

**BIO-PACIFIC, LLC**

**AGREEMENT TO  
ARBITRATE**

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October 2018

## **MUTUAL AGREEMENT TO ARBITRATE**

The Employee identified below and the Company identified below (together the "Parties") agree as follows:

### **1. Consideration.**

The Parties agree and understand that the mutual promises by the Company and by the Employee to arbitrate their respective differences, rather than litigate them before courts or other bodies, as well as Employee's initial or continued employment with the Company, provide adequate consideration for this Agreement.

### **2. Disputes Subject to Arbitration.**

A. The Parties agree to arbitrate any dispute, cause of action, claim, or controversy ("Claim(s)") arising out of the Employee's employment or the termination of the Employee's employment, with the Company. The Employee agrees to arbitrate all Claims against the Company, as well as against any and all of their parents, subsidiaries, and affiliated Companies; employees; owners; officers; directors; agents; customers; accountants; and vendors/contractors. The scope of this arbitration clause is intended to be as expansive as possible.

B. Claims include, but are not limited to, any Claim of wrongful discharge (including claims of constructive discharge), breach of contract, statutory violation, tortious conduct (whether intentional, negligent, or otherwise), Claims in which punitive damages or consequential damages could be awarded, or any other Claim that arose out of, or is in any way related to, the employment relationship. This agreement includes all Claims which could have been brought before any government agency or in a court proceeding including, but not limited to, Claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the Age Discrimination in Employment Act, the California Labor Code, the California Wage Orders, the Fair Labor Standards Act, or Claims under any other federal, state or local law (excluding claims for worker's compensation benefits to remedy work-related injury or illness).

C. Nothing in this Agreement shall be construed as precluding the Employee from filing a: (1) claim for workers' compensation or unemployment compensation benefits; and (2) claim with the Equal Employment Opportunity Commission, California Department of Fair Employment and Housing or similar fair employment practices agency, or an administrative charge within the jurisdiction of the National Labor Relations Board; however, the Employee may not recover monetary amounts from any such governmental agency-related claim (e.g., NLRB or EEOC) and may instead pursue a claim for monetary amounts through arbitration, and any such administrative claim that cannot be resolved administratively through such an agency shall be subject to this Agreement. Further, any claim that is non-arbitrable under applicable state or

federal law is not arbitrable under this Agreement. Finally, this Agreement specifically excludes any and all claims currently pending in state or federal court or before any state or federal administrative body at the time the Employee signs this Agreement. Claims under the California Private Attorneys General Act (“PAGA”), and any claim that is non-arbitrable under applicable state or federal law, are not arbitrable.

D. Arbitrable disputes by the Company are those claims against Employee that are made within the applicable statute of limitations and that arise out of, or are related to, the employment relationship.

E. Statutes of limitations, scope of remedies, and substantive law (including any requirement for prior exhaustion of administrative agency relief) shall be the same as would be applicable were any action to be brought in court and shall not be limited by the fact that any dispute is subject to arbitration.

### **3. Arbitration is the Exclusive Remedy.**

Arbitration pursuant to this Agreement shall be the exclusive remedy for resolving any arbitrable disputes. The Parties mutually waive their right to a trial before a judge or jury in federal or state court in favor of arbitration under this Agreement. Otherwise, the rights of the Parties under this Agreement shall be the same as those available to them in a court of competent jurisdiction. This Agreement shall be governed by the Federal Arbitration Act and/or the Arbitration Act of the State of California, whichever is more permissive of arbitration in the context of any given dispute. This Agreement may be enforced and administered by a court of competent jurisdiction through the filing of a petition to compel arbitration or decide arbitrability; confirm, vacate or modify an arbitration award; or otherwise pursuant to the Federal Arbitration Act, the arbitration laws of the State of California, or a combination of the two. The Parties agree that a court, and not the arbitrator, shall decide all issues of arbitrability.

