terms, "**Supplier**" means the air carriers, hotels and other suppliers providing Travel Products through our Services.

Vayama does not provide information for all air airlines, hotels, and other suppliers providing Travel Products. If you are unable to find a flight, hotel, or other Travel Product on Vayama.com, that does not necessarily mean that no such flight, hotel, or other Travel Product exists.

Your access to the Site and use of the Services is at your own risk. Vayama disclaims all warranties, express or implied, relating to the Suppliers, the Travel Products you purchase, and the Services, and limits its liability in these Terms. You'll see that we've included a disclaimer towards the end of these Terms.

### **Agreement to Terms**

By accessing or using our Services, you agree to be bound by these Terms. If you don't agree to these Terms, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer), other legal entity or another individual, you represent and warrant that you have the authority to bind that company, other legal entity or individual to these Terms, and that individual is informed of these Terms and applicable rules and restrictions. In that case, "you" and "your" will include that company, other legal entity, or individual.

### **Changes to Terms or Services**

We may modify the Terms at any time, in our sole discretion. If we do so, we'll let you know either by posting the modified Terms on the Site or through other communications. It's important that you review the Terms whenever you visit the website because if you continue to use the Services after we have posted modified Terms on the Site, you agree to be bound by the modified Terms. If you don't agree to be bound by the modified Terms, then you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

### **Use of the Services**

You will use our Services in accordance with these Terms. You represent and warrant that (i) you will only use our Services to make legitimate reservations, excluding reservations that are speculative, false or fraudulent or made in anticipation of demand; and (ii) all information supplied by you to our Services, including information for your Account (see below) and/or for your reservation(s), is accurate, complete and up-to-date.

### Eligibility

You may use the Services only if you are 18 years of age or older and capable of forming a binding contract with Vayama and are not barred from using the Services under applicable law.

Some countries may prohibit or make unlawful certain persons accessing this website or accessing certain



information or Services on this website. Vayama does not represent that this website or information and Services on this website are available or lawful in places outside the United States. You accept responsibility

for accessing this website in a manner consistent with the laws of the place where you are accessing this website.

#### Registration

If you want to use certain features of the Services you'll have to create an account ("**Account**"). You can do this via the Site. You agree to update your Account information, as needed, to keep it accurate, complete and up-to-date. If you don't, we might not be able to provide you certain Services and may have to suspend or terminate your Account. You agree to maintain the secrecy of your password, and you'll notify us immediately of any unauthorized use of your Account. You're responsible for all activities that occur under your Account, whether or not you know about them.

#### **Feedback**

We welcome feedback, comments and suggestions for improvements to the Services ("**Feedback**"). You can submit Feedback by emailing us at [feedback@vayama.com](mailto:feedback@vayama.com). You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully-paid, royalty-free, sub-licensable and transferable license under any and all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose. Vayama is not obligated to respond to any Feedback you provide.

#### **Privacy Policy**

Please refer to our [Privacy Policy](#) for information on how we collect, use and disclose information from our users, and the integration of the California Consumer Privacy Act (CCPA) for California residents.

#### **Content and Content Rights**

For purposes of these Terms, "Content" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services.

Vayama and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

Subject to your compliance with these Terms, Vayama grants you a limited, non-exclusive, non-transferable, non-sublicensable license to download, view and print the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

#### **General Prohibitions and Vayama's Enforcement Rights**

You agree not to do any of the following:

- Modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, sell, or re-sell any Content;
- Make any speculative, false or fraudulent reservation or any reservation in anticipation of demand;
- Use, display, mirror or frame the Services or any individual element within the Services, Vayama's name, any Vayama trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Vayama's express written consent;
- Access, tamper with, or use non-public areas of the Services, Vayama's computer systems, or the technical delivery systems of Vayama's providers;
- Attempt to probe, scan or test the vulnerability of any Vayama system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Vayama or any of Vayama's providers or any other third party (including another user) to protect the Services or Content;
- Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, scrapers, data



mining tools or the like) other than the software and/or search agents provided by Vayama or other generally available third-party web browsers;

- Use any meta tags or other hidden text or metadata utilizing a Vayama trademark, logo URL or product name without Vayama's express written consent;
- Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party, including, but not limited to, travel agency services, or in any manner not permitted by these Terms;
- Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- Impersonate or misrepresent your affiliation with any person or entity;
- Deep-link to any portion of the Site without Vayama's express written consent;
- Violate any applicable law or regulation in any applicable jurisdiction, including local law of the foreign countries you travel or transit to; or
- Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable your access to any Content or Services, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any activity under your Account or any of your activity in connection with your use of the Services to be fraudulent, abusive, suspicious, or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law. Subject to applicable laws and regulations, we may cancel any travel or service related reservations associated with your name, email address or Account or Travel Products you purchase via the Services. In addition, if you have conducted any fraudulent activity, we reserve the right to take any necessary legal action and you may be liable for monetary losses to Vayama, including litigation costs and damages.

#### **Links to Third Party Websites or Resources**

The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. The existence of these links does not in any way imply, suggest, or constitute any affiliation between any such third party and Vayama. You should refer to the separate terms of use, privacy policies, and other rules posted on the third parties' websites before you use their services. Vayama's display of specific travel options does not suggest a recommendation by Vayama of the third parties or their travel products or services. You acknowledge sole responsibility for and assume all risk arising from your use of any third-party websites or resources.

#### **Supplier Terms**

When you reserve or purchase Travel Products via our Services, additional terms and conditions from the Suppliers ("**Supplier Terms**") may apply. Please read those Suppliers Terms carefully as they govern your use of the Travel Products that you purchase and you agree to abide by Supplier Terms, including all cancellation rules, imposed by any Supplier with whom you elect to deal. Some Suppliers may require you to sign a liability waiver, agree to certain conditions of carriage, such as conditions set forth in the Warsaw Convention, prior to participating in certain Travel Products they offer. You acknowledge that any violation of any such Supplier Terms may result in cancellation of your reservation(s), in your being denied access to the applicable Travel Product, in your forfeiting any monies paid for such reservation(s), and/or in our debiting your account for any costs we incur as a result of such violation.

In addition, for air-travel Travel Products specifically, please read the full [Fare Rules and Policies](#), which, in addition to the Supplier Terms, apply to any air-travel Travel Product you purchase from our Services. Please note that if your travel involves multiple Suppliers (e.g., an itinerary using more than one airline), multiple Supplier's terms and conditions may apply. Please note that Suppliers may change their prices without notice.

#### **An Important Note Regarding Air Tickets:**



Air carriers generally only guarantee airfare once your tickets are confirmed, which occurs either when you receive confirmation of your ticket purchase or when your credit card is charged with the fare for your air-travel Travel Product. Air carriers may make changes or cancellations to your tickets before your tickets are confirmed.

Air carriers may be required to make available to the public the terms of their contract of carriage pursuant to Title 14, Part 253 of the Code of Federal Regulations. The circumvention of an air carrier's rules, including practices such as back-to-back ticketing (purchasing two or more tickets with overlapping travel dates in order to circumvent minimum stay requirements) and hidden-city ticketing (purchasing tickets including segments which the purchaser does not intend to use in order to circumvent an air carrier's pricing structure), is prohibited by air carriers. The use of prohibited ticketing practices may result in the air carrier taking actions including the cancellation of the ticket, denied boarding, revocation of frequent flier miles and other benefits, additional charges to the purchaser's credit card, additional charges collected at the airport, or future invoicing. You are responsible for ensuring that your purchases abide by the terms or conditions of purchase imposed by any Supplier with whom you elect to deal, including terms or condition of purchase set forth in an air carrier's fare rules or contract of carriage.

#### An Important Note Regarding Travel Insurance Products

You may be able to purchase Travel Insurance Products on Vayama.com. Travel Insurance Products are offered by third-party Suppliers, not Vayama or its affiliates. Before purchasing Travel Insurance Products, you should carefully read the relevant rules, terms, and conditions that apply to the particular Travel Insurance Product you purchase.

#### An Important Note Regarding Hotel and Car Related Services

Vayama's hotel and car-related services are provided by separate companies that operate booking.com and cartrawler.com respectively. Vayama is not liable for those companies' products or services, and explicitly disclaims all liability relating to any product or service provided by those companies. Those services are subject to separate terms of use.

