

Expert Witness Terms and Conditions and Hourly Rates

1. Our expert witness rates effective January 1, 2018 are:

Personnel	Hourly Rates
Expert Witness	\$400/hr
Principal Consultants	\$380/hr
Senior Engineers	\$350/hr
Senior Consultants	\$340/hr
Consultants	\$300/hr
Architectural Production	\$200/hr
Support Personnel	\$120/hr

2. **Retention.** The parties agree that Expert will only become retained by Client once this contract has been mutually executed and Client has paid the initial non-refundable retention retainer specified in paragraph 4.b. Expert has no duties to Client until such time.

3. **Fees and Expenses.** The parties agree that the fee for all time spent on the case specifically including (but not limited to) research, conferences, consultations with Client, reviewing documents, organizing documents, analysis, testing, responding to discovery requests, report writing, testifying, investigating, reading and signing deposition transcripts, portal-to-portal travel, waiting time, preparing exhibits, preparing demonstrative aids, and preparation time for testifying at deposition, trial, hearing, arbitration or other venues will be at rates listed in paragraph 1. Time will be tracked and invoiced to the nearest .25 of an hour. In any and all events, Client will be responsible for all reasonable out of pocket expenses including, but not limited to travel, testing, research, copying, storage of evidence or documents, etc.

4. Payment Terms.

a. All payments are to be made to: ABD Engineering & Design, Inc., 124 Fulton Street East, 2nd Floor, Grand Rapids, MI, 49503. Expert's Taxpayer ID# is: 38-3631490.

b. The non-refundable retention retainer amount is \$5,000. Expert will apply this retainer against the final invoice. This non-refundable retainer amount is the

minimum fee due Expert and is earned upon receipt.

c. Expert agrees to invoice client no less frequently than monthly.

d. All invoices are due upon receipt.

e. Overdue invoices will accrue interest at a rate of 1.5% per month.

f. Fees for any time Expert is asked to reserve for testifying (at trial, hearing, deposition, arbitration or other venue) and preparation for said testimony must be paid in advance and in full 5 (five) business days prior to the time reserved for the scheduled testimony. Expert is under no contractual obligation to reserve the time or appear to testify and provide opinions unless Expert has received this payment in full at least 5 (five) business days prior to the time reserved for the scheduled testimony.

g. Client is responsible for collecting any and all deposition fees owed by other lawyers or parties. In the event Expert's deposition fees are reduced by court order, Client shall still pay Expert's full fee specified in paragraph 3.

h. Expert will invoice Client upon completion of Expert's report(s). All fees must be paid in full before a report is released to Client, other parties or anyone else. Expert is under no duty to release a report if any outstanding invoice of Expert to Client is past due. until Expert has been paid in full for all work performed to date.

i. Expert will invoice Client before scheduled testimony for any outstanding fees and expenses for work performed to date. All such fees must be paid in full before Expert testifies. Expert is under no contractual duty to appear to testify and provide opinions if any outstanding invoice of Expert to Client is past due, until Expert has been paid in full for all outstanding services performed and expenses incurred on behalf of Client.

5. Fees for Late Notice Cancellation or Rescheduling of Testimony.



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a. Client understands that Expert will suffer damages from late notice cancellation or rescheduling of Expert's testimony and that since the precise amount of these damages would be difficult to determine, Expert shall instead be entitled to the cancellation and rescheduling fees specified in paragraphs 5.c and 5.d.

b. The fees specified in paragraph 4.f. are 100% refundable to Client in the event Expert's scheduled testimony is cancelled or rescheduled with notice to Expert of 3 (three) or more business days.

c. In the event Expert's scheduled testimony is cancelled or rescheduled with 1 (one) or 2 (two) business days' notice, Expert may retain a cancellation fee of 25% of the amount from paragraph 4. f. The remaining amount will at Client's option be applied to future testimony or refunded to Client.

d. In the event of same day cancellation or rescheduling of Expert's Testimony or if Expert's testimony is completed in less time than was reserved pursuant to paragraph 4. f., Expert may retain 100% of the amount specified in paragraph 4.f.

e. In the event of any cancellation or rescheduling of testimony, Client shall be responsible for all non-refundable out of pocket travel expenses incurred by Expert such as airline tickets and hotel rooms.

6. Duties of Client. The Client's duties specifically include, but are not limited to:

a. Abiding by the applicable rules of professional conduct for attorneys.

b. Making all payments as specified in Paragraphs 4 and 5 under the terms as specified in Paragraphs 4 and 5.

c. Providing Expert with copies of or access to all non-privileged, arguably relevant documents, evidence and other materials in the underlying legal matter.

d. Notifying Expert of all parties and attorneys in the case so that Expert can check for conflicts of interest.

e. Where circumstances reasonably allow, providing Expert with prompt notice of any Daubert motions,

Frye motions, motions in limine, or other pre-trial motions made by other parties or persons to restrict, exclude or in any way limit Expert's testimony or Expert's participation in the underlying legal matter.

f. Obtaining Expert's advance approval (for accuracy) of the relevant portions of any and all answers to interrogatories, motions, expert designations or other documents which summarize Expert's qualifications, methodology, opinion(s) and/or anticipated testimony.

g. Being available as reasonably requested to meet with Expert prior to anticipated testimony.

h. Promptly notifying Expert of when and where Expert may be requested to appear to testify.

i. Promptly notifying Expert of any issues related to paragraph 8.b. to which Client is or becomes aware of.

j. Promptly notifying Expert of the settlement or final adjudication of the underlying legal matter.

