

Litigation Services Agreement Instructions

Please stop and read this before filling out the Litigation Services Agreement.



The Litigation Services Agreement should be filled out and returned immediately, as we need it before scheduling an appointment. The Engineering Services Agreement must be neatly and completely filled out. Beginning on the first page, the specific steps you should follow are:

- Fill in *all* the information on the top of the first page. Be sure and type or print clearly.
- Familiarize yourself with all the fees in the agreement. You can either send a retainer check as described in the agreement or provide a valid credit card. All fees and expenses will be charged against the retainer or billed to the credit card as they are incurred.
- At the bottom of the first page, initial after the X.
- At the bottom of the second page, sign the agreement at the X.
- Print your name and address on the line provided.
- On the line below the signature, type or print clearly the signer's name and address.
- If you are providing credit card information, complete the following:

Credit Card: American Express Master Card Visa Discover

Name on Credit Card _____ Security Code _____

Credit Card Billing Address _____

Credit Card Number _____ Expiration Date _____

Signature _____

- Set your fax machine resolution to fine, and fax this page and both pages of the Agreement to [631.858.5599](tel:631.858.5599). There is no need to include a cover page. Alternatively, you can scan the signed agreement and email it to orders@heimer.com.
- If you have not confirmed the appointment, you must still call and confirm. Sending a signed agreement is not a confirmation of an otherwise unconfirmed appointment.

If you have any questions, call 800.605.1500.



2171 JERICHO TURNPIKE, SUITE 230, COMMACK, NY 11725
TOLL FREE: 800-605-1500 • FAX: 631-858-5599

WEB: www.heimer.com • EMAIL: info@heimer.com

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AGREEMENT BETWEEN LITIGANT AND ENGINEER

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This signed white ENGINEER copy constitutes the agreement for the performance of engineering services at the charges indicated below and under the terms and conditions set forth throughout this agreement. The yellow LITIGANT copy is for your records.

This Agreement (hereinafter "AGREEMENT") dated (DATE): _____ is between Heimer Engineering, P.C. (hereinafter "ENGINEER") and _____ (hereinafter "LITIGANT"),

[represented by _____ (hereinafter "ATTORNEY")] who retains ENGINEER to provide preparatory, engineering, and other professional services in the matter of:

_____ vs. _____ (hereinafter "LITIGATION")

NOTE: AGREEMENT is contingent upon payment of retainer and fees as outlined herein. ENGINEER reserves the right not to begin services until payment of retainer is received.

Section 1 Basic Services of ENGINEER:

After signed AGREEMENT is received and payments are rendered per AGREEMENT, ENGINEER shall perform professional services as follows:

- 1.1 Consult with LITIGANT, ATTORNEY, or any other entity (including, but not limited to, by telephone, fax, letter, meeting, or email) to clarify/define LITIGANT's and/or ATTORNEY's requirements for LITIGATION and review available data.
- 1.2 Examine or meet at a specified site and/or consult with LITIGANT and/or ATTORNEY and provide written report, if required.
- 1.3 Appear at Courtroom, Arbitration, Hearing, or Deposition, or stand-by on-call reservation basis for LITIGATION provided designated date is not already scheduled by ENGINEER.

Section 2 LITIGANT's and ATTORNEY's Responsibilities:

LITIGANT's and ATTORNEY's responsibilities must be fulfilled in a timely manner, so as not to delay or impede the services of ENGINEER. LITIGANT and/or ATTORNEY shall:

- 2.1 Provide full information as to LITIGANT's and ATTORNEY's requirements for LITIGATION. LITIGANT is responsible for all expenses resulting from requests by ATTORNEY or by any other entity acting on behalf of LITIGANT.
- 2.2 Furnish ENGINEER, in a timely manner, readable copies of all existing studies, reports, depositions, and available data pertinent to LITIGATION. LITIGANT states that all relevant facts, reports, studies, and available data have been disclosed to ENGINEER. LITIGANT holds ENGINEER harmless for all consequences, financial or otherwise, resulting from incomplete or inaccurate disclosure by LITIGANT or LITIGANT's ATTORNEY.
- 2.3 Pay all fees associated with ENGINEER's services in accordance with AGREEMENT and in advance of ENGINEER's performing professional services.

Section 3 ENGINEER's SERVICES AND FEES: (These services may be required or optional as described on page 2.) NOTE: Fees subject to change after October 1, 2010.

