



## BRAND/SAFWAY MUTUAL ARBITRATION AGREEMENT

The undersigned applicant/employee ("Employee") and Brand Industrial Services, LLC and all U.S. divisions, subsidiaries and affiliated entities (collectively the "Company" or "BrandSafway") voluntarily and knowingly enter into this Mutual Arbitration Agreement ("Agreement"):

1. Except as provided below, Employee and the Company both agree all legal disputes and claims between them, including without limitation those relating to Employee's employment with the Company or any separation therefrom and claims by Employee against the Company's parents, subsidiaries, affiliates, directors, employees, or agents, if not resolved under Steps 1-3 of the Brand/Safway Dispute Resolution Program (DRP), shall be determined exclusively by final and binding arbitration before a single, neutral arbitrator as described herein. Claims subject to arbitration under this Agreement include without limitation those for discrimination, harassment, or retaliation; wages, overtime, benefits, or other compensation; breach of any express or implied contract; violation of public policy; and negligence or other tort claims including defamation, fraud, and infliction of emotional distress. **Except as provided below, Employee and the Company voluntarily waive all rights to trial in court before a judge or jury on all legal claims between them.**

2. The only legal disputes and actions excluded from this Agreement are: (a) claims by Employee for workers' compensation, unemployment, or other benefits under a plan or program that provides its own process for dispute resolution; (b) claims for which this Agreement would be invalid as a matter of law; (c) actions to enforce this Agreement, compel arbitration, or enforce or vacate an arbitrator's award under this Agreement; (d) a claim or charge filed with a federal, state, or local administrative agency such as the Equal Employment Opportunity Commission, National Labor Relations Board, Department of Labor, or similar agency; (e) an action by either party seeking a provisional remedy in any court of competent jurisdiction or seeking to enforce or vacate a contractual non-competition agreement and/or to protect a trade secret, proprietary data or property; (f) claims asserted by Employee or Company prior to their execution or deemed acceptance of this Agreement as provided herein; and (g) claims asserted on Employee's behalf by another individual if and only if such a claim was the subject of a motion to certify a class or collective action and such motion was filed prior to Employee's execution or deemed acceptance of this Agreement or any prior arbitration agreement as provided herein. As to subpart (c) above, the parties hereby agree and stipulate that such actions and this Agreement are covered and governed by Section 2 of the Federal Arbitration Act and not any state law. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

3. As referenced above, by agreeing to submit the described claims to binding arbitration, Employee does not waive the right to file an administrative complaint with the appropriate administrative agency (e.g., the Equal Employment Opportunity Commission, National Labor Relations Board, Department of Labor, or similar agency) but does knowingly and voluntarily waive the right to file, or participate or obtain relief in, a court action of any nature seeking recovery of money damages or injunctive relief against the Company, except as described above.

4. A party wishing to initiate arbitration must notify the other party in writing by hand delivery or certified mail. The notice must identify the party requesting arbitration by name, address, and telephone number; describe the facts upon which the claim is based, the persons involved, and the date and location of any occurrences giving rise to the claim; and describe the remedy requested. Notice to the Company

must be sent to the local Human Resources representative with a copy to the Legal Department at Brand/Safway's corporate office. Notice to Employee must be sent to Employee's most recent residence address reflected in the Company's employment records.

5. Within 30 days of receipt of a notice of arbitration, the parties shall select a mutually agreeable arbitrator. Unless mutually agreed otherwise, the arbitration shall be held in or near the city in which Employee is or was last employed by the Company. To the maximum extent permitted by law and except as noted herein, the arbitrator selected by the parties shall administer the arbitration according to the National Arbitration & Mediation (NAM) Employment Rules & Procedures (or successor rules) and Federal Rule of Civil Procedure 68 ("Offer of Judgment"). These rules can be found at <http://www.namadr.com> and [http://www.law.cornell.edu/rules/frcp/rule\\_68](http://www.law.cornell.edu/rules/frcp/rule_68), respectively, or requested from the Company. If NAM's rules are inconsistent with this Agreement, the terms of this Agreement shall govern. If the parties are unable to agree on an arbitrator, the party requesting arbitration shall submit the matter to NAM, and an arbitrator shall be selected pursuant to NAM's rules.

