

## ARBITRATION POLICY/AGREEMENT

### **Introduction**

The Company, including Sears, Roebuck and Co., Kmart Corporation, Sears Holdings Management Corporation, Sears Holdings Corporation, and all subsidiaries, indirect subsidiaries, and affiliates of Sears Holdings Corporation (collectively, the “Company”) understands that employment-related disagreements will arise from time to time. Accordingly, Company has adopted this Arbitration Policy/Agreement (“Agreement”). Under this Agreement, and subject to certain exceptions specified within the Agreement, all employment-related disputes between you (“Associate”) and Company that are not resolved informally shall be resolved by binding arbitration in accordance with the terms set forth below. This Agreement applies equally to disputes related to Associate’s employment raised by either Associate or by Company.

**Accordingly, Associate should read this Agreement carefully, as it provides that virtually any dispute related to Associate’s employment must be resolved only through binding arbitration. Arbitration replaces the right of both parties to go to court, including the right to have a jury decide the parties’ claims. Also, this Agreement prohibits Associate and Company from filing, opting into, becoming a class member in, or recovering through a class action, collective action, representative action or similar proceeding.**

**If Associate does not wish to be bound by the Agreement, Associate must opt out by following the steps outlined in this Agreement within 30 days of receipt of this Agreement. Failure to opt out within the 30-day period will demonstrate Associate’s intention to be bound by this Agreement and Associate’s agreement to arbitrate all disputes arising out of or related to Associate’s employment as set forth below.**

### **1. How This Agreement Applies**

Except as it otherwise provides, this Agreement applies, without limitation, to disputes regarding the employment relationship, trade secrets, unfair competition, compensation, pay, benefits, breaks and rest periods, termination, discrimination, or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, as amended, Family and Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act, Genetic Information Non-Discrimination Act, and any and all state statutes addressing the same or similar subject matters, and all other state or federal statutory and common law claims (“Covered Claims”).

This Agreement is intended to apply to and cover all such disputes that Associate has against Company that Associate could otherwise file in court and all such disputes Company has against Associate that Company could otherwise file in court. This Agreement requires all such disputes to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial. The Arbitrator will not have the authority to determine whether this Agreement or

any portion of it is enforceable, revocable or valid. This Agreement will continue to apply after Associate is no longer employed by Company.

This Agreement does not alter the at-will nature of Associate's employment relationship with Company. Nor is it intended to substitute for, or alter, Company's existing internal procedures for resolving complaints. It does, however, set forth rules and procedures for arbitration that apply with full force and effect to both Associate and Company.

Both parties agree that this Agreement is enforceable under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"). If the FAA is found not to apply, then this Agreement is enforceable under the laws of the state in which Associate is employed. However, both parties agree that there will be no right to bring any dispute covered by this Agreement as a class action, collective action, or in a representative capacity.

## **2. What Is Not Covered By This Agreement**

This Agreement does not apply to claims for workers compensation, state disability insurance and unemployment insurance benefits. This Agreement also does not preclude Associate from filing a claim or charge with a federal, state or local administrative agency such as the Equal Employment Opportunity Commission, the U.S. Department of Labor, or the National Labor Relations Board. Further, nothing in this Agreement excuses either party from bringing an administrative claim before a state or federal agency in order to fulfill the party's obligation to exhaust administrative remedies before making a claim in arbitration.

This Agreement also does not apply to claims for employee benefits under any benefit plan sponsored by Company and covered by the Employee Retirement Income Security Act of 1974 or funded by insurance; however, this Agreement does apply to any claims for breach of fiduciary duty, for penalties, or alleging any other violation of the Employment Retirement Income Security Act of 1974, as amended, even if such claim is combined with a claim for benefits.

This Agreement also does not apply to any dispute that is within the jurisdiction of, or amenable to resolution under, any valid collective bargaining agreement with Company.

## **3. Pending Litigation**

This Agreement does not apply in any way to any employment-related single-plaintiff lawsuit or any employment-related class, collective or representative action on file with any court as of April 2, 2012. This agreement does apply, however, to all lawsuits that are filed after April 2, 2012.

## **4. Class Action Waiver, Collective Action Waiver, and Representative Action Waiver**

**Associate and Company agree to bring any dispute in arbitration on an individual basis only. Also, this Agreement prohibits Associate and Company from filing, opting into,**

**becoming a class member in, or recovering through a class action, collective action, representative action or similar proceeding in court.**

**Accordingly, if Associate does not opt out of this Agreement as set forth in Section 11 below:**

**(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 lawsuit in which (1) the complaint is filed as a class action and (2) the civil court of competent jurisdiction in which the complaint was filed finds the Class Action Waiver is unenforceable (and such finding is confirmed by appellate review if review is sought). In such instances, the class action must be litigated in a civil court of competent jurisdiction and not as a class arbitration.**

