

## MUTUAL ARBITRATION AGREEMENT

Employee (“Employee”) and Rock Hawaiian, LLC, which for purposes herein expressly includes its parents, subsidiaries, affiliates, owners, directors, employees, officers, and agents (collectively, the “Company”), knowingly and voluntarily enter into this Mutual Arbitration Agreement (“Agreement”), which Employee voluntarily agrees to execute electronically, and agree as follows:

**1. Claims Subject to Arbitration.** Except as provided below, Employee and the Company both agree that all legal disputes and claims between them, including without limitation, those arising out of or relating to Employee’s employment with the Company and separation therefrom for any reason, shall be determined exclusively by final and binding arbitration before a single, neutral arbitrator as described herein. Claims subject to arbitration pursuant to this Agreement include, but are not limited to, claims for: discrimination, non-sexual harassment, and retaliation; unpaid wages and/or overtime; misclassification issues; any type of compensation; breach of any express or implied contract; violation of public policy; negligence of any kind; violation of any local, state, and/or federal laws or ordinances; and any claims arising out of or sounding in tort law, including intentional torts. Except as provided herein, Employee and the Company voluntarily waive all rights to trial in court before a judge or jury on all legal claims between them.

**2. Claims Excluded from Arbitration.** The only legal disputes and claims excluded from this Agreement are: (a) claims by Employee for workers’ compensation, unemployment, or other benefits under a plan or program that provides its own process for dispute resolution; (b) claims alleging sexual assault or sexual harassment, unless Employee consents to arbitration in accordance with applicable law; (c) claims for which this Agreement would be invalid as a matter of law; (d) actions to enforce this Agreement, compel arbitration, or enforce or vacate an arbitrator’s award under this Agreement; (e) a claim or charge filed with a local, state, or federal administrative agency, such as the Equal Employment Opportunity Commission, National Labor Relations Board, United States Department of Labor, or similar agency; (f) an action by either party seeking a provisional remedy in any court of competent jurisdiction; (g) claims asserted by Employee prior to his or her execution or deemed acceptance of this Agreement as provided herein; and (h) claims asserted on Employee’s behalf by another individual, if and only if such a claim was the subject of a motion to certify a class or collective action and such motion was filed prior to Employee’s execution or deemed acceptance of this Agreement as provided herein. As to subpart (d) above, the parties hereby agree and stipulate that such actions are covered and governed by Section 2 of the Federal Arbitration Act, 9 U.S.C. §2, and not any state law.

**3. No Waiver of Administrative Complaints / Class and Collective Action Waiver.** As referenced above, by agreeing to submit the described claims to binding arbitration, Employee does not waive the right to file an administrative complaint with the appropriate administrative agency, but knowingly and voluntarily waives the right to file, or participate or obtain relief in, a court action of any nature seeking money damages or injunctive relief against the Company, except as described above. Further, Employee knowingly and voluntarily waives the right to seek or recover money damages of any type pursuant to any administrative complaint, and instead may seek such relief only through arbitration under this Agreement.

Employee expressly understands and agrees that, except as provided in Section 2 above, all of Employee's claims must be arbitrated individually, and this Agreement expressly precludes Employee from proceeding on a class, collective, or representative basis in any arbitration proceeding pursuant to this Agreement, except for claims alleging sexual assault or sexual harassment unless agreed to by Employee in accordance with applicable law.

**4. Arbitration Rules and Arbitrator Qualifications.** Any arbitration pursuant to this Agreement shall be conducted in accordance with the Employment Arbitration Rules issued by the Judicial Arbitration and Mediation Services, Inc. entity known as "JAMS" that are in effect as of the date of the submission of the notice described in Section 5 below; provided that the Arbitrator shall have the power to expand any discovery upon motion by a party. Within thirty (30) days of any party's receipt of a notice to arbitrate, the parties shall make all reasonable, good faith efforts to mutually agree on an arbitrator, but in the event they are unable to do so within ten (10) calendar days of negotiating over an acceptable arbitrator, they shall submit the matter to JAMS for administration, including, without limitation, the selection of an arbitrator. Regardless of the method used to select an arbitrator, the arbitrator selected by the parties must have the following, minimum qualifications: (a) Board Certification in Labor and Employment Law by the Texas Board of Legal Specialization for a minimum of fifteen (15) years; (b) a minimum of ten (10) years of experience in arbitrating labor and employment disputes in the State of Texas; and (c) no prior disciplinary history by the State Bar of Texas or any other state.

**5. Procedure for Initiating Arbitration.** A party wishing to initiate arbitration must notify the other party in writing by hand delivery or certified mail. The notice must identify the party requesting arbitration by name, address, and telephone number; describe the facts upon which the claim is based and the persons involved, and the date and location of any occurrences giving rise to the claim; and describe the remedy requested. Notice to the Company must be sent to Rock Hawaiian, LLC at P.O. Box 496539 Garland, TX 75049. Notice to Employee must be sent to the residential address included in Employee's personnel file.