### **4. Class Action Waiver.**

The Parties agree to bring any dispute in arbitration on an individual basis only, and not as a class, collective or representative action, and that both the Company and I waive the right to bring, participate in, join, or receive money or any other relief from any class, collective, or representative proceeding, except that I retain the right to bring a claim under PAGA in a court of law. No Party may bring a claim on behalf of other individuals, and an arbitrator may not: (i) 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.

In the event the foregoing waiver to proceed in arbitration on a class, collective, or representative basis is found to be unenforceable or contrary to law, then any claim brought on such a basis must be filed in a court of competent jurisdiction, and such court, and not an arbitrator, shall be the exclusive forum for such claims.

**5. Procedure for Arbitration.**

**A. Initiation of Arbitration.**

Arbitration is initiated by giving written notice of the intention to arbitrate to the other party. The notice must be given within the applicable statute of limitations. A failure to file the notice within the applicable statute of limitations shall constitute a waiver of the dispute in any forum.

The notice of intent to arbitrate must contain a description of the dispute, the facts on which it is based, and the remedy/relief sought. A notice of intent to arbitrate from the Employee shall be submitted to the Company by hand-delivery or by registered or certified mail and shall be deemed filed on the date received by the Company. A notice of intent to arbitrate from the Company shall be hand-delivered or sent by registered or certified mail to Employee at the last known address listed in the Company's records and shall be deemed filed on the date received by Employee.

**B. Rules of Arbitration.**

The Parties agree that, except as provided in this Agreement, the arbitration shall be in accordance with the JAMS then-current employment mediation/arbitration rules/procedures. The rules for arbitration of employment disputes pursuant to JAMS can be found at <http://www.jamsadr.com/rules-employment-arbitration/>

**C. Selecting the Arbitrator.**

JAMS rules shall govern the arbitrator selection.

**D. Arbitrator's Fees**

To the extent required by applicable law, and only to this extent, the Company shall pay all costs uniquely attributable to arbitration, including the administrative fees and costs of the arbitrator. Each side shall pay that side's own costs and attorneys' fees, if any, unless the arbitrator rules otherwise. If the applicable law affords the prevailing party's attorneys' fees and costs, then the arbitrator shall apply the same standards a court would apply to award such fees and costs.

**E. Scope of Arbitrator's Authority**

The arbitrator shall have the authority to rule on all motions whether made prior to or at the hearing, including motions for summary judgment or summary adjudication and motions to dismiss (with respect to any such motions, the party filing the motion may file a reply brief at their option or as required by the Arbitrator or the applicable rules). The arbitrator shall not have the authority to amend, modify or delete any provision of this Agreement or the Company's policies, unless violative of applicable law.

The arbitrator shall have the authority to award only such remedies as could be awarded by a court under the applicable substantive law which may include injunctive or other equitable relief. Prior to the hearing, the arbitrator shall encourage the Parties to explore settlement.

All arbitration proceedings are confidential, unless applicable law provides otherwise. The arbitrator shall maintain the confidentiality of the arbitration to the extent the law permits and shall have the authority to make appropriate rulings to safeguard that confidentiality.

#### **F. Conducting Discovery**

Arbitration is intended to provide a less time-consuming, less expensive, and less complicated means of settling employment-related disputes. Discovery may be initiated by the parties after the selection of the arbitrator and may be initiated without first obtaining permission from the arbitrator. In the event of a dispute regarding discovery either party may ask the arbitrator to determine what discovery is appropriate under the circumstances or adequate for the prosecution or defense of the claims in accordance with current JAMS arbitration discovery rules. However, under no circumstances will discovery be permitted that is broader than that which is allowed by the applicable procedural rules of the State of California. The arbitrator may issue subpoenas to compel the testimony of third-party witnesses or the production of documents.

#### **G. The Hearing**

Unless the Parties agree otherwise, the hearing shall be held in the city closest to the primary location where the Employee performs(ed) work for the Company. The arbitrator may order the parties to submit pre- and/or post-hearing briefs. All testimony taken at the hearing before the arbitrator shall be under oath and, unless otherwise agreed to by the parties, the rules of evidence of the state in which the Company that employed the Employee is located shall apply. A Party shall have the right to have a written transcript of the proceedings at that Party's own expense.

