



## Arbitration Retainer Agreement



**Designation of Arbitrator.** The undersigned have agreed to the appointment of Jerome F. Rock, Esq. as Arbitrator in the above referenced pending dispute. The arbitration will be conducted on an ad hoc basis by the Arbitrator without the administration services of the American Arbitration Association.



**Rules of the Proceedings.** The parties agree to proceed under the \_\_\_\_\_ Rules of the American Arbitration Association, revision dated \_\_\_\_\_, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding. Since the proceedings are self-administered, and the American Arbitration Association is not in any way associated with these proceedings, the arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator’s powers and duties.



**Existence of Agreement to Arbitrate.** The attorneys for Claimant and the Respondent acknowledge that their clients are parties to an agreement dated \_\_\_\_\_, which provides for arbitration of all claims or disputes arising out of or relating to the referenced Contract Documents.



**Arbitrator’s Services and Compensation.** The Arbitrator’s services shall include case management, scheduling, organizing and conducting the pre-hearing administrative conferences, meetings or calls; scheduling the hearing dates and any adjournments; study time and review of briefs, exhibits and other written materials in preparation for the hearing; presiding at the arbitration hearing; and preparation of the Award.

The Arbitrator shall be compensated at the rate of \$395.00/hr. Hearings cancelled or rescheduled less than 30 days prior to an agreed scheduled date will incur a charge of \$1,500. The Arbitrator’s fee shall be shared equally by the parties unless otherwise provided.

Upon acceptance of this Arbitration Retainer Agreement, the Arbitrator requests that **each party** promptly deposit an initial retainer of **\$X,000.00**, which will be deposited to the Arbitrator’s IOLTA client trust account to be applied against fees charged for actual services performed by the Arbitrator. Based on the complexity and expected level of effort to be expended by the Arbitrator, the Arbitrator may from time to time request additional deposits to the retainer to establish a sufficient fund balance commensurate with the Arbitrator’s estimate of the fees to be incurred in the proceedings, including preparation for the hearings, the expected hearing days, as well as decision making and Award preparation.

Interim billings for the Arbitrator's services shall be submitted to the parties on a monthly basis. All interim billings shall be payable upon presentation of the statement unless other arrangements have been made. The Arbitrator reserves the right to suspend any of the proceedings or cease performing services if retainers or payment has not been received in a timely manner. The parties hereby consent to the suspension/cessation under circumstances of non payment of the Arbitrator's fee.

At the conclusion or other termination of the arbitration proceedings, in the event the Arbitrator's Fees are less than the amount of any retainer paid by the parties, the unused portion of the retainer shall be promptly returned to the parties.

 **Disclosures.** The Arbitrator has made a reasonable effort to learn and has disclosed to the parties: (a) all business or professional relationships the Arbitrator has had with the parties or their law firms within the past three years; (b) any financial interest the Arbitrator has in any party; (c) any significant social, business or professional relationship the Arbitrator has had with an officer or employee of a party or with an individual representing a party in the arbitration; and (d) any other circumstances that may create doubt regarding the Arbitrator's impartiality in the arbitration. Each party and its law firm has made a reasonable effort to learn and has disclosed to every other party and the Arbitrator any relationships of a nature described in the preceding paragraph not previously identified and disclosed by the Arbitrator. The parties and the Arbitrator are satisfied that any relationships disclosed pursuant to this paragraph will not affect the Arbitrator's independence or impartiality. Notwithstanding any such relationships, the parties have chosen the Arbitrator to serve in the arbitration, waiving any claim based on such relationships, and the Arbitrator agrees to so serve. The Arbitrator has submitted an Arbitrator Disclosure to the parties pursuant to the Rules and the Code of Ethics for Arbitrators promulgated by the American Arbitration Association, and the Arbitrator affirms that none of these disclosures, or any other factors would limit his ability to be impartial, fair and objective as an Arbitrator in the proceeding.

 **Confidential Nature of Proceedings.** Unless the parties agree otherwise, the parties, their attorneys, and the Arbitrator shall treat the proceedings, any related discovery and the decisions of the Arbitrator, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party.

 **Exclusion of Arbitrator Testimony and Limitation of Liability.** The Arbitrator shall not be subpoenaed or otherwise compelled to testify in any proceeding relating to the subject matter of the arbitration and shall not be required to provide a declaration or finding as to any fact or issue relating to the arbitration proceeding or the dispute which is the subject of the arbitration proceedings. The Arbitrator, and any documents and information in his possession will not be subpoenaed in any proceeding and all parties will oppose any effort to have the Arbitrator or documents subpoenaed and will jointly and severally defend and hold the Arbitrator harmless from costs associated with asserting this position. The parties agree that the Arbitrator will have

the same immunity from liability for any act or omission in connection with the arbitration as judges have under Michigan Uniform Arbitration Act, MCL 691.1694.



**Neutrality.** The Parties understand and agree that the Arbitrator shall act in a strictly neutral capacity as a decision-maker and not as a mediator or advocate for either party. If the parties desire to engage the Arbitrator in the capacity of Mediator to attempt to arrive at a consensual resolution of the claim or dispute prior to the arbitration hearing, the parties and the Arbitrator will enter into a separate agreement for Mediation/Facilitation.



**Hearing Location.** The Arbitrator generally conducts hearings at the facilities of the Engineering Society of Detroit, located at 20700 Civic Center Drive, Suite 450, Southfield, MI 48076, which costs are allocated equally to the parties.



**Applicable Law.** The laws of the State of Michigan shall govern the construction and interpretation of this agreement.



**Arbitrator's Oath.** As evidenced by my signature below, as Arbitrator, I swear or affirm, that I will arbitrate all matters coming before me faithfully and with fairness to all parties.



**Counterpart Execution; Binding on Representatives.** This Agreement may be executed in any number of counterparts which when taken together shall constitute one fully executed Agreement. This Agreement when so executed shall inure to the benefit of and be binding on the undersigned parties as well as their lawyers, respective representatives or other persons they have caused to be present during these arbitration proceedings.

Arbitrator: Jerome F. Rock (P27317)
_____
Date:

Caption Self-Administered
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Attorney for Claimants,
_____
Date:

Attorney for Respondents,
_____
Date: