

## NATIONAL UTILITY BILLING

### TERMS OF USE

*Last Modified: These Terms of Use were last modified on August 1, 2020.*

A. Introduction. Welcome to National Utility Billing Online Billing System & Services' website. You ("**User**") are accessing this website, which is owned and operated by National Utility Billing Services LLC, a Delaware limited liability company ("**NUBS**"), pursuant to the terms of the Services Agreement (defined below). If you are an individual who is authorized by, and acting on behalf of, Client and/or Owner (as such terms are defined below), by accessing and using the Services and Systems on this website, you expressly agree to have read, understood, accept and comply with this Terms of Use.

B. General Conditions.

I. NUBS' Right to Amend Terms of Use. This Terms of Use ("**Terms of Use**") explains the terms by which you may use our Services described in the Services Agreement signed between you and NUBS. By accessing the Systems (defined below) and/or using the Services, you signify that you have read, understood, and agree to be bound by this Terms of Use. NUBS reserves the right to amend this Terms of Use at any time by notifying you as provided in this Terms of Use, provided that no notice shall be required for non-substantive changes to the Terms of Use or for changes we are required to make to comply with the then-applicable laws pertaining to the general use of internet services, collection and security of data, and similar laws affecting privacy rights; provided, further however, prior to making any changes that will have a material adverse effect on your ability to use this website, we will obtain your approval. If you do not agree to any of these terms, do not use or access (or continue to access) the Services. This Terms of Use applies to all Users.

II. Eligibility. You may use the Services and access the Systems only if you (i) directly (or indirectly through Client) have entered into the Services Agreement, (ii) if applicable, have been authorized by Client and/or Owner to use the Services and access the Systems, and (iii) can form a binding contract with NUBS, and only in compliance with this Terms of Use and all applicable laws, rules and regulations.

III. Prohibited Conduct. You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Services or Systems in any medium, including without limitation by any automated or non-automated "scraping"; (ii) using any automated system, including without limitation "robots," "spiders," "offline readers," etc., to access the Services or Systems in a manner that sends more request messages to the NUBS servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser; (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services or Systems; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Services or Systems; (vii) collecting or harvesting any personally identifiable information, including account names, from the Services or Systems; (viii) using the Services or Systems for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with

the proper working of the Services or Systems; (xi) accessing any content on the Services or Systems through any technology or means other than those provided or authorized by the Services or Systems; or (xii) bypassing the measures we may use to prevent or restrict access to the Services or Systems, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or Systems or the content therein. We may, without prior notice, change the Services or Systems; stop providing the Services or features of the Services or Systems, to you or to users generally; or create usage limits for the Services or Systems. We may permanently or temporarily terminate or suspend your access to the Services or Systems without liability, if in our sole determination, you violate any provision of this Terms of Use, your contract with NUBS, or if you are delinquent in payment for use of the Systems or Services. Upon termination for any reason or no reason, you continue to be bound by this Terms of Use. You are solely responsible for your interactions with other users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. We will have no liability for your interactions with other Users, or for any User's action or inaction.

## 1. DEFINITIONS

**"Documentation"** shall mean any instructions, documents or other materials provided by NUBS, either online or otherwise, to Users in connection with the Systems.

**"Intellectual Property"** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing: copyrights (including derivative works, as defined by the United States Copyright Act, thereof), trademarks, trade names, trade secrets, mask work rights, know-how, patents and any other intellectual and industrial property and proprietary rights, of every kind and nature throughout the universe and however designated, and including all registrations, applications, renewals and extensions thereof.

**"NUBS Online™ Content"** means information (entered into the Systems for access by you) authored or provided by the NUBS employees and its licensors, (other than User Content) including, without limitation, those authorized representatives who are editors or who are otherwise designated by NUBS to contribute to the Systems (collectively the **"NUBS Designated Online Providers"**).

