

MUTUAL AGREEMENT TO ARBITRATE

1. Effective Date and Acceptance Date

The effective date of this Mutual Agreement to Arbitrate Claims (“Agreement”) is 5/30/2017. Company and Claimant mutually agree to resolve Covered Claims which occur on or after the effective date according to the terms and conditions of this Agreement.

2. Acts of Acceptance

Any one of the following actions shall constitute acceptance of the terms and conditions of this Agreement:

a. If a Claimant receives notice of this Agreement prior to commencing work at Company, Claimant’s commencement of work at Company shall constitute acceptance; or

b. If a Claimant receives notice of this Agreement after commencing work at Company, Claimant’s continuation of employment at Company constitutes acceptance if Claimant continues to work after receipt of the notice; or

c. If Claimant incurs an injury within the Course and Scope of Employment and has not previously accepted under subsection (a) or (b) above, notice of this Agreement may be provided to Claimant. If such notice is provided, Claimant’s subsequent receipt of any benefit payable under Company’s Occupational Injury Plan shall constitute acceptance.

3. Definitions

a. “**Company**” means the entities set forth on Schedule A which is attached hereto. The term “Company” also includes all employees, officers, directors, agents, franchisors, franchisees, successors,

representatives, predecessors, affiliated or related entities or companies of the entity(ies) and/or person(s) listed in Schedule A (other than Claimant).

b. “**Claimant**” means a person who is employed by Company and has a Covered Claim. The term also includes a Claimant’s spouse, children, parents, estate, successors and assigns.

c. “**Course and Scope of Employment**” means an activity of any kind or character that has to do with or originates in the work, business, trade, or profession of Company and that is performed by Claimant while engaged in or about the furtherance of the affairs or business of Company. The term includes an activity conducted on the premises of Company or at other locations.

d. “**Covered Claim**” or “**Covered Claims**” means any and all claims included or described in Paragraph 6(a) of this Agreement.

4. Federal Arbitration Act Applies

Company is engaged in “commerce” as that term is defined in Section 1 of the Federal Arbitration Act (“FAA”). The FAA governs all aspects of this Agreement.

5. Arbitration is Mandatory for Covered Claims

Covered Claims shall be exclusively resolved by binding arbitration. While both Claimant and Company retain all substantive legal rights and remedies under this Agreement, Claimant and Company are both waiving all

rights which either may have with regard to trial, whether jury or non-jury, in state or federal court for any Covered Claim.

6. **Scope of Arbitration Agreement**

a. **Claims Covered by This Agreement**

This Agreement is mutual, covering all claims that Company or Claimant may have, including but not limited to, claims for negligence, gross negligence, and all claims for personal injuries, physical impairment, disfigurement, pain and suffering, mental anguish, wrongful death, survival actions, loss of consortium and/or services, medical and hospital expenses, expenses of transportation for medical treatment, expenses of drugs and medical appliances, emotional distress, exemplary or punitive damages and any other loss, detriment or claim of whatever kind and character.

b. **Claims Not Covered by This Agreement**

This agreement does not apply to:

- (i) Claims for benefits under Company's Occupational Injury Plan;
- (ii) Workers' Compensation Benefits under the Texas Workers' Compensation Act or any other similar state or federal law;
- (iii) Claims based upon Company's pension or benefit plan that contains an arbitration or other non-judicial resolution procedure, in which case the provisions of that plan shall apply;
- (iv) Claims covered by a collective bargaining agreement, in which case the terms, conditions and procedures of that

collective bargaining agreement shall control.

(v) Claims for Unemployment Compensation Benefits.

(vi) Claims under the National Labor Relations Act.

Nothing in this Agreement precludes the parties from agreeing to resolve claims that are otherwise not covered by this Agreement the same as if they were Covered Claims.

c. **Arbitrability of Particular Dispute**

Any question as to the arbitrability of any particular claim shall be arbitrated pursuant to the procedures set forth in this Agreement.

7. **Procedure**

a. **Who Shall Arbitrate?**

All arbitrations under this Agreement shall be administered by Judicial Workplace Arbitrations under its rules for the resolution of disputes. In the event that Judicial Workplace Arbitrations is unable or unwilling to administer the arbitration, Benchmark Arbitration Services shall administer the arbitration under its rules for the resolution of disputes. Should Benchmark Arbitration Services be unwilling or unable to administer the arbitration, then the American Arbitration Association will administer the arbitration under its then existing rules for the resolution of employment disputes from its Dallas, Texas Panel, or the parties may utilize any other arbitrator that is mutually agreeable to Claimant and Company. For any arbitration under this Agreement, a single

arbitrator shall be appointed. Company and Claimant are to participate in the selection of a neutral arbitrator as follows: The parties shall be presented a panel with a minimum of three different arbitrators. Company and Claimant may agree to the selection of one arbitrator from the panel. If agreement is not reached, Company and Claimant shall have an equal number of strikes. The parties shall continue to strike arbitrators from the panel until one arbitrator remains. That person shall then arbitrate the claim. Any arbitrator must be neutral as to all parties. Standards for the recusal of an arbitrator shall be the same standards under which trial judges are recused under Texas law.

b. Where Shall the Arbitration Take Place?

