

Mutual Agreement to Arbitrate Employment-Related Disputes

This Mutual Agreement to Arbitrate Disputes ("**Agreement**") is made and entered into as of _____ (the "**Effective Date**") by and between Delta Building Services, a New Jersey S Corporation, authorized to conduct business in the State of New York, including its present and future parents, subsidiaries, affiliates, successors, and assigns (collectively, the "**Employer**") and _____ an individual (the "**Employee**") (the Employer and the Employee are collectively referred to herein as the "**Parties**").

1. Intent of the Agreement. It is the intent of Parties to resolve all disputes, claims, and any other matters arising out of or relating to the Employee's employment by the Employer or termination of employment by binding private arbitration in accordance with the provisions of this Agreement. The Parties understand that by entering into this Agreement **THE EMPLOYEE AND THE EMPLOYER ARE GIVING UP THE RIGHT TO A JURY TRIAL OR TO FILE A LAWSUIT IN COURT AGAINST THE OTHER, AND THE RIGHT TO BRING A CLASS OR COLLECTIVE ACTION AGAINST THE OTHER IN COURT OR IN ARBITRATION**, regarding any claims covered by this Agreement.

2. Mandatory Arbitration. In exchange for the mutual promises contained in this Agreement, and as a condition of Employee's employment (and continued employment where applicable) with Employer, Employer and Employee agree that:

(a) any and all "**Covered Claims**" (as defined in Section 3 below) shall be submitted to and resolved by final and binding arbitration to be held in Bergen County, New Jersey, before a single arbitrator and administered by the American Arbitration Association ("AAA") in accordance with the AAA Employment Rules applicable at the time the arbitration is commenced, except as modified by this Agreement. A copy of the current version of the AAA Employment Rules is attached as Exhibit "A". The Rules may be amended from time to time and are also available online at adr.org/employment. The Employee can also call the AAA at 888-774-6904 with any questions about the arbitration process. If the AAA Rules are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern. If the AAA is unavailable, the Parties agree to binding arbitration before JAMS alternative dispute resolutions services.

(b) the Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, formation, or enforceability of this Agreement, including but not limited to the arbitrability of any dispute between the parties except for a dispute regarding the enforceability or scope of the waiver in Section 5, which shall be determined by a court of competent jurisdiction.

(c) the Arbitrator's decision shall be final and binding only on the Parties to this Agreement and the Parties agree that awards deciding issues for similarly situated employees will have no preclusive effect in any arbitration between the Parties; and

(d) nothing in this Agreement shall preclude the Parties from seeking provisional remedies, such as an injunction or temporary restraining order, in aid of

arbitration from a court of competent jurisdiction or from the arbitrator /the Parties may seek provisional remedies from an emergency arbitrator under the AAA's Optional Rules for Emergency Measures of Protection; and

(e) the Arbitrator shall have no power to award punitive damages to either party, except where an applicable statute allows for punitive damages.

(f) the arbitration shall be conducted on a confidential basis and there shall be no disclosure of evidence or the award or Arbitrator's decision beyond the arbitration proceeding.

