

## MUTUAL ARBITRATION AGREEMENT REGARDING WAGE & HOUR CLAIMS

1. Agreement to Arbitrate. You and ES3, LLC (together with its parents, subsidiaries, affiliates, successors and assigns, referred to herein as the “Company”), agree to use binding arbitration, instead of going to court, for any Covered Claims that arise or have arisen between you and the Company. **You understand that your new or continued employment with the Company is deemed to be acceptance of this Agreement to Arbitrate.**

The Covered Claims under this Agreement are the following statutory and common law legal claims, asserted or unasserted, brought by you against the Company (and/or the Company’s customers), or brought by the Company against you: claims based on the failure to pay any wages, including minimum wage, straight time, overtime, bonuses, commissions, advances, paid time off, vacation pay, pay for sick leave or other forms of leave, expenses, loans, or any other element of compensation; claims based on eligibility for overtime (including the misclassification as an exempt employee) or the proper calculation of overtime; claims for recovery of overpayment of wages; claims based on off-the-clock work, meeting, training, or travel time, or other uncompensated hours worked; claims regarding the timing or amount of pay; claims based on payment or non-payment of accrued vacation, bonuses or other earned amounts due at separation of employment; claims regarding improper deductions from pay; claims regarding fees, commissions, bonuses, incentive payments or other amounts owed under law, policy or contract; claims for meal or rest periods; claims for failure to reimburse mileage or other business expenses; claims for failure to repay loans, tuition reimbursement, or advances; claims regarding failure to pay or provide sick leave, vacation, PTO or other leave benefits; claims regarding improper or inaccurate wage statements or notices or failure to issue statements or notices; claims for failure to maintain adequate records regarding hours, wages, vacation or leave balances; claims for statutory penalties related to hours or wages; claims regarding credit card or business expense misuse; and any other claimed violation of wage-and-hour practices or procedures under local, state or federal statutes, regulations, ordinances or common law.

**You understand and agree that arbitration is the only litigation forum for resolving Covered Claims, and that the Company and you are waiving the right to a trial before a judge or jury in federal or state court in favor of arbitration.**

The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to the law governing your Covered Claim(s).

2. Waiver of Class and Collective Claims. The Company and you also agree that Covered Claims will be arbitrated only on an individual basis, and that the Company and you waive the right to bring, participate in, join, or receive money or any other relief from any class, collective, or representative proceeding. You may not bring a claim on behalf of other individuals, and any arbitrator hearing your claim may not: (i) without the consent of all parties, or as specifically provided in Section 7.iii., combine more than one individual’s claim or claims into a single case; (ii) participate in or facilitate notification of others of potential claims; or (iii) arbitrate any form of a class, collective, or representative proceeding.

3. Excluded Claims. Covered Claims under this Agreement do **not** include: any claims alleging discrimination, harassment, retaliation, failure to accommodate, or other statutory or contractual claims under local, state or federal statutes, regulations, ordinances or common law not enumerated in Covered Claims. Also excluded from this agreement are any claims that cannot be required to be arbitrated as a matter of law. You also understand that you are not barred from filing a claim or charge with a governmental administrative agency, such as the National Labor Relations Board or Equal Employment

Opportunity Commission, or from filing a workers' compensation or unemployment compensation claim with respect to Covered Claims, though you are giving up the opportunity to recover monetary amounts from any such governmental agency (e.g., National Labor Relations Board or Equal Employment Opportunity Commission), and would instead be able to pursue a claim for monetary amounts through arbitration. You also understand that if a third party seeks to have the Company garnish your wages, you may be subject to third-party garnishment proceedings in court, even though such a dispute concerns your wages. The excluded claims in this Section 3, collectively, are defined as "Excluded Claims" for purposes of this Agreement.

4. Enforcement. In the event the Company or you choose to pursue both Covered Claims and Excluded Claims, Covered Claims must be arbitrated and Excluded Claims must be litigated in court. Covered Claims may be joined with Excluded Claims and litigated in court, and Excluded Claims may be joined with Covered Claims and arbitrated, only if the non-asserting party agrees; however in no event will there be arbitration of any form of a class, collective, or representative proceeding. Any failure to enforce any part of this Agreement at any time shall in no way affect the right to enforce same at a later time against the same or any other party or any current or future claim.

5. At-Will Employment Unchanged by this Agreement. Nothing in this Agreement changes your relationship with the Company of employment-at-will.

6. Internal Dispute Resolution. The Company and you value our working relationship, and we would prefer to address and resolve concerns through normal workplace channels before resorting to arbitration. Arbitration is intended to be a last resort. If you have a concern, you are encouraged to contact your manager or a human resources representative, or take advantage of any hotline or complaint initiation processes available to you. The Company will investigate, and should your concerns be substantiated, the Company will meet with you to discuss proposed resolutions. In this way, the Company's goal is to offer a speedy, efficient, informal and inexpensive way to resolve your underlying concerns that may give rise to a Covered Claim. If you are dissatisfied with the investigation results, you may provide the Company with an arbitration demand for a Covered Claim as described in Section 7.