#### **H. Arbitrator's Decision**

The arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law. The arbitrator shall follow applicable state or federal law, and the rules stated in this Agreement. The arbitrator's award is to be in writing, with reasons given and evidence cited for the award. The arbitrator shall not have the power to commit errors of law or legal reasoning, and any award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. Any court of competent jurisdiction may enter judgment upon the award, either by (i) confirming the award or (ii) vacating, modifying, or correcting the award on any ground referred to in the Federal Arbitration Act or California Code of Civil Procedure §§ 1286 *et seq.*

## **6. Severability and Enforceability of Agreement.**

In the event that any paragraph or provision within a paragraph of this Agreement is determined to be illegal or unenforceable, specifically including but not limited to the provisions of section 4, above, the provisions of such determination shall not affect the validity or enforceability of the remaining paragraphs or provisions within a paragraph, all of which shall remain in full force and effect. If necessary, to effectuate the intent of the parties to resolve the specified disputes through arbitration, a court of competent jurisdiction should reform this Agreement.

Notwithstanding the waiver of the Employee and the Company to bring or participate in a class, collective or other representative proceeding, employees may have a statutory right (e.g., under the National Labor Relations Act) to act concertedly on behalf of themselves and others to challenge this Arbitration Policy in any forum. If the Employee acts concertedly to pursue any such proceeding, the Company will not retaliate against the Employee for doing so. The Company is entitled, however, to enforce this Agreement, including the Employee's agreement to arbitrate all claims and to forego pursuing any covered dispute on a class, collective or representative basis; and the Company is entitled to seek dismissal of any such class, collective or representative action and otherwise assert this Agreement as a defense in any proceeding. However, under no circumstances shall a dispute be arbitrated on a class, multi-party, representative, or collective basis.

## **7. Governing Law.**

This Agreement, as well as all terms and conditions of the Employee's employment, shall be governed by and shall be interpreted in accordance with the laws of the State of California.

## **8. Modifications.**

The terms of this Agreement shall not be orally modified; this Agreement shall be modified only by a written document signed by the President of the Company and the Employee. The arbitrator shall have no authority to add to, delete from or modify in any way the provisions of this agreement. A court or other entity construing this Agreement may administer, modify, or interpret it to the extent and in such manner as to render it enforceable.

## **9. Employee Acknowledgments**

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS AGREEMENT, THAT I UNDERSTAND ITS TERMS, THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND THE EMPLOYEE RELATING TO THE SUBJECTS COVERED IN THE AGREEMENT ARE CONTAINED IN IT, AND THAT THE EMPLOYEE HAS ENTERED INTO THE AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT ITSELF.

THIS AGREEMENT IS NOT, AND SHALL NOT BE CONSTRUED TO CREATE, ANY CONTRACT OF EMPLOYMENT, EXPRESS OR IMPLIED. THIS AGREEMENT SHALL NOT BE DEEMED TO ALTER OR MODIFY THE COMPANY'S POLICIES OF AT -WILL EMPLOYMENT. EMPLOYMENT AT THE COMPANY IS AT-WILL AND CAN BE TERMINATED BY EITHER THE EMPLOYEE OR THE COMPANY AT ANY TIME, WITH OR WITHOUT CAUSE OR NOTICE.

THE EMPLOYEE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT THE EMPLOYEE IS GIVING UP ANY RIGHT TO A JURY TRIAL.

BY SIGNING THIS AGREEMENT THE EMPLOYEE FURTHER ACKNOWLEDGES THAT HE/SHE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH INDEPENDENT LEGAL COUNSEL AND THAT HE/SHE HAS SOUGHT THE ADVICE OF LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO DO SO AND HAS DECLINED TO DO SO, HAS AVAILED HER/HIM-SELF OF THAT OPPORTUNITY TO THE EXTENT HE/SHE WISHES TO DO SO.

Name of the Employee: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name of the Company: Bio-Pacific LLC \_\_\_\_\_

Name of the Company Representative: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_