

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 or this “Agreement to Private Arbitration” 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 Code of Ethics for Commercial Arbitrators promulgated by the ABA and the American Arbitration Association (the “Code of Ethics”). 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 currently existing by and between them to binding arbitration, except to the extent specifically excluded on Exhibit “A” hereto. The Arbitrator shall decide the claims, controversies, and demands submitted to the arbitration and the nature and amount of relief, if any, arising under all claims, controversies, and demands submitted to the arbitration proceeding unless expressly excluded by the parties. Upon an affirmative finding by the Arbitrator with regard to the claims, controversies, and demands submitted, the Arbitrator shall decide what nature and amount of relief, 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 shall execute this Agreement in sufficient multiple originals to allow each party and the Arbitrator to have an original of the Agreement. The multiple originals shall be submitted to the Arbitrator, and the Arbitrator shall execute each original and distribute one original to each of the parties.

5. Upon receipt of an executed 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. No ex parte communication with the Arbitrator shall be permitted.

6. The Arbitrator shall be compensated for his/her services at the hourly rate of (_____) per hour plus all out-of-pocket expenses incurred by the Arbitrator, including study and hearing time, 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, study, and Award preparation), and agrees that this estimated fee/deposit may be increased from time to time upon request from the Arbitrator 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 or remaining deposits to be returned to the parties, and direct the payment of the remaining fee to be paid by each party or deposits to be returned.

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 arbitration service provider, the parties agree that the following arbitration/dispute resolution rules (the "Rules") shall apply:

- JAMS; AAA CPR NAF
 AHLA 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 be in accordance with the

- Federal Rules of Civil Procedure/Rules of Evidence Texas Rules of Civil Procedure/Rules of Evidence.
 Other (Specify): _____

PARTIES TO COOPERATE

15. 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

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

17. 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 to the Arbitrator and all parties in writing.

NO ACTION AGAINST ARBITRATOR

18. 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 or her then-applicable hourly rate for all the Arbitrator's time and expense related to the Arbitrator's response to the subpoena.

SIGNED and EFFECTIVE this ____ day of _____, 200__.

_____ Claimant

_____ Respondent

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Attorneys' Signatures:

, Esq.

, Esq.

State Bar No.

State Bar No.

Address

Address

Address

Address

City

City

Phone: ()

Phone: ()

Fax: ()

Fax: ()

Attorney for Claimant

Attorney for Respondent

ARBITRATOR STATEMENT

The undersigned Arbitrator hereby acknowledges receipt of a copy of this Agreement, the parties' arbitration agreement and the Rules selected by the parties, and represents that he or she has no financial interest in the work or the disputed matter which is the subject of this proceeding or in the business affairs of any Party to this Agreement. The Arbitrator accepts the responsibility to determine the issues submitted hereunder and agrees to faithfully, fairly and promptly, discharge the duties of Arbitrator in accordance with the terms of this Agreement.

The Arbitrator makes the disclosures shown on Exhibit "D."

ARBITRATOR

EXHIBIT "D"

I have reviewed the list of parties, counsel and disclosed 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 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