7. How to File for Arbitration. To file a demand for arbitration:

- i. The party desiring to pursue a legal dispute must prepare a written demand setting forth the claim(s). If you wish to initiate arbitration, you must email or prepare a written demand to your HR representative that describes the nature of the claims/dispute, a summary of the facts supporting your claim, and the relief sought. You are encouraged but not required to use the attached Demand for Arbitration Form. Upon receipt, the Company will follow up with you about your payment of your portion of the filing fee, which, subject to Section 7.iii below, will be the lesser of \$400 or the applicable federal or state court filing fee where you work(ed) for the Company. Once your filing fee is received, the Company will submit the Demand for Arbitration Form and remaining fees to JAMS, the organization administering this arbitration program. If the Company is the party initiating arbitration, you will receive a Demand for Arbitration Form from the Company and have an opportunity to respond before the Company submits the Demand for Arbitration to JAMS, but you will not owe a filing fee.
- ii. Except as provided in Section 7.iii below, the JAMS Employment Arbitration Rules and Procedures effective at the time of filing will apply to Covered Claims. The current version can be found here: <http://www.jamsadr.com/rules-employment-arbitration/>. These rules are modified by the terms of this Agreement as follows:

- a. **Interpretation of Arbitration Agreement.** If a party violates this Agreement by commencing an action asserting a Covered Claim in a court of law, then the court shall not have the authority to resolve any disputes about the interpretation, formation, existence, enforceability, validity, and scope of the Agreement, including the Waiver of Class and Collective Claims. Rather, all such disputes shall be resolved by the Arbitrator selected as described below.
- b. **Costs.** For Covered Claims, the Company will pay all costs that are unique to arbitration, including the Arbitrator's fees and the arbitration filing and administrative fees, other than the initial filing fee as described in Section 7.i.
- c. **Location.** The arbitration shall take place at a mutually convenient location within 50 miles from your residence at the time of the demand for arbitration, unless the parties mutually agree to an alternative location.
- d. **Selecting an Arbitrator.** If the organization administering the arbitration so permits, either party may nominate any person(s) for consideration as an arbitrator. If the parties do not mutually agree on an arbitrator, a list of nine (9) neutral potential arbitrators will be submitted to the parties by the arbitration administrator. From that list, the Company and you will each have the opportunity to strike up to three names and "rank" their preference for the remaining names, and the arbitration administrator shall select a neutral arbitrator that is highest ranked by both parties and not stricken by either party.
- e. **Discovery.** Due to the simplicity, informality, and expedited nature of arbitration proceedings, absent a showing of compelling need, the parties shall engage only in limited discovery, as follows:
  - 1) Each party shall avoid broad or widespread collection, search, and production of documents, including electronically stored information ("ESI"). If compelling need is demonstrated by the requesting party, the production shall: (i) be narrowly tailored in scope; (ii) only come from sources that are reasonably accessible without undue burden or cost; (iii) be produced in a searchable format if ESI and which is usable by the receiving party and convenient and economical for the producing party; and (iv) not require electronic metadata. Where the costs and burdens of the requested discovery outweigh its likely benefit, considering the needs of the case, the amount in controversy, and the importance of the discovery in resolving the issues, the Arbitrator will deny such requests or order production on condition that the requesting party advance to the producing party the reasonable costs involved in making the production, subject to the allocation of costs in the final award.
  - 2) Each party shall be entitled to only one interrogatory limited to the identification of potential witnesses, in a form consistent with Rule 33 of the Federal Rules of Civil Procedures ("FRCP").
  - 3) Each party shall be entitled to only 25 requests for production of documents, including sub-parts, in a form consistent with Rule 34 of the FRCP.
  - 4) Each party shall be entitled to a maximum of two (2) eight hour days of depositions of witnesses in a form consistent with Rule 30 of the FRCP.
- f. **Arbitrator's Authority.**
  - 1) The Arbitrator shall have the authority to award only such remedies as could be awarded by a court based upon the applicable statutes of limitations, administrative prerequisites to suit, and applicable substantive law (which may include injunctive or

other equitable relief, as well as an award of attorneys' fees if permitted by law) based on where you work(ed) for the Company.

2) The Arbitrator shall have the authority to issue an award or partial award without conducting a hearing on the grounds that there is no claim on which relief can be granted or that there is no genuine issue of material fact to resolve at a hearing;

3) The Arbitrator shall decide all disputes related to discovery and to the agreed limits on discovery and may allow additional discovery upon a showing of substantial need by either party or upon a showing of an inability to pursue or defend certain claims without such additional discovery;

4) For discovery purposes only, the Arbitrator may consolidate claims filed by multiple individual employees, each on their own behalf, in a single arbitration proceeding, or may conduct a joint hearing for discovery purposes, so long as the Arbitrator does not certify (conditionally or otherwise) a collective, class, or representative action that includes individuals who have not themselves already submitted their own individual claims;

5) The Arbitrator must issue a decision in writing, setting forth in summary form the disposition of each claim and the relief, if any, awarded as to each claim, as well as the reasons for the Arbitrator's determination, including the legal basis for the determination and the essential findings and conclusions on which the determination is based; and

6) The Arbitrator's authority shall be limited to deciding the case submitted by the parties to the arbitration. Therefore, no decision by any arbitrator shall serve as precedent in other arbitrations except to preclude the same claim from being re-arbitrated between the same parties.

