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## **AGREEMENT TO ARBITRATE EMPLOYMENT DISPUTES**

\_\_\_\_\_ (“Employer”), with a business address at \_\_\_\_\_, and \_\_\_\_\_ (“Employee”), with a residence address at \_\_\_\_\_, (each a “Party” and collectively, the “Parties”) agree as follows, effective as of \_\_\_\_\_, 20\_\_:

### 1. Agreement to Arbitrate.

Except as otherwise mutually agreed in writing, the Parties hereby irrevocably agree to arbitrate in accordance with the terms of this Agreement to Arbitrate Employment Disputes (“Agreement”) any legal disputes, claims, controversies, or disagreements among them in any way whatsoever relating to, arising from, or concerning Employee’s employment with Employer, including the interpretation, breach, or enforcement of any current, former, or future Employer employee manual or handbook or employment agreement between Employee and Employer, as well as this Agreement itself. To the extent there is any conflict between such employment agreement(s) and this Agreement, this Agreement shall prevail over any former or current employment agreements with regard to dispute resolution, but any future employment agreement(s) shall supersede this Agreement, but only to the extent of incompatibility, and otherwise the terms and conditions of this Agreement shall remain in full force and effect. In all instances, this Agreement shall prevail over any inconsistent language in Employer employee manuals or handbooks.

Without limitation, this Agreement shall apply to any legal disputes, claims, controversies, or disagreements among the Parties relating to or arising from harassment or discrimination claims or matters, state law, and federal law (including, without limitation, the Americans with Disabilities Act and the Civil Rights Act of 1964).

### 2. Waiver of Jury Trial.

Except as otherwise provided here, mutually agreed by the Parties in writing, or as specified in a subsequent inconsistent employment agreement, it is the intention of the Parties that arbitration in accordance with the terms of this Agreement be the exclusive method of resolving disputes between the Parties. Each Party therefore hereby waives and understands that it is waiving his, her, or its right to court trial and trial by jury.

### 3. Commencement of Arbitration.

If the Parties are unable to resolve a dispute covered in Section 1 of this Agreement through negotiation or other informal means, they shall submit any such dispute, whether based

on contract, tort, or statutory duty or prohibition, to binding arbitration, before one (1) arbitrator, in accordance with California Code of Civil Procedure §§1280 through 1294.2; provided, however, that the terms of this Agreement shall prevail where the Code of Civil Procedure provisions are inconsistent, and the decision of the arbitrator shall be final and non-appealable.

The Party demanding arbitration shall submit a written claim to the other Party, setting out the basis of the claim and proposing the name of an arbitrator. Each Party consents to such service of process at the address listed above (which may be changed at any time, upon written notice to the other Party). The responding Party shall have fifteen (15) calendar days in which to respond to this demand in a written answer. If this response is not timely made, or if the responding Party agrees with the person proposed as the arbitrator, then the person named by the demanding Party shall serve as the arbitrator. If the responding Party submits a written answer rejecting the proposed arbitrator then, unless the Parties mutually agree on an arbitrator, on the request of either Party, the local American Arbitration Association shall select an arbitrator from its employment law panel.

No one who has ever had any business, financial, family, or social relationship with any Party to this Agreement shall serve as an arbitrator unless the related Party informs the other Party of the relationship and the other Party thereafter consents in writing to the use of that arbitrator.

### 3. Conduct of Arbitration.

The arbitration shall take place in \_\_\_\_\_ County, California, at a time and place selected by the arbitrator. California and U.S. federal law shall apply.

A prearbitration hearing shall be held within thirty (30) calendar days after the arbitrator's selection. The arbitration shall be held within ninety (90) calendar days after the prearbitration hearing. The arbitrator shall establish any deadlines necessary to accomplish this goal and shall permit the extension of this deadline in his or her discretion, as necessary to avoid unfairly burdening or prejudicing any Party.

Each Party shall be entitled to discovery of essential documents and witnesses, as determined by the arbitrator. No less than forty-five (45) calendar days before the first scheduled date of the arbitration, a Party may serve a document request calling for any document that would be discoverable in civil litigation. The Party served with this request shall deliver the requested documents and any objections within ten (10) calendar days. The arbitrator shall resolve any dispute over the exchange of documents. Each Party may take no more than two (2) depositions, unless additional depositions are allowed by the arbitrator for good cause. All depositions must be completed fifteen (15) calendar days before the arbitration date. The arbitrator may resolve any disputes over the depositions as they would be resolved in civil litigation.

The arbitrator shall have the following powers:

a. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, documents, and other evidence;

b. To order depositions to be used as evidence;

c. Subject to the limitations on discovery enumerated above, to enforce the rights, remedies, procedures, duties, liabilities, and obligations of discovery as if the arbitration were a civil action before a California superior court;

d. To conduct a hearing on the arbitrable issues;

e. To administer oaths to Parties and witnesses.