If Claimant lives within 50 miles of Dallas, Texas, the arbitration shall be held in Dallas, Texas. If Claimant lives more than 50 miles from Dallas, Texas, Claimant may elect to have the arbitration held in Dallas or at a location within 50 miles of the Pallet Logistics location where employed.

c. Payment of Fees and Expenses

Company shall be responsible for the fees of the arbitrator and the cost of a stenographic record of the arbitration hearing.

d. Discovery and Pre-Arbitration Motions

All parties are entitled to pre-arbitration discovery under the Texas Rules of Civil Procedure. The same discovery devices and scope of discovery as set forth in those rules shall apply. All parties are entitled to file any motions,

including dispositive motions, set forth in the Texas Rules of Civil Procedure.

e. Remedies and Defenses

All parties are entitled to allege any claim, obtain any remedy and assert any legal or equitable defense that the party could allege, obtain or assert in a Texas state or federal court.

f. Record

A stenographic record shall be taken of the arbitration hearing.

g. Written Award

Within a reasonable time after the conclusion of the arbitration hearing, the arbitrator shall issue an award and send a copy to all parties.

h. Judgment and Appeals

Any motion to confirm the award, vacate or modify the award, or appeal an award shall be consistent with the procedures set forth in the FAA.

i. Confidentiality

The parties agree that any settlement or arbitration of a Covered Claim shall be kept confidential except:

(i) Communications made, pleadings filed and materials submitted in connection with the entry or appeal of an award of the arbitrator;

(ii) Communications or reporting to the Internal Revenue Service;

(iii) If Claimant or Company is compelled to testify by subpoena.

8. **Consideration**

In addition to any other consideration that may exist for the agreement to arbitrate, Company's and Claimant's mutual promise to resolve claims and controversies by arbitration in accordance with the provisions of this Agreement constitutes consideration for this Agreement. Claimant's continued employment with Company after receiving notice of the institution of the Agreement also constitutes consideration for this Agreement. Finally, this Agreement is presented in connection with Company's Occupational Injury Plan. Payments made under that Plan also constitute consideration for this Agreement.

9. **Enforceability**

If any provision of this Arbitration Program is adjudged to be invalid, illegal or unenforceable, in whole or in part, the balance of this Agreement shall remain in effect.

10. **Not an Employment Agreement**

This Agreement is not, and shall not be construed to create, any contract of employment, express or implied, nor shall the Agreement be construed in any way to change the employment status of any employee of Company from at-will status.

11. **Termination of Agreement**

Company shall have the right to prospectively terminate this Agreement. Termination is not effective for Covered Claims which accrued or occurred prior to the date of the termination. Termination is also not effective until ten (10) days after reasonable notice is given to Claimant.

12. **Term**

This Agreement commences on the Acceptance Date and applies to all Covered

Claims which occurred on or after the effective date.

This Agreement shall survive the employer-employee relationship between Company and the Claimant and shall apply to any Covered Claim whether it arises or is asserted during or after termination of the Claimant's employment with Company or the expiration of any ERISA plan.

13. **Sole and Entire Agreement**

This Program Agreement constitutes the parties' complete agreement and supersedes any prior agreement regarding arbitration of Covered Claims which occur during the Term of this Agreement.

14. **Applicability of This Agreement to Others**

Claimant and Company intend and expressly agree that any Covered Claim of Claimant's spouse, children, parents, estate, successors and/or assigns that now exists or that may come into existence in the future which arises from, relates to, or is derivative of any Covered Claim, shall be resolved according to the terms and conditions of this Agreement.

Claimant and Company intend and expressly agree that any Covered Claim of Company's officers, directors, agents, predecessors, successors, and affiliated companies that arises from, relates to, or is derivative of any Covered Claim of Company, shall be resolved according to the terms and conditions of this Agreement.

15. **Spanish Language Version**

This Agreement has been translated into Spanish. In the event of any discrepancy or conflict between the English and Spanish versions of this Agreement, the terms of the English language version shall control.

SCHEDULE A

Pallet Logistics of America, LLC

4100 Platinum Way	Dallas	TX	75237
5891 FM 1346	San Antonio	TX	78220
5401 Business Park (SA-TPM)	San Antonio	TX	78218
4625 Windfern Road(TPM)	Houston	TX	77041
2304 Cenury Center Blvd (Dr.	Irving	TX	75062
2696 Dowty Ferry Road	Dallas	TX	75217