

**RESOLVING OUR DIFFERENCES TOGETHER: ESS**  
**DISPUTE RESOLUTION AND ARBITRATION AGREEMENT**

**Dispute Resolution**

Disputes may arise between ESS<sup>1</sup> ("the Company") and the undersigned Employee arising out of or relating to the Employee's recruitment, application, employment or the termination of that employment. At ESS, we value and encourage open and honest discussion. We want you to feel welcome and comfortable to come in and talk to us anytime about any issue that impacts you at work. We want you to feel confident in discussing any issue with the person or people directly involved. You may also talk to your District Manager, Area Manager, or Human Resources Director, whenever you wish. By resolving our differences together, we can open the door to a better working relationship and a stronger company all around.

Unfortunately, open discussion is sometimes unable to resolve a dispute or issue and a party will wish to bring a formal claim or complaint. In recognition of the fact that resolution of disputes in the courts is rarely timely or cost effective for either party, the Company and the Employee have entered into this Arbitration Agreement ("Agreement") to establish and gain the benefits of a speedy, impartial and cost-effective dispute resolution procedure.

Please note that arbitration in accordance with this Agreement does not prevent the Employee from filing a charge with the Equal Employment Opportunity Commission, or a state agency with the jurisdiction to enforce a state Equal Employment Opportunity Act, or Fair Employment Practices Act.

**Agreement to Arbitrate**

**Except as otherwise provided in this Agreement, the Company (including all its officers, directors, employees, agents or independent contractors of the Company, its subsidiaries and affiliated entities) and the Employee hereby agree that the parties' claims will not be resolved by a court of law and the parties hereby waive their respective rights to a trial by jury. Moreover, the Company and Employee agree that no demand, request or motion will be made for trial by jury.**

**Further, in consideration of the Employee's continued employment with the Company, the Employee and Company agree that any claim or cause of action covered by this Agreement will be settled by arbitration by one (1) arbitrator in accordance with the Rules of the American Arbitration Association (AAA) and the Arbitration Procedures related to this Agreement.**

The Employee and Company further agree that the option to arbitrate any dispute covered by this Agreement is covered by the Federal Arbitration Act (FAA) and is fully enforceable. It is the intent of the parties that the FAA and AAA Rules shall preempt all state laws to the fullest extent permitted by law.

Judgment on the arbitration award may be entered in any court having competent jurisdiction to do so. The Arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. An Arbitrator's decision shall be final and binding on all parties. An Arbitrator's decision and judgment thereon shall have no precedential or collateral estoppel effect.

**Claims Covered By This Agreement**

The Claims covered by this Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant, express or implied; tort claims including, but not limited to, claims for outrage, fraud, defamation, conversion and invasion of privacy; claims for unlawful discrimination, including, but not limited to, unlawful discrimination based on race, retaliation, sex, religion, national origin, age, marital status, handicap, disability or medical condition; claims for unlawful harassment of any kind; claims for benefits, except as excluded in the following paragraph; and claims for violation of any federal, state or other governmental constitution, statute, ordinance or regulation and all other claims or causes of action arising out of the employment relationship, not specifically excluded by the following paragraph, the written contract of employment, and post-employment disputes including claims for defamation.

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<sup>1</sup> "ESS" refers to all ESS companies, including ESS Northeast, LLC, ESS Southeast, LLC, ESS Midwest, Inc., ESS South Central, LLC, ESS West, LLC & ESS Support Services, LLC.

### **Claims Not Covered By This Agreement**

This Agreement to Arbitrate does not apply to or cover claims for workers' compensation benefits or compensation, except for claims of retaliation; claims for unemployment compensation benefits; claims by the Company for injunctive and/or other equitable relief for unfair competition and/or the use and/or unauthorized disclosure of trade secrets or confidential information; claims based upon an employee pension or benefit plan the terms of which contain an arbitration or other non-judicial dispute resolution procedure, in which case the provisions of such plan shall apply; criminal charges; infringement of copyright, trademark, patents or other intellectual property; or matters involving the National Labor Relations Act.

### **Arbitration Procedures**

Unless you and the Company otherwise agree, the arbitration will be conducted in the county and state where you last worked for the Company. Any arbitration required by this Agreement shall be conducted in accordance with the procedures specified in the Employment Arbitration and Mediation Procedures of the American Arbitration Association which are incorporated herein by reference. The procedures are available online at [adr.org/employment](http://adr.org/employment) or the Employee may obtain a copy of the Arbitration Procedures at any time by contacting the Company's Legal Department in writing at 800 King's Highway North, Suite 405, Cherry Hill, New Jersey 08034.

