

# AGREEMENT TO PRIVATE ARBITRATION

## RECITALS

Certain controversies and disputes have arisen and exist between the parties. Accordingly,

By Court Order dated \_\_\_\_\_, 200\_\_, or

By written agreement as described below,

the parties have been ordered to/have agreed to arbitration before \_\_\_\_\_ (the “Arbitrator”), pursuant to the arbitration agreement contained in the \_\_\_\_\_ Agreement executed by \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_, 200\_\_.

The parties, with the advice of counsel, have agreed to submit their dispute(s) to final and binding arbitration, and this Agreement is intended to memorialize and supplement that agreement and provide the details of their submission to arbitration. Accordingly, the parties stipulate and agree:

1. Each party acknowledges receipt of a copy of the Arbitrator’s resume and any disclosures he has made modeled on the disclosure requirements of the American Arbitration Association (the “Association”). Each party represents, as an express representation and warranty, that to the best of its knowledge, it is not aware of any fact or circumstance that constitutes a conflict of interest or raises an appearance of bias or evident partiality that might justify the Arbitrator’s removal or recusal. If any party subsequently becomes aware of a fact or circumstance that may be, or give the appearance of, a conflict of interest or suggestion of evident partiality, it shall immediately notify the Arbitrator and the other parties of such fact or circumstance; otherwise, the right to raise such fact or circumstance shall be forever waived.

## SUBMISSION OF DISPUTES

2. The parties hereby irrevocably agree to submit all claims, controversies, and demands by and between them to binding arbitration, except to the extent specifically excluded on Exhibit “A” hereto. The Arbitrator shall determine liability, if any, and the amount of damages, if any, arising under all issues submitted to this arbitration proceeding unless expressly excluded. Upon an affirmative finding by the Arbitrator with regard to the issues submitted, the Arbitrator shall decide what amount of damages, if any, will be paid by one party to the prevailing party.

3. This submission to arbitration shall be conducted by the parties, their counsel and by the Arbitrator in accordance with the provisions of the Federal Arbitration Act, 9 U.S.C. Section 1, et. seq. (the “FAA”).

## TERMS AND CONDITIONS OF ARBITRATION

4. The parties and their counsel may execute this Agreement in multiple originals and by facsimile signature(s) as may be necessary. Once fully understood and executed, the parties and counsel shall submit all multiple originals and signatures to the Arbitrator, who shall assemble one integrated agreement, sign it and distribute one duplicate original to counsel.

5. Upon receipt of an executed duplicate original of this Agreement, no party or its counsel shall contact the Arbitrator except jointly or in writing with a true copy of any communication to be furnished contemporaneously to all other parties.

6. The Arbitrator shall be compensated for his/her services at the hourly rate of (\_\_\_\_\_) per hour from the date the Arbitrator is retained until the Award has been issued. Arbitrator fees and expenses shall be paid:

- |  |   |
|--|---|
| <input type="checkbox"/> by the Defendant/Respondent | <input type="checkbox"/> by the Plaintiff/Claimant; |
| <input type="checkbox"/> jointly by the parties      | <input type="checkbox"/> as provided on Exhibit "B" |

The responsible party or parties will deposit with the Arbitrator the estimated fee and expenses (including time for preparation, hearing and Award preparation), and agrees that this estimated fee/deposit may be increased from time to time as warranted by the case and the issues presented. Upon concluding the deliberations and completing the preparation of the Award, the Arbitrator will, prior to publishing the Award, notify all parties of the entire amount of the his/her fees, the amount of any unpaid fees, and direct the payment of the remaining fee to be paid by each party.

If one party shall default in the deposit/payment of estimated Arbitrator's fees, the Arbitrator may in his/her discretion a) suspend all further proceedings pending receipt of the required deposit, or b) upon notice to all parties allow a non-defaulting party to cure the default. Any such payment by the non-defaulting party shall not be used, in and of itself, to allege or prove evident bias or partiality. In the event that the deposit exceeds the Arbitrator's total fee, then the remainder shall be disbursed in accordance with the Arbitration award. The parties agree that a) if the arbitration hearing is canceled for any reason on fewer than thirty (30) calendar days notice to the Arbitrator, he/she shall retain all accrued fees and one-half of the deposit and b) if the arbitration hearing is cancelled for any reason on fewer than ten (10) calendar days notice to the Arbitrator, the entirety of the deposit shall be retained and applied as compensation for his/her lost opportunities.