#### Suppliers are Separate from Vayama

The Suppliers are independent contractors and not agents or employees of Vayama. Vayama and Vayama's affiliated, co-branded and/or linked website partners, such as booking.com and cartrawler.com, through whom we provide the Services are not liable for any of the Supplier's products or services, and explicitly disclaim all liability relating to any Travel Product provided by any Suppliers, for any acts, errors, omissions, representations, warranties, breaches or negligence of any Suppliers, or for any personal injuries, death, property damage, or other damages or expenses resulting therefrom. Vayama and Vayama's affiliates and partners have no liability and will make no refund in the event of any delay or cancellation of the Travel Product purchased through the Services, and they have no responsibility for any additional expenses incurred by you associated with the delay or cancellation.

#### **Purchase of Travel Products and Cancellations by Vayama**

When you make a booking request for a Travel Product on Vayama, Vayama will send a "Booking Request Acknowledgement" email. Vayama will then process your request and send you a confirmation email when the booking is confirmed (e.g., when an itinerary has been ticketed). The "Booking Request Acknowledgement" is not a confirmation of ticketing. Note that the fare and availability of your booking request may change during the time it takes Vayama to process your booking request. Your reservation is not confirmed and your purchase is not completed until Vayama sends you an E-ticket confirmation. In some cases, Vayama may determine that it is unable to confirm your tickets. Reasons that Vayama may be unable to confirm your tickets, include, but are not limited to, changes in the fare amount or the availability of the flights you have requested, an airline's failure to confirm the booking request, incomplete or inaccurate payment information, rejection of a method of payment, concerns that the booking request was unauthorized or fraudulent, or other issues that may prohibit fulfillment of your request for a particular Travel Product. Vayama will notify you if it is unable to process your request. If Vayama is unable to process your request, Vayama may suggest an alternative Travel Product for you. You are, however, under no obligation to purchase any such alternative.

Once your booking request is confirmed, Vayama reserves the right to cancel confirmed bookings if full payment is not received by Vayama within a reasonable time after you make such purchase. Vayama also



reserves its right, to the extent allowed by law, to cancel your confirmed booking for reasons such as fraud or other illegal activity. Please note that Vayama does not control air carriers that provide air travel Services. If an air carrier cancels your booking, you should contact the air carrier directly. Vayama may choose to provide assistance in finding you an alternative Travel Product if an air carrier cancels your booking. If you are interested in requesting Vayama's assistance, please contact Vayama's customer service department at [cs@vayama.com](mailto:cs@vayama.com).

If you decide to change or cancel a confirmed booking for air travel, and such changes or cancellation is allowed, Vayama will charge you a fee of **up to \$100 per person**. Note that Vayama will charge you this fee even if you cancel within 24 hours of receiving your booking confirmation.

For Travel Products other than air travel, subject to applicable laws, Vayama reserves the right to cancel a purchase you make of a Travel Product and in its sole discretion, may provide full refund of all payments made by you and charges made to you relating to such purchase in the event of price errors, incorrect price rules, system errors, availability problems, travel reservations not confirmed by Suppliers or carriers, and other technical issues that may prohibit fulfillment of the Travel Product purchased by you at the cost paid by you and in a timely manner. For such cancellations Vayama may look for an alternative Travel Product for you. You are, however, under no obligation to purchase any such alternative, including, but not limited to if the purchase price of the alternative Travel Product is higher than that of original Travel Product you purchased.

In addition, Vayama reserves the right to cancel a purchase you make of a Travel Product if full payment is not received by Vayama within a reasonable period of time after you make such purchase.

### **Financial Terms**

You must provide information sufficient for full payment for your selected Travel Product(s) at the time you request a booking. As noted above, you agree to comply with any applicable Supplier Terms relating to your purchase of a Travel Product, including financial terms. Also as discussed above, your submission of payment information to Vayama does not guarantee or confirm your booking.

### **Fraud Detection and Prevention**

When Vayama receives a submission of payment information, it may process the information to evaluate whether there is a risk of fraud. Vayama believes this process protects you from fraudulent charges on our site. Vayama does not, however, make any guarantees or warranties regarding fraud detection or prevention. In order to establish the validity of your payment information, we may contact you or your financial institution. As part of its fraud detection process, Vayama may make a temporary charge to your account, usually of \$1.00 USD or less. This temporary charge does not reflect a purchase of any Travel Products from Vayama. If the charge is not removed from your account, you should contact your financial institution. If Vayama determines that the submission of payment information constitutes a sufficient fraud risk, in our sole discretion, we will decline to process the transaction and notify you at the email provided that the booking request was declined.

You agree to notify Vayama immediately of any unauthorized use of your payment information. Vayama is not responsible for any loss that you may incur as a result of someone else using your account or payment information, either with or without your knowledge.

### **PayPal Payments**

If you finalize a payment on Vayama with the PayPal payment method – the amount will be collected by Travix Nederland B.V. – a sister company of Travix Travel USA Inc. Your PayPal payment statement will make reference to Vayama.

### **Vayama Fees**

Vayama may charge you a fee when you (i) purchase a Travel Product through the Services or (ii) engage in other activities via the Services, such as, without limitation, changing the dates of your travel plans associated with a Travel Product you purchase. Such fee will be communicated to you prior to your completion of the action associated with the fee via the Services. You agree to pay such fees to Vayama and to permit Vayama to charge your credit card in this regard. Any such service fee is non-refundable.



You are and will be responsible for all charges, fees, duties, taxes, and assessment arising out of your use of the Travel Products available from the Services.

#### Conversion Fees and Foreign Transaction Fees

Some financial institutions, such as banks and credit card companies, impose fees for international transactions and transactions in foreign currencies. For some transactions booked through Vayama, such as bookings that involve international travel, may be charged in a foreign currency and may result in a conversion fee from your financial institution. This is also true for any credits you receive from Vayama. This means that the amount listed on your credit or bank card statement may be in your local currency and therefore a different figure than the figure shown on the confirmation page for purchase of a Travel Product through our Services. In addition, a foreign transaction fee may be assessed if your financial institution is located outside of the United States. Booking international travel may be considered to be an international transaction by your financial institution, since Vayama may transmit your payment to a Supplier that is outside the United States or that offers international travel. The currency exchange rate and foreign transaction fee are determined solely by your financial institution. If you have any questions about these fees or the exchange rate applied to your booking, please contact your financial institution.

#### Disclosure of Financial Information

To process any payment that you make through Vayama.com, Vayama may disclose any information you provide us to your bank or financial institution and to any third-party intermediaries involved in the transaction. By using the Services, you authorize Vayama to disclose payment information to process your booking request.

#### **International Travel outside of the United States of America**

While most travel, including travel to international destinations is completed without incident, travel to certain destinations may involve greater risks than others. We encourage you to review and evaluate travel advisories, prohibitions, and warnings, issued by the government and the aviation administration, particularly before booking travel to any international destinations.

You are responsible for ensuring that you meet all the foreign entry requirements for international travel and that you have all the required travel documents, such as passports, visas, and any other applicable documents in advance of your scheduled date of departure and during your travel. You must consult the relevant government agencies, embassy or consulate for information regarding passport and visa requirements. Foreign entry requirements may change and you should check for up-to-date information before booking and departure. Vayama has no liability for any refusal of entry, damages, losses, or delays that occur due to your having improper or inadequate documents for entry, transit, exit, length of stay, or from travel to any destinations.

The recommended inoculations for travel may change and you should consult your doctor for current recommendations before you depart for international travel. It is your responsibility to ensure that you meet all health entry requirements, obtain the recommended inoculations, take all recommended medication, and follow all medical advice in relation to your trip.

If you are traveling internationally, your flight itinerary may include a country that requires the use of insecticides for in-bound flights. You can find more information, including a list of countries that require insecticide use, at <http://www.dot.gov/office-policy/aviation-policy/aircraft-disinsection-requirements>.

Vayama does not represent or warrant that travel to any locations within or outside of the USA is advisable or without risk, and is not liable for any damages or losses that may result from travel to such destinations.

#### **Termination**

We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at [cs@vayama.com](mailto:cs@vayama.com). Upon any termination, discontinuation or cancellation of Services or your Account, the following provisions of these Terms will survive: ownership provisions, Supplier Terms, warranty disclaimers, indemnity, limitations of liability, and dispute resolution provisions.

#### **Warranty Disclaimers**





THE SERVICES AND CONTENT ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness or reliability of any Content. We make no warranty and expressly disclaim any obligation that the quality of any Travel Products, information or other material obtained by you through the Services will meet your expectation.

Hotel ratings displayed on the Services are intended to be used as only general guidelines, and Vayama and our partners do not guarantee the accuracy of the ratings. Vayama, our partners and Suppliers make no guarantees about the availability of specific Travel Products.

### **Indemnity**

You will indemnify, defend and hold harmless Vayama and its officers, directors, employee and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services or Content or Travel Products, (iii) your violation of any law, regulation or the rights of a third party, or (iii) your violation of these Terms.

### **Limitation of Liability**

NEITHER VAYAMA (TOGETHER WITH OUR CORPORATE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AND PROVIDERS) NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES (EXCLUDING SUPPLIERS) WILL BE LIABLE FOR (I) ANY DAMAGES TO OR VIRUSES THAT MAY INFECT YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY AS THE RESULT OF YOUR ACCESS TO THE SITE, OR (II) ANY INJURY, DEATH, LOSS, CLAIM, ACT OF GOD, ACCIDENT, DELAY, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, OR THE PERFORMANCE OR NON- PERFORMANCE BY VAYAMA OR ANY PROVIDER WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT VAYAMA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

IN NO EVENT WILL VAYAMA'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID TO VAYAMA FOR USE OF THE SERVICES OR CONTENT OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO VAYAMA, AS APPLICABLE.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN VAYAMA AND YOU.

### **Dispute Resolution**

#### Governing Law

These Terms and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods.

#### Agreement to Arbitrate

You and Vayama agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services or Content (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) 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 (the action



described in the foregoing clause (ii), an **"IP Protection Action"**). The exclusive jurisdiction and venue of any action in small claims court will be the small claims court(s) located in Santa Clara County, California and each of the parties hereto waives any objection to jurisdiction and venue in such court(s). The exclusive jurisdiction and venue of any IP Protection Action will be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts. **You acknowledge and agree that you and Vayama are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both you and Vayama otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

You agree that if the preceding paragraph is held unenforceable, the exclusive jurisdiction for any dispute arising out of these Terms, or the use of the website or Services, shall be the state and federal courts located in the Northern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

#### Arbitration Rules

The arbitration will be administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "**AAA Rules**") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at <https://www.adr.org/Rules> or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

#### Arbitration Process

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at [https://www.adr.org/sites/default/files/Consumer\\_Demand\\_for\\_Arbitration\\_Form\\_1.pdf](https://www.adr.org/sites/default/files/Consumer_Demand_for_Arbitration_Form_1.pdf) and a separate form for California residents at [https://www.adr.org/sites/default/files/Waiver\\_of\\_Fees\\_CA\\_Only.pdf](https://www.adr.org/sites/default/files/Waiver_of_Fees_CA_Only.pdf)). The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

#### Arbitration Location and Procedure

Unless you and Vayama otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Vayama submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

#### Arbitrator's Decision

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Vayama will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

#### Fees

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Vayama will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration





was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

#### Changes

Notwithstanding the provisions of the "Changes to Terms or Services" section above, if Vayama changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to [feedback@Vayama.com](mailto:feedback@Vayama.com)) within 30 days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Vayama's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Vayama in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

#### **General Terms**

These Terms constitute the entire and exclusive understanding and agreement between Vayama and you regarding the Services, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Vayama and you regarding the Services. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign or transfer these Terms, by operation of law or otherwise, without Vayama's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Vayama may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Any notices or other communications provided by Vayama under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

Vayama's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Vayama. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

Our performance of this Agreement is subject to existing laws and legal process, and nothing contained in these Terms limits our right to comply with law enforcement or other governmental or legal requests or requirements relating to your use of our Services or information provided to or gathered by us with respect to such use. To the extent allowed by applicable law, you agree that you will bring any claim or cause of action arising from or relating to your access or use of the Services within two (2) years from the date on which such claim or action arose or accrued, otherwise such claim or cause of action is and will be irrevocably waived by you.

#### **Contact Information**

If you have any questions about these Terms or the Services, please contact Vayama at: <https://www.vayama.com/customer-service>