PROFESSIONAL ENGINEERING SERVICE	FEE
3.1 Initial Setup: Non-refundable and required when AGREEMENT is received by ENGINEER.	\$125
3.2 Initial Consultation and investigation by ENGINEER	\$1,500*
3.3 Developing Cost Estimates: Added to the Initial Consultation fee when cost estimates are required.	\$285 per hour, minimum of 1 hour
3.4 Affidavit of Report Preparation: Less than 2 pages attached to report stating only that ENGINEER prepared report..	\$170
3.5 Affidavit of Facts: Any affidavit that includes facts, observations, or conclusions of the ENGINEER, or is more than 2 pages.	\$570, +\$50 per page over 10 pages
3.6 Initial Fact Review: Required if ENGINEER did not perform an Initial Consultation on LITIGANT's behalf.	\$950* Add \$550 if a site visit is required
3.7 All Other Services: Including code or other research, review of documents, review of depositions, affidavits, or transcripts, meeting with the LITIGANT or ATTORNEY in ENGINEER's Commack, NY office. (Added to the Initial Consultation or Initial Fact Review fee).	\$285 per hour, with a minimum of 1 hour, add \$950 if services are performed outside of ENGINEER's Commack office
3.8 Litigation Setup: Due if Initial Consultation becomes a court, arbitration, hearing, deposition, or any other appearance. This one-time fee is also due when a summons and complaint is issued, or a third party is provided with or notified of: 1) ENGINEER's name, 2) Any reports Prepared by ENGINEER, 3) Any agreements signed with ENGINEER, 4) ENGINEER's curriculum vitae.	\$450
3.9 Engineer's Report Archive Retrieval: Less than 1 year since Initial Consultation or Initial Fact Review by ENGINEER	No Charge
3.10 Engineer's Report Archive Retrieval: 1 year to 3 years since Initial Consultation or Initial Fact Review by ENGINEER	\$250
3.11 Engineer's Report Archive Retrieval: 3 years to 7 years since Initial Consultation or Initial Fact Review by ENGINEER	\$500
3.12 Engineer's Report Archive Retrieval: More than 7 years since Initial Consultation or Initial Fact Review by ENGINEER. The LITIGANT must provide all documents to ENGINEER.	\$750* Additional hourly fees at \$285 per hour will be required for re-familiarization
3.13 Subpoena or Service Handling: Due each time ENGINEER is subpoenaed or process-served documents related to LITIGATION.	\$570, plus expenses
3.14 Invoice Fee: Added to any invoices sent out because the retainer balance is negative	2.5% of billed fee
3.15 Invoice Fee: Added to any bills that are sent out because a check is not honored by a bank or a credit card charge is denied or disputed.	20% of billed fee
3.16 Date Reservation Fee: Due and payable for each specific date reserved, credited toward any appearance fee with 30 days of the reservation.	\$125 per day reserved
3.17 Pre-Appearance Review: Required and non-refundable. If appearance is postponed more than 30 days from ENGINEER's initial preparation, additional preparation time will be needed and will be paid by LITIGANT at \$285 per hour.	\$570 + \$285 per hour (if more than 2 hours)
3.18 First Appearance: First appearance of Engineer courtroom (or anywhere else requested by LITIGANT) between 9:30 and 5:00	\$1,900 per day or part thereof, a separate charge is made for each calendar day
3.19 Standby: On-call appearance or availability, which does not result in testimony, between 9:30 AM and 5:00 PM. Fee must be paid prior to prior to scheduled on-call date.	\$1,500 per day or part thereof, a separate charge is made for each calendar day
3.20 Subpoenaed Appearance: Due any time ENGINEER appears because of a subpoena regarding LITIGATION	The same as First Appearance in 3.18
3.21 After Hours Appearance: Any appearance outside of normal weekday hours, except night small claims court	Add \$1,000 to 3.18, 3.19, and/or 3.20
3.22 Surcharge: Due if the retainer and AGREEMENT are received less than 3 business days before the scheduled appearance	\$570
3.23 Continuing Appearances: Second or more consecutive days. Fee required prior to appearance.	\$1,500 per day or part thereof, a separate charge is made for each calendar day
3.24 Small Claims Appearance: Standby, or availability at night small claims court	\$1,500 per day or part thereof
3.25 Pro Se Client: Any appearance (except small claims court) where client is pro se	Add \$1,350 per day

* indicates base fee. Additional time is billed at \$285 per hour. All time is billed from when ENGINEER leaves Commack, NY, office until time ENGINEER of return to Commack, NY, office.