**"Services"** shall mean the Services described in the Services Agreement and being provided by NUBS to Client through one or more of NUBS' online application modules, including without limitation the modules included in the definition of the **"Systems."**

**"Services Agreement"** means any agreement between a Client and NUBS pursuant to which NUBS provides to User access to the Systems.

**"Site"** shall mean all online access points to NUBS, including the Resident Portal, the Mobile App and NUBS Online™.

**"Software"** shall mean the computer program(s), software, source code, object code, applications and the Documentation, together with updates thereto as may be made available from time to time, provided to or accessible by a User, in accordance with the terms and conditions hereof and any and all other written Service Agreements between a Client and NUBS.

**"Systems"** shall mean any and all proprietary and confidential NUBS software, systems, services and applications (which contain, among other things, source and object code, other intellectual property and technologies, NUBS' business model and business plans, training materials (written, video or any other

format), web site look, feel, structure and know-how), including, without limitation, the following modules (i) Resident Account Summary/Ledger; (ii) Resident Billing Platform; (iii) Reports; (iv) Resident Portal and E-Billing; (v) NUBS Mobile Platform ("**NUBS Mobile™**"); (vi) NUBS' Internet based, online application services ("**NUBS Online™**"); and (vii) other modules that may be added by NUBS from time to time.

**"Technology"** shall mean (a) any and all technology, information, data, know-how, ideas, designs, software, inventions, documentation, resources and all other tangible and intangible items made, conceived or reduced to practice by the NUBS alone or jointly with others and (b) all Intellectual Property rights in part (a) of this definition of Technology.

**"User"** shall mean (a) a Client, as defined in the Services Agreement, (b) an Owner, as defined in the Services Agreement, (c) any employee, agent, contractor, partner, shareholder, director, member, investor, owner, manager, consultant, nominee or officer of Client or Owner, (d) any affiliate, subsidiary or related party of Client or Owner that is authorized to use the Systems pursuant to the Services Agreement, and (e) any other party that is expressly authorized to use this Site by NUBS.

**"User Content"** means specific information relating to the management and operation of a User's business, Property, Residents and any other information either entered into the Systems by you, another User, your respective employees and agents, or NUBS on your behalf. User Content shall explicitly exclude NUBS Online™ Content, and shall refer only to the actual "raw" data/information entered into the Systems by you, another User, your respective employees and agents, or NUBS on your behalf (e.g., it shall exclude the corresponding presentation/graphics, background analytics, etc. provided by NUBS and bundled with the User Content in the Systems).

## 2. USE OF THE NUBS SYSTEMS

All of the Systems, including, without limitation, the Documentation, Intellectual Property, NUBS Online™ Content, Software and Technology are the property of NUBS and are protected by trade secret, copyright, and other intellectual property laws, and further protected as highly confidential, proprietary information as outlined herein and in the Services Agreement. User shall honor all reasonable requests by NUBS to protect NUBS' proprietary interests. During the term of the Services Agreement, NUBS hereby grants User a non-exclusive, non-transferable license to access and use the Systems for the fees and under the terms described in the written Services Agreement. User may display, download or print out, for User's own use or reference only, materials from the Systems; User may not otherwise copy, transmit, rent, lend, or sell or modify any materials from the Systems or modify or remove any proprietary content contained therein, or create or use derivative works based on materials from the Systems, including, without limitation, the Documentation, Intellectual Property, NUBS Online™ Content, Software and Technology. User shall not, and shall not permit any third party (including, but not limited to, another User), to alter, modify, adapt, translate, disassemble, decompile, reverse compile, reverse engineer or otherwise alter any executable code, contents or materials received hereunder.

Notwithstanding the foregoing, such limitation does not limit or restrict User's right to customize User Content for the duration of the Services Agreement, but User may customize only those materials provided by the Systems which are, from time to time, expressly designated by NUBS for customization. User may not disseminate any portion of the Systems or Services, through electronic means, including mail lists or electronic bulletin boards, and User agrees not to restrict or inhibit any other person or entity's authorized, lawful access to, or use of, the Systems.

Upon the termination of the Services Agreement, User's limited rights outlined above immediately cease and any continued use of any of the Systems, including any previously authorized customization, is expressly prohibited. User retains no rights whatsoever in any customization or the continued use of any customization created during the Services Agreement. User agrees that any continued use of any kind, as outlined above, would cause irreparable injury to NUBS and that NUBS is entitled to an injunction restraining such continued or further use without the necessity of posting a bond. The terms of this section entitled "USE OF THE NUBS SYSTEMS" and the prohibitions applicable to User regarding NUBS' proprietary information shall survive the termination of the Services Agreement, including any amendment, extension thereof or replacement thereto and shall also survive any court order holding any other term of the Services Agreement invalid or void.

### 3. TECHNICAL SUPPORT, UPDATES AND TRAINING

During the term of Services Agreement, NUBS' support to Client shall comprise of the following:

- (a) Support provided by NUBS' online Support Desk, during the hours of 6 A.M. – 5 P.M. Pacific Time.
- (b) Initial training and follow-up on the use and operation of the Services, via online webinars during NUBS' normal business hours and/or previously recorded web-based demonstrations.
- (c) Updates to the Software, if and when such become available.
- (d) Use and training documentation as developed by NUBS, from time to time.
- (e) For questions regarding NUBS Mobile, please contact support staff at:
  - (i) NUBSmobile@nationalutilitybilling.com
  - (ii) (855) 228-4855

### 4. ACCESS AND DEPLOYMENT

Pursuant to the Services Agreement, User shall have access, other than as hereinafter set forth, to the Systems; provided, however, User shall not allow any third party(ies) access to the Systems. User acknowledges that the Systems are delivered via the Internet and access may, from time to time, be affected by events, circumstances, matters, equipment, and the like, outside the control of NUBS. NUBS shall use reasonable efforts to provide such unlimited web access to the Software twenty-four hours-a-day, seven days-a-week, except for reasonable and prudent downtime for system maintenance and backup, unanticipated system failure or force majeure. The Systems shall be deployed on NUBS' server(s) and NUBS shall be solely responsible for configuration, maintenance and operation thereof.

### 5. USER SYSTEM REQUIREMENTS

In order to effectively utilize the Systems, you must minimally have:

#### Computer Minimum System Requirements:

- PC-Pentium or better
- High speed internet access (preferably cable or fiber)

- Microsoft Windows 7, 8.1 or 10 Operating System or Mac OS X
- Microsoft Office 2010 or later
- Up-to-Date and regularly scheduled Windows updates
- Most recent versions of Microsoft Internet Explorer, Microsoft Edge, Google Chrome, Mozilla Firefox and/or OS X Safari
- Most recent version of Adobe Acrobat Reader (free plugin)
- Adobe Flash Player & Shockwave (free plugin)
- Cookies and Javascript enabled
- Active virus protection

NUBS Mobile Minimum System Requirements (Android):

- Operating System: Android 7.1
- CPU/Processor: 1.4 GHz None
- Wi-Fi: Dual-Band 802.11 a/b/g/n
- Display Size: 8"
- Touchscreen: Yes
- Memory: 2 GB
- Storage: 32 GB
- Battery Size: 4000 mAh
- Camera: 5.0MP front/8MP rear

NUBS Mobile Minimum System Requirements (iOS):

- Operating System: iOS 9/iPadOS 13.4.1
- CPU/Processor: Dual Core 1.5 GHz
- Wi-Fi: Dual-Band 802.11 a/b/g/n
- Display Size: 7.9"
- Touchscreen: Yes
- Memory: 2 GB
- Storage: 32 GB
- Battery Size: 5124 mAh
- Camera: 1.2MP front/8MP rear

