

# **Mongolian Dining Ventures, LLC I**

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## **DISPUTE RESOLUTION PROGRAM**

### **PROGRAM BOOKLET**

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## DISPUTE RESOLUTION PROGRAM

Mongolian Dining Ventures, LLC I (the “Company”) is committed to building a strong relationship between the Company and all of our employees... a relationship that is based on trust and open communication. The Company is an equal opportunity employer and strives to maintain an atmosphere of mutual trust and open, honest communication. By working together, we can reach any goal we set for ourselves. We do not discriminate on the basis of race, religion, color, age, sex, national origin, or disability in our recruiting, hiring, training, on-the-job treatment and promotion opportunity. We do not and will not tolerate harassment or discrimination by any employee, regardless of their status with the Company, and no employee will be retaliated against for using this Program. The Company will not retaliate against any employee for taking any legitimate action nor for engaging in any legitimate or lawful activity.

We understand, however, that problems and disagreements are unavoidable when people with different viewpoints spend a lot of time together. We cannot entirely eliminate disagreements, but we can provide a process for resolving them when they do occur by taking prompt constructive action.

Based on these beliefs and values, we developed the DISPUTE RESOLUTION PROGRAM (the “Program”). The Program is a four-step process for resolving workplace problems quickly and fairly. This policy describes the steps that both you and the Company must take to resolve many types of workplace problems. The Company is also obligated to follow the Program and will also be bound by arbitration. The types of problems covered by the Program are explained in detail in this policy.

**THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH THOSE PROBLEMS MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY.**

When you have a work-related problem, follow the steps listed below in this policy.

### **Step 1: Communication**

In any relationship, when a disagreement occurs, keeping emotions bottled up inside only causes the problem to get bigger. At the Company we want to encourage open communication ... so we can solve the problem with the least amount of stress for those involved. To do this, we have developed the Communication Step ... an open-door policy that encourages you to talk with your supervisor to get your concern addressed quickly.

1. **Talk directly to your immediate supervisor.** If you have a problem, you are encouraged to first discuss it with your immediate supervisor. Generally, this will be your restaurant manager. You should discuss the problem with your manager as soon as possible after the problem arises.
2. **Talk to a higher level of management.** Sometimes you may not be able to resolve the issue with your immediate supervisor. If this is the case, take your concern to the next higher level of management to get the answers you need. Follow the chain of command as high as you need to go to resolve the problem.

## Step 2: Executive Review

If you have tried the Communication Step and are not satisfied, you may request the Executive Review Step. In this step, the Company's Operating Partner, Keith Sullins, will review the issue or problem and attempt to resolve the issue or problem to your satisfaction and to the satisfaction of your supervisor and the Company. Failing that, Keith will make a decision.

Here is how you obtain access to the Executive Review Step:

1. **Request review.** Within three days following the response to Step 1 of the Communication process, you can start the Executive Review process by contacting the Company's Benefits Manager. You can reach the Benefits Manager at 281-580-6088, write to her at 13131 Champions Drive, Suite 110, Houston, Texas 77069, or send fax to 281-580-8277. You can also contact your area or district manager to start the process.
2. **Information submitted.** In order to access the Executive Review Step, you should provide a written statement which contains as much of the following information as is reasonably available to you:
  - a. Describe in detail, to the best of your ability, the factual basis on which your claim is made.
  - b. Describe the measures you have taken at the Communication Step to resolve the issue including the supervisors you have spoken with about the problem.
  - c. Describe the nature and extent of any remedy or relief you believe you should have.

You must obtain a copy of the Executive Review form to use for this purpose from any general manager, area supervisor, or from the home office.

