

# AGREEMENT TO PRIVATE ARBITRATION

## RECITALS

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

By Court Order dated \*\*\*\* and

By written agreement as described below,

the parties have been ordered to/have agreed to arbitration before William E. Hartsfield (Arbitrator), pursuant to the arbitration agreement contained in the \*\*\*\* Agreement dated \*\*\*\*, and this “Agreement to Private Arbitration” executed by \*\*\*\*\* and \*\*\*\*\* as dated below.

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 (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 under Additional Terms below. 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. (FAA).

## TERMS AND CONDITIONS OF ARBITRATION

4. This Agreement may be executed in accordance with any applicable federal or state statute regarding digital signatures, and it is the intent of the Parties for any electronic document digitally signed in accordance with such statute to be deemed an originally executed document.

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 services at the hourly rate of \$400.00 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 under Additional Terms |

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 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 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 if the arbitration hearing is cancelled for any reason within forty two (42) calendar days notice to the Arbitrator, he shall retain all accrued fees and one-half of the hearing days scheduled or a minimum of one day from the deposit and to be applied as compensation for his 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 (Rules) shall apply:

JAMS;       AAA       CPR       NAF

AHLA       Other (Specify): as provided under Additional Terms

Any variations to the applicable Rules, limitations on discovery and the like are set forth under Additional Terms.

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       Texas Rules of Civil Procedure.

Other (Specify): as provided under Additional Terms

#### **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, the Arbitrator may assess and direct the payment of all costs and expenses of the arbitration, including his fees and any expenses of conducting the arbitration, subject to the parties' arbitration agreement.

17. All notices to a party or to the Arbitrator shall be mailed, sent by email or facsimile, or personally delivered to the party through its counsel or to the Arbitrator at the addresses reflected for him 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 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 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 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 then-applicable hourly rate for all the Arbitrator's time and expense related to the Arbitrator's response to the subpoena.

**ADDITIONAL TERMS**

19. As guidelines, the parties agreed to use in the following order: the Federal Rules of Civil Procedure, the local rules of the \*\*\*\*, and the American Arbitration Association Employment Arbitration Rules, in effect as of November 1, 2009 ( collectively "Rules"). By mutual agreement, the parties may modify the procedures.

20. The parties' agreed that initially the Arbitrator's fees and expenses will be split equally between the parties. Following the ruling on Claimant's motion regarding arbitrability/jurisdiction, the parties may raise the issue of reallocation of the Arbitrator's fees and expenses. At that time, if the parties are not able to agree upon an allocation of the Arbitrator's fees and expenses, they will submit the issue to the Arbitrator for a binding decision.

**EFFECTIVE \*\*\*\*.**

\*\*\*\*, Claimant            \*\*\*\*, Respondent

By: \_\_\_\_\_ By: \_\_\_\_\_

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Attorneys' Signatures:

\_\_\_\_\_

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\_\_\_\_\_

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**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 previously made the disclosures shown on Exhibit "A."

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**WILLIAM E. HARTSFIELD, ARBITRATOR**