



# Boyne Resorts Terms

EFFECTIVE: December 21, 2022

## **IMPORTANT – PLEASE READ CAREFULLY**

**THESE TERMS ARE AN ENFORCEABLE CONTRACT BETWEEN US WHICH AFFECTS OUR RESPECTIVE LEGAL RIGHTS. IT INCLUDES A MANDATORY INDIVIDUAL ARBITRATION REQUIREMENT AND CLASS ACTION AND JURY TRIAL WAIVERS AS SET FORTH IN SECTION 3, BELOW.**

Boyne USA, Inc., d.b.a. Boyne Resorts and all affiliated companies, resorts, and brands (“Boyne,” “we,” or “us”) provide this website, all related websites, mobile and television apps, and all venue websites accessible via any of the foregoing (together, the “Sites”), promotions, and offers to sell or otherwise make available products, services, accommodations, and resort-related activities, or information regarding same, to consumers and businesses subject to your agreement to these Terms and Conditions (the “Terms & Conditions” or “Terms”), which are final.

By accessing or using the Sites, signing up for promotions of any kind (including email and text-based promotions), doing business with us in any way, or registering with us, you agree to be bound by these Terms.

We recommend you print out a copy of these Terms for your records. We each agree, upon request, to provide to each other a signed copy of these Terms.

## **TABLE OF CONTENTS**

- SECTION 1. PRIVACY & SECURITY**
- SECTION 2. PRODUCT & SERVICE DESCRIPTIONS**
- SECTION 3. LEGAL DISPUTES – THE REQUIREMENT TO ARBITRATE**
- SECTION 4. INTELLECTUAL PROPERTY RIGHTS**
- SECTION 5. CONTACT INFORMATION & COMMUNICATIONS**
- SECTION 6. ADDITIONAL TERMS**

## 1. PRIVACY & SECURITY

Please read our [Privacy Policy](#) which is incorporated into these Terms & Conditions and governs your use of the Sites. You agree with and consent to our [Privacy Policy](#), including the information collection, transmittal, analysis, and usage practices it describes. To the extent there is a conflict between the [Privacy Policy](#) and these Terms, these Terms will control to the fullest extent permitted by law. Like most websites, our Sites may cause information concerning you or your usage of the Sites to be transmitted by your web browsing software to third parties acting for or on behalf of Boyne. By agreeing to the Terms & Conditions, you consent to these communications.

## 2. PRODUCT & SERVICE DESCRIPTIONS

We work hard to be as accurate as possible. Errors will be corrected when discovered and we have the absolute right to revoke any stated offer and correct any error, inaccuracy, or omission (including after an order or request has been submitted by you or an order or request confirmation has been sent by us). Such errors shall not be binding on you or Boyne, and you agree to Boyne's right to correct such errors without liability.

## 3. LEGAL DISPUTES – THE REQUIREMENT TO ARBITRATE

We hold our relationships with our customers and site visitors in the highest regard. On occasion, a third party may be necessary to help us resolve Disputes (defined below) that may arise between you and us, and this Section of the Terms & Conditions (the "arbitration agreement" or "Section 3") limits us to arbitration (or small claims court, if a claim qualifies) in all such instances.

**YOU AND BOYNE AGREE THAT ALL DISPUTES THAT CANNOT BE RESOLVED INFORMALLY SHALL BE RESOLVED ON AN INDIVIDUAL BASIS IN EITHER ARBITRATION OR SMALL CLAIMS COURT ONLY. YOU AND BOYNE AGREE TO WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY, TO PARTICIPATE IN ANY WAY IN A CLASS ACTION OR CLASS ARBITRATION, AND TO RESOLVE DISPUTES IN COURTS OTHER THAN SMALL CLAIMS COURT.**

This arbitration agreement covers all complaints, demands, and claims of any kind, including, but not limited to, those arising out of or related to these Terms & Conditions, the use and operation of the Sites, communications from and promotions by or on behalf of Boyne, and your interactions with and doing business in any way with Boyne (whether through the Sites or otherwise) (each a "Dispute," and, collectively, the "Disputes"). Disputes include, but are not limited to, statutory, regulatory, constitutional, contractual, common law, and tax-related claims, including claims alleging of negligence, fraud, and misrepresentation.