6. The arbitrator's authority and jurisdiction shall be limited to determining the matter in dispute consistent with controlling law and this Agreement. Except as otherwise provided herein and to the maximum extent legally permissible, the arbitrator shall apply the substantive law of the state where the claim arises and/or federal law, as applicable. The arbitrator shall have the same authority to order remedies (*e.g.*, emotional distress damages, punitive damages, equitable relief, *etc.*) as would a court of competent jurisdiction. The arbitrator shall not have the authority to hear disputes not recognized by existing law and shall dismiss such claims upon motion by either party in accordance with the summary judgment standards of the applicable jurisdiction. Similarly, the arbitrator shall not have the authority to order any remedy that a court would not be authorized to order. The arbitrator shall render a written award setting forth the arbitrator's findings of fact and conclusions of law. Except as noted in the following paragraph, the arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation of this Agreement, including without limitation any claim that this Agreement is void or voidable. Thus, except as noted in the following paragraph, the parties voluntarily waive the right to have a court determine the enforceability of this Agreement.

**7. This Agreement prohibits the arbitrator from consolidating the claims of others into one proceeding, to the maximum extent permitted by law. This means an arbitrator shall hear only individual claims and is prohibited from fashioning a proceeding as a class, collective, representative, or group action or awarding relief to a group of employees in one proceeding, to the maximum extent permitted by law. Any question or dispute concerning the scope or validity of this paragraph, or the enforceability of the parties' class, collective, representative or group action waiver, shall be decided by a court of competent jurisdiction and not the arbitrator.**

8. The Employee shall be responsible for the filing fee required to initiate any demand for arbitration with NAM (or any other Brand/Safway designated national arbitration service). The Company shall pay all other costs unique to arbitration (as compared to the costs of adjudicating the same claims before a court), including the regular and customary arbitration fees and expenses. Except as provided in Federal Rule of Civil Procedure 68, each party shall pay its own attorneys' fees and any costs that are not unique to the arbitration (*i.e.*, costs that each party would incur if the claim(s) were litigated in a court such as costs to subpoena witnesses and/or documents, take depositions and purchase deposition transcripts, copy documents, *etc.*). Any dispute as to whether a cost is unique to arbitration shall be resolved by the arbitrator. The arbitrator may award reasonable fees and costs or any portion thereof to the prevailing party to the same extent a court would be entitled to do so, in accordance with applicable law.

9. This is the complete agreement between the parties on the subject of arbitration and supersedes any other understandings on the subject. No representations, oral or written, are being relied upon by either party in executing this Agreement, other than those contained herein. This Agreement shall remain in effect even after the termination of Employee's employment with the Company. If any provision of this Agreement is deemed invalid or unenforceable, such provision shall be modified automatically to the minimum extent necessary to render the Agreement valid and enforceable. If a provision conflicts with a mandatory provision of applicable law, the conflicting provision shall be severed automatically and the remainder of the Agreement construed to incorporate the mandatory provision. In the event of such automatic severance and modification with respect to a particular provision, the remainder of this Agreement shall not be affected. Similarly, should a court determine that arbitration pursuant to this Agreement is unavailable for any reason, the parties agree and stipulate that they hereby waive any right to a jury and instead agree and stipulate that the claim(s) at issue will be heard only by a judge.

10. This Agreement shall be construed as a whole, according to its fair meaning, and not for or against any party. This Agreement may be modified or terminated only by a writing signed by Employee and a senior officer of the Company, or by either party after 30 days' written notice to the other party. Any modification or termination of this Agreement shall be prospective only and shall not apply to any pending claims or disputes that have been initiated (or could have been initiated) by either party pursuant to this Agreement prior to the expiration of the 30-day period.

11. Employee warrants and agrees that he or she has read and understands this Agreement and has had the opportunity to consult with an attorney of Employee's own choosing regarding the effect of this Agreement to the extent Employee deems necessary. By signing this Agreement, Employee acknowledges that he or she is knowingly and voluntarily waiving the right to file a lawsuit relating to Employee's employment with the Company as well as the right to resolve disputes in a proceeding before a judge or jury, except as described above. Employee further acknowledges and agrees that this Agreement, while mutually binding upon the parties, does not constitute a guarantee of continued employment for any fixed period or under any particular terms except those contained herein and does not alter in any way the at-will nature of Employee's employment relationship.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Applicant/Employee Signature

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name and Title