6. USER CONTENT

(a) Ownership of User Content. The User Content is your property. You are solely responsible for its accuracy, completeness and compliance with applicable law. However, upon termination of the Services Agreement, for any reason whatsoever, you shall no longer have access to NUBS Online™ or your User Content as stored on NUBS Online™. As such, to the extent you wish to export such User Content for your records prior to the aforementioned termination, it shall be your responsibility (and not NUBS) to generate reports on NUBS Online™ and extract the User Content for your future use. After termination of the Services Agreement, NUBS shall have the right, in its sole and absolute discretion and without notice to you, to permanently delete the User Content from NUBS Online™ and all of the Systems, and you hereby agree to and acknowledge the same. Neither NUBS nor any of the NUBS Designated Online Providers have any responsibility for User Content, including, but not limited to, the content of any messages or information posted by Users of the Systems or others, or for the content of information accessible via direct or indirect hyperlinks from the Systems.

(b) Grant of License. Subject to the provisions of clause (a) above, by posting any User Content on the Systems, you expressly grant, and you represent and warrant that you have a right to grant, to NUBS a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use and distribute such User Content and your name, as contained in your User Content, in whole or in part, and in any form, media or technology, whether now known or hereafter developed, for use in connection with the Services. The above license granted by you in your User Content terminates within a commercially reasonable time after you remove or delete your User Content from the Systems. You understand and agree, however, that NUBS may retain, but not display, distribute, or perform, server copies of User Content that have been removed or deleted as required by record retention policies. Any User Content remaining in the possession of NUBS after termination or expiration of any agreement or business relationship between us shall remain subject to the confidentiality and security obligations of this Terms of Use. The above licenses granted by you in User Content for which the Systems do not provide you a means to delete or remove are perpetual and irrevocable.

#### 7. USERNAME AND PASSWORD

User will be issued usernames and passwords for its authorized personnel and for another User's, as applicable, authorized personnel. User will keep its usernames and passwords confidential and will instruct its personnel to do the same. In the event a Client or Owner sells or otherwise transfers management or ownership of its Property(ies) to another party, the successor party shall be strictly prohibited from using the username and password of the previous party, and User shall be required to notify NUBS prior to any such change. NUBS, subject to its sole and absolute discretion, shall issue a username and password to the new party.

User is responsible to immediately notify NUBS of any disclosure or unauthorized use of User's or another User's usernames and passwords by sending an email to [access@nationalutilitybilling.com](mailto:access@nationalutilitybilling.com). Subject to NUBS' sole and absolute discretion, the party whose username and password were compromised will be assigned a new username and password. NUBS shall have the right, in its sole and absolute discretion, to suspend and/or terminate the username and password of any User at any time. User will be liable for any damages and/or charges which occur stemming from such disclosure and/or unauthorized use.

#### 8. GRANT OF AUTHORITY TO NUBS FOR UTILITY BILLING SERVICES

With respect to those Properties (as identified in the Services Agreement) for which NUBS provides utility billing services, to the extent NUBS deems it necessary, NUBS shall be authorized, and Client hereby confirms such authorization, to contact: (a) the utility companies to obtain information needed to prepare the billing statement and/or investigate utility company charges; (b) governmental bodies or other similar organizations which have jurisdiction over utility rates and charges or other charges found on the billing statements prepared by NUBS on behalf of Client; and (c) third parties, such as trade associations, to aid NUBS in providing Services. NUBS shall be authorized to disclose the name, address and other relevant information on Client's Property, if NUBS reasonably determines such disclosure is needed. Upon request by NUBS, Client shall provide NUBS with a letter of authorization (in form and substance acceptable to NUBS) executed by Client notifying a third party provider that (i) one or more individuals designated by

NUBS are to be added as authorized owner's representative(s) on the account(s) with such provider, and (ii) any such person(s) is/are to be provided with information by such provider upon request.

