

## ARBITRATION AND CLASS ACTION WAIVER POLICY ADDENDUM

### PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS.

This Arbitration and Class Action Waiver Policy Addendum is incorporated into and made a part of your enrollment terms and conditions with Fanfare Energy, LLC (“Fanfare”). To the extent there is any discrepancy between the language of the terms and conditions and this Addendum, the language of this Addendum will control. By agreeing to enroll with Fanfare, you agree to the provisions of this Communications Policy. This Addendum does not apply to those individual disputes decided by your public utility commission or through dispute resolution administered or facilitated by your public utility commission. We hope we never have a dispute, but if we do, you and Fanfare agree to try for sixty (60) days to resolve the dispute informally. If we are unable to informally resolve the dispute, you and Fanfare agree that **binding individual arbitration before the American Arbitration Association (“AAA”) under the Federal Arbitration Act (“FAA”) – and not the commencement of any lawsuit, claim, or cause of action in any court, regardless of whether before a judge or jury** – shall be the sole and exclusive method for resolving any claim or dispute arising out of or relating to this Agreement or the products or services contemplated under this Agreement (“Dispute”). A neutral arbitrator will decide any Dispute, and the arbitrator’s decision will be final, except for a limited right of review under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney general actions, and any other proceeding where someone acts in a representative capacity are not permitted. Combining individual proceedings without the consent of all parties also is not permitted. This arbitration clause, and the submission of any Dispute to arbitration, is mandatory and not permissive.**

- a. *Scope.* Except as otherwise stated herein, the term “Dispute” means any claim or controversy between you and us – including either party’s respective parents, subsidiaries, affiliates, officers, directors, employees, agents, predecessors, and successors – related to this Agreement, its terms, the products or services contemplated under it, or any aspect of the relationship between us, including but not limited to, the pricing of the products or Services, Fees, billing, any purchase transaction made by you, Fanfare’s website or other media, the software related to the Services, your provider account, advertising, marketing, communications by Fanfare in general, any communication with you regardless of how the communication is made, or authorizations, arising under any legal theory including contract, warranty, tort, statute, regulation, fraud, misrepresentation, or any other legal theory. All Disputes shall be resolved by binding arbitration on an individual basis in accordance with this arbitration provision. This agreement to arbitrate is intended to be broadly interpreted, and it shall apply to any claim that arose before this or any prior Agreement as well as to claims that may arise after the termination of this Agreement.

All Disputes and claims must be brought within one (1) year of the claim arising or such claim is barred, abandoned and void. You understand and agree that you will arbitrate with us in your individual capacity, not as a representative or member of a class. Your claim may not be joined with the claim of any other person, and there will not be authority for any Dispute to be arbitrated on a class-action basis. The arbitrator, and not any federal, state, or local court or agency, will have exclusive

authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement, and the arbitrability of any claim, including, but not limited to any claim that all or any part of this Agreement is void or voidable. Any party refusing to comply with an order of the arbitrators will be liable for costs and expenses, including attorneys' fees, incurred by the other party in enforcing the award.

Notwithstanding the foregoing, either you or we may bring claims in small claims court in your jurisdiction, if that court has jurisdiction over the parties and the action and the claim complies with the prohibitions on class, representative, and private attorney general proceedings and non-individualized relief discussed herein. You may also bring issues to the attention of federal, state, and local executive or administrative agencies.

Resolving your dispute with us through arbitration means you will have a fair hearing before a neutral arbitrator instead of in a court before a judge or jury. **YOU AGREE THAT BY USING OUR SERVICES, USING OUR PRODUCTS, USING OUR WEBSITE, ENROLLING, AND/OR ENTERING INTO THIS AGREEMENT, YOU AND FANFARE EACH WAIVE THE RIGHT TO A TRIAL BY JURY AND THE RIGHT TO PARTICIPATE IN A CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL ACTION.**

- b. Opting Out of Arbitration. **WITHIN 30 DAYS (UNLESS A LONGER PERIOD IS REQUIRED BY LAW) OF FIRST SIGNING UP FOR SERVICES OR RECEIVING THIS ARBITRATION PROVISION IF ALREADY RECEIVING SERVICES, IF YOU DO NOT WISH TO BE BOUND BY THIS ARBITRATION PROVISION, YOU MUST NOTIFY FANFARE IN WRITING BY EMAILING US AT [NOFANFAREARBITRATION@ENERGYWELL.COM](mailto:NOFANFAREARBITRATION@ENERGYWELL.COM) OR BY CERTIFIED MAIL TO FANFARE AT P.O. BOX 1288, GREENS FARMS, CONNECTICUT 06838, ATTN. ARBITRATION. YOUR WRITTEN NOTIFICATION TO FANFARE MUST INCLUDE YOUR NAME, ADDRESS, AND FANFARE ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH FANFARE THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH FANFARE OR YOUR USE OF THE SERVICES. OPTING OUT OF THIS ARBITRATION PROVISION HAS NO EFFECT ON ANY OTHER OR FUTURE ARBITRATION AGREEMENTS THAT YOU MAY HAVE WITH FANFARE.**

