



## Third Party Platform Integration – End User Terms of Service

*(Last updated: October 4, 2023)*

These Terms of Service (“Terms”) govern your relationship with Arcadia Power, Inc. (“Arcadia” or “Company”) through your usage of the Services (as defined below) as incorporated within the applicable Third Party Platform (as defined below). Your access to any other Arcadia Services or parts of the Arcadia Website may be governed by the separate terms of service applicable thereto.

These Terms reflect a binding legal contract between you and Arcadia. It is important that you read these Terms carefully because if you sign up with us, you consent to the practices we describe below. If you do not agree to the practices described, you should not create or continue your Arcadia membership.

**THIS AGREEMENT CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. YOU ARE ACCEPTING THE AGREEMENT ON BEHALF OF YOURSELF OR THE ENTITY YOU REPRESENT. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THIS AGREEMENT. IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF ANOTHER PERSON OR ENTITY, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT PERSON OR ENTITY TO THIS AGREEMENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION OR RESIDENCE TO ENTER INTO THIS AGREEMENT. YOU FURTHER REPRESENT THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT.**

**PLEASE BE AWARE THAT THIS AGREEMENT IS SUBJECT TO THE ARBITRATION REQUIREMENTS OUTLINED BELOW THAT CONTAINS PROVISIONS GOVERNING HOW DISPUTES THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. THIS MEANS THAT (1) YOU WILL ONLY BE PERMITTED TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL. THIS AGREEMENT IS ALSO SUBJECT TO THE DISCLAIMERS AND LIMITATION ON LIABILITY IN THE GENERAL TERMS OF SERVICE.**

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## 1. Agreement; Introduction to Services

These terms of service ("Terms") form a binding, enforceable contract between you and Arcadia and authorize Arcadia to access your utility account and, if applicable, pay your utility bill on your behalf. By agreeing to these Terms, you acknowledge that you have read, understood, and agree to be bound and abide by these Terms, including any additional guidelines referenced in these Terms. If at any time you do not agree to these Terms, you must immediately terminate your use of the Services.

PLEASE NOTE THAT THE AGREEMENT IS SUBJECT TO CHANGE BY COMPANY IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Company will make a new copy of the Terms of Use Agreement available within the Application and any new Supplemental Terms will be made available from within, or through, the affected Service within the Application. We will also update the "Last Updated" date at the top of the Terms of Use Agreement. If we make any material changes, we will also make commercially reasonable efforts to notify you of any changes. Any changes to the Agreement will be effective immediately for new users of the Website, the Application and/ or Services and will be effective thirty (30) days after posting notice of such changes on the Website. Company may require you to provide consent to the updated Agreement in a specified manner before further use of the Application and/ or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Application and/or the Services. Otherwise, your continued use of the Application and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE ARCADIA WEBSITE TO VIEW THE THEN-CURRENT TERMS.

## 2. Definitions

"Application" means the Third Party Platform Provider's software application, cloud-based platform or customer portal through which the Services are offered.

"Arcadia," "we," "us" or "our" means Arcadia and its subsidiaries or assigns.

"Arcadia Billing" means a billing model where, in accordance with and subject to the instructions of Third Party Platform Provider, (i) Arcadia will perform Utility Pay services and (ii) Arcadia will charge your Payment Method for amounts due on your Consolidated Bill.

"AutoPay Program" or "AutoPay" is when Arcadia deducts payment through your Payment Method automatically to pay your Consolidated Bill.

"Bundled Billing" means a Service provided by Arcadia, where (i) Arcadia will receive your Utility Bill, and share it with Third Party Platform Provider, who will use it to calculate a Consolidated Bill and (ii) Arcadia will perform Utility Pay services at the direction of Third Party Platform Provider, under either a Third Party Platform Provider Billing or Arcadia Billing model.

"Business Day" is every Monday through Friday, excluding statutory holidays in the USA.

"Consolidated Bill" means a bill, calculated by Third Party Platform Provider, which includes Third Party Platform Provider Fees together with Utility Charges.

"Force Majeure" means circumstances beyond Arcadia's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems or Internet service provider failures or delays.

"Payment Account" is the permitted account you designate from which your bill payment will be deducted through your Payment Method, including your checking account or credit card account.