**6. Time Limit for Initiating Arbitration.** All claims subject to arbitration are subject to the legal statutes of limitations for those claims, and for purposes of this Section, are considered to be filed, for purposes of limitations, on the date the party provides notice of the claim to the other party in accordance with this Agreement.

**7. Arbitrator Authority.** To the maximum extent permitted by law, any dispute of any nature regarding the enforceability of this Agreement, including any challenges thereto of any nature, shall be decided by the arbitrator and not by a court. The Arbitrator is expressly authorized to and shall consider and timely rule upon any dispositive motions, such as motions to dismiss and/or motions for full or partial summary judgment, in advance of the actual hearing date. The Arbitrator shall have the authority to issue subpoenas to compel the attendance of witnesses at the arbitration hearing and to compel the production of documents during discovery, as well as to award any relief available by law, including, without limitation, reasonable attorneys' fees and costs, to a prevailing party to the same extent a court would be entitled to do so based on applicable law. The Arbitrator shall not have the authority to hear disputes not recognized by existing law and shall dismiss such

claims upon motion by either party in accordance with the standards and burdens generally applicable in federal district court.

**8. Location of Arbitration and Payment of Fees.** The arbitration hearing shall be held in or within fifty (50) miles of the city in which Employee is or was last employed by the Company, and may, only upon the mutual agreement of the parties, be held via videoconference, such as Zoom or Microsoft Teams. The Company shall pay any and all fees associated with the use of an arbitration service and any reasonable and necessary arbitrator fees; provided that to the maximum extent permitted by law, the arbitrator may award reasonable fees and costs, or any portion thereof, to the prevailing party to the same extent a court would be entitled to do so in accordance with applicable law. Additionally, and except as provided herein, each party shall be responsible for the payment of its/his/her own attorneys' fees and costs.

**9. Type of Arbitration Award and Stenographic Record.** Any arbitration decision or award shall be in writing and shall provide a reasoned decision that includes an explanation for all conclusions of law and fact, as well as, if awarded, the assessment of costs, expenses, and reasonable attorneys' fees if permitted by law. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction. Either party may request a stenographic record of the arbitration hearing, if any, at that party's own expense.

**10. Miscellaneous Provisions.** This is the complete agreement between the parties on the subject of arbitration and supersedes any other understandings on the subject. No representations, oral or written, are being relied upon by either party in executing this Agreement, other than those contained herein. This Agreement shall remain in effect even after the termination of Employee's employment with the Company for any reason. If any provision of this Agreement is deemed invalid or unenforceable, such provision shall be modified automatically to the minimum extent necessary to render the Agreement valid and enforceable. If a provision herein conflicts with a mandatory provision of applicable law, the conflicting provision shall be severed automatically and the remainder of the Agreement construed to incorporate the mandatory provision. In the event of such automatic severance and modification with respect to a particular provision, the remainder of this Agreement shall not be affected. Similarly, should a court or arbitrator determine that arbitration pursuant to this Agreement is unavailable for any reason, the parties hereby waive any right to a jury and instead agree and stipulate that the claim(s) at issue will be heard only by a judge. This Agreement shall be construed as a whole, according to its fair meaning, and not for or against any party.

**11. Applicable Law and Optional Mediation.** Except as provided in Section 2 above regarding the applicability of the FAA, this Agreement shall be interpreted by and under the laws of the State of Texas. The parties may, only upon mutual agreement, mediate any disputes between them, either with JAMS or upon mutual agreement, with an independent mediator.

**12. Acknowledgments.** Employee agrees that he or she has read and understands this Agreement and has consulted with an attorney of his or her choosing regarding the effect of this Agreement, to the extent Employee deems necessary. By signing this Agreement, Employee acknowledges that he or she is knowingly and voluntarily waiving the right to file a lawsuit relating

in any way to Employee's employment with the Company, as well as the right to resolve disputes in a proceeding before a judge or jury, except as described above. Employee further acknowledges and agrees that this Agreement, while mutually binding upon the parties, does not constitute a guarantee of continued employment for any fixed period or under any particular terms except those contained herein, and does not alter in any way the at-will nature of Employee's employment relationship.

**13. Amendments.** The parties agree that Employer may amend, supplement, modify, or terminate this Agreement only with reasonable, advance, written notice to Employee. Any amendment, supplementation, modification, or termination of this Agreement by Employer shall not apply to any arbitration claim already submitted to the Company or to Employee, or to any arbitration proceeding already in progress.

**14. Conflict.** In the event of a conflict between this Agreement and any JAMS rules, this Agreement shall control.

**I UNDERSTAND THAT I AM VOLUNTARILY AGREEING TO ARBITRATE DISPUTES ARISING UNDER THIS AGREEMENT AND THAT I AM GIVING UP MY RIGHT TO A TRIAL BY JURY.**

**I FURTHER KNOWINGLY AND VOLUNTARILY CONSENT TO SIGNING THIS MUTUAL ARBITRATION AGREEMENT ELECTRONICALLY AND CONFIRM THAT MY ELECTRONIC SIGNATURE SHALL BE VALID AND BINDING IN ACCORDANCE WITH TEXAS LAW.**