X _____ LITIGANT'S INITIALS
_____ ENGINEER'S INITIALS

ENGINEER COPY — WHITE
Revised: 9/16/2009

LITIGANT COPY — YELLOW

(continued on reverse side)
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- 3.26 If LITIGANT is scheduling an appearance and no report has been prepared by ENGINEER, a minimum retainer of \$5,000 is required, plus any required Engineering analysis fees. If scheduling an appearance, and a report has been prepared by ENGINEER, a minimum retainer of \$4,000 is required. If AGREEMENT is received less than 3 business days before scheduled appearance, add \$570 to the required retainer. There must be a minimum balance of \$3,400 in the retainer account for any day ENGINEER is scheduled to appear. ENGINEER will not appear if balance is less than \$3,400.
- 3.27 As an alternative to the minimum retainer schedule, LITIGANT can provide ENGINEER with a valid credit card to bill fees as they are incurred. The credit card will be charged up to five business days before the expense is incurred, except for appearance fees. Appearance fees and retainers for appearances must be billed to credit card 90 days before appearance. Otherwise, appearance fees must be in cash or certified funds.
- 3.28 If the appearance is cancelled less than 48 hours in advance, but before 2:00 PM on the business day before the required appearance, there will be a \$950 charge. If an appearance is cancelled on the day it is scheduled, or after 2:00 PM on the business day before an appearance is scheduled, \$1,500 is due. Cancellation notifications occurring after 2:00 PM on Saturday, Sunday, or legal holidays are considered to have occurred on the business day following the cancellation. If AGREEMENT is received on Saturday, Sunday, or other legal holiday, it will be considered as if it was received on the next business day.
- 3.29 As an alternate to the above fee schedule, LITIGANT can remit retainer of \$20,000 by cash or certified check for up to one week (9:00 AM to 5:00 PM) of appearance time. All other fees due under the terms of section 3 must also be paid.
- 3.30 If ENGINEER is subpoenaed by LITIGANT's adversary, LITIGANT, ATTORNEY, any municipal agency or court of law with interest in LITIGATION, or any third-party with interests in LITIGATION or aspects thereof, LITIGANT shall do one of the following:
 - a. Pay ENGINEER for services rendered according to the fee schedule set forth in AGREEMENT or;
 - b. Obtain protective order prohibiting said adversary or third-party from obtaining information from ENGINEER, at LITIGANT's sole cost and expense. If LITIGANT fails to provide said protective order, LITIGANT shall remain liable to ENGINEER for all costs incurred as a result of the subpoena according to the fee schedule herein.

Section 4 Payments:

- 4.1 For Basic Service, LITIGANT shall pay ENGINEER retainer required as above. This must be paid by Personal Check, Attorney's Check, Cash, or Certified Check no less than 10 business days prior to reservation for scheduled appearance. Credit card payments must be made more than 90 days before the scheduled appearance. All payments received are applied first to any outstanding balances, then to the retainer. If LITIGANT or LITIGANT's agent disputes credit card charges or stops payment on any check, LITIGANT agrees to be responsible for all collection costs, including reasonable attorney's fees, required to collect the outstanding fees.
- 4.2 If appearance by ENGINEER is required for more than one day, then an additional appearance fee (as per Section 3) per day is required by Cash or Certified Check prior to each additional day's appearance.
- 4.3 Fees for additional services as agreed are due and payable prior to appearance or standby dates. As soon as retainer is received, ENGINEER will commence review and research under the terms of the AGREEMENT. No time will be scheduled for appearances without receipt of retainer and signed AGREEMENT.
- 4.4 If payments to ENGINEER are not rendered in advance of requested appearance or standby services as provided above, then LITIGANT agrees that there are no further obligations by ENGINEER, and that requested appearance obligations by ENGINEER are terminated. If such payments are not provided as stated herein, the LITIGANT waives all rights to any and all of ENGINEER's prior commitments to LITIGANT, which are thus voided and annulled. If payment is not honored by the bank or credit card processing company, it is considered as if payment was not received.
- 4.5 LITIGANT shall pay ENGINEER accrued charges as stated herein. If any payment due under AGREEMENT is not made on or before due dates specified in ENGINEER's invoices, LITIGANT agrees to remit, in addition to the delinquent amount, a late charge at the rate of 1.5% per month (or the highest lawful rate) on the entire delinquent amount.
- 4.6 In the event that payment is not made by LITIGANT in accordance with conditions of AGREEMENT, LITIGANT agrees to pay for costs incurred by ENGINEER in collecting any amount due pursuant to this agreement, including but not limited to, reasonable attorney's fees, collection agency costs, court costs, etc.
- 4.7 If payment is not honored by the bank or credit card processing company, ENGINEER has no obligation to appear at any scheduled hearing, and LITIGANT is responsible for all ENGINEER's expenses.
- 4.8 Within 30 days (90 days if paid by credit card) of LITIGANT's or ATTORNEY's written notification to ENGINEER of termination of LITIGATION, ENGINEER will send LITIGANT a statement of accrued payments and fees (hereinafter STATEMENT). In the event that the payments to ENGINEER by the LITIGANT exceed the fees for the services rendered under AGREEMENT, then ENGINEER agrees to send a refund check to LITIGANT (or refund credit card charges) for the excess at the time STATEMENT is sent, provided all checks and/or credit cards have been honored. No refunds will be issued if a check or credit card has not been honored by the bank. If LITIGANT desires that the refund be sent to ATTORNEY then LITIGANT or ATTORNEY should so notify ENGINEER in writing. Cashing or depositing refund check by LITIGANT (or ATTORNEY) is an acknowledgement that STATEMENT is correct. Written notification should be sent to ENGINEER at 2171 Jericho Turnpike, Suite 230, Commack, New York, 11725-2947.

Section 5 Other Provisions:

- 5.1 If LITIGANT or ATTORNEY discloses that ENGINEER is appearing and/or provides any outside party with a copy of ENGINEER's curriculum vitae and/or discloses ENGINEER's name in any way, all applicable fees described herein are immediately due.
- 5.2 If applicable, ATTORNEY or LITIGANT's agent represents that he has authority to sign on behalf of the LITIGANT.
- 5.3 LITIGANT's returning of signed AGREEMENT to ENGINEER constitutes authorization to proceed with services under AGREEMENT, assuming required fees and retainer have been paid. Once AGREEMENT is signed, all accrued time and fees is billable even if case is settled or does not proceed for any reason.
- 5.4 If either LITIGANT or ENGINEER waives any breach of AGREEMENT, such waiver applies only to that particular breach: it does not act as a waiver of any subsequent similar or dissimilar breaches of AGREEMENT, nor does it act as a waiver of any of LITIGANT's obligations or those of ENGINEER.
- 5.5 LITIGANT acknowledges that ENGINEER has the right to notify any third party of the existence of AGREEMENT and/or its provisions and/or the fact that ENGINEER entered into it.
- 5.6 If any provision of AGREEMENT is found to be invalid as a matter of law, such finding will not invalidate the remainder of AGREEMENT; all of the remaining provisions shall be interpreted as being valid and enforceable.
- 5.7 AGREEMENT contains the entire agreement relating to the subject matters contained in it. AGREEMENT supersedes any and all previous oral or written communication, discussions and agreements with respect to the subject of AGREEMENT.
- 5.8 LITIGANT agrees that AGREEMENT will be construed and interpreted according to the laws of New York State, but without giving effect to New York's conflict of laws provisions.
- 5.9 LITIGANT agrees to relinquish all claims against ENGINEER as a consequence of ENGINEER's findings, testimony, or other appearance that may result in an unfavorable decision or outcome for LITIGANT.
- 5.10 LITIGANT acknowledges that ENGINEER is bound by laws of New York State regarding Professional Engineering. In the event that the laws of New York State require ENGINEER to take any action contrary to the LITIGANT's interests, LITIGANT will hold ENGINEER harmless for all consequences, financial or otherwise, that result from ENGINEER's actions.
- 5.11 LITIGANT will hold ENGINEER harmless for all consequences, financial or otherwise, that result from any actions ENGINEER is ordered to take by any Court of law or other lawful authority.
- 5.12 All Notices shall be sent to ENGINEER at 2171 Jericho Turnpike, Suite 230, Commack, NY 11725-2947, and not to any other address.
- 5.13 In the event of litigation between ENGINEER and LITIGANT, and/or between ENGINEER and ATTORNEY, the venue is mutually agreed to be Nassau County, New York. In the event of a refund of FEE or portion thereof, or any other sum, such refund shall be a full and final settlement of all present and future claims and causes of actions, and ENGINEER shall be thereupon generally and fully released.
- 5.14 Should any litigant or entity disclaim authority of AGREEMENT signer to act as agent of any or all litigants, then the signer of AGREEMENT herein indemnifies ENGINEER for all costs, damages, judgments, and expenses incurred by ENGINEER, including reasonable attorney's fees, regarding any claims against ENGINEER made by litigant or entity that relies on representation or conduct of ENGINEER or agents thereof.
- 5.15 LITIGANT will hold ENGINEER harmless for all consequences, financial or otherwise for incorrect information provided to ENGINEER.
- 5.16 Any modification of AGREEMENT must be in writing and signed by both LITIGANT and ENGINEER.

IN WITNESS WHEREOF, we have executed AGREEMENT as of the day and year written on page one of this document.

LITIGANT (or ATTORNEY as agent for LITIGANT): _____

Date: _____

Agreement Signer's Name and Address (Print): _____

ENGINEER: _____

Date: _____