This arbitration agreement applies to all agents, attorneys, contractors, subcontractors, service providers, employees, and all others acting for, on behalf of, or under the direction of Boyne and you, including all affiliated companies (including, but not limited to, parents, subsidiaries, and sibling corporations) of Boyne and you. This agreement is binding on you and Boyne, as well as our respective heirs, successors, and assigns.

This arbitration agreement is governed exclusively by the Federal Arbitration Act (“FAA”) and federal law, and not by any state or local laws, or the laws of other countries, including those concerning or purporting to place limits on the availability and scope of arbitration or which include requirements beyond or different from those imposed by the FAA. If any provision of this arbitration agreement is held to be unenforceable for any reason, the remaining parts of this arbitration agreement shall remain in effect to the fullest extent permitted by law and in a manner that facilitates resolution of Disputes in arbitration in a way that is cost-effective to all parties. If any other provision of the Terms & Conditions renders unenforceable any aspect of this arbitration agreement, such provision shall be treated as null, void, and of no effect.

You have the right to opt out of this arbitration agreement by sending a written notice expressly stating “I opt out of the arbitration requirement” or words to that effect to: [arbitration@boyneresorts.com](mailto:arbitration@boyneresorts.com) , or by writing to us at 3951 Charlevoix Avenue, Petoskey, MI 49770 within thirty (30) days after you first agree to these Terms & Conditions. 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 Boyne, nor does it eliminate or change any other rights or requirements of the Terms & Conditions.

### **MANDATORY SETTLEMENT PROCESS**

Before you and Boyne can seek to resolve a Dispute in arbitration or small claims court, this mandatory sixty (60) day settlement process must be completed. To initiate this process, the claiming party must send to the other a short, written statement with their name, mailing address, and email address (a “Dispute Statement”) explaining their Dispute in sufficient detail for the other party to understand and investigate it, along with a proposal for resolving it, including any money being claimed and, if so, how that dollar amount was calculated. You agree to send Dispute Statements by email to Boyne at [dispute@boyneresorts.com](mailto:dispute@boyneresorts.com), or by certified mail, return receipt requested to 3951 Charlevoix Avenue, Petoskey, MI 49770.

Once a Dispute Statement is received, you and Boyne shall work in good faith to resolve the Dispute for a period of sixty (60) days. At the conclusion of the sixty (60) day period, if the Dispute has not been resolved, you and Boyne thereafter each have the right to resolve the Dispute in small claims court or through arbitration in compliance with the requirements of this arbitration agreement as explained below. All applicable statutes of limitation shall be suspended during the sixty (60) day informal settlement process.

### **ARBITRATION RULES AND REQUIREMENTS**

While there is no judge or jury in an arbitration, the arbitrator has the power to award the same individual relief as a court and must construe and apply the Terms & Conditions in the same way a court would. The arbitrator has the sole authority to and shall address all claims or arguments by both parties concerning the formation, legality, and enforceability of this arbitration agreement, the scope of this arbitration agreement, and the arbitrability of any Dispute arising between us. If any cause of action, defense, or claim for relief cannot for any reason be addressed in arbitration, you and Boyne agree that any court proceedings which may be pending shall be stayed until the final resolution in arbitration of all arbitrable causes of action, defenses, and claims for relief. The results of such an arbitration shall be binding in all

court proceedings relating to or arising out of any Dispute. An arbitration award shall be binding only on you and Boyne and shall have no preclusive effect in any other arbitration or proceeding involving a different party, provided, however, that the arbitrator may consider rulings in other arbitrations involving different parties.

Any court of competent jurisdiction will have the authority to enforce all aspects of the arbitration agreement (including the requirement to complete the informal settlement process described above before filing any claim in arbitration or small claims court) and, if necessary, to enjoin the filing or prosecution of arbitrations and/or the assessment of fees or costs by the American Arbitration Association (“AAA”) or any other arbitral organization or arbitrator.

If the AAA is for any reason unavailable, unable, or unwilling to handle an arbitration assigned to it under this arbitration agreement (including under the Mass Arbitration Rules, below), and you and Boyne cannot agree on an alternative organization or arbitrator, you or Boyne may petition a court of competent jurisdiction to appoint an organization or individual to conduct the arbitration consistent with the requirements of this arbitration agreement.

As explained below, the arbitration process will differ depending on whether your claim is pursued individually or as part of a Mass Arbitration. In the case of a Mass Arbitration, if there is a conflict between the General Arbitration Rules and the Mass Arbitration Rules set forth below, the Mass Arbitration Rules will control. In the absence of such a conflict and in situations not involving a Mass Arbitration, the General Arbitration Rules will control.

**General Arbitration Rules.** Arbitrations shall be before a single neutral arbitrator. Arbitrations brought by consumers shall be governed by this arbitration agreement and the AAA Consumer Arbitration Rules and the AAA Consumer Due Process Protocol, which you can find here: <https://www.adr.org/consumer>. All other arbitrations shall be governed by this arbitration agreement and the AAA Commercial Arbitration Rules and the AAA Optional Appellate Rules, which you can find here: <https://www.adr.org/commercial>. To the extent there is a conflict between this arbitration agreement and any applicable AAA rules and protocols, the provisions of this arbitration agreement shall control to the fullest extent consistent with preserving the parties’ obligation to arbitrate their Disputes.

Disputes that involve an individual claim for less than \$25,000 (US) in actual or statutory damages (but not including any amounts claimed for attorneys’ fees and incidental, consequential, punitive, or exemplary damages, and any damage multipliers), must be resolved exclusively through binding non-appearance-based arbitration based solely on the written submissions of the parties, including sworn statements. All other arbitrations will be conducted by telephone, online, or based solely on written submissions, including sworn statements, and will not involve any personal appearances by parties or witnesses unless you and Boyne otherwise agree. Judgment on an arbitrator’s award may be entered in any court that has jurisdiction to do so.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the AAA and to Boyne USA, Inc., 3951 Charlevoix Avenue, Petoskey, MI 49770. The AAA’s address is American Arbitration Association Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043 (the “AAA Notice Address”). You may also send a copy to the AAA online at <https://www.adr.org>

**Mass Arbitration Rules.** If twenty-five (25) or more claimants file, or indicate an intention to file, demands for arbitration against Boyne raising substantially identical Disputes, and counsel

for the claimants are the same or coordinated across such Disputes (a “Mass Arbitration”), these special rules apply.

Claimants that are part of a Mass Arbitration (each a “Mass Arbitration claimant”) must complete the sixty (60) day informal settlement process (described above) before proceeding to arbitration. Counsel for claimants and Boyne agree to the submission by Mass Arbitration claimants of a single Dispute Statement, but only if that statement identifies every Mass Arbitration claimant by name, mailing address, and email address.

If the sixty (60) day informal settlement process is unsuccessful, counsel for the Mass Arbitration claimants and Boyne shall each select three (3) Mass Arbitration claimants to proceed to arbitration (each a “bellwether arbitration”) on their Disputes, each with a different arbitrator, followed by a mandatory mediation involving all Mass Arbitration claimants. All statutes of limitation shall be suspended for the duration of the informal settlement process, the bellwether arbitrations, and mediation.

If any demands for arbitration have been filed by Mass Arbitration claimants other than those selected for the six (6) bellwether arbitrations (the “non-bellwether claimants”), they shall promptly be dismissed without prejudice upon selection of the bellwether arbitration claimants. For such dismissed arbitrations, no arbitration fees or costs shall be owed to or imposed by the arbitral organization. The bellwether arbitrations shall commence promptly upon their selection. All bellwether arbitrations shall require a reasoned decision from the arbitrator and be completed within one hundred twenty (120) days after commencement unless otherwise ordered by the arbitrator or agreed to by the parties.

Upon the resolution of all six (6) bellwether arbitrations, counsel for Boyne and counsel for claimants shall participate promptly and in good faith in non-binding confidential mediation for a period of not less than sixty (60) days in a good faith effort to resolve all Disputes of the Mass Arbitration claimants under the Mediation Procedures of the AAA or such other mediation rules as to which you and Boyne may agree.

If the bellwether arbitrations and the mandatory mediation are unsuccessful in resolving the Disputes of all Mass Arbitration claimants, those Mass Arbitration claimants whose claims have not been resolved shall then have the right to pursue their claims on an individual basis only with FairClaims, Inc. (“FairClaims”), and not the AAA, to be arbitrated under FairClaims’ Small Claims Rules & Procedures, which are available at <https://s3.amazonaws.com/arbitration/fairclaims-rules/FairClaims-Small-Claims-Rules.pdf>. If any cause of action, defense, or claim for relief cannot for any reason be addressed by FairClaims, you and Boyne agree that any court proceedings shall be stayed until the final resolution in arbitration of all arbitrable causes of action, defenses, and claims for relief. The results of such FairClaims arbitrations shall be binding in all court proceedings related to the arbitrated Dispute. The results of such individual arbitration shall not be binding on any other individual arbitration involving a different Mass Arbitration claimant.

If for any reason FairClaims cannot arbitrate a Dispute filed by a Mass Arbitration claimant pursuant to its Small Claims Rules & Procedures, you and Boyne shall negotiate in good faith for the substitution of an alternative arbitration organization for that Dispute whose rules, costs, speed, and fees are comparable to those under FairClaims’ Small Claims Rules & Procedures. If you and Boyne cannot agree on an alternative arbitration organization, you or Boyne may petition a court of competent jurisdiction to appoint an organization or individual to conduct the arbitration consistent with the requirements of these Mass Arbitration rules by an arbitrator with

comparable rules whose fees and costs are not greater than twice those under FairClaims' Small Claims Rules & Procedures. If, and only if, the court determines that there are no alternative arbitrators or arbitration organizations available to handle these Disputes with comparable rules and whose fees and costs are not greater than twice those of FairClaims Small Claims Rules & Procedures, Boyne shall have the right to require that Mass Arbitration claimants resolve their claims via a class action lawsuit in the federal courts of the State of Michigan or, if the federal courts cannot hear such an action, in the state courts of the State of Michigan.

**Fees and Costs.** You and Boyne will bear our own costs, arbitral fees, and attorneys' fees in the event of a Dispute consistent with this arbitration agreement and governing arbitral rules, provided, however, that either party may recover fees and costs to the extent permitted by applicable law. If the arbitrator determines that an arbitration has been brought in bad faith or for an improper purpose, or that the demand was frivolous, the arbitrator may award costs, arbitration fees, and attorneys' fees to the party against which that arbitration has been brought.

**No Class Actions.** Except as expressly provided for In the Mass Arbitration rules above, you and Boyne agree that we can each only bring claims against the other on an individual basis. This means: (a) neither of us can bring a claim as a plaintiff or class member in a class action, consolidated action, or representative action; (b) an arbitrator cannot combine multiple people's claims into a single case (or preside over any consolidated, class, or representative action); and (c) an arbitrator's decision or award in one person's case can only decide the disputes of that user, not other users. Nothing in this section is intended to limit the individual relief available to either of us in arbitration or small claims court. Nor does anything in this section limit the parties' rights to resolve a Dispute by mutual agreement through a class-wide settlement of claims.

**Survival.** All provisions of the terms regarding dispute resolution, including the arbitration agreement, shall survive termination.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

The Sites contain trademarks, copy, and designs that are owned by Boyne and may not be used by you without our prior written authorization in connection with the sale or promotion of products and services or used in any manner that is likely to cause confusion among our customers or wrongfully disparages or discredits us.

#### **5. CONTACT INFORMATION & COMMUNICATIONS**

Except as otherwise provided in these Terms & Conditions, please contact Boyne via mail at [info@boyneresorts.com](mailto:info@boyneresorts.com), by telephone at 231.439.4750, or by mail at 3951 Charlevoix Avenue, Petoskey, MI 49770. Please include with any correspondence information that will help us assist you with your inquiry, request, or Dispute, together with your name, mailing address, and email address. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## **6. ADDITIONAL TERMS**

Boyne has unrestricted right to assign this agreement and transfer its rights and obligations hereunder to another company or individual. Neither you nor Boyne shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached these terms due to any failure or delay in fulfilling or performing any obligation under this Terms when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, embargoes, war, acts of war, insurrections, riots, strikes, lockouts or other labor disturbances, or acts of God; provided, however, that the party so affected shall use reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. The Sites may contain links to third-party websites that are not under Boyne's control. Boyne makes no claim and accepts no responsibility regarding the quality, nature, or reliability of those websites. Boyne provides such links to you as a convenience and the inclusion of any link does not imply endorsement by Boyne or any association with the operators of such websites. You are responsible for viewing and abiding by the privacy statements and terms of use posted at any third-party sites. If, notwithstanding Section 3, above, any action between you and Boyne proceeds in court (other than in small claims court), you consent to the exclusive jurisdiction of the federal and state courts of the State of Michigan to the fullest extent permitted by law. No waiver of any provision or any breach of these Terms will constitute a waiver of any other provisions or any other or further breach. If any provision of these Terms determined to be illegal or unenforceable, the balance of the Agreement shall continue to be fully valid, binding, and enforceable.