

## Litigation Agreement Instructions

The **Litigation Agreement** should be filled out and returned *immediately*, as it is needed before scheduling an appointment or performing any work. The **Litigation Agreement** is found on pages 2 and 3 of this PDF document.

**If any info is omitted, incorrect, or difficult to read, the inspection and/or report will be delayed**

Please carefully follow these steps. You can place a check mark in the  after completing each step to remind yourself what you have completed.

- Fill in *all* the information on the top of the first page. Be sure and type or print clearly. Spaces that need to be filled in are marked by a **\***.
- 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. Payment is required at the time services are rendered. If you want the Engineering Services billed to your credit card, complete the attached **Credit Card Information Sheet**.
- On the second page, print your name and address on the line provided.
- On the line below the signature on the second page, type or print clearly the signer's name and address.
- A **Client Information Sheet** must be completed even if you have provided this information to the office. **The highlighted areas are required**. Page 4 of this PDF document is the **Client Information Sheet** that needs to be completed.
- Complete the payment information in the middle section of the **Client Information Sheet** and complete the **Credit Card Information Sheet** (page 5 of this PDF document). **The highlighted areas are required**
- Scan both pages of the signed **Litigation Agreement**, the **Client Information Sheet**, and **Credit Card Information Sheet**, and email them to [orders@heimer.com](mailto:orders@heimer.com). If you email a scanned copy, include both a subject and written text in the body of the email. Emails with only an attachment may be treated as junk mail. Alternatively, set your fax machine resolution to fine, and fax both pages of the signed **Litigation Agreement**, the **Client Information Sheet**, and **Credit Card Information Sheet** to **631.858.5599** or **646.795.4571** (3 pages total). There is no need to include a cover page.
- 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.**
- At item eight of the agreement, initial after **Signer's Initials**.
- Be sure and send us all required documentation.

## Agreement Between Litigant and Engineer

(Copyright © 1995-2016 Heimer Engineering PC. All rights reserved)

This constitutes the agreement for the performance of engineering services at the fees 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 \* \_\_\_\_\_ (hereinafter "DATE") is between Heimer Engineering PC (hereinafter "HEIMER") and \* \_\_\_\_\_ (hereinafter "LITIGANT"), represented by \* \_\_\_\_\_ (hereinafter "ATTORNEY")]

who retains HEIMER to provide preparatory, engineering, and other professional services in the matter of:

\* \_\_\_\_\_ versus \* \_\_\_\_\_ (hereinafter "LITIGATION")

AGREEMENT is contingent upon payment of retainer and fees as outlined herein. HEIMER reserves the right not to begin services until payment of retainer is received. LITIGANT acknowledges that the terms and conditions below and on the second page hereof are incorporated by reference herein and are agreed to be part of this agreement.

### Section 1 Basic Services of HEIMER

After signed AGREEMENT is received and payments are rendered per AGREEMENT, HEIMER 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 HEIMER. LITIGANT acknowledges that there are certain dates and times when HEIMER is not available.

### 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 impede the services of HEIMER. 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 HEIMER, in a timely manner, readable copies (including color copies of multi-color documents) 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 HEIMER. LITIGANT holds HEIMER 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 HEIMER's services in accordance with AGREEMENT and in advance of HEIMER's performing professional services.