- iii. If your claim is one of greater than 30 individual employment-related arbitration claims of a nearly identical nature demanded against the Company in close proximity to one another, the Company may submit your demand with JAMS as provided above, or may submit your demand to a mutually agreed-upon Mediator at the Company's expense. You and the Company specifically agree that, to avoid the fees, costs and investment of time that would be required to arbitrate each of greater than 30 nearly identical arbitration demands at the same time, the Mediator first shall select between five and ten "test cases" to be arbitrated on an expedited basis through JAMS while the other cases stand by and will not be filed with any court, JAMS or any other arbitration administrator. No parties to the cases on "stand-by" shall be required to pay any arbitration or filing fees unless and until both: (a) the mediation process described below is concluded, and (b) individual stand-by arbitrations or court cases proceed. All statutes of limitations for the cases on stand-by shall be tolled during the stand-by period.

The test cases shall be heard and resolved as individual arbitrations pursuant to the provisions of Sections 7.i and 7.ii of this Agreement. The written decisions of the Arbitrator(s) of the test cases (see Section 7.ii.f.5 above) shall be provided to all parties to the test cases, all parties to the cases on stand-by, and the Mediator. All parties to the cases on stand-by then will participate in good faith in mediation before the Mediator. The Company shall bear the costs of the mediation.

You and the Company agree that if your case is a stand-by case and the mediation did not resolve it, both you and the Company have the right to opt out of the arbitration process and proceed in court, but only if: (a) your case is one of greater than one thousand (1,000) stand-by cases; (b) the mediation has concluded; (c) the mediation fails to resolve your case and greater

than one thousand (1,000) other stand-by cases; and (d) there has not yet been a hearing on the substance of your claim. Otherwise, the parties to the stand-by cases may not opt-out of arbitration and shall proceed with individual arbitration if the mediation has concluded without resolving the case. You and the Company also agree that if JAMS is for any reason unwilling or unable to administer arbitrations involving the Company on the basis described in this Section 7.iii, you and the Company will attempt in good faith to agree on an alternative arbitration administrator that will do so, and that if the parties cannot so agree, either party may petition a court to appoint a mediator or an arbitration administrator to carry out the parties' agreement in this Section 7.iii.

8. Confidentiality. Arbitration proceedings are private and confidential, and the parties and the Arbitrator shall be empowered to maintain the private and confidential nature of the arbitration proceeding, testimony, hearing and award. The Arbitrator must allow persons to attend the hearing who have a direct role or interest in the hearing, but shall have the authority to safeguard privacy and confidentiality such as by excluding non-essential persons from the hearing, and by issuing orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information. This confidentiality provision shall not restrain or prohibit a party from investigating, preparing for, or presenting or defending against Covered Claims, and does not apply to a judicial challenge to or enforcement of an award, or to disclosures required or authorized by law or judicial decision.
9. Right to Representation. Each party to arbitration has a right to be represented by an attorney in arbitration. Each party shall bear its own attorneys' fees, except as may be awarded in a matter authorized by and consistent with this Agreement and applicable law.
10. Settlement. The parties may settle any dispute on a mutual basis without involvement of the Arbitrator.
11. Amendment. The Company and you may enter into a revised agreement in writing.
12. Savings & Conformity Clause. If any provision of this Agreement is determined to be unenforceable or in conflict with a mandatory provision of applicable law, it shall be construed to incorporate any mandatory provision, or the unenforceable or conflicting provision shall be automatically severed and the remainder of the Agreement shall not be affected. Provided, however, that if the Waiver of Class and Collective Claims is found to be unenforceable, then any claim brought on a class, collective, or representative action basis must be filed in a court of competent jurisdiction, and such court shall be the exclusive forum for such claims.
13. Jury Trial Waiver for Matters Heard in Court. To the extent that, for whatever reason, either Covered Claims or disputes relating to the enforceability of this Agreement (such as pursuant to Sections 7.ii.a or 12) are heard in court rather than in arbitration, you and the Company both agree to waive any right to trial by jury, to the maximum extent permitted by applicable law based on where you work(ed) for the Company.
14. Opportunity to Review. You agree that you have received a reasonable opportunity to consider this Agreement, and you are hereby advised to consult with an attorney before indicating your agreement to it. You have relied on your own informed judgment, or that of your attorney if any, in deciding to agree to the terms of this Agreement.

15. Controlling Law. You agree that this Agreement is made pursuant to and shall be governed under the Federal Arbitration Act.

By providing this Agreement to you, the Company agrees to and is bound by its terms. Please reflect your agreement by following the designated protocols for electronic signature.

**Demand for Arbitration Form**

Claimant Name:			
Work Location:			
Home Address:			
Phone:		Email:	
Attorney Name & Firm Name: (if known)			
Atty Phone:		Atty Email:	
Nature of Claims/Dispute, Key Facts & Relief Sought:			

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Signature

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Date