3. Covered Claims. Except as provided in Section 4, Covered Claims under this Agreement shall include all past, current, and future grievances, disputes, claims, or causes of action that otherwise could be brought in a federal, state, or local court or agency under applicable federal, state, or local laws, arising out of or relating to the Employee's employment with the Employer, including claims arising out of or related to the Employee's hiring, recruitment, and termination of employment, and including claims the Employee may have against the Employer or its officers, directors, supervisors, managers, employees, or agents in their capacity as such or otherwise, or that the Employer may have against the Employee. Covered Claims include, but are not limited to, claims for breach of any contract or covenant (express or implied), tort claims, claims for wages, or other compensation due, claims for wrongful termination (constructive or actual), claims for discrimination, harassment, or retaliation (including, but not limited to, any whistle blowing claims, harassment or discrimination based on age, race, color, religion, creed, national origin including ancestry, ethnicity, sex including pregnancy, gender, gender identity or expression, including status as a transgender individual, physical or mental disability, including gender dysphoria and similar gender-related conditions, alienage or citizenship status, military status, including past, current, or prospective service in the uniformed services, genetic information, predisposing genetic characteristics, marital status, domestic violence victim status, familial status, sexual orientation, (including actual or perceived heterosexuality, homosexuality, bisexuality, and asexuality, unemployment status, caregiver status, partnership status, credit history, or any other trait or characteristic protected by federal, state, or local law, claims for violation of any federal, state, local or other governmental law, statute, regulation, or ordinance, including, but not limited to, all claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act, the Civil Rights Act of 1991, Section 1981 of U.S.C. Title 42, the Worker Adjustment and Retraining Notification Act, the Age Discrimination in Employment Act, the Fair Credit Reporting Act, the Uniform Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, the New York State Human Rights Law, the New York Labor Law, the New York Civil Rights Law, the New York City Human Rights Law, all as amended, all of their respective implementing regulations biometric privacy laws, antitrust laws, and any other federal, state, local, or foreign law that governs the Parties' employment relationship or termination thereof that can be arbitrated under applicable law. Covered Claims under this Agreement include claims arising out of or related to acts or omissions that occurred before entering into this Agreement and those that may occur in the future.

4. Claims Not Covered. Notwithstanding anything to the contrary in Section 2 or Section 3 of this Agreement, this Agreement does not cover:

- (a) claims for workers' compensation benefits; or
- (b) claims for unemployment compensation benefits; or
- (c) whistleblower retaliation claims under the Sarbanes-Oxley Act (SOX) or the Dodd-Frank Act that cannot be arbitrated as a matter of law; or
- (d) administrative charges for unfair labor practices brought before the National Labor Relations Board; or
- (e) administrative charges brought before the Equal Employment Opportunity Commission, The New York State Division of Human Rights and the New York City Commission on Human Rights, or other similar administrative agency; or
- (f) any other claims that, as a matter of law, the Parties cannot agree to arbitrate.

5. Waiver of Class and Collective Actions. Except as otherwise required under applicable law, Employee and Employer expressly intend and agree that:

- (a) class and collective action procedures shall not be asserted and will not apply in any arbitration pursuant to this Agreement;
- (b) each party will not assert class or collective claims against the other in court, in arbitration, or otherwise;
- (c) each party shall only submit their own individual claims in arbitration and will not seek to represent the interests of any other person;
- (d) any claims by the Employee will not be joined, consolidated, or heard together with the claims of any other employee and
- (e) no decision or arbitral award determining an issue with a similarly situated employee shall have any preclusive effect in any arbitration between the Parties, and the Arbitrator shall have no authority to give preclusive effect to the issues determined in any arbitration between the Employer and any other employee; and
- (f) notwithstanding anything to the contrary in the AAA's Employment Arbitration Rules, and the general grant of authority to the arbitrator in paragraph 2 to determine issues of arbitrability, the arbitrator shall have no jurisdiction or authority:
 - (i) to compel any class or collective claim, consolidate different arbitration proceedings, or join any other party to an arbitration between Employer and Employee; or

(ii) to determine the enforceability or scope of the class and collective action waiver, which shall be determined by a court of competent jurisdiction.

6. Waiver of Trial by Jury. The Parties understand and fully agree that by entering into this Agreement to arbitrate, they are giving up their constitutional right to have a trial by jury, and are giving up their normal rights of appeal following the issuance of the arbitrator's award except as applicable law provides for judicial review of arbitration proceedings.

7. Claims Procedure. Arbitration shall be initiated by the express written notice of either Party. The aggrieved party must give written notice of any claim to the other Party. Written notice of Employee's claim shall be mailed by certified or registered mail, return receipt requested, to **Zachary Levison at 43 Chestnut Street, Rutherford, New Jersey 07070** ("**Notice Address**"). Written notice of Employer's claim will be mailed to the last known address of Employee. The written notice shall identify and describe the nature of all claims asserted and the facts supporting the claims. Written notice of arbitration shall be initiated within the same time limitations that applicable federal and state law applies to those claim(s).

