
Exhibit 2

Arbitration Agreement

1. **THE ARBITRATION PROCESS.** Arbitration is mandatory as part of the procedures outlined in Rev. Proc. 2002-67 and will be used to assist

_____ (hereinafter "Taxpayer") and the Commissioner of the Internal Revenue Service (collectively the "Parties") in resolving certain issues relating to the Taxpayer's participation in a Contingent Liability Transaction, a transaction designated by the Commissioner and Treasury as a "listed transaction" in Notice 2001-17, 2001-1 C.B. 730. The applicable provisions and requirements of Rev. Proc. 2002-67 are hereby incorporated in this Agreement by reference.

The Parties have agreed to use Final Offer Arbitration, also known as baseball arbitration. The Final Offers of both Parties shall reflect the following:

- a) The amount of capital loss permitted on the sale of stock received in the Contingent Liability Transaction, which amount will reflect a concession by the Taxpayer of between 50% and 90% of the capital loss reported by the Taxpayer on the sale of the stock received in the Contingent Liability Transaction.
- b) The identity of the corporation that is entitled to the tax benefits associated with the deduction resulting from the liability assumed in the Contingent Liability Transaction, including whether such corporation is or has been a member of the Taxpayer's consolidated group (including any successor to such group).
- c) With respect to the Electing Taxpayer or an entity that was a member of the Electing Taxpayer's consolidated group (including any successor to such group) at any time, the manner and timing of the reduction in the tax benefits necessary to eliminate any duplication in the tax benefits associated with the Contingent Liability Transaction in amounts that, in the aggregate, equal the capital loss permitted under (a) above.
- d) The amount of any penalty under section 6662.

The Arbitrator, after reviewing the Final Offers and the accompanying information, will choose one Final Offer. Each Party's Final Offer shall state an amount that reflects the above, including the effect of any present value calculation, as appropriate

The Parties to this Agreement (see section 2 below) agree to be bound by the Arbitrator's determination. There can be no ex parte communications between the Arbitrator and any Party, third party, witness, agent, or other person regarding the issues for arbitration. All communications between the Arbitrator and either Party, unless otherwise stated, including requesting and transferring documentation and information, will be made through an Administrator. The Administrator for this Arbitration Session will be an Appeals employee to be assigned by Appeals. The Administrator will inform and discuss with the Parties the rules and procedures pertaining to the Arbitration process.

2. **PARTICIPANTS.** The Parties to the arbitration will be the Taxpayer and the Commissioner. The Taxpayer may elect to have the representation of counsel or an authorized representative to assist in preparing for and conducting the arbitration proceeding. The Office of Chief Counsel will represent the Commissioner in the arbitration proceeding. The specific participants on behalf of the Taxpayer in the Arbitration Session will be:

Taxpayer:

For Taxpayer:

No later than two weeks before commencement of the Arbitration Session, each Party will submit, to the Administrator and the other Party by facsimile, a complete and final list of participants who will attend the Arbitration Session. The list must identify, for each participant, their position with the Party or other affiliation (e.g., a member of the XYZ law firm, counsel to the Taxpayer), and their address, telephone and fax numbers.

3. **SELECTION OF ARBITRATOR.** The Parties have agreed to select an Arbitrator from a qualified list of eligible persons prepared by the Service, as described in Section 7.05 of Rev. Proc. 2002-67. Within 15 days of the date that the Service notifies the Electing Taxpayer that the Service has determined that the Fast Track Dispute Resolution Procedure - Contingent Liability Cases was unsuccessful, the Taxpayer must select three names from the qualified list and rank them in order of preference. If the first candidate is unavailable, the Administrator will contact the other candidates in the order indicated by the Taxpayer. The fees and costs of the Arbitrator will be shared equally by the Parties. The Administrator will arrange for the hiring of the Arbitrator, subject to applicable rules and regulations for Government procurement.

A selected Arbitrator who has represented or currently represents a promoter or investor in a Contingent Liability Transaction, or whose firm has done so, is not neutral and, therefore, will be ineligible to serve as an arbitrator in a proceeding under this revenue procedure. The selected Arbitrator will be disqualified from representing the Taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in transactions or issues that are the particular subject matter of the arbitration. Members or employees of the Arbitrator's firm will also be disqualified from representing the Electing Taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration, unless: (i) the Arbitrator disclosed the potential of such representation prior to the parties' acceptance of the Arbitrator; (ii) such action relates to a taxable year that is different from the taxable year(s) under arbitration; (iii) the firm's internal controls preclude the Arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the Arbitrator any part of the fee therefrom.

The Arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The Arbitrator and the firm are not disqualified from representing the Electing Taxpayer or any other parties involved in the arbitration in any matter unrelated to the transactions or issues that are the particular subject matter of the arbitration.

The Arbitrator shall have no official, financial or personal conflict of interest with respect to the Parties, unless such interest is fully disclosed in writing to the Parties and the Parties agree to the continued participation of the Arbitrator. See 5 U.S.C. § 573(a).