### Section 3 Heimer's Services and Fees (Fees subject to change after December 31, 2017).

#### Professional Engineering Service

#### Fee

Professional Engineering Service	Fee
3.1 <b>Initial Consultation</b> and investigation by HEIMER	\$1,500 Simple, \$3,000 and up Complex
3.2 <b>All Other Professional Services:</b> Including code or other research, review of documents, review of depositions, affidavits, or transcripts, meeting with the LITIGANT or ATTORNEY in HEIMER's Commack, NY office.	\$335 per hour, with a minimum of 1 hour, add \$1,150 if services are performed outside of HEIMER's Commack office
3.3 <b>Pre-Appearance Review:</b> Required and non-refundable. If appearance is postponed more than 30 days from HEIMER's initial preparation, additional preparation time will be paid by LITIGANT at \$335 per hour.	\$670 plus \$335 per hour (if more than 2 hours)
3.4 <b>First Appearance:</b> First appearance of Engineer courtroom (or anywhere else requested by LITIGANT) between 9:30 AM and 5:00 PM. HEIMER does <u>not</u> testify at the hourly rate.	\$2,450 per day or part thereof, a separate charge is made for each calendar day.
3.5 <b>Standby:</b> On-call appearance or availability, which does not result in testimony, between 9:30 AM and 5:00 PM.	\$1,500 per day or part thereof, a separate charge is made for each calendar day
3.6 <b>Continuing Appearances:</b> Second or more consecutive days. Fee required prior to appearance.	\$1,950 per day or part thereof, a separate charge is made for each calendar day
3.7 <b>HEIMER's Attorney Fees:</b> If HEIMER's attorney is required to provide services in support of LITIGATION, because LITIGANT'S ATTORNEY fails to provide such services (including, but not limited to, services for pro se clients, preparation of affidavits, case law research, response to subpoenas or summons, etc.)	LITIGANT is responsible for services rendered by HEIMER's attorney in support LITIGATION. If HEIMER'S attorney is paid on a retainer basis, LITIGANT will pay a reasonable attorney's fees as a partial offset to the cost to HEIMER of having an attorney on retainer.

3.8 If HEIMER is subpoenaed by LITIGANT's adversary, LITIGANT, ATTORNEY, any municipal agency or court of law with interest in LITIGATION, or any third-party with an interest in LITIGATION or aspects thereof, LITIGANT shall Pay HEIMER for services rendered according to the fee schedule set forth in AGREEMENT. Alternatively, LITIGANT can obtain a protective order prohibiting said adversary or third party from obtaining information from HEIMER, at LITIGANT's sole cost and expense. If LITIGANT fails to provide said protective order, LITIGANT shall remain liable to HEIMER for all costs incurred because of the subpoena according to the fee schedule herein

3.9 As an alternative to the minimum retainer schedule, LITIGANT can provide HEIMER with a valid credit card to bill fees to as they are incurred.

**Section 4 Payments:**

- 4.1 The payment terms are NET CASH. Payment of fees (by check, credit card, money order, or cash) will be rendered at the time the services are provided. If the appearance is cancelled when HEIMER is at the location where the appearance is to take place, the full continuing appearance fee is due. CLIENT agrees to pay HEIMER'S reasonable attorney's fees involved in the collection of TOTAL FEE. HEIMER does not work on contingency.
- 4.2 As soon as retainer is received, HEIMER will commence review and research under the terms of the AGREEMENT.
- 4.3 If payments to HEIMER are not rendered in advance of requested appearance or standby services as provided above, then LITIGANT agrees that there are no further obligations by HEIMER, and that requested appearance obligations by HEIMER are terminated. If such payments are not provided as stated herein, the LITIGANT waives all rights to any and all of HEIMER'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.
- 4.4 Within 60 days (120 days if paid by credit card) of LITIGANT's or ATTORNEY's written notification to HEIMER of termination of LITIGATION, HEIMER will send LITIGANT a statement of accrued payments and fees (hereinafter STATEMENT). If the payments to HEIMER by the LITIGANT exceed the fees for the services rendered under AGREEMENT, then HEIMER 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. Cashing or depositing refund check, or accepting a credit card refund by LITIGANT (or ATTORNEY) is an acknowledgement that STATEMENT is correct.

**Section 5 Other Provisions:**

- 5.1 If LITIGANT or ATTORNEY discloses that HEIMER is appearing and/or provides any outside party with a copy of HEIMER's curriculum vitae and/or discloses HEIMER's name in any way, LITIGANT is responsible for all resulting expenses incurred by HEIMER.
- 5.2 LITIGANT will disclose to HEIMER all parties involved in LITIGATION so make sure there are no conflicts of interest.
- 5.3 HEIMER agrees to keep confidential any information provided to HEIMER that is subject to a Court confidentiality agreement provided CLIENT gives HEIMER sufficient notice of the confidentiality agreement.
- 5.4 ATTORNEY and LITIGANT understand that there are certain days the HEIMER is not available due to religious observances or other prior commitments.
- 5.5 If ATTORNEY is billing LITIGANT for HEIMER's appearance, ATTORNEY agrees to accurately disclose to LITIGANT HEIMER's actually billing.
- 5.6 ATTORNEY or LITIGANT's agent represents that he has authority to sign on behalf of the LITIGANT.
- 5.7 LITIGANT's returning of signed AGREEMENT to HEIMER 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.
- 5.8 If either LITIGANT or HEIMER 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 HEIMER.
- 5.9 HEIMER has the right to notify any third party of the existence of AGREEMENT and/or its provisions and/or the fact that HEIMER entered into AGREEMENT.
- 5.10 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 the remaining provisions shall be interpreted as being valid and enforceable. Facsimile and scanned copies shall be treated as original documents for all purposes. Initials shall be treated as signatures for all purposes. Anywhere that LITIGANT, ATTORNEY, or HEIMER initials this agreement, it is considered the same as if he or she had signed at that location.
- 5.11 AGREEMENT contains the entire agreement relating to the subject matters contained in it. AGREEMENT supersedes all previous oral or written communication, discussions and agreements with respect to the subject of AGREEMENT.
- 5.12 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.
- 5.13 LITIGANT agrees to relinquish all claims against HEIMER because of HEIMER's findings, testimony, or other appearance that may result in an unfavorable decision or outcome for LITIGANT.
- 5.14 LITIGANT acknowledges that HEIMER is bound by laws of New York State regarding Professional Engineering. In the event that the laws of New York State require HEIMER to take any action contrary to the LITIGANT's interests, LITIGANT will hold HEIMER harmless for all consequences, financial or otherwise, that result from HEIMER's actions.
- 5.15 LITIGANT will hold HEIMER harmless for all consequences, financial or otherwise, that result from any actions HEIMER is ordered to take by any Court of law or other lawful authority.
- 5.16 HEIMER has no obligation to pay any of LITIGANT's fees or expenses. HEIMER has no obligation to pay any judgments against LITIGANT.
- 5.17 All Notices shall be sent to HEIMER at 2171 Jericho Turnpike, Suite 230, Commack, NY 11725-2947, and not to any other address.
- 5.18 In the event of litigation between HEIMER and LITIGANT, and/or between HEIMER 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 HEIMER shall be thereupon generally and fully released
- 5.19 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 HEIMER for all costs, damages, judgments, and expenses incurred by HEIMER, including reasonable attorney's fees, regarding any claims against HEIMER made by litigant or entity that relies on representation or conduct of HEIMER or agents thereof.
- 5.20 If the LITIGATION venue is changed to a location more than 100 miles from Manhattan, New York, LITIGANT will pay all of HEIMER's travel expenses, including travel time.
- 5.21 If the LITIGATION venue is changed to a State other than New York, HEIMER can terminate this agreement with no notice and no obligation to refund LITIGANT's payments.
- 5.22 LITIGANT will hold HEIMER harmless for all consequences, financial or otherwise for incorrect information provided to HEIMER.
- 5.23 The employee who signs this document on HEIMER's behalf can only bind HEIMER to this agreement without changes to the pre-printed language. CLIENT agrees that any changes to the pre-printed language contained herein may only be accepted by HEIMER in a separate document signed by an officer of HEIMER. Extra instructions written by HEIMER, HEIMER's employees, or CLIENT on this agreement are not part of this agreement unless accepted as such in a separate agreement signed by an officer of HEIMER.

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)  \_\_\_\_\_

HEIMER \_\_\_\_\_ Date \_\_\_\_\_



2171 Jericho Turnpike, Commack, NY 11725  
[www.heimer.com](http://www.heimer.com) • [Info@heimer.com](mailto:Info@heimer.com)

Licensed Professional Engineers

516.487.2100 • 718.544.3000  
212.563.4777 • 631.858.5500  
914.576.6100 • 718.227.5000  
800.605.1500 • 845.638.4900

### Client Information Sheet

Fill out this page *before the end of the inspection* and hand it to the Engineer. This is not an agreement to perform the inspection. Inspections are subject to a pre-inspection agreement, available at [www.heimer.com/go/Inspection-Agreements.html](http://www.heimer.com/go/Inspection-Agreements.html). If you are not going to be at the inspection, scan and email this completed form to [Info@heimer.com](mailto:Info@heimer.com), or fax the form to **631.858.5599**. Information is confidential and is subject to Heimer Engineering's privacy policy. **The highlighted areas are required**

If any information is omitted, incorrect, or difficult to read, your report will be delayed by one or more days

Your Info	<b>Your Name</b>
	<b>Your Phone Number</b>
	<b>Your Current Mailing Address</b>
	<b>Your Email Address</b>
Payment Info	Payment is required at the time of the inspection. <b>Fill in how payment will be made below</b>
	<input type="checkbox"/> <b>Credit card.</b> Fill in the credit card information sheet. Information from a previous inspection cannot be reused. <input type="checkbox"/> <b>Credit card.</b> My credit card information was provided when the order was placed. <input type="checkbox"/> <b>Check</b> made out to Heimer Engineering PC <input type="checkbox"/> <b>Cash</b>
Property Info	<b>Address of the property inspected</b>
	The inspection report will be emailed to you and your Attorney. Please make sure that we have the correct email addresses, and that all email addresses are readable.
Attorney Info	<b>Fill in information on your Attorney information below</b>
	<input type="checkbox"/> I do not have this information with me. I will email it to <a href="mailto:Info@heimer.com">Info@heimer.com</a> within the next 24 hours. <input type="checkbox"/> I have not yet selected an Attorney. <input type="checkbox"/> I do not want the report emailed to my Attorney at this time. <i>Do <u>not</u> fill in any information below.</i>
	<b>Attorney's Name</b>
	<b>Attorney's Email Address</b> _____ <b>Attorney's Phone Number</b> _____
	<b>Attorney's Firm Name</b> _____
Control ID         -         <i>Office Use Only</i>	This document contains proprietary and confidential information. It is prohibited to release this document or the information it contains without authorization. Information in this document is subject to Heimer Engineering's privacy policy.

**Your Signature** X \_\_\_\_\_ **Today's date** \_\_\_\_\_



2171 Jericho Turnpike, Commack, NY 11725  
www.heimer.com • Info@heimer.com

Licensed Professional Engineers

516.487.2100 • 718.544.3000  
212.563.4777 • 631.858.5500  
914.576.6100 • 718.227.5000  
800.605.1500 • 845.638.4900

### Credit Card Information

Fill in this information ONLY if paying by credit card. This information is on a separate sheet to help protect the security of your credit card information. **This document will be shredded after processing payment.** If you are not going to be at the inspection, scan and email this completed form to [Info@heimer.com](mailto:Info@heimer.com), or fax the form to 631.858.5599. The amount billed to the credit card is shown on the pre-inspection agreement. **Highlighted areas are required**

**If any information is omitted, incorrect, or difficult to read, your report will be delayed by one or more days**

Cardholder	<b>Name as it Appears on Credit Card</b> First and Last Name Required _____
	Master Card, Visa, or Discover use <b>MC, VISA, Discover</b> box. American Express use <b>American Express</b> box
	<b>Master Card – Visa – Discover</b> ( <i>American Express see below</i> ) Print all information clearly
MC, Visa, Discover	<b>Card Number</b> _____
	<b>CVV Security Code</b> (from <u>back</u> of card) _____
	<b>Master Card, Visa, Discover Expiration Date:</b> <b>Month</b> _____ <b>Year</b> _____
American Express	<b>American Express</b> ( <i>Master Card – Visa – Discover see above</i> ) Print all information clearly
	<b>Card Number</b> _____
	<b>Security Code</b> (from <u>front</u> of card) _____
Billing Address	<b>AMEX Expiration Date:</b> <b>Month</b> _____ <b>Year</b> _____
	<b>Credit Card Billing Address Information</b> This information should be filled in even if you have already provided it to us.
	<b>Phone Number</b> (to contact you if there are difficulties processing the card) _____
Client	<b>Credit Card Billing Address</b> _____
	<b>Credit Card Billing City and State</b> _____
	<b>Credit Card Billing Zip Code</b> _____
	<b>Client's Name</b> _____
	<b>Address of Property Inspected</b> _____
	<b>Control ID</b> _____ <i>Office Use Only</i>
	This document contains proprietary and confidential information. It is prohibited to release this document or the information it contains without authorization. Information in this document is subject to Heimer Engineering's privacy policy.

This is not an agreement to perform the inspection. Inspections are subject to a pre-inspection agreement, which is available at [www.heimer.com/go/Inspection-Agreements.html](http://www.heimer.com/go/Inspection-Agreements.html).

**Your Signature** X \_\_\_\_\_ **Today's date** \_\_\_\_\_