- c. Pre-Arbitration Process

- i. Notice of Dispute. Before commencing an action in arbitration, you must first notify us of your Dispute and allow us an opportunity to resolve it without the need for arbitration. You must write us a letter briefly explaining the dispute and stating the relief that you demand. Provide as much information as possible, including where applicable dates and specific

amounts of money. Also include the account holder's name, the account number, the service address, and a telephone number at which you may be reached during business hours. Once you have written us the letter, send it to us by registered or certified mail to Fanfare's address listed in this Agreement.

- ii. 60 Day Waiting Period. Fanfare shall have sixty (60) days from the time it receives your letter notifying Fanfare of a Dispute to resolve your Dispute. If Fanfare has not been able to resolve your dispute to your satisfaction within sixty (60) days from when we received your notice of Dispute, you may then commence arbitration proceedings.
- d. Commencing an Arbitration. To commence an arbitration, you must submit a written Demand for Arbitration to the American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, with a copy to Fanfare. A Demand for Arbitration form can be found on the AAA website by clicking the following link or typing the following address into your Internet browser:

[https://www.adr.org/sites/default/files/Consumer\\_Demand\\_for\\_Arbitration\\_Form\\_3.pdf](https://www.adr.org/sites/default/files/Consumer_Demand_for_Arbitration_Form_3.pdf)

- e. Arbitration Process. The arbitration will be administered by the AAA under the AAA's Consumer Arbitration Rules, as modified by this arbitration provision. You may obtain copies of those rules from the AAA by clicking the following link or typing the following address into your Internet browser:

[http://www.adr.org/sites/default/files/Consumer\\_Rules\\_Web\\_2.pdf](http://www.adr.org/sites/default/files/Consumer_Rules_Web_2.pdf)

If the AAA will not enforce this arbitration provision as written, it cannot serve as the arbitration organization to resolve the Dispute. If this situation arises, or if the AAA for any reason cannot serve as the arbitration organization, the Parties shall agree on a substitute arbitration organization or ad hoc arbitration, which will enforce this arbitration provision as to the Dispute. If the Parties are unable to agree, the Parties shall appoint JAMS as the organization to resolve the Dispute. If there is a conflict between this arbitration provision and the AAA rules, this arbitration provision shall govern. A single arbitrator will resolve the Dispute between you and Fanfare. Participation in arbitration may result in limited discovery. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect confidential or proprietary information, including User personally identifiable information.

The Parties agree that the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to arbitrability, interpretation, applicability, enforceability, formation of this Agreement, or the interpretation of this Agreement's prohibitions of class, representative, private attorney general proceedings and non-individualized relief. The Parties further agree that, in any arbitration, the arbitrator has the exclusive authority to determine issues

with respect to deadlines and the timeline leading up to and including the arbitration hearing. The arbitrator is limited and bound by terms of this arbitration provision, and the arbitrator shall have no authority to make any decision, judgment, ruling, finding, award, or other determination that does not conform to the terms and conditions of this Agreement. Although the arbitrator shall be bound by rulings in prior arbitrations involving the same Customer to the extent required by applicable law, the arbitrator shall not be bound by rulings in other arbitrations involving different customers. Unless the Parties agree otherwise, any arbitration hearing will take place in the county (or parish) of your service address. If the amount in dispute is \$10,000 or less, Fanfare agrees that you may choose whether the arbitration is conducted solely on the basis of documents submitted to the arbitrator, by a telephonic hearing, or by an in-person hearing as established by AAA rules. If the amount in dispute exceeds \$10,000, the right to a hearing will be determined by the AAA Rules.

- f. *The Arbitrator's Award.* An arbitrator's award will consist of a written statement of the disposition of each Dispute and a concise written statement of the essential findings and conclusions on which the award is based. The arbitrator shall use best efforts to deliver the award within thirty (30) days of the conclusion of any final hearing. The arbitrator's decision and award are final and binding, subject only to the limited court review permitted under the FAA, and judgment on the award may be entered in any court of competent jurisdiction.
- g. *Arbitration Fees.* Except as otherwise provided in this arbitration provision, Fanfare will pay all arbitration filing, administrative, and arbitrator fees for any arbitration that Fanfare commences or that you commence seeking damages of \$75,000 or less. If you commence an arbitration seeking greater than \$75,000 in damages, arbitration filing, administrative, and arbitrator fees shall be allocated in accordance with the AAA rules. If you cannot pay your share of these fees, you may request a fee waiver from the AAA. In addition, Fanfare will consider reimbursing your share of these fees if you indicate you cannot afford them and, if appropriate and in its discretion, will pay directly all such fees upon your written request prior to the commencement of the arbitration. You are responsible for all additional costs and expenses that you incur in the arbitration, including, but not limited to, attorneys' or expert witness fees and expenses, unless the arbitrator determines that applicable law requires Fanfare to pay those costs and expenses. Notwithstanding the foregoing, if the arbitrator concludes that your claim is frivolous or has been brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)), then the AAA rules shall govern the allocation of arbitration fees, and you agree to reimburse Fanfare for any amounts Fanfare may have paid on your behalf.
- h. *Governing Law.* Because the services provided to you involve interstate commerce, the Federal Arbitration Act ("FAA"), not state arbitration law, shall govern the arbitrability of all Disputes under this arbitration provision. Any state statutes pertaining to arbitration shall not be applicable. However, the clear intent of Fanfare entering in this Agreement with you is to be bound by the substantive law of the state or district in which you receive the Services. You and Fanfare agree that the arbitrator or arbitrators: (i) are bound to decide the legal issues of the terms and conditions of

this Agreement in accordance with the substantive law of the state or district in which you receive the Services; and (ii) are not authorized to and cannot make an award in equity.

- i. Waiver of Class and Representative Actions. **YOU AGREE TO ARBITRATE YOUR DISPUTE AND TO DO SO ON AN INDIVIDUAL BASIS; CLASS, REPRESENTATIVE, AND PRIVATE ATTORNEY GENERAL ARBITRATIONS AND ACTIONS ARE NOT PERMITTED.** You and Fanfare agree that each Party may bring claims against the other only in your or its individual capacity and may not participate as a class member or serve as a plaintiff in any purported class, representative, or private attorney general proceeding. This arbitration provision does not permit and explicitly prohibits the arbitration of consolidated, class, or representative Disputes of any form. In addition, although the arbitrator may award any relief that a court could award that is individualized to the claimant and would not affect other Fanfare account holders, neither you nor Fanfare may seek, nor may the arbitrator award, non-individualized relief that would directly affect other customers. Further, the arbitrator may not consolidate or join more than one person's claims unless all parties affirmatively agree in writing. If any of the prohibitions in the preceding paragraph are held to be unenforceable as to a particular claim, then that claim (and only that claim) must be severed from the arbitration and brought in court. In that instance, or any instance when a claim between You and Fanfare proceeds to court rather than through arbitration, You and Fanfare each waive the right to any trial by jury through this Agreement.
- j. Severability and Survival. If any of the prohibitions in the preceding paragraph are held to be unenforceable as to a particular claim, then that claim (and only that claim) must be severed from the arbitration and brought in a court of competent jurisdiction. **IN THAT INSTANCE, OR ANY INSTANCE WHEN A CLAIM BETWEEN YOU AND FANFARE MUST PROCEED TO COURT RATHER THAN THROUGH ARBITRATION, YOU AND FANFARE EACH WAIVE THE RIGHT TO ANY TRIAL BY JURY THROUGH THIS AGREEMENT.** If any other portion of this arbitration provision is determined to be unenforceable, then the remainder of this arbitration provision shall be given full force and effect. The terms of the arbitration provision shall survive termination, amendment or expiration of this Agreement.
- k. Future changes to Dispute Resolution Agreement. If Fanfare makes any changes to this binding arbitration provision (other than a change to Fanfare's Notice Address), you may reject any such change by notifying Fanfare via email at [noFanfarearbitration@energywell.com](mailto:noFanfarearbitration@energywell.com) within 30 days of the change. It is not necessary to submit a rejection of changes to this binding arbitration provision if you had already properly opted out of arbitration in compliance with the requirements of this section as described above. By rejecting a new change, you are agreeing that we will arbitrate any Dispute in accordance with the language of this binding arbitration provision, and in accordance with any changes that you did not reject.