4. **ISSUE TO BE ARBITRATED.** The Parties agree that only the following issue will be submitted to the Arbitrator:

Which of the two Final Offers presented by the Parties best reflects the hazards of litigating the Taxpayer's entitlement to a capital loss deduction from the sale of stock received as part of the Contingent Liability Transaction?

In reaching a determination on the issue submitted, the Arbitrator may only consider the legal and factual arguments made in the Fast Track Dispute Resolution Procedure - Contingent Liability Cases, including the facts developed under Section 7.02 of Rev. Proc. 2002-67.

5. **BURDEN OF PROOF.** In choosing between the Final Offers, the Arbitrator shall consider that the Taxpayer has the burden of proving the facts by a preponderance of the evidence. To the extent the Taxpayer, in support of its Final Offer, argues under section 357(b) that the liabilities assumed by the transferee in the Contingent Liability Transaction should not be considered as money received by the

Taxpayer on the exchange, the Arbitrator must take into account the burden of proof standard as stated in section 357(b)(2).

6. **GUIDANCE FOR ARBITRATOR.** Legal guidance for the Arbitrator shall be provided by the parties for purposes of establishing context, limited to guidance on the specific arguments presented in the Fast Track Dispute Resolution Procedure - Contingent Liability Cases. The legal guidance will consist of a list of citations or copies of relevant cases and legal authority. With respect to factual information, the Taxpayer may only submit to the Arbitrator for consideration material that was previously provided to LMSB and Appeals in the Fast Track Dispute Resolution Procedure - Contingent Liability Cases. The Service is permitted to include additional factual information developed pursuant to Section 7.02 of Rev. Proc. 2002-67. All material for the Arbitrator will be provided through the Administrator.

The Arbitrator is not permitted to make any conclusions of law or provide reasoning that represents an interpretation of the law; however, it is necessary for the Arbitrator to refer to the existing applicable law in considering the submitted issue. The Arbitrator shall look solely to the legal guidance provided by the Parties in determining the issue presented and conducting the Arbitration Session. The Arbitrator is not permitted to make any findings of fact, except for resolving the issue stated in section 4 of this Agreement.

If any legal guidance for the Arbitrator was overlooked, at the sole request of the Arbitrator, made through the Administrator, the Parties may agree upon further legal guidance and the manner in which it is to be communicated to the Arbitrator.

7. **SUBMISSION OF MATERIALS.** Within 60 days of the date the proposed Arbitrator is selected, the Parties will submit to the Administrator for submission to the Arbitrator, the administrative record developed prior to and during the Fast Track Dispute Resolution Procedure - Contingent Liability Cases, any additional factual information developed by the Service pursuant to Section 7.02 of Rev. Proc. 2002-67, a stipulation of facts based on the record and the legal guidance set forth in Section 6 of this Agreement. In addition, each Party will submit a memorandum supporting its respective positions, not to exceed 30 pages. The memorandum shall be typed only on one side of opaque unglazed paper, 8 ½ inches wide by 11 inches long. All pages shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than 3/4 inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch, with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented. Not more than 10 days after submission of its memorandum, each Party shall submit its Final Offer. No additional factual information may be submitted by either Party after their Final Offer has been made.

Any and all information and materials that a Party provides throughout the Arbitration Session shall be submitted to the Administrator. The Administrator will ensure that each Party receives the materials submitted by the opposing Party. Any objections to statements of fact, not previously presented, will be submitted to the Administrator within 10 days. If there are no objections, the Administrator will forward the submissions to the Arbitrator no earlier than the date the employment contract with the Arbitrator has been approved.

- a. The Parties shall have no right to offer witnesses at the Arbitration Session. The Arbitrator has the sole power to request the testimony of witnesses during the Arbitration Session and to direct the questioning of such witnesses.
- b. The Arbitrator may order a Party to produce other documents, exhibits or evidence deemed necessary or appropriate.
- b. At the Arbitrator's sole discretion, oral arguments may be requested at the Arbitration Session. In the absence of such a request, there will be no oral presentation by the Parties at the Arbitration Session.

- b. The Parties agree to clarify issues that may arise in calculating any deficiency or overpayment resulting from the Arbitrator's decision.
- b. The Arbitrator's decision will be used by the Parties to determine the Taxpayer's tax liability and penalties, if applicable.
- b. The Parties agree that statutory interest will apply to any deficiency, including penalties, resulting from the Arbitrator's decision.
- 8. **CONTACT WITH ARBITRATOR.** The Parties agree that there shall be no ex parte communications between the Arbitrator and either Party or agent for a Party. In addition, the Arbitrator may not have contact with any other individuals, including witnesses outside the Arbitration Session, concerning the arbitration matter without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and the Administrator. Should the Parties require additional information or clarification regarding the Arbitration process, they shall contact the Administrator.
- 8. **TIME OF ARBITRATION SESSION.** Within 45 days of the date the Arbitrator receives the information to be provided by the Parties under Section 7 of this Agreement, the Arbitrator will contact the parties and set the time for the Arbitration Session, if the Arbitrator decides that a hearing is necessary. The Arbitrator will decide on the necessity of oral arguments and presentation of witnesses during the Arbitration Session. If there are to be oral arguments during the Arbitration Session, the Arbitrator will decide the time allotted for the arguments. The Arbitrator is free to allocate time necessary for presentation of witnesses without regard for equal time between the parties; however, any such hearing will not exceed 8 hours, including any oral arguments or the presentation of witnesses. Alternatively, the Arbitrator may elect to render a decision based on the written record alone, without a hearing.
- 8. **PLACE OF ARBITRATION.** The Taxpayer has selected [City, State] as the site for the Arbitration Session, subject to change by agreement among the Parties and the Arbitrator. The Service will provide the space and facilities for the Arbitration Session.
- 8. **CONFIDENTIALITY.** Service and Treasury employees who participate in any way in the arbitration process and any person under contract to the Service pursuant to section 6103(n) of the Internal Revenue Code of 1986, as amended, including the Arbitrator, that the Service invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431. Any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any party, nonparty participant, or arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. See 5 U.S.C. § 571(5).