## 9. TERMINATION

(a) Termination of Use. You agree that NUBS, without prior notice, may immediately terminate or suspend and/or limit your access to the Site and/or the Systems for good cause. Good cause for such termination, limitation of access or suspension shall include, but not be limited to:

- (i) Termination, breaches or violations of this Terms of Use, the Services Agreement or other incorporated agreements or guidelines;
- (ii) requests by law enforcement or other government agencies;
- (iii) discontinuance or material modification to the Systems (or any part thereof);
- (iv) unexpected technical or security issues or problems;
- (v) extended periods of inactivity; and/or
- (vi) any fraudulent or illegal activities by you.

Further, you agree that all terminations, limitations of access and suspensions for cause shall be made in NUBS' sole discretion and that NUBS shall not be liable to you or any third party for any termination of your account, any associated email address, or access to the Systems.

(b) Effects of Termination. In addition to all other remedies available to NUBS, legal or equitable, under this Terms of Use and/or the Services Agreement, the termination of your NUBS account includes any or all of the following:

- (i) removal or denial of access to all or part of the offerings within the Systems;
- (ii) deletion of your account, password and all related information and files associated with your account (or any part thereof); and
- (iii) barring of further use of all or part of the Site or Systems.

Termination of your account and limitations on access shall not relieve you of any obligations arising or accruing prior to such termination or limit any liability or obligation you otherwise may have to NUBS, including all indemnification obligations contained herein, which hereby expressly survive any termination.

## 10. INTERSTATE NATURE OF COMMUNICATIONS

You understand that using the Site or the Systems involves the use of computers and networks located throughout the United States of America and the world. As a result thereof, the network architecture used and the nature of electronic communications, even communications that appear to be intrastate, can result in the transmission of interstate communications regardless of where you are physically located at the time of the transmission. Accordingly, you acknowledge that the use of the Site and Systems results in interstate data transmissions.

## 11. SITE OPERATION AND SECURITY

NUBS and its service providers will use reasonable efforts to ensure that the Site and Systems are available 24 hours a day, 7 days a week. However, from time to time Site and/or Systems may be interrupted for maintenance, upgrades and emergency repairs or due to failure of telecommunications links and

equipment. Reasonable steps will be taken by NUBS to minimize such disruption where it is within NUBS' reasonable control. YOU AGREE THAT NUBS WILL NOT BE LIABLE IN ANY EVENT TO YOU OR ANY OTHER PARTY FOR ANY SUSPENSION, MODIFICATION, DISCONTINUANCE OR LACK OF AVAILABILITY OF THE SITE OR SYSTEMS OR NUBS' SERVICES.

NUBS makes no claim that the Site may be lawfully viewed outside of the United States. If you access the Site from outside the United States, you do so at your own risk and you are responsible for compliance with the laws of your jurisdiction.

NUBS has implemented commercially reasonable technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration or disclosure. However, NUBS cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

## 12. PRIVACY

We care about the privacy of our Users. Please review our Privacy Policy (<http://public.nationalutilitybilling.com/documents/NUBSPrivacyPolicy.pdf>), which governs the use of personal information on the Site and to which you agree and consent to be bound as a User of the Site.

## 13. HOLD HARMLESS

You agree to hold harmless NUBS, its affiliates, subsidiaries, and their respective agents, licensors, managers, employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Systems and the Site, including any data or content transmitted or received by you; (ii) your violation of any term of this Terms of Use, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property rights; (iv) any claim or damages that arise as a result of any of your User Content or any that is submitted via your account; or (v) any other party's access and use of the Systems and the Site with your unique username, password or other appropriate security code.

## 14. DISCLAIMERS OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE SITE AND THE SYSTEMS ARE AT YOUR SOLE RISK. THE CONTENT AND NUBS SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NUBS DOES NOT GUARANTEE, REPRESENT OR WARRANT THAT YOUR USE OF THE NUBS SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. NUBS AND ITS DIRECTORS, SHAREHOLDERS, SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, EMPLOYEES, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

(b) ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SYSTEMS IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OF DATA THAT



RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

(c) NUBS SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY YOU IN CONNECTION WITH NUBS' SERVICES, BUT YOU ACKNOWLEDGE AND AGREE THAT YOUR SUBMISSION OF SUCH INFORMATION IS AT YOUR SOLE RISK, AND NUBS HEREBY DISCLAIMS ANY AND ALL LIABILITY TO YOU FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.

15. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NUBS AND ITS DIRECTORS, SHAREHOLDERS, SUBSIDIARIES, AFFILIATES, OFFICERS, AGENTS, EMPLOYEES, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, (EVEN IF NUBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM:

- (a) THE USE OR THE INABILITY TO USE THE SYSTEMS;
- (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES;
- (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; OR
- (d) ANY OTHER MATTER RELATING TO NUBS.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT NUBS, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, AGENTS, EMPLOYEES, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR DAMAGES OF ANY KIND IN EXCESS OF THE FEES RECEIVED BY NUBS FOR THE SERVICES PROVIDED TO YOU DURING THE THREE MONTH PERIOD PRIOR TO THE CLAIM.

16. THIRD PARTY WEBSITES

Users of the Site may gain access from the Site to third party sites on the Internet through hypertext or other computer links on the Site. Third party sites are not within the supervision or control of NUBS. Unless explicitly otherwise provided, NUBS does not:

- (a) make any representation or warranty whatsoever about any third party site that is linked to the Site; or
- (b) endorse the products or services offered on such third party site.

If you access a third party website from the Site, you do so at your own risk, and you understand that this Terms of Use and NUBS' Privacy Policy do not apply to your use of such sites.

NUBS expressly disclaims:

- (a) all responsibility and liability for content on third party websites and
- (b) any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against NUBS with respect to such sites and third party content.

17. MISCELLANEOUS

This Terms of Use constitute the entire agreement and understandings by the parties relating to the subject matter hereof and supersedes all prior agreements, proposals or understandings between the

parties regarding such subject matter (except as such terms may conflict with the Services Agreement). Further, each party shall comply with all applicable federal, state and local laws and regulations in the performance of its obligations under this Terms of Use. The Services shall be deemed solely based in California and shall be deemed passive that do not give rise to personal jurisdiction over NUBS, either specific or general, in jurisdictions other than California. This Terms of Use shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. Any controversy, claim or dispute between the parties arising out of or relating to this Terms of Use, or any default hereof, that cannot be resolved through mutual negotiations shall be finally determined by arbitration to be held in Los Angeles County, California, before one neutral arbitrator, knowledgeable in the subject matter. The arbitration award shall be in writing and shall include a statement of findings of fact and conclusions of law for the award. The arbitration award may not grant any relief that may not be granted under California law. Judgment on the award may be entered in any court of competent jurisdiction. The prevailing party in any arbitration, action, suit, or proceeding arising out of or relating to this Terms of Use shall be entitled to all costs incurred, including, but not limited to, all costs of the arbitration and other costs and expenses (including, but not limited to, attorneys' fees and expenses). Such arbitrator shall determine which party is the prevailing party and whether or not such dispute proceeds to final adjudication. EACH PARTY HEREBY WAIVES ANY RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING RELATED TO THIS TERMS OF USE OR TO THE ENGAGEMENT, PERFORMANCES OR APPEARANCES CONTEMPLATED HEREBY, REGARDLESS OF WHICH PARTY INITIATES ANY SUCH ACTION OR PROCEEDING. Nothing in this paragraph shall be deemed to limit NUBS' right to obtain injunctive relief. The rights and obligations set forth herein may not be assigned, in whole or part, by the User without the prior written consent of NUBS. All waivers must be in writing and executed by the waiving party. The failure by a party to enforce any provision hereof shall not be construed as a waiver of such provision. If any term hereof shall be held to be invalid by any competent court, this Terms of Use shall be interpreted as if such invalid provisions were not contained in the Terms of Use.