8. Arbitrator Selection. The Arbitrator shall be selected as provided in AAA Employment Rules.

9. Discovery. The AAA Employment Rules regarding discovery shall apply to arbitration under this Agreement. The parties shall be entitled to conduct discovery to the full extent authorized by the FRCP or NY CPLR depending on the claims asserted. To the extent not provided for in the AAA Employment Rules, the Arbitrator has the power to order discovery upon a showing that discovery is necessary for a Party to have a fair opportunity to present a claim or defense. The Arbitrator shall have the authority to set deadlines for completion of discovery. The Arbitrator shall decide all discovery disputes.

10. Governing Law; Substantive Law. This Agreement and any arbitration shall be governed by the Federal Arbitration Act (FAA). The Arbitrator shall apply the substantive state or federal law (including the applicable statute of limitations) as applicable to the claim(s) asserted in arbitration. Claims arising under federal law shall be determined in accordance with federal law. Common law claims shall be determined in accordance with New York substantive law, without regard to its conflict of law principles.

11. Motions. The Arbitrator shall have jurisdiction to hear and rule on prehearing disputes and is authorized to hold prehearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to set deadlines for filing motions for summary judgment, and to set briefing schedules for any motions. The Arbitrator may allow the filing of a dispositive motion if the Arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case. The Arbitrator shall have the authority to adjudicate any cause of action, or the entire claim, pursuant to a motion for summary adjudication and in deciding the motion, shall apply the substantive law applicable to the cause of action.

12. Compelling Arbitration/Enforcing Award. Either party may ask a court to stay any court proceeding to compel arbitration under this Agreement, and to confirm, vacate, or

enforce an arbitration award. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

13. Arbitration Fees and Costs. The Employer shall be responsible for the arbitrator's fees and arbitration expenses and any other costs unique to the arbitration hearing, except that the Employee shall be responsible for paying the initial filing fees as provided by the AAA Employment Rules. Each Party shall pay its own deposition, witness, expert, and attorneys' fees and other expenses to the same extent as if the matter were being heard in court. However, if any Party prevails on a statutory claim that affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and costs to be awarded to the prevailing party, the Arbitrator may award reasonable attorneys' fees in accordance with the applicable statute or written agreement. The Arbitrator shall resolve any dispute as to the reasonableness of any fees or costs awarded under this paragraph.

14. Term of Agreement; Modification in Writing. This Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified in writing signed by both Parties that specifically states an intent to revoke or modify this Agreement and is signed by **Zachary Levison**.

15. Successors and Assigns. Employer may freely assign this Agreement at any time. This Agreement shall inure to the benefit of Employer's successors and assigns.

16. Severability. Except as otherwise provided in Section 5 of this Agreement, if any provision of this Agreement to arbitrate is adjudged to be void or otherwise unenforceable, in whole or in part, the void or unenforceable provision shall be severed and that adjudication shall not affect the validity of the remainder of this Agreement.

17. Voluntary Agreement. By executing this Agreement the Parties represent that they have been given the opportunity to fully review the terms of this Agreement. The Employee acknowledges and agrees that the Employee has had an opportunity to ask questions and consult with an attorney of the Employee's choice before signing this agreement. The Parties understand the terms of this Agreement and freely and voluntarily sign this Agreement. **EACH PARTY FULLY UNDERSTANDS AND AGREES THAT THEY ARE GIVING UP CERTAIN RIGHTS OTHERWISE AFFORDED TO THEM BY CIVIL COURT ACTIONS, INCLUDING BUT NOT LIMITED TO THE RIGHT TO A JURY OR COURT TRIAL AND THE RIGHT TO BRING ANY CLAIM AS A CLASS OR COLLECTIVE ACTION.**

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DELTA BUILDING SERVICES

By _____

Name:

Title:

EMPLOYEE

Signature: _____

Print Name: _____