7. Although this matter is not administered by a third party service provider, the parties agree that the following arbitration/dispute resolution rules (the "Rules") shall apply:

- |                                |   |                              |
|--------------------------------|---|------------------------------|
| <input type="checkbox"/> JAMS; | <input type="checkbox"/> AAA                    | <input type="checkbox"/> CPR |
| <input type="checkbox"/> AHLA  | <input type="checkbox"/> Other (Specify): _____ |                              |

Any variations to the applicable Rules, limitations on discovery and the like are set forth on Exhibit "C" attached hereto.

8. To the extent consistent with the parties' arbitration agreement, the Arbitrator shall have full power to make such rules and to give such orders and directions as the Arbitrator deems expedient and consistent with the FAA and this Agreement. Discovery, pre-hearing and evidentiary rulings shall *guided* by, but not necessarily strictly in accordance with, the

Federal Rules of Civil Procedure/Rules of Evidence

Texas Rules of Civil Procedure/Rules of Evidence.

### **PARTIES TO COOPERATE**

9. No party or its counsel shall unreasonably delay or otherwise prevent or impede the arbitration proceeding or the timely rendering of an Award.

### **COSTS AND EXPENSES**

10. Notwithstanding that the parties may have made equal deposits of the Arbitrator's fee, the Arbitrator may in his Award assess and direct the payment of all costs and expenses of the arbitration, including his/her fees and any expenses of conducting the arbitration.

11. All notices to a party or to the Arbitrator shall be mailed, sent by facsimile, or personally delivered to the party through its counsel or to the Arbitrator at the addresses reflected for him or her and for each such party's counsel on the execution pages hereof or at such other address as may be designated in writing.

### **NO ACTION AGAINST ARBITRATOR**

12. The parties specifically stipulate and agree that no action may be brought against the Arbitrator arising from the discharge of his duties in connection herewith, and expressly agree that neither the Arbitrator nor anyone employed by or affiliated with him or her shall be liable to any party or its counsel for any act or omission relating in any way to or in connection with this arbitration. Each party expressly covenants not to commence an action or administrative proceeding, in court or in arbitration, against the Arbitrator concerning his or her services as Arbitrator. No party or counsel will ever subpoena the Arbitrator to testify in any action or proceeding, in arbitration or otherwise, as to anything arising out of, relating to or connected in any way with this arbitration proceeding. The parties also agree that neither the Arbitrator nor anyone employed by or affiliated with him or her are in any way necessary parties in any judicial proceedings related in any way to this arbitration proceeding. Each party agrees to hold the Arbitrator harmless against any claims, demands or lawsuits. The parties further agree that in the event a party does subpoena the Arbitrator to testify, that party shall compensate the Arbitrator at his



EXHIBIT "D"

I have reviewed the list of parties, counsel and potential witnesses and, after conducting a conflicts check, answer the following questions and execute the Oath shown below:

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1. Do you or your law firm presently represent any person in a proceeding involving any party to the arbitration?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Have you represented any person against any party to this arbitration?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you, any member of your family, or any close social or business associate ever served as an arbitrator in a proceeding in which any of the identified witnesses or named individual parties gave testimony?                                     | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you, any member of your family, or any close social or business associate been involved in the last five years in a dispute involving the subject matter contained in the case, which you are assigned?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Have you ever served as an expert witness or consultant to any party, attorney, witness or other arbitrator identified in this case?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Have any of the party representatives, law firms or parties appeared before you in past arbitration cases?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Are you a member of any undisclosed organization that may be relevant to this arbitration?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Have you ever sued or been sued by either party or its representative?  | <input type="checkbox"/> | <input type="checkbox"/> |

12. Do you or your spouse own stock in any of the companies involved in this arbitration?

13. If there is more than one arbitrator appointed to this case, have you had any professional or social relationships with any of the other arbitrators?

14. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?

Should the answer to any question be "Yes", or if I am aware of any other information that may lead to a justifiable doubt as to my impartiality or independence or create an appearance of partiality, I have described the nature of such on an attached page.

I have conducted a check for conflicts and have **nothing to disclose.**

I have conducted a check for conflicts and have **made disclosures on an attached sheet.**

State of Texas }  
County of \_\_\_\_\_ }

**ARBITRATOR'S OATH:**

I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, have performed my obligations and duties to disclose in accordance with the applicable Rules, Code of Ethics for Commercial Arbitrators and all applicable statutes pertaining to arbitrator disclosures. I understand that my obligation to check for conflicts and make disclosures is ongoing for the length of my service as an arbitrator in this matter.

The Arbitrator, being duly sworn, hereby accepts this appointment and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the Code of Ethics for Commercial Arbitrators, and the Rules of the American Arbitration Association, and will make an Award according to the best of the his or her understanding.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Sworn before me this \_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public, State of Texas