### **Class Action Waiver**

**Employee and Company agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective action basis.** Accordingly, (a) There will be no right or authority for any dispute to be brought, heard or arbitrated as a class action ("Class Action Waiver"). The Class Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a class action and (2) a civil court of competent jurisdiction finds the Class Action Waiver is unenforceable. In such instances, the class action must be litigated in a civil court of competent jurisdiction. (b) There will be no right or authority for any dispute to be brought, heard or arbitrated as a collective action ("Collective Action Waiver"). The Collective Action Waiver shall not be severable from this Agreement in any case in which (1) the dispute is filed as a collective action and (2) a civil court of competent jurisdiction finds the Collective Action Waiver is unenforceable. In such instances, the collective action must be litigated in a civil court of competent jurisdiction. Disputes regarding the validity and enforceability of the Class Action Waiver and/or the Collective Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. The Class Action Waiver and Collective Action Waiver, and any other provision of this Agreement, shall be severable in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration. Although employees will not be retaliated against, disciplined or threatened with discipline for their exercising rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class or collective action, Company may lawfully seek enforcement of this Agreement, including the Class Action Waiver and the Collective Action Waiver under the Federal Arbitration Act, and may seek dismissal of any such class or collective action.

### **Term, Modification and Revocation**

This Agreement shall survive the employer-employee relationship between the Company and the Employee and shall apply to any Claim whether it arises or is asserted before, during or after termination of any employment of the Employee by the Company. This Agreement can be modified or revoked only by a writing signed by both parties that references this Agreement and specifically states an intent to modify or revoke this Agreement.

### **Construction and Enforceability**

Except as set forth in the section above entitled "Class Action Waiver", the parties agree that the arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the terms are unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel.

The decision of an arbitrator on any such issue or dispute, as well as on any Claim submitted to arbitration as provided in this Agreement, shall be final and binding upon the parties.

If any provision of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement and to enforce an arbitration award.

**Not an Employment Agreement**

This Agreement is not, and shall not be construed to create, any contract of employment, express or implied, and does not alter the Employee's "at will" status.

**Sole and Entire Agreement**

This is the complete agreement of the parties on the subject of arbitration of disputes, except for any arbitration provision contained in any pension or benefit plan. This Agreement supersedes any prior or contemporaneous oral or written agreement or understanding on the subject. In executing this Agreement, neither party is relying on any representation, oral or written, on the subject of the effect, enforceability or meaning of this Agreement, except as specifically set forth in this Agreement.

**Voluntary Agreement**

**EMPLOYEE ACKNOWLEDGES THAT HE OR SHE HAS CAREFULLY READ THIS AGREEMENT, THAT HE OR SHE UNDERSTANDS ITS TERMS, THAT ALL UNDERSTANDINGS BETWEEN THE EMPLOYEE AND THE COMPANY RELATING TO THE SUBJECTS COVERED IN THIS AGREEMENT ARE CONTAINED IN IT, AND THAT HE OR SHE HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT ITSELF. EMPLOYEE FURTHER ACKNOWLEDGES THAT HE OR SHE HAD A REASONABLE PERIOD OF TIME TO REVIEW AND CONSIDER THIS AGREEMENT BEFORE SIGNING IT AND THAT HE OR SHE HAD AN OPPORTUNITY TO DISCUSS THIS AGREEMENT AND THE RELATED ARBITRATION PROCEDURES WITH HIS OR HER PERSONAL LEGAL COUNSEL AND HAS USED THAT OPPORTUNITY TO THE EXTENT HE OR SHE WISHES TO DO SO.**

**Your Right To Opt Out of Arbitration**

**ARBITRATION IS NOT A MANDATORY CONDITION OF YOUR CONTRACTUAL RELATIONSHIP WITH THE COMPANY. IF YOU DO NOT WANT TO BE SUBJECT TO THIS ARBITRATION PROVISION, YOU MAY OPT OUT OF THIS ARBITRATION BY NOTIFYING THE COMPANY IN WRITING OF YOUR DESIRE TO OPT OUT OF THIS ARBITRATION PROVISION, EITHER BY (1) SENDING, WITHIN 30 DAYS OF THE DATE THIS AGREEMENT IS EXECUTED BY YOU, E-MAIL TO HR@PCMISERVICES.COM.**

**, STATING YOUR NAME AND INTENT TO OPT OUT OF THE ARBITRATION PROVISION OR (2) BY SENDING A CERTIFIED LETTER BY U.S. MAIL, OR BY ANY NATIONALLY RECOGNIZED DELIVERY SERVICE (E.G., UPS, FEDERAL EXPRESS, ETC.) OR BY HAND DELIVERLY TO THE ESS MIDWEST, INC. HUMAN RESOURCES DEPARTMENT.**

**EMPLOYEE**

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Signature of Employee

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By:

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Print Name of Employee

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Date

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Date