"Payment Method" means a permitted payment method used to fund a transaction through the Services, including but not limited to ACH, credit or debit cards.

"Personal Information" means any personally identifiable information concerning a User, including but not limited to the following: name, email address, billing/shipping address, Utility service address, phone number, and credit or debit card number.

"Services" means all our products and services and any other features, technologies and/or functionalities offered by us on to you via the Application or through any other means.

"Third Party Platform" means the Application.

"Third Party Platform Provider" means the party that (i) operates the Third Party Platform and (ii) has engaged Arcadia to provide your access to the Arcadia Services by integrating the Arcadia Services into the Third Party Platform.

"Third Party Platform Provider Billing" means a billing model where (i) Third Party Platform Provider will bill you directly for your Consolidated Bill and (ii) in accordance with and subject to the instructions of Third Party Platform Provider, Arcadia will perform Utility Pay services.

"Third Party Platform Provider Fees" means an amount due to Third Party Platform Provider in connection with a purchase, subscription or other transaction within the Application or the Services.

"User," "you" or "your" means you and any other person or entity using the Service.

"Utility" means either a regulated electric or natural gas distribution company from which the User receives delivery of electricity or natural gas, or a regulated electric or gas generation, transmission, and distribution company from which a User receives electricity or natural gas.

"Utility Account" means a User's account with his or her Utility.

"Utility Account Credentials" means User's Utility Account username, password, and/or account number, and/or any other necessary credentials to access User's Utility Account or that may be necessary to provide our Services.

"Utility Account Information" means a User's personal customer information, Utility usage information, Utility bill amounts due, service address and any other information from User's Utility that may be necessary to provide the Services.

"Utility Charges" means amounts due to your Utility under your Utility Statement.

"Utility Pay" means a service where Arcadia will remit payments to your Utility in connection with your Utility Charges.

"Utility or Supplier Account Notices" means any communications sent to the User from his or her Utility or Supplier that includes, but is not limited to, notices regarding disconnection, outages past due bills, tariff or rate changes, commercial offers, or other information the Utility or Supplier wishes to communicate to the User.

"Utility or Supplier Statement" means the bill or statement for the User's use of electricity, natural gas, Utility bill credits, and any other related utility good or service.

"Website" means [www.arcadia.com](https://www.arcadia.com) (<https://www.arcadia.com>), including all subpages and successor pages.

### 3. Utility Account Access

You authorize Arcadia to retrieve, store, and use, on your behalf as your agent, your Utility Account Information and your Utility Account Credentials in order to provide our Services, including Utility Account Information not provided to us when creating your account. By submitting your Utility Account Information, you certify and confirm that you are entitled to disclose this Utility Account Information and that you are an authorized user of your Utility Account. Arcadia makes no effort to review your Utility Account Information for accuracy.

By using the Services, you authorize Arcadia to share your Utility Account Information (including without limitation your Utility Statements), together with any data analytics performed on your Utility Account Information, with Third Party Platform Provider. Third Party Platform Provider may use your Utility Account Information to provide services to you, including without limitation via the Application. You acknowledge that Third Party Platform Provider's usage of your Utility Account Information is governed by the terms of its agreements with you, including the Application's terms of service and the Third Party Platform Provider's Privacy Policy.

To allow Arcadia to retrieve and use your Utility Account Information as provided herein, you understand that you must provide Arcadia with your Utility Account Credentials. You acknowledge that Arcadia may need to periodically change or update your Utility Account Credentials in order to use the Services. You agree to allow Arcadia to make such changes to your Utility Account(s) on your behalf and as your agent including, but not limited to, changes to your login information, your email address, and your account security questions. You represent, warrant, acknowledge, and agree that you are solely responsible for the accuracy of your Utility Account Credentials.

You acknowledge that Arcadia may also need to modify or update your Utility Statement delivery preferences in order to provide the Services, which could include modifying your e-billing or auto payment preferences.

You acknowledge that if your Utility Account Information or Utility Account Credentials change, the Services may no longer provide all functionality. By providing Arcadia with your Utility Account Credentials, you certify that you or another member of your household or small business owns the Utility Account(s) associated with your home or business.

You acknowledge and agree that when Arcadia is accessing and retrieving your Utility Account Information from third-party sites, Arcadia is acting as your agent, and not as the agent for or on behalf of the third-party.

You further acknowledge and agree that Arcadia may analyze your Utility Account Information as described herein and as permitted by Section 10.

### 4. Bundled Billing Terms

This Section 4 only applies if you are enrolled in Arcadia's Bundled Billing through the Application. Certain provisions of this Section 4 may not apply to you. For example if the Application does not require or support AutoPay, the provisions related to AutoPay will not be applicable to your use of the Services.

#### Utility Pay – Generally

When enrolled in Bundled Billing, Arcadia will access your Utility Account on a regular basis and will facilitate payment of your Utility Charges, in each case in accordance with and subject to the instructions of Third Party Platform Provider. We will use reasonable efforts to facilitate your Utility payments properly and on time. However, Arcadia makes no guarantees, warranties, representations or commitments regarding when payments will reach your Utility. Arcadia shall not be responsible for any fees, penalties, or late payment interest charged to you by your Utility or any third party as a result of a delay in payment. However, Arcadia will pay any fees, penalties, or late payment interest charges charged to you by your Utility if it determines that a late payment was caused solely by Arcadia.

#### Utility Pay – Delivery of Funds to Utility

Arcadia is not responsible for any failure to complete or delay in completing any payment due to any of the following:

Your Payment Account does not contain sufficient funds or your Payment Method does not have available credit to complete the payment or the charge is rejected or returned by your bank or financial institution;

Third Party Platform Provider instructs us not to pay any Utility Charges;

The payment processing center is not working properly and you know or have been advised by us about the malfunction before you

execute the transaction;

Your Utility rejects or returns the payment for any reason;

Your equipment, software or any communications link is not working properly;

You have provided us with incorrect information about your Utility;

Your Utility mishandles or delays handling or posting any payment;

Circumstances beyond our control (for example, Force Majeure) that prevent or delay the payment from being completed;

You have revoked the recurrent payment authorization;

You have not provided us with the correct bank account or credit card information; and/or Your payment was sent to an unintended Utility.

If we facilitate a payment for an incorrect amount, we will use commercially reasonable efforts to recover the incorrect payment from your Utility. If we can recover the incorrect payment that was charged to you, we will return the amount of the incorrect payment to you. If not, we will notify you of that fact and you will be responsible to make appropriate arrangements with your Utility to receive a refund of the credit or have it applied against future balances.

#### Bundled Billing Pay Types

If you are enrolled in Bundled Billing, you will be charged either via (x) Third Party Platform Provider Billing or (y) Arcadia Billing.

##### (x) Third Party Platform Provider Billing

If Bundled Billing is provided under Third Party Platform Provider Billing, Arcadia will receive your Utility statement on your behalf and share it with Third Party Platform Provider, who will calculate your Utility Charges together with any Third Party Platform Provider Fees and send you a Consolidated Bill. You will pay your Consolidated Bill directly to Third Party Platform Provider. Arcadia will perform Utility Pay services only according to the instructions of Third Party Platform Provider. You hereby expressly consent to Arcadia following Third Party Partner's instructions and agree that Arcadia shall only pay your Utility Charges in connection with the instructions issued by Third Party Platform Provider.

##### (y) Arcadia Billing

If your Bundled Billing services are provided under Arcadia Billing, Arcadia will receive your Utility statement on your behalf and share it with Third Party Platform Provider, who will calculate your Utility Charges together with any Third Party Platform Provider Fees and send you a Consolidated Bill. Arcadia will receive instructions from Third Party Platform Provider with respect to the amount to pay your Utility and the amount to charge your Payment Method. Arcadia will perform Utility Pay services and charge your Payment Method only in accordance with such instructions from Third Party Platform Provider. You hereby expressly consent to Arcadia following Third Party Partner's instructions and agree that Arcadia may (i) pay your Utility Charges and (ii) charge your Payment Method, both in connection with the instructions issued by Third Party Platform Provider.

Using Arcadia Billing requires you to enroll in our AutoPay Program. You understand and agree that you will directly pay Arcadia for your total Consolidated Bill. In addition, you authorize and order Arcadia to have your Payment Method debited or charged for the amount noted on your Consolidated Bill. You understand that this authorization and order will remain in effect until you cancel it in writing, and you agree to notify us of any changes in your account information or termination of this authorization and order at least fifteen (15) days prior to the next billing date. If the above noted payment date does not fall on a Business Day, you understand that the payment may be executed on the next Business Day. You understand that because this is an electronic transaction, these funds may be withdrawn from your account each period as soon as the above noted transaction date. You have the right to stop automatic payment by notifying Arcadia of that fact as contemplated above, but if you do so Arcadia will no longer pay your Utility bill. This authorization is to remain in full force and effect until Arcadia has received written notification from you in such time and in such manner as set forth above.

You agree to receive the notice required by 12 C.F.R. § 1005.10(d)(2) only if the difference between your current Consolidated Bill and

your previous Consolidated Bill falls outside of a specific range as defined herein. For business customers, your Bill must be \$5,000 greater than the previous Consolidated Bill. For residential customers, your Consolidated Bill must be (1) \$1,000 greater than the previous Consolidated Bill and (2) 150% variant greater than the average of your previous six-months Consolidated Bill. However, if you are a residential customer who has solar power and has an annual "true-up" with your Utility company, your Consolidated Bill must be \$5,000 greater than the previous Consolidated Bill.

In the case of a transaction being rejected for non-sufficient funds or declined credit you understand that Arcadia may at its discretion attempt to process the charge additional times within thirty (30) days. Arcadia is not responsible for any overdraft fees, over-the-limit fees, or insufficient fund charges (including finance charges, late fees, or similar charges) charged to you by your financial institution from your failure to maintain a balance in the Payment Account or have available credit in the Payment Method that is sufficient to process our payment. Arcadia reserves the right to charge you for any overdraft fees, over-the-limit fees, or insufficient fund charges (including finance charges, late fees, or similar charges) assessed to Arcadia that result from your failure to maintain a balance or credit in the Payment Account that is sufficient to process your payment.

You acknowledge that the origination of payment transactions to the Payment Account must comply with the provisions of U.S. law. You will not dispute Arcadia's recurring billing with your financial institution, bank or credit card company so long as the transaction corresponds to the terms indicated in these Terms. Any disputes should be first brought to our attention by contacting us at [support@arcadia.com](mailto:support@arcadia.com) or (866)-526-0083.

Transaction fees may apply for credit card and ACH bank debit payments.

#### Electronic Consent Regarding Recurring Payment Authorization

You acknowledge and agree that by accepting these recurring payment terms and conditions ("Recurring Payment Terms"), you consent to receive a copy of your payment authorization for recurring monthly payments in electronic form only instead of receiving a paper copy. This consent applies only to recurring payment authorizations as to which we are required to provide you with a written copy under applicable law.

We cannot process your online recurring payment authorization unless you are willing to receive, in electronic form only, a copy of the Recurring Payment Terms that we are required to provide to you in writing under applicable law. Once you have accepted the Recurring Payment Terms, you cannot withdraw your consent to receive your copy of the Recurring Payment Terms in electronic form. However, you will still be able to cancel your recurring payment authorization in accordance with this agreement

If you wish to obtain a paper copy of your recurring payment authorization, you may do so by printing the Recurring Payment Terms yourself or by calling us at 866-526-0083 to request a paper copy. We may charge you a reasonable service charge for the delivery of a paper copy of the Recurring Payment Terms so long as we disclose our then current service charge to you at the time of your request for a paper copy.

#### 5. Utility or Supplier Notices

You authorize Arcadia to receive Utility or Supplier Notices on your behalf, where permitted, and you understand and agree that we may not pass along any or all of these Notices to you. You agree that Arcadia shall not be liable for any delays, failure to deliver, or misdirected delivery of any Utility or Supplier Account Notices.

#### 6. Identity Verification

You authorize Arcadia, directly or through third parties, to make any inquiries we consider necessary to verify your identity. This may include asking you for further information, requiring you to take steps to confirm ownership of your email address or financial instruments, and verifying your information against third party databases or through other sources. If you cannot verify your identity, Arcadia reserves the right to deny you use of the Services.

#### 7. Your Relationship with Your Utility and Supplier

Arcadia does not supply, transmit, or distribute electricity or natural gas and is not affiliated or endorsed by any Utility or Supplier. By using Arcadia's Services, you acknowledge and agree that Arcadia is acting only as an intermediary and is not a party to any transaction between you and your Utility or Supplier. Accordingly, Arcadia assumes no responsibility and will have no liability of any

kind whatsoever in respect to your dealings with your Utility or Supplier including with regards to electric or natural gas delivery, payments, notices, and the proper and timely delivery of goods or services by your Utility or Supplier. Arcadia in no way endorses, recommends, and/or bears any responsibility or liability for any products, services, statements, made by your Utility or Supplier. Statements and opinions of your Utility or Supplier are not representative of Arcadia or its business partners.

Arcadia is not liable for the accuracy of your Utility Statement. Any discrepancies or disputes regarding the accuracy of your Utility Statement must be addressed with your Utility or Supplier directly. You understand and agree that any Utility Statement provided to you through the Services may be delayed or prevented by a variety of factors. We use commercially reasonable efforts to provide Statements in a timely manner with accurate information.

However, we neither guarantee the delivery nor the accuracy of the content of any Statement. You also agree that Arcadia will not be liable for any delays, failure to deliver, or misdirected delivery of any Statement; for any errors in the content of a Statement; or for any actions taken or not taken by your or any third party in reliance on a Statement.

Arcadia assumes no responsibility, and will not be liable, for your failure to take any action or inaction with respect to your Utility Account(s) or your failure to receive any information with respect to any Utility Account(s). You agree to hold Arcadia harmless should your Utility fail to deliver your Utility Statement(s). You are responsible for ensuring timely payment of all Utility Statements.

These Terms do not alter any liability or obligations that currently exist between you and your Utility. You agree that your relationship with your Utility is governed solely by the agreement(s) with your Utility.

#### 8. Actions by Arcadia

If we have reason to believe that you have violated these Terms, we may take various actions to protect Arcadia, a third party, or you from fees, costs, expenses, fines, penalties and any other liability. The actions we may take include but are not limited to the following:

We may close, suspend, or limit your access to the Services;

We may update inaccurate information you provided us;

We may refuse to provide the Services to you in the future;

Arcadia may close, suspend, or limit your access to the Services; and We may take legal action against you.

Arcadia, in its sole discretion, reserves the right to terminate access to the Services for any reason and at any time upon notice to you.

If we close your Account or terminate your use of the Services for any reason, we will provide you with notice of our actions. If we limit access to your Account, we will make commercially reasonable efforts to provide you with notice of our actions and the opportunity to request restoration of access if appropriate in our sole discretion.

#### 9. Arcadia's Relationship to Third Party Platform Provider.

Arcadia provides its Services hereunder through the Application, which is owned and operated by Third Party Platform Provider. Your access to and usage of the Application is governed by the Application's terms of service. These Terms do not alter any liability or obligations that currently exist between you and Third Party Platform Provider.

Arcadia is not responsible for the Application, the content thereon, the instructions of Third Party Platform Provider with respect to Bundled Billing or Utility Pay (if applicable) or any other matter, or any acts or omissions of Third Party Platform Provider and you expressly release and hold harmless Arcadia from and against any liability therewith.

#### 10. Your Privacy

In its provision of the Services via the Application, Arcadia acts as a data processor and service provider for Third Party Platform Provider, which is the controller of your personal information. Accordingly, in providing the Services, Arcadia will have access to and process your personal information on behalf of Third Party Platform Provider. Arcadia's use, storage and processing of your personal information in connection with the Services, as well as your use of the Services, are governed by the applicable privacy policy(ies) of Third Party Platform Provider (the "Privacy Policies") and these Terms. By using the Services or otherwise providing personal information via the Application, you understand that the information you provide to Third Party Platform Provider, including without

limitation via the Application, may be shared with Arcadia to process on Third Party Platform Provider's behalf, and you consent to the collection, use, and disclosure of your information as described in these Terms and as set forth in the Privacy Policies. You further agree that you consent to Arcadia accessing and processing your Utility Account Information for the purpose of providing the Services, including without limitation to analyze your Utility Account Information to create anonymous and aggregated data for purposes of creating benchmarks and other analytical reports and data in accordance with the Privacy Policies, and to share any such information with Third Party Platform Provider.

#### 11. Confidentiality and Notices

You may provide any notice to Arcadia under Terms electronically via [legal@arcadia.com](mailto:legal@arcadia.com).

In order for the Services to function effectively, you must keep your Utility Account Credentials and Registration Information up to date and accurate. If you do not do this, the accuracy and effectiveness of the Services will be affected. If you become aware of any unauthorized use of your Utility Account Credentials or Registration Information, you agree to notify Arcadia as soon as reasonably possible at the e-mail address [legal@arcadia.com](mailto:legal@arcadia.com).

#### 12. Arcadia Communications

By entering into this Agreement or using the Services, you agree to receive communications from us, including via e-mail, text message, calls, and push notifications. You agree that texts, calls or prerecorded messages may be generated by automatic telephone dialing systems and that any calls may be recorded and the record of those calls may be retained by Arcadia. Communications from us and our affiliated companies may include but are not limited to: operational communications concerning your Account or the use of the Application and Services, updates concerning new and existing features on the Application and Services, communications concerning promotions run by us together with Third Party Service Provider, and news concerning the Company, Third Party Service Provider and industry developments. Standard text messaging charges applied by your cell phone carrier will apply to text messages that we send. IF YOU WISH TO OPT OUT OF PROMOTIONAL EMAILS, YOU CAN UNSUBSCRIBE FROM OUR PROMOTIONAL EMAIL LIST BY FOLLOWING THE UNSUBSCRIBE OPTIONS IN THE PROMOTIONAL EMAIL ITSELF. IF YOU WISH TO OPT OUT OF PROMOTIONAL CALLS OR TEXTS, YOU MAY TEXT "END" TO 224-258-0477 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. YOU ACKNOWLEDGE THAT YOU ARE NOT REQUIRED TO CONSENT TO RECEIVE PROMOTIONAL TEXTS OR CALLS AS A CONDITION OF USING THE APPLICATION AND SERVICES OR RELATED SERVICES. IF YOU WISH TO OPT OUT OF ALL TEXTS OR CALLS FROM US (INCLUDING OPERATIONAL OR TRANSACTIONAL TEXTS OR CALLS), YOU CAN TEXT THE WORD "STOPALL" TO 224-258-0477 FROM THE MOBILE DEVICE RECEIVING THE MESSAGES. HOWEVER, YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL TEXTS MAY IMPACT YOUR USE OF THE APPLICATION AND SERVICES OR RELATED SERVICES.

#### 13. Compliance with Applicable Laws

When you access or use the Services, you are required to comply with all applicable laws and any other conditions or restrictions in any written or online notice from Arcadia (including these Terms). As a condition of your access to and use of the Services, you agree that you will not use the Services for any purpose that is unlawful or prohibited by these Terms. The Services are offered for your personal and non-commercial use only, and Arcadia does not grant you any express or implied rights to access or use the Services for any other purpose.

Without limiting the generality of the foregoing, you agree not to:

Impersonate any person or entity, whether actual or fictitious, or falsely state or otherwise misrepresent your affiliation with any person or entity;

Interfere with any other users' rights to privacy and publicity, including by harvesting or collecting information from or about users;

Upload or otherwise transmit any communication, software, or materials that contain a virus or is otherwise harmful to Arcadia or its users' computers or systems; or

Engage in "spidering," "screen scraping," "database scraping," harvesting of email addresses, wireless address, or other contact or personal information, or any other automatic means of obtaining lists of users or other information from Arcadia, including without limitation any information residing on any server or database connected to the Services.



#### 14. Intellectual Property of Arcadia and Its Licensors

Our Website, and our content contained in the Application and Services (including, but not limited to, text, images, photographs, graphics, user interface, screen shots, designs, and computer code, and the selection, coordination, and arrangement of such content) is protected under the copyright laws of the United States and other countries. Arcadia or its third-party suppliers and licensors owns all copyrights in our Website and Services to the full extent permitted under the United States Copyright Act and all international copyright laws. Unless expressly permitted in writing, you may not copy, reproduce, distribute, publish, enter into a database, display, perform, modify, create derivative works from, transmit, or in any way exploit any part of our Website or Services, except that you may make use of the content for educational and non-commercial purposes only, provided that you maintain all copyright and other notices posted along with the content.

#### Trade and Service Mark Rights

All rights in the company names, trade names, logos, service marks, and slogans of the Services, whether or not appearing in large print or with the trademark symbol, belong exclusively to Arcadia or its third-party suppliers and licensors and are protected from reproduction, imitation, dilution, or confusing or misleading uses under national and international trademark and copyright laws. The use or misuse of these trademarks or any materials is expressly prohibited, and nothing stated or implied on our Website or the Application confers on you any license or right under any trademark of Arcadia, its affiliates, or any third party. To obtain written permission to use the trade and service mark rights of Arcadia, please contact Arcadia at [info@arcadia.com](mailto:info@arcadia.com).

#### 15. Notice of Infringement

Arcadia respects the intellectual property rights of others, and requires that Users do the same. If you believe in good faith that your work has been reproduced or is accessible on our Website or the Application in a way that constitutes copyright infringement or that your intellectual property rights have otherwise been violated, please provide Arcadia with the following information in writing:

Identification of the copyrighted work or other intellectual property claimed to have been infringed;

Identification of the allegedly infringing material, reference, or link that is to be removed and information reasonably sufficient to permit Arcadia to locate the material, reference, or link;

Your name, address and daytime telephone number, and an e-mail address if available, so that Arcadia may contact you if necessary;

A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

A statement that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright or other intellectual property owner, its agent, or the law; and

A physical or electronic signature of a person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

Please note that due to security concerns, e-mail attachments will not be accepted. Any notice of infringement submitted electronically with an attachment will not be received or processed. Upon receipt of a notice of claimed infringement (or any statement in conformity with 17 U.S.C. § 512(c)(3)), Arcadia will expeditiously remove or disable access to the allegedly infringing content. Arcadia may terminate the service privileges of users who repeatedly infringe the copyrights or other intellectual property rights of others.

#### 16. Disclaimer of Warranties

YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. Arcadia expressly disclaims all warranties of any kind, whether express, implied, or statutory, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. Arcadia makes no warranty that (i) the Services will meet your requirements, (ii) the Services will be uninterrupted, timely, secure, or error-free, (iii) the results that may be obtained from the use of the Services will be accurate or reliable, or (iv) the quality of any products, services, information, or other material purchased or obtained by you through the Services will meet your expectations.

#### 17. Limitation of Liability

You expressly understand and agree that Arcadia will not be liable for any indirect, incidental, special, consequential, exemplary damages, or damages for loss of profits including but not limited to, damages for loss of goodwill, use, data, or other intangible losses (even if Arcadia has been advised of the possibility of such damages), whether based on contract, tort, negligence, strict liability or otherwise, resulting from: (i) the use or the inability to use the Services; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information, or services purchased or obtained or messages received or transactions entered into through or from the Services; (iii) unauthorized access to your account information; (iv) statements or conduct of any third party on the Services; (v) late or never received Statements or Notices, or (vi) any other matter relating to the Services. In no event will Arcadia's total liability to you for all damages, losses, or causes of action exceed the amount you have paid Arcadia in the last six (6) months, or, if greater, one hundred dollars (\$100). Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the limitations set forth above may not apply to you. If you are dissatisfied with any portion of the Services or with these terms, your sole and exclusive remedy is to discontinue use of the Services.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARCADIA DISCLAIMS ALL LIABILITY OF ANY KIND ARISING FROM THE UNAUTHORIZED ACCESS TO OR USE OF YOUR PERSONAL INFORMATION (as defined in the Privacy Policy).

#### 18. Indemnification

You agree to release, indemnify, and hold harmless Arcadia, its affiliates, and its and their respective officers, employees, directors, members, and agents from any and all losses, damages, costs, expenses (including reasonably attorneys' fees), rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Services, your connection to the Services, your use of products or services obtained by or through Linked Sites, your violation of these Terms, or your violation of any rights of another. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

#### 19. Arbitration of Claims

*Please read the following arbitration agreement in this Section ("Arbitration Agreement") carefully. It requires you to arbitrate disputes with Arcadia and limits the manner in which you can seek relief from us.*

**Applicability of Arbitration Agreement.** You agree that any dispute, claim or request for relief relating in any way to your access or use of the Services and/or Website or to any aspect of your relationship with Arcadia, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims or seek relief in small claims court if your claims qualify; and (2) you or Arcadia may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all disputes or claims and requests for relief that arose or were asserted before the effective date of this Agreement or any prior version of this Agreement.**

**Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your dispute or claim or request for relief to our registered agent Corporation Service Company 251 Little Falls Drive Wilmington, DC 19808 in detail with your specific facts. Prior to the commencement of arbitration the parties agree to mediate their dispute for a period of not longer than thirty (30) days. This mediation shall be conducted in good faith between the parties. After the expiration of the mediation period, the arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims, counterclaims, or requests for relief under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other disputes shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at [www.jamsadr.com](http://www.jamsadr.com) or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. Notwithstanding anything to the contrary in the JAMS arbitration rules (or the rules of any other alternative arbitration provider), to the extent your fees for arbitration are being paid on your behalf by a third party (including your lawyer or a third party funding source) or you have an agreement to be reimbursed by a third party for such fees, then you shall be required to split any fees for the arbitration equally with Arcadia.

In the case of any arbitration claim made that is part of a mass arbitration (e.g., the claim is similar to or on the same basis as other arbitration claims made by the same lawyer or law firm representing multiple individuals), then: (a) arbitration procedures shall be modified to allow for dispositive motions, including, but not limited to, motions for summary judgement; and (b) at Arcadia's option, the arbitration may be consolidated with other arbitration claims setting forth a similar fact pattern and arbitrated in a single arbitration proceeding, provided, that if Arcadia does not exercise this option, then the waiver set forth below remains in place.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**Authority of Arbitrator.** The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Arbitration Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any assertion that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Arcadia. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

**Waiver of Jury Trial.** YOU AND COMPANY HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Arcadia are instead electing that all disputes, claims, or requests for relief shall be resolved by arbitration under this Arbitration Agreement, except as specified above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

**Waiver of Class or Other Non-Individualized Relief.** ALL DISPUTES, CLAIMS, AND REQUESTS FOR RELIEF WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS (INCLUDING MASS ARBITRATION CLAIMS). ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER (EXCEPT AS PROVIDED FOR ABOVE). If a decision is issued stating that applicable law precludes enforcement of any of this subsection's limitations as to a given dispute, claim, or request for relief, then such aspect must be severed from the arbitration and brought into the State or Federal Courts located in the District of Columbia. All other disputes, claims, or requests for relief shall be arbitrated.

**30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: support@arcadia.com within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your username (if any), the email address you used to set up your account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

**Severability.** Except as provided in the waiver of class or other individualized relief paragraph above, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

**Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Arcadia.

**Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if Arcadia makes any future material change to this Arbitration Agreement, you may reject that change within thirty (30) days of such change becoming effective by writing Arcadia at the following address: Arcadia: Attn: General Counsel 555 11th Street Fourth Floor Washington DC 20004.

**20. No Waiver**

The failure of Arcadia to enforce any provisions of these Terms or respond to a breach by you or other parties will not in any way waive its right to enforce subsequently any terms or conditions of these Terms or to act with respect to similar breaches.

## **21. Miscellaneous**

### **System Availability**

Arcadia will use commercially reasonable efforts to make the Services available at all times except for: (a) planned downtime, or (b) any unavailability due to Force Majeure. Planned downtime and routine maintenance and updates may result in temporary unavailability of the Services. We will have no liability to you or any third party in respect of your inability to access the Services at any time.

### **Your Liability**

You are responsible for all fees, costs, expenses, fines, penalties, and other liabilities incurred by Arcadia, yourself, or a third-party caused by or arising out of your breach of these Terms and/or your use of the Services. You agree to reimburse Arcadia or a third-party of any and all such liability.

### **Choice of Law and Forum**

These Terms are governed by, and must be construed in accordance with, the laws of the District of Columbia. In the event Arcadia brings a claim against you, you agree to submit to the exclusive jurisdiction of the federal or local courts located in Washington, D.C.

### **Integration and Severability**

Unless otherwise specified herein, the Terms constitute the entire agreement between you and Arcadia and govern your use of the Services. If any portion of the Terms is held invalid or unenforceable, that portion will be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intention of the parties, and the remaining portions will remain in full force and effect.

### **Electronic Communications.**

The communications between you and Company may take place via electronic means, whether you visit Company Properties or send Company e-mails, or whether Company posts notices on Company Properties or communicates with you via e-mail. For contractual purposes, you (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights, including but not limited to the Electronic Signatures in Global and National Commerce Act at 15 U.S.C. §7001 et seq. ("E-Sign").