

SAMPLE ARBITRATION AGREEMENT

As a condition of employment with [COMPANY NAME] (referred to as COMPANY) and in consideration of my further employment with COMPANY and my receipt of compensation now and hereafter paid to me by COMPANY, I, the COMPANY Employee/Applicant who manually or electronically signs this [SAMPLE ARBITRATION AGREEMENT] ("Agreement") below (referred to as "I" or "me")*, agree to the following:

1. Recitals

1.1 While I am employed by COMPANY or thereafter, or during any pre-hire processes, disputes may arise between COMPANY and me related to my employment or application for employment. By entering into this Agreement, both COMPANY and I anticipate that we will benefit by resolving these disputes by a fair and impartial procedure that is in most cases faster and less expensive than civil litigation.

1.2 References to "COMPANY" in this Agreement include [COMPANY NAME] and all direct or indirect subsidiaries, affiliates, and parent companies of [COMPANY NAME], together with all benefit plans of any of the foregoing companies and the sponsors, fiduciaries and administrators of such benefit plans.

2. Claims Covered By This Agreement

2.1 Except as described in 2.2 below, this Agreement applies to all disputes between COMPANY and me, all claims COMPANY may have against me, and all claims I may have against COMPANY or any of its officers, directors, employees or agents, arising out of my employment with COMPANY or the termination thereof, whether asserted during my employment with COMPANY or after it has ended, or during any pre-employment processes in which I may participate (referred to as Claims). Claims covered by this Agreement include, but are not limited to, the following: claims for breach of express or implied contract or covenant; breach of fiduciary duty; misappropriation of trade secrets; claims for the commission of any intentional or negligent tort; claims for violation of any federal, state or local law, ordinance, regulation or rule; claims for wages, benefits or other compensation due; claims for wrongful termination, demotion or disciplinary action; and claims of discrimination or harassment for any reason.

2.2 This Agreement does not apply to the following claims: claims for worker's compensation or unemployment compensation benefits; claims or charges before any administrative agency having jurisdiction there over, if private dispute resolution procedures cannot lawfully be compelled as to such claims such as a petition or charge that could be brought before the National Labor Relations Board; claims for benefits under a plan that specifies a claim procedure inconsistent with this Agreement; or any other claim that is not subject to arbitration under federal law.

3. **Resolution of Claims: Exclusive Method** All Claims must be resolved according to the procedures in this Agreement, and in no other manner. Neither COMPANY nor I will file or prosecute any lawsuit except as expressly permitted by this Agreement. Either COMPANY or I may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement. The parties agree that, except where prohibited by federal law, all claims subject to this Agreement must be pursued on an individual basis only. By entering this Agreement, the parties waive their right to commence, or be a party to, any class, collective or representative action or to bring jointly or collectively any claim, and the arbitrator has no authority to proceed with arbitration on such a basis. Any disputes concerning the validity of this multi-plaintiff, class, collective and representative action waiver will be decided by a court of competent jurisdiction, not by the arbitrator.¹ In the event a court determines this waiver is unenforceable with respect to any claim, then this waiver shall not apply to that claim, that claim must be filed in a court of competent jurisdiction, and such court shall be the exclusive forum for that claim. In addition, nothing herein limits my right and the rights of others collectively to challenge the enforceability of this Agreement, including the class/collective action waiver.

4. **Internal Grievance Procedure** I understand that before commencing arbitration under this Agreement, I may attempt to resolve a Claim through COMPANY's internal procedure for resolving employee grievances in effect at that time.

5. **Arbitration** If any Claims cannot be resolved through the internal grievance procedure, if applicable, or another

¹ COMMENT: The class action waiver clause may no longer be enforceable in certain Seventh and Ninth Circuit jurisdictions.

mutually acceptable voluntary dispute resolution method such as mediation, the Claims must be resolved through final and binding arbitration conducted with the American Arbitration Association (AAA) at an AAA or other facility within a reasonable distance of the COMPANY office in which I was employed at the time the Claims arose, or where I resided before the Claims arose, unless the parties agree otherwise. The arbitration shall be administered in conformity with the then existing Federal Rules of Civil Procedure; provided, however, that where such procedures are inconsistent with the procedures set forth below, the procedures set forth below shall govern.

6. Arbitration Procedures Any demand for arbitration by either COMPANY or I shall be served and filed within the statute of limitations applicable to the claim(s) upon which arbitration is sought or required. Any failure to demand arbitration within this time frame and according to these rules shall constitute a waiver of all rights to raise any claims in any forum arising out of any dispute that was subject to arbitration to the same extent such claims would be barred if the matter proceeded in court (along with the same defenses to such claims). Thereafter, each party is expected to respond within thirty (30) calendar days to each communication regarding the selection of an arbitrator and the scheduling of a hearing. Either party may, in conjunction with the initiation of any arbitration proceeding or motion to compel arbitration, seek provisional relief from any court of competent jurisdiction consistent with applicable federal or state law. Such provisional relief shall only be available to preserve the status quo and to avoid irreparable injury pending appointment of the arbitrator. Thereafter, following appointment of the arbitrator, all matters, including the issuance of further provisional and/or injunctive relief, shall be within the jurisdiction of the mutually-selected neutral arbitrator. The parties shall select a mutually-agreeable neutral arbitrator (who shall be a retired judge). If the parties are not able to agree on a neutral arbitrator, COMPANY and I will obtain a list of employment arbitrators (who shall be retired judges) from AAA and the parties will take turns striking names from the list of arbitrators. I will strike the first name, then COMPANY, until only one name remains. The last remaining person shall be the arbitrator.

6.1 The parties agree that the arbitrator shall be bound by the law applicable to the Claims asserted by either party and/or any defenses thereto and shall have jurisdiction to award all relief available in law or equity that is requested by the parties and supported by credible, relevant and admissible evidence.

6.2 Each party may conduct discovery to the full extent as would be allowed in civil litigation in court in accordance with the Federal Rules of Civil Procedure, subject only to limitation by the arbitrator upon motion of the other party on the ground that limitation of such discovery is necessary to protect the party from waiver of privilege, unwarranted annoyance, embarrassment, oppression, or undue burden and expense.

6.3 The arbitrator may rule on pre-hearing disputes and hold such pre-hearing conferences by telephone or in person as he or she may determine. Either party may make a motion to dismiss, for summary judgment or for summary adjudication of issues, and the arbitrator will apply the standards governing such motions under the Federal Rules of Civil Procedure.

6.4 Either party may submit, or the arbitrator may order either or both parties to submit, a brief prior to the arbitration hearing. Either party, at its own expense, may arrange for a court reporter to provide a stenographic record of the proceedings at the hearing.

6.5 Upon request at the close of the arbitration hearing, either party may file a post-hearing brief within the time set by the arbitrator. The award will be final and binding on the parties to the arbitration.

6.6 The arbitrator shall issue a written decision that will reveal the essential findings and conclusions upon which the award is based. The decision of the arbitrator shall be final, conclusive and binding on the parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The arbitrator's award shall be subject to correction, confirmation, or vacation, only as provided by applicable law governing judicial review of arbitration awards.

7. Arbitration Costs COMPANY shall bear those costs of arbitration that are particular to the arbitration (as opposed to civil litigation in the courts), such as arbitrator fees. Otherwise, the parties each shall bear their own standard litigation type costs such as deposition fees, transcript fees, and witness fees. However, the arbitrator may award the fees and costs discussed in the preceding sentence of this Agreement to the prevailing party under any applicable statute or written agreement to the same extent that such fees and/or costs could be awarded in any civil litigation.

8. Legal Representation In any arbitration under this Agreement, both COMPANY and I may be represented by legal counsel of our own choosing. Each of us will be responsible for the fees of our own counsel, provided that an

arbitrator may award attorneys' fees to the prevailing party under any applicable statute or written agreement to the same extent that attorneys' fees could be awarded in litigation.

9. No Employment Contract This Agreement is not, and does not create, any contract of employment, express or implied. I acknowledge that if I am employed by COMPANY, my employment is "at-will," that is, COMPANY or I may terminate my employment at any time and for any reason, either with or without cause, and that my "at-will" status may be modified only in a writing signed by the Chairman of the Board or President of COMPANY.

10. Integrated Agreement; Amendment This Agreement contains the final and complete expression and understanding between COMPANY and me with respect to the subjects covered hereby.

11. Severability If any provision of this Agreement is held invalid, in whole or in part, such invalidity will not affect the remainder of such provision or the remaining provisions of this Agreement. The Arbitrator, and not any federal, state or local court or agency, 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; except that any determination as to the enforceability of the class/collective action waiver shall be made solely by a court of competent jurisdiction. This Agreement shall be interpreted or modified, to the extent necessary, to the extent necessary, for it to be enforceable, subject to the sentence above. This Agreement shall be self-amending; meaning that if by statute or common law a provision is deemed unlawful or unenforceable, then that provision and the Agreement automatically, immediately and retroactively shall be amended, modified, and/or altered to be enforceable.

12. Governing Law This Agreement shall be governed by and construed and enforced pursuant to the procedural and substantive provisions of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and not individual state laws regarding enforcement of arbitration agreements or otherwise.

13. Headings The headings in this Agreement are inserted for convenience only and do not affect the meaning or interpretation of this Agreement or any provision hereof.

14. Successors and Assigns This Agreement will be binding upon, and inure to the benefit of, COMPANY, me and our respective heirs, executors, administrators, representatives, successors and assigns.

IMPORTANT

I agree that I have been given a reasonable opportunity to read this Agreement carefully, I have read it, I understand it, and I am signing it voluntarily. I have not been promised anything for signing it that is not described in this Agreement. [COMPANY NAME] encourages me to discuss this Agreement with my legal advisor, if I wish, before signing it. By signing this Agreement, I understand the parties are waiving the right to a jury or court trial. By issuance of this Agreement, COMPANY agrees to be bound by its terms.

AGREED:

(Type or Print Employee/Applicant Name)

Signature or E-Sign with "I Agree"²

Date

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² Mere reference to an arbitration agreement in an employee handbook and an acknowledgment of receipt of an employee handbook is insufficient to constitute and agreement to arbitrate. Also most employers state in their employee handbook that it is not a "contract". Likewise, you need an 'at will clause' in the arbitration agreement as recognized above in Paragraph 9. Accordingly, get a signature if there is any doubt as to the existence of and enforceability of an agreement to arbitrate.