The Taxpayer consents to the disclosure by the Service of the Taxpayer's returns and return information incident to the arbitration to any participant for the Taxpayer identified in the initial list of participants in section 2 of this Agreement, to any participant for the Taxpayer identified in writing by the Taxpayer subsequent to execution of this Agreement, and to any persons, including witnesses, who participate in this Arbitration Session on behalf of either Party. If the Arbitration Agreement is executed by a person pursuant to a power of attorney executed by the Taxpayer, that power of attorney must clearly express the grant of authority by the Taxpayer to consent to disclose the returns and return information of the Taxpayer by the Service to third parties, and a copy of that power of attorney must be attached to this Agreement.

8. **I.R.C. SECTION 7214(a)(8) DISCLOSURE.** The Parties acknowledge that employees of the Service and all other Treasury employees involved in this arbitration are bound by section 7214(a)(8) and must report information concerning violations of any revenue law to the Secretary.
8. **RECORD.** Neither the Taxpayer nor the Service shall make a stenographic record of the Arbitration Session, except that a transcript of the Arbitration Session may be provided to the Arbitrator, if requested. The Parties agree that any stenographic record or other recording of the Arbitration Session shall remain confidential and will be destroyed once the Arbitrator reaches a decision.
8. **TERMINATIONS AND POSTPONEMENT.** Due to the particular nature and scope of the Contingent Liability Transactions and the procedures outlined in Rev. Proc. 2002-67, the Taxpayer agrees to full participation in this Arbitration Process. Termination by the Service for any reason other than final settlement with the Service will subject the Taxpayer to the full range of Service audit and deficiency procedures. In addition, the Contingent Liability Transaction issue will not be considered under the settlement, mediation or arbitration procedures under Notice 2001-67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001-2 C.B. 544; Announcement 2002-60 (Extension of Test of Arbitration Procedure for Appeals), 2002-26 I.R.B. 28; and Rev. Proc. 2002-44 (Mediation Procedure for Appeals), 2002-26 I.R.B. 10.

If the Parties reach a settlement by agreement at any time prior to the date set for the arbitration hearing, or if no hearing is ordered, prior to the decision of the Arbitrator, the Parties may withdraw from the Arbitration Process. Any such settlement negotiations will be conducted by Appeals subject to the concurrence of Counsel. If settlement is reached, Appeals will effectuate the settlement of agreed issues using established issue or case closing procedures.

8. **DECISION BY ARBITRATOR.** Within 30 days after the hearing, the Arbitrator will select one of the Final Offers proposed by the Parties. After the Arbitrator renders a decision and advises the Administrator and the Parties of the decision, the case or issues will be closed using established procedures for case closing, including preparation of a Form 906, Specific Matters Closing Agreement. The closing agreement will include provisions reflecting the requirements of Section 7 of Rev. Proc. 2002-67.
8. **ARBITRATOR'S DECISION IS FINAL.** The Parties agree to be bound by the Arbitrator's decision. Neither Party may appeal the decision of the Arbitrator nor contest the decision in any judicial proceeding, including but not limited to the Tax Court, the Court of Federal Claims, or a federal district or federal appellate court. Each Party enters into this agreement in reliance on the other Party's agreement to be bound by the decision of the Arbitrator.
8. **PRECEDENTIAL USE.** The decision by the Arbitrator will not be binding on, or otherwise control, the Parties for Contingent Liability Transactions not covered by the Arbitration. Except as provided in this Agreement, the Arbitrator's decision may not be used as precedent by any Party.
- The Commissioner is not precluded or impeded under section 7605(b) or any administrative provisions adopted by the Commissioner from conducting a later examination or inspection of records with respect to any taxable year of a participating Taxpayer by inspecting information, documents and materials supplied in connection with the Arbitration Session.
8. **JOINT COMMITTEE ON TAXATION.** If applicable, a settlement entered into as a result of this Arbitration Proceeding will be reported to the Joint Committee on Taxation in accordance with section 6405.

INTERNAL REVENUE SERVICE

By:

Date:

[Taxpayer]

By:

Date: