

## ARBITRATION AGREEMENT

THIS ARBITRATION AGREEMENT (Agreement) is made by [insert employer name] (Employer) and the undersigned employee (Employee).

The purpose of this Agreement is to establish final and binding arbitration for all disputes arising out of Employee's relationship with Employer, including without limitation Employee's employment or the termination of Employee's employment. Employee and Employer desire to utilize arbitration, an alternative dispute resolution process widely recognized as often providing a speedy, impartial procedure without the unpredictable delays and other downsides associated with traditional civil litigation.

PLEASE NOTE: Agreement to arbitration is a condition of employment or continued employment with Employer. This Arbitration Agreement is presented to Employee for review and consideration; any modifications or revisions to its original format signed by Employer and Employee will apply to Employee's individual employment. If the Arbitration Agreement is not signed by Employee in its original or modified form, however, acceptance of employment or continued employment with Employer shall be deemed knowledge and acceptance of this Arbitration Agreement by Employee under the terms set forth below.

Employee and Employer agree to the following:

### 1. Claims Covered by the Agreement

Employee and Employer mutually consent to the resolution by final and binding arbitration of all claims or controversies (claims) that Employer may have against Employee or that Employee may have against Employer or against its officers, directors, managers, members, partners, employees, agents, administrators, or fiduciaries, or any subsidiary or affiliated company or corporation, or joint or otherwise related employer (collectively referred to as Employer), relating to, resulting from, or in any way arising out of Employee's relationship with Employer, Employee's employment relationship with Employer or any joint employer(s) with it, and/or the termination of Employee's employment relationship with Employer, to the extent permitted by law. The claims covered by this Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination and harassment (including, but not limited to, race, sex, religion, national origin, age, marital status or medical condition, disability, sexual orientation, or any other characteristic protected by federal, state or local law); claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); and claims for violation of any public policy, federal, state or other governmental law, statute, regulation or ordinance. All such claims shall be subject to arbitration whether arising before or after either party's execution of this Agreement. This Agreement shall not cover claims not subject to arbitration including, but not limited to, claims for substantive workers compensation benefits, whistleblower protection provisions of the Dodd-Frank Wall Street Reform Consumer Protection Act, or any other law or regulation validly prohibiting the application of pre-dispute arbitration agreements. This Agreement does not prohibit Employee from participating in or cooperating with any investigation conducted by the Equal Employment Opportunity Commission or other federal or state equal employment opportunity agency, but such participation or cooperation shall not diminish the scope or applicability of this Agreement to claims by Employee. This Agreement shall not interfere with claims under the National Labor Relations Act, including but not limited to unfair labor practice charges filed with the National Labor Relations Board, and shall not interfere with any duly recognized or certified labor representative's ability to negotiate regarding this Agreement or any other term or condition of Employee's employment.

Note: This is a draft document for discussion of current arbitration agreement requirements. It should not be used without further consultation regarding individual workplace considerations.

## 2. Required Notice of Claims and Statute of Limitations

Employee may initiate arbitration by serving or mailing a written notice to “[insert title, company name, address]” or by completing valid service of process on any person or entity authorized to accept service on Employer’s behalf. Employer may initiate arbitration by serving or mailing a written notice to Employee at the last address recorded in Employee’s personnel file. Employee should ensure that Employee’s address on file with Employer is current at all times, including all times after Employee’s employment, to ensure that any notices are forwarded to a then-current address. The written notice must specify the claims asserted against the other party. Notice of any claim sought to be arbitrated must be served within the limitations period established by applicable federal or state law.

## 3. Arbitration Procedures

### 3.1

After demand for arbitration has been made by serving written notice under the terms of Section 2 of this Agreement, the party demanding arbitration shall file a demand for arbitration with the American Arbitration Association (AAA) in the AAA office nearest to Employee’s last employment location. Employer will pay all arbitration fees and costs, including but not limited to filing and administration fees assessed by AAA.

### 3.2

A neutral arbitrator shall be selected from the AAA panel and the arbitration shall be conducted pursuant to AAA policies and procedures. The arbitrator must be a retired state or federal-court judge or an attorney with at least ten years’ experience in labor or employment law. Except as provided herein, all rules governing the arbitration shall be the then applicable rules set forth by the AAA. If the dispute is employment-related, the dispute shall be governed by the AAA’s then current version of the national rules for the resolution of employment disputes (currently the Employment Arbitration Rules and Mediation Procedures). The AAA’s then applicable rules governing the arbitration may be obtained from the AAA’s website, which currently is [www.adr.org](http://www.adr.org), or via telephone at (800) 778-7879.

### 3.3

The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement, including but not limited to any claim that all or any part of this Agreement is void or voidable.

### 3.4

Either party may file a motion for summary judgment with the arbitrator. The arbitrator is entitled to resolve some or all of the asserted claims through such a motion. The standards to be applied by the arbitrator in ruling on a motion for summary judgment shall be the applicable laws as specified in Section 3.3 of this Agreement.

### 3.5

Discovery shall be allowed and conducted pursuant to the then applicable arbitration rules of the AAA, provided that the parties shall be entitled to discovery sufficient to adequately arbitrate their claims and defenses. The arbitrator is authorized to rule on discovery motions brought under the applicable discovery rules.

### 3.6

**Class and collective action waiver.** The parties agree not to bring any disputes between each other on a collective or class basis (including, but not limited to, actions qualifying as class or mass actions under

28 U.S.C. § 1332(d)); rather, the parties agree to bring such disputes in arbitration on an individual basis only. An arbitrator may not resolve any disputes concerning the enforceability or validity of this class and collective action waiver; only a court with proper jurisdiction may resolve such a dispute. If this class action waiver is held to be illegal for any reason, the parties agree that a court, and not an arbitrator, will hear any class or collective action.

#### **4. Application for Emergency Injunctive and/or Other Equitable Relief**

Claims by Employer or Employee for emergency injunctive and/or other equitable relief shall be subject to the then current version of the AAA's Rules Governing Emergency Measures of Protection set forth within the AAA's Commercial Dispute Resolution Procedures. The AAA shall appoint a single emergency arbitrator to handle the claim(s) for emergency relief. The emergency arbitrator selected by the AAA shall be either a retired judge, or an individual experienced in handling matters involving claims for emergency injunctive and/or other equitable relief. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

#### **5. Arbitration Decision**

The arbitrator's decision will be final and binding. The arbitrator shall issue a written arbitration decision revealing the essential findings and conclusions upon which the decision and/or award is based. A party's right to appeal the decision is limited to grounds provided under applicable federal or state law.

#### **6. Arbitration Hearing**

The arbitration will be at a mutually agreed location. If the parties cannot agree upon a location, then the arbitration will be held at the AAA's office nearest to Employee's last employment location. The arbitrator shall appoint a time and place for the hearing and forward notice to each party consistent with the applicable AAA rules and procedures. Appearance at the hearing waives the right to notice.

#### **7. Construction**

Should any portion of this Agreement be found to be unenforceable, such portion will be severed from this Agreement, and the remaining portions shall continue to be enforceable.

#### **8. Representation, Fees, and Costs**

Each party may be represented by an attorney or other representative selected by the party. Each party shall be responsible for its own attorney's or representative's fees. However, if any party prevails on a statutory claim that affords the prevailing party attorney's fees, or if there is a written agreement providing for fees, the arbitrator may award reasonable fees to the prevailing party.

#### **9. Sole and Entire Agreement**

This Agreement expresses the entire agreement of the parties and shall supersede any and all other agreements, oral or written, concerning arbitration. This Agreement is not, and shall not be construed to create, any contract of employment, express or implied.

#### **10. Requirements for Modification or Revocation**

This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the then-current President of Employer and Employee that specifically states an intent to revoke or modify this Agreement.

**11. Application of Federal and/or Any Applicable Law**

This Agreement shall be enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and any other applicable law including, but not limited to, the California Arbitration Act, California Code of Civil Procedure § 1280 *et seq.*

**12. Voluntary Agreement**

Employee acknowledges and agrees that Employee has carefully read this Agreement, understands its terms, and agrees that all understandings and agreements between Employer and Employee relating to the subjects covered in the Agreement are contained in it. Employee specifically authorizes and affirmatively agrees to the portions of this Agreement requiring arbitration of all disputes covered by the Agreement. Employee has knowingly and voluntarily entered into the Agreement without reliance on any provisions or representations by Employer, other than those contained in this Agreement.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

I UNDERSTAND AND AGREE THAT THIS AGREEMENT TO ARBITRATE CONSTITUTES A WAIVER OF BOTH PARTIES' RIGHT TO HAVE THEIR DISPUTES LITIGATED IN A COURT AND/OR THE RIGHT TO A JURY TRIAL.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name