3. **The review.** Keith Sullins will review the problem and make whatever investigation he believes is appropriate under the circumstances. This may include, in all likelihood, a discussion with you and your supervisor or manager and a review of all relevant documents.
4. **The solution.** The review will be made within thirty (30) days after the company receives your completed Executive Review form. Keith will attempt to find a way to resolve the problem to the satisfaction of all the parties involved in the situation. However, if the problem cannot be resolved in this manner, Keith will make a decision. That decision will be made in writing, generally within thirty (30) days of your appeal for executive review.
5. **Non-legal claims.** If your claim is not a statutory or common law claim ("legal claim"), this Step 2 is the final step in the Dispute Resolution Program. **(Only legal claims may proceed to mediation or arbitration).** For example, mediation and arbitration are not available to review performance evaluations, job elimination or lay-off decisions, Company work rules, policies and pay rates, or increases or decreases in benefits, except to the extent such matters relate to statutory or common law claims.

## Step 3: Mediation

If you believe you have a legal claim that was not solved through open communication or executive review, the next step is mediation. In mediation, the Company adds an objective, independent third party to help.

When you or the Company request mediation, the Company will contact a professional mediator to mediate the dispute. The mediator will listen, work to open communication lines, and offer solutions. But the mediator does not make a final decision. It is up to you and the Company to reach agreement. The goal of mediation is to develop a solution that satisfies both parties involved in a way that strengthens, rather than weakens, the working relationship.

Here is how to put the Mediation Step to work for you:

1. **Request Mediation for a Legal claim.** After the conclusion of the Executive Review process, advise the Benefits Manager (or her designee) to request mediation. You should request mediation as soon as possible but within sixty (60) days from the date of conclusion of the Executive Review Step so that the issues will be fresh in your mind. You will be requested to complete a Request for Mediation form, which will be furnished.
2. **Mediator selected.** When either you or the Company request mediation, the Company will select an outside, independent neutral mediator to handle the mediation process. The Company will pay the fees of the mediator and the mediation agency.
3. **You, the mediator and the Company representative meet.** The mediator will schedule a meeting between you and the Company representative. The mediator will guide the discussion and help resolve the problem. However, it is up to both you and the Company to reach agreement. The mediator does not make the final decision.
4. **Written agreement.** If appropriate, after you and the Company have agreed upon a solution, a written agreement will be signed by both you and the Company representative.

#### Step 4: Arbitration

If you have a work-related problem that involves one of your legally protected rights shown on page 4, which has not been resolved through the earlier steps, you must request arbitration.

In arbitration, an outside neutral expert called an arbitrator becomes involved in the resolution process. He or she listens to the facts, then makes a final binding decision and awards any damages, just like a judge in a court of law. Arbitration is less formal than conventional court litigation but is clearly established and governed by rules and standards of conduct, which are designed to assure due process of law is fully protected. However, the goal of arbitration is still to provide quick problem resolution without damaging the working relationship.

Here is how the arbitration process works:

1. **Request arbitration.** If you believe you have a legal claim, you must request that your claim go to arbitration. Simply complete an Arbitration Request form and return it along with a certified check in the amount of \$200.00 to the Company at 13131 Champions Drive, Suite 110, Houston, Texas 77069 addressed to the attention of the Benefits Manager. The form can be obtained from any general manager, area supervisor or from the home office.
2. **Choose an arbitrator.** Once the AAA receives your request to begin arbitration, it will send both you and the Company a list of approved arbitrators with a brief biography on each. Once you receive the list, you and the Company each remove the names of any arbitrators that you do not want to hear the case, list in order of preference the remaining arbitrators, and then return the list to the agency. The arbitrator who has received the highest ranking in order of preference from both lists shall be assigned. If this process does not result in the selection of an arbitrator, the agency will appoint an arbitrator.
3. **A hearing is set.** The agency arbitrator will schedule a date, time and place for a hearing. During this hearing, both you and the Company present the pertinent facts. You may hire a lawyer to participate in the arbitration hearing with you. The hearing will be conducted in the community where you are employed or in another mutually agreeable location.
4. **A decision is made.** Based on the information presented and the facts gathered, the arbitrator will make a final binding decision in writing. The decision of the arbitrator shall have preclusive effect with respect to any subsequent litigation. If you win, the arbitrator can award you anything you might seek through a court of law. By using arbitration, your rights are protected and damages can be paid if those rights have been violated. It is only the process that is different.

The applicable rules of arbitration through the American Arbitration Association can be found on their website at [ADR.org](http://ADR.org).

## **Program Rules**

### **Claims Subject to Arbitration**

Claims and disputes subject to arbitration include all those legal claims you may now or in the future have against the Company (and its successors or assigns) or against its officers, directors, shareholders, employees or agents, including claims related to any Company employee benefit program or against its fiduciaries or administrators (in their personal or official capacity), and all claims that the Company may now or in the future have against you, whether or not arising out of your employment or termination, except as expressly excluded under the "Claims Not Subject to Arbitration" section below.

The legal claims subject to arbitration include, but are not to be limited to:

- claims for wages or other compensation;
- claims for breach of any contract, covenant or warranty (expressed or implied);
- tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers' compensation claims);
- claims for wrongful termination;
- sexual harassment;
- discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability whether under federal, state or local law);
- claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans);
- "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance;
- claims for a violation of any other non-criminal federal, state or other governmental law, statute, regulation or ordinance; and
- claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers' compensation law or regulation.

### **Claims Not Subject to Arbitration**

The only claims or disputes not subject to arbitration are as follows:

- any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure;
- any statutory workers' compensation claim;
- unemployment insurance claims;
- any lawful claim(s) brought under the Dodd Frank Act's whistleblower protection, pursuant to 15 U.S.C. Section 1514A, et. Seq., is exempted from this DRP plan; and
- any third party claim involving a governmental agency such as the NLRB or EEOC, with the exception that a "Right-to-Sue" letter issued by these agencies to an employee would proceed under this mandatory arbitration process.

Neither the employee nor the Company has to submit the items listed under this "Claims Not Subject to Arbitration" caption to arbitration under this Program and may seek and obtain relief from a court or the appropriate administrative agency.

The employee and company each agree, that there shall be no class or collective action arising from any employee's claim(s), and each employee may only maintain a claim under this plan on an individual basis and may not participate in a class or collective action.

If any provision within this plan is deemed unenforceable by a court of competent jurisdiction, the remaining provisions of this plan shall remain in full force and effect.

Any and all decisions as to the applicability or enforceability of this DRP plan are delegated to, and must be decided, by the arbitrator appointed to the matter.

Also, any non-legal dispute is not subject to arbitration. Examples include disputes over a performance evaluation, issues with co-workers or complaints about your work site or work assignment, which do not allege a legal violation.

## **Required Notice of All Claims**

When seeking arbitration, the claimant must file the Request for Arbitration form and give written notice of any claim to the other party within one year or within the applicable statute of limitations, whichever is longer. The day the act occurred, and/or the day the request for arbitration was submitted shall be counted for purposes of determining the applicable period.

Use the Request for Arbitration form when submitting a claim for arbitration. Identify and describe the nature of all claims asserted and the facts on which your claims are based. Send this written notice by certified or registered mail, return receipt requested. If the Company wishes to invoke arbitration, it will give written notice to you at the last address recorded in the Company's payroll records.

## **Arbitration Procedures**

You must use the Mediation Step explained in this policy before requesting arbitration. The agency will administer any arbitration under the AAA's "Employment Arbitration Rules and Mediation Procedures" and in conformity with this Dispute Resolution Program. Go to [ADR.org](http://ADR.org) to obtain a copy of the rules or request a copy from the Company. The rules in effect on the date a demand is made shall control.

The arbitration will be before a neutral arbitrator who is licensed to practice law and who has significant experience in the employment law area. The arbitrator shall apply the substantive law and the laws of remedies, if applicable, in the state in which the claim arose, or federal law or both, depending upon the claims asserted. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise.

The arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold a pre-hearing conference by telephone or in person, as the arbitrator deems necessary. The arbitrator shall have the authority to rule on a motion to dismiss and/or a motion for summary judgment by any party and, in doing so, must apply the standards governing such motion under the Federal Rules of Civil Procedure.

## **Pre-Arbitration Procedures**

Each party has a right to take a maximum of (7) depositions. If the party can prove to the arbitrator compelling reason(s) why it is needed to exceed a maximum of (7) depositions, the arbitrator may in his discretion, allow in excess of (7) depositions to be taken by either party. Unless agreed to otherwise in writing by both parties, discovery shall be conducted in the most expeditious and cost-effective manner possible, and shall be limited to that which is clearly relevant and material to the dispute and for which the party has a substantial, demonstrable need.

You and the Company have the right to subpoena witnesses to the arbitration in accordance with the Federal Rules of Civil Procedure. At least thirty (30) days before the arbitration, you and the Company must exchange lists of witnesses, including any experts, and copies of all exhibits to be used at the arbitration.

Any disputes regarding discovery shall be decided by the Arbitrator and the Arbitrator may grant, upon good cause shown, either party's request for discovery in addition to or limiting that expressly provided in this Program.

## **Arbitration Fees and Costs**

There are two types of administrative fees and costs associated with the arbitration; a filing fee with the arbitration agency selected and payment to the arbitrator for his or her services and expenses. Such fees and other expenses shall be allocated as follows:

1. The party requesting arbitration must pay a \$200.00 filing fee to the agency to request arbitration. If you request arbitration the Company will pay the balance of the initial filing fee, and will pay the entire fee if it requests arbitration.
2. Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of the proceedings.
3. Each party shall be responsible for its own attorneys' fees and related litigation expenses, if any; however, if any party prevails on a statutory claim, which allows the prevailing party to be awarded attorneys' fees, or if there is a written agreement providing for fees, the arbitrator may award reasonable fees to the prevailing party.
4. The arbitrator may assess attorneys' fees against a party upon showing by the other party that the first party's claim is frivolous or unreasonable or factually groundless.
5. If either party pursues a legal claim covered by the Dispute Resolution Program in court by any means other than arbitration, the responding party shall be entitled to a stay or dismissal of such action, the remand of such action to arbitration, and the recovery of all costs and attorneys' fees and expenses related to such action.

## **Multi-State Business**

The Company is engaged in transactions involving interstate commerce and your employment involves such commerce; therefore, the parties agree that the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings under the Dispute Resolution Program.

## **Program Provisions/Enforcement**

The provisions of the Program document are severable and, should any provision be held unenforceable, all others will remain valid and binding. No provision of the Program document will be held unenforceable if such provision can be reasonably interpreted in a manner that results in such provision being enforceable. Unless this provision would result in the Program being held unenforceable under prevailing law, the arbitrators, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of the agreement to arbitrate including, but not limited to, any claim that all or any part of the agreement to arbitrate is void and voidable.

If a court should determine that arbitration under this Program is not the exclusive, final and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of a party's claim(s), the party must submit the claim(s) to arbitration and pursue the arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

## **Program Steps**

While we encourage you to use all of the steps in the Program in the order outlined, we realize that in some cases it may not be appropriate to use the preliminary steps. Accordingly, if your claim involves a legal claim that is subject to arbitration hereunder, you may proceed directly to Step 3, Mediation, without first using Step 1, Communication or Step 2, Executive Review. The Company may skip Steps 1 and 2 if a legal claim is involved.

## **Not an Employment Contract/Exclusive Remedy**

**While this Program constitutes a binding promise between you and the Company to arbitrate all claims in dispute described in this Program Booklet, this Program is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Program in any way alter the “at-will” status of any employee. This Program will prevent you from filing a lawsuit in Court for individual relief for a legal claim subject to arbitration. However, the Program will not prevent you from filing a charge with any state or federal administrative agency.**

**This Program shall constitute the mandatory and exclusive means by which all covered workplace claims may be resolved. The submission of an application, acceptance of employment or the continuation of employment by an individual shall be deemed to be acceptance of the Dispute Resolution Program. No signature shall be required for the policy to be applicable. This agreement applies and extends to all future employment with the company and shall survive any termination and/or resignation.**