3. Decision of Arbitrator.

Within fifteen (15) calendar days after completion of the arbitration, the arbitrator shall submit a tentative decision in writing, specifying the reasoning for the decision and any calculations necessary to explain the award. Each Party shall have fifteen (15) calendar days in which to submit written comments to the tentative decision. Within fifteen (15) calendar days after the deadline for written comments, regardless of whether any comments are received, the arbitrator shall transmit the final award to the Parties in writing.

4. Expenses of Arbitration.

Employee and Employer shall each pay directly to the arbitrator half of the initial arbitration fee, regardless of which Party initiated the arbitration. Employer shall pay the arbitrator's other expenses and fees, any meeting room charges, and any other expenses that would not have been incurred if the case had been litigated in the judicial forum having jurisdiction over it. Unless otherwise ordered by the arbitrator, each Party shall pay its own attorney fees, witness fees, and other expenses incurred by the Party for his or her own benefit.

The arbitrator may award the prevailing Party his, her, or its expenses and fees of arbitration, including reasonable attorney fees and witness fees, in such proportion as the arbitrator decides. In general, it is the intention of the Parties that the prevailing Party be awarded its attorneys fees and costs, and that the arbitrator determine the prevailing Party, or the lack thereof, for this purpose.

5. Confidentiality of Arbitration.

The Parties agree that, except to the extent that disclosure may be required pursuant to subpoena, deposition notice, discovery requests, court order or process, or otherwise required by law or ordered by the arbitrator, the conduct of, and decision, results, and any award of the arbitration are and shall be confidential and shall be kept confidential and secret by the Parties to this Agreement, and their respective attorneys, agents, and employees, except that the Parties may disclose the contents of this Agreement to their respective attorneys, auditors, accountants, insurers, clergy, and immediate family. The Parties further agree that any comment by the

Parties, and their attorneys, agents, and employees regarding the result of any arbitration shall be limited to a statement that the Parties settled their differences and resolved all controversies between them. Neither Party shall make, directly or indirectly, and public derogatory remarks regarding the other Party to the arbitration.

6. Binding on Successors.

The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns, and successors in interest of each of the Parties.

7. Entire Agreement.

Except as otherwise provided herein, this Agreement constitutes an integration of the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Agreement, shall not be binding on any of the Parties, and each of the Parties acknowledges that he, she, or it has not relied, in entering into this Agreement, on any representation, warranty, promise, or condition not specifically and expressly set forth in this Agreement. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Agreement.

8. Amendments.

The Parties agree that any amendments or modifications to this Agreement shall be deemed null and void unless such amendments or modifications are in writing, specifically refer to this Agreement, and are signed by authorized representatives of all Parties.

9. Severability.

In the event that any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

10. Headings.

The heading in this Agreement are for convenient reference only and shall not limit or otherwise affect any of the terms of this Agreement.

11. Choice of Law.

This Agreement shall be interpreted in accordance with the laws of the State of California and of the United State of America applicable to contracts executed and performed entirely therein, without regard to its conflicts of law provisions.

12. Survivability.

This Agreement shall survive the termination of any employment agreement and of Employee's employment with Employer.

13. Drafting.

This Agreement shall be deemed to have been drafted jointly by the Parties hereto. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to said Party. The Parties acknowledge and represent that each of them have been given an opportunity to consult with, an attorney(s) of his, her, or its own choice in connection with the execution of this Agreement.

14. Counterparts; Effectiveness.

This Agreement may be executed in multiple counterparts, each of which, when solely executed, shall be deemed an original, but which counterparts together shall constitute one and the same instrument. A signature delivered via facsimile, email, or attachment to email shall be equally as effective as an original signature delivered in-person, by postal mail, or by any other means.

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SAMPLE

15. Acknowledgement.

EACH PARTY SIGNING THIS AGREEMENT REPRESENTS AND WARRANTS THAT HE, SHE, OR IT HAS CAREFULLY READ AND FULLY UNDERSTANDS THIS AGREEMENT AND ITS FINAL AND BINDING EFFECT; HAS BEEN AFFORDED

SUFFICIENT TIME AND OPPORTUNITY TO REVIEW THIS AGREEMENT WITH ADVISORS OR ATTORNEYS OF HIS, HER, OR ITS CHOICE; HAS HAD AN OPPORTUNITY TO NEGOTIATE WITH REGARD TO THE TERMS OF THIS AGREEMENT; IS FULLY COMPETENT TO MANAGE HIS, HER, OR ITS OWN BUSINESS AFFAIRS AND TO ENTER INTO OR SIGN THIS AGREEMENT; HAS SIGNED THIS AGREEMENT KNOWINGLY, FREELY, AND VOLUNTARILY; AND THAT THE ONLY PROMISES MADE TO INDUCE HIM, HER, OR IT TO SIGN THIS AGREEMENT ARE THOSE STATED HEREIN.

EMPLOYER:

Name: \_\_\_\_\_

By (Signature): \_\_\_\_\_

By (Print Name): \_\_\_\_\_

Its (Title): \_\_\_\_\_

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

EMPLOYEE:

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

Signature: \_\_\_\_\_

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

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