**(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 lawsuit in which (1) the complaint is filed as a collective action and (2) the civil court of competent jurisdiction in which the complaint was filed finds the Collective Action Waiver is unenforceable (and such finding is confirmed by appellate review if review is sought). In such instances, the collective action must be litigated in a civil court of competent jurisdiction and not as a collective arbitration.**

**(c) To the extent permissible by law, there will be no right or authority for any dispute to be brought, heard, or arbitrated as a private attorney general action ("Private Attorney General Action Waiver"). The Private Attorney General Action Waiver shall not be severable from this Agreement in any lawsuit in which (1) the complaint is filed as a private attorney general action and (2) the civil court of competent jurisdiction in which the complaint was filed finds the Private Attorney General Action Waiver is unenforceable (and such finding is confirmed by appellate review if review is sought). In such instances, the private attorney general action must be litigated in a civil court of competent jurisdiction and not as a private attorney general arbitration.**

Although Associate will not be retaliated against, disciplined or threatened with discipline as a result of his or her filing of or participation in a class, collective or private attorney general action in any forum, either party may lawfully seek enforcement of this Agreement and the Class Action Waiver, Collective Action Waiver, and Private Attorney General Action Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or private attorney general actions or claims. Notwithstanding any other clause contained in this Agreement, any claim that all or part of the Class Action Waiver, Collective Action Waiver or Private Attorney General Action Waiver is invalid, unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.

The Class Action Waiver, Collective Action Waiver and Private Attorney General Action Waiver shall be severable when a dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.

## 5. Starting The Arbitration

The party wishing to bring any Covered Claim(s) against the other party must do so in arbitration. To start the arbitration, the Associate must submit a written demand for arbitration by certified mail sent to Legal Intake, Sears Holdings Management Corporation, 3333 Beverly Road, B6-300A, Hoffman Estates, IL 60179. In the case of a Company-initiated claim, Company shall notify Associate of its initiation of the arbitration process by serving a demand for arbitration upon Associate by certified and first class mail to Associate's last known home address. Any demand for arbitration by either party shall identify the parties, describe the legal and factual basis of the dispute, and specifically state the remedy being sought. The demand must be sent within the time limits that would apply to the party's claim if it were being resolved in a court and not by arbitration. The sent date will be determined by the date of postmark on the envelope in which the demand is mailed.

The arbitrator shall resolve all disputes regarding the timeliness or sufficiency of the demand for arbitration. A party may apply to a court of competent jurisdiction for temporary or preliminary injunctive relief in connection with an arbitrable controversy, but only upon the ground that the award to which that party may be entitled may be rendered ineffectual without such provisional relief.

## 6. Selecting A Neutral Arbitrator; Payment

- (a) **Selection by Mutual Agreement of the Parties.** The Arbitrator shall be selected by mutual agreement of Company and Associate. Unless Associate and Company mutually agree otherwise, the Arbitrator shall be an attorney licensed to practice in the location where the arbitration proceeding will be conducted or a retired federal or state judicial officer who presided in the jurisdiction where the arbitration will be conducted. The location of the arbitration proceeding shall be no more than 45 miles from the unit where Associate last worked for Company, unless each party agrees in writing otherwise.
- (b) **Selection When Parties Cannot Mutually Agree.** If the parties have not agreed upon an arbitrator within 30 days of service of the arbitration demand, then Company will file the initiating party's demand with JAMS. JAMS shall then appoint an arbitrator who shall act under this Agreement with the same force and effect as if the parties had selected the arbitrator by mutual agreement. The location of the arbitration proceeding shall be no more than 45 miles from the unit where Associate last worked for Company, unless each party agrees in writing otherwise.
- (c) **Payment.** If applicable law requires Company to pay the Arbitrator's fees, then Company will pay such fees; otherwise, payment of fees shall be governed by the rules of the organization that administers the arbitration. Where the arbitration is conducted by an organization or arbitrator that does not have rules pertaining to the payment of fees, the Company shall pay the arbitrator's fees.

## **7. How Arbitration Proceedings Are Conducted**

In arbitration, the parties will have the right to conduct adequate civil discovery, bring dispositive motions, and present witnesses and evidence as needed to present their cases and defenses. Any disputes in this regard shall be resolved by the Arbitrator, provided, however, that to the extent discovery and presentation of witnesses and evidence would be limited or unavailable under applicable law if the dispute were brought in court, such limitations shall also apply in arbitration.

Both parties will have the right to be represented by an attorney in any arbitration under this Agreement. However, neither party is required to be represented by an attorney. Each party shall pay the fees for his, her or its own attorneys, and any related expenses, including the expenses of witnesses called by such party, depositions, or any other costs that would otherwise be borne by a party were the claims brought in court, subject to any remedies to which that party may later be entitled under applicable law.

If the arbitration is being administered by JAMS then the arbitration shall be conducted according to [\*JAMS Employment Arbitration Rules & Procedures effective July 15, 2009\*](#). Notwithstanding anything in the JAMS rules, the Arbitrator will not have the authority to determine whether this Agreement or any portion of it is enforceable, revocable or valid. Additionally nothing in the JAMS rules should be construed or interpreted to allow for class, collective, or representative arbitration. If you are unable to access or print [the JAMS rules](#), you may obtain a printout of the rules from your Human Resources representative or from your manager.

## **8. The Arbitration Hearing And Award**

The parties will arbitrate their dispute before the Arbitrator, who shall confer with the parties regarding the conduct of the hearing and resolve any disputes the parties may have in that regard. Within 30 days of the close of the arbitration hearing, any party will have the right to prepare, serve on the other party and file with the Arbitrator a brief. The Arbitrator may award any party any remedy to which that party is entitled under applicable law, including an award of attorneys' fees, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claims presented to and decided by the Arbitrator. No remedies that otherwise would be available to an individual in a court of law will be forfeited by virtue of this Agreement. Within 30 days after the submission of the briefs or as soon as possible thereafter, the Arbitrator will issue a decision or award in writing, stating the essential findings of fact and conclusions of law. Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the content or results of any arbitration hereunder without the prior written consent of all parties. A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration.

## **9. Non-Retaliation**

It is against Company policy for any Associate to be subject to retaliation because he or she exercises his or her right to assert claims under this Agreement or participates in any way in an arbitration under this Agreement. If Associate believes that he or she has been retaliated against by anyone at Company, Associate should immediately report this by calling Human Resources at 1-888-88Sears or the Ethics Hotline at 1-800-8ASSIST (1-800-827-7478).

## **10. Enforcement Of This Agreement**

This Agreement is the full and complete agreement relating to the formal resolution of Covered Claims. Except as stated in Section 4, above, in the event any portion of this Agreement is deemed unenforceable, the remainder of this Agreement will be enforceable. If the Class Action, Collective Action, or Private Attorney General Action Waiver is deemed to be unenforceable, Company and Associate agree that this Agreement prohibits any party from bringing a class, collective or private attorney general action in arbitration.

## **11. Associate's Right To Opt Out**

### **ACTION IS REQUIRED TO PROTECT YOUR LEGAL RIGHTS TO SUE COMPANY IN COURT AND/OR TO PARTICIPATE IN ANY WAY IN A CLASS ACTION, COLLECTIVE ACTION, OR PRIVATE ATTORNEY GENERAL ACTION.**

Arbitration is not a mandatory condition of Associate's employment at Company, and therefore an Associate who does not wish to be bound by the terms of this Agreement may opt out by notifying Company in writing, using the "Arbitration Policy/Agreement Opt Out Form" ("Form") that is attached at the end of this Agreement. If Associate is unable to print it, Associate may also obtain a print-out of the form from Associate's Human Resources representative or manager. The Arbitration Policy/Agreement Opt Out Form must be signed, dated and include Employee ID number. To be effective, the completed Form must be returned to Sears Holdings Legal Intake, 3333 Beverly Road, B6-300A, Hoffman Estates, IL 60179 or fax number 847-286-4511 within thirty (30) days of Associate's receipt of this Agreement (the "Opt-Out Period"). Associate should retain the fax confirmation sheet.

An Associate who timely opts out as provided in this paragraph will not be subject to any adverse employment action as a consequence of that decision and may pursue available legal remedies without regard to this Agreement. By not opting out of this Agreement within the Opt-Out Period, Associate will be deemed to have agreed to be bound by this Agreement, including the arbitration provision and Class Action Waiver, Collective Action Waiver, and Private Attorney General Action Waiver contained herein. Further, should Associate choose to opt out of the Agreement, Associate acknowledges and agrees that Company is no longer bound by the terms of the Agreement and may elect to bring any Covered Claims it has against Associate in a court rather than in arbitration. Associate has the right to consult with counsel of Associate's choice concerning how this Agreement affects Associate's rights.

**Arbitration Policy/Agreement Opt Out Form**

I have reviewed the Arbitration Policy/Agreement, and I elect to opt out of the Arbitration Policy/Agreement. I understand that there will be no adverse employment action taken against me as a consequence of that decision. I understand that this completed Opt Out Form must be returned within 30 days, as provided in the Arbitration Policy/Agreement. The date of its return will be determined by the date of the postmark on the envelope in which the form is mailed. Alternatively, I may fax the form to the number indicated below, and the date of return will be determined by the date the form is faxed. I will retain a copy of the fax confirmation sheet.

By timely returning this signed and completed Opt Out Form, I understand that the Arbitration Policy/Agreement will not apply to me or Company.

Name: \_\_\_\_\_

Employee Identification Number (11-Digits): \_\_\_\_\_

Note: You can find your Employee Identification Number next to your name on the My Personal Information (MPI) website, or by calling 1-888-88SEARS.

Note: Please do not provide your Social Security Number (SSN).

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

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

Please return this Opt Out Form to: Sears Holdings Legal Intake, 3333 Beverly Road, B6-300A, Hoffman Estates, Illinois 60179, or fax number 847-286-4511. If you fax this form, retain the fax confirmation.