7. Duties of Expert. The Expert's duties are:

a. To truthfully represent Expert's credentials.

b. To formulate with honesty and due care and truthfully express Expert's opinion(s) in those areas (and only those areas) where Expert feels qualified to render an opinion and where Client has requested an opinion. Client agrees that Expert's opinion(s) are not preordained, might be contrary to Client's position, and are subject to modification as a result of new or additional information.

c. To cease work on the underlying legal matter and promptly inform Client whenever Expert has accrued unpaid fees and expenses totaling more than \$5,000. In this event, Expert shall not perform further work on the underlying legal matter until approval is given by Client.

d. Expert is under no duty to provide and express opinions if Expert is given time deadlines or cost-based or other restrictions by Client that would not reasonably allow Expert to in good faith formulate and express his opinions with reasonable care.



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e. Subject to paragraph 7.d., to prepare a written report if Client requests one.

f. Subject to paragraph 7.d. and to circumstances beyond the Expert's control, to meet all reasonable deadlines requested by Client.

g. To retain and preserve (during this engagement) all evidence provided to Expert from the underlying legal matter unless Client gives written permission for destructive testing or the like.

h. To be available on reasonable notice to testify.

i. To be available on reasonable notice to consult with Client.

j. To work exclusively with Client in the underlying legal matter unless the parties mutually agree in writing otherwise.

k. Upon receipt from Client of the list of attorneys and parties specified in paragraph 6.d., to within 30 days check for conflicts of interest with due care and within the same 30 day period to notify Client of any conflicts of interest discovered that preclude Expert's further involvement in the underlying legal matter.

8. Expert's Right of Withdrawal From Case. Expert shall have the absolute right to withdraw, without any liability, from the case if Client violates any of the duties specified in paragraph 6 above or if:

a. Expert discovers a conflict of interest which precludes Expert's further involvement in the underlying legal matter.

b. Expert discovers that because of legal restrictions Expert's involvement or testimony in the case could reasonably be deemed to be practicing Expert's profession without a license.

9. Withdrawal. Notice of withdrawal under Paragraph 8 shall be in writing from Expert to Client. In the event of withdrawal, the parties agree that Client remains fully liable for all accrued but unpaid fees, expenses, and interest.

10. Termination. This contract shall be terminated upon written notice to Expert from Client at any time, by Expert's withdrawal pursuant to paragraph 8, at such time as Client is no longer involved in the underlying legal matter, or upon the settlement or final adjudication of the underlying legal matter. In the event of termination Client is still responsible for all sums owed Expert.

11. Document/Evidence Retention. Expert shall have no duty to retain any documents, reports, evidence, transcripts, exhibits, e-mails, electronic files or other materials from the underlying legal matter for more than 30 (thirty) days following the termination of this agreement. Expert shall return (at Client's expense) all records and evidence in the underlying legal matter to Client if a written request to do so is received by Expert within the 30 (thirty) days following the termination of this agreement.

12. Documents. All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by Expert are instruments of Expert's service that shall remain Expert's property. The Client agrees not to use Expert-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by Expert, or for future modifications to this project, without Expert express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by Expert will be at the Client's sole risk and without liability to Expert or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Expert from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.



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13. **Airline Flights.** All airline flights taken by Expert shall be direct, non-stop, coach class where possible.

14. **Disputes.** The laws of the state in which the Expert office executing this Agreement is located shall govern the validity and interpretation of this Contract. The Client agrees to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

15. **Indemnification.** The Expert agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Expert's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Expert is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Expert, its officers, directors, employees and subconsultants (collectively, Expert) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Neither the Client nor the Expert shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

16. **Standard of Care.** Expert and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing

similar services. Client agrees that services provided will be rendered without any warranty, express or implied. Expert shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws, rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

17. **Liability.** To the fullest extent permitted by law, the total liability, in the aggregate, of Expert and Expert's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Expert's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Expert under this Agreement.

18. **Miscellaneous.** Each party agrees that it may not assign its interest, rights or duties under this Contract to any other person or entity without the other party's prior approval. (Expert is under no duty to work for successor law firms on the underlying legal matter.) The performance of this contract by either party is subject to acts of God, death, disability, government authority, disaster or other emergencies, any of which make it illegal or impossible to carry out the agreement. It is provided that this contract may be terminated for any one or more of such reasons by written notice from one party to the other without liability. If either party agrees to waive its right to enforce any term of this contract, it does not waive its right to enforce any other terms of this contract. This written contract represents the entire understanding between the Expert and Client. The individual signing this contract on behalf of Client represents and warrants that he/she is duly authorized to bind Client.

In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken.



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Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Contract.

Expert shall not be required to sign any documents, no matter by whom requested, that would result in Expert's having to certify, guaranty, or warrant the existence of conditions that Expert cannot ascertain.

Neither the Client nor the Expert shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

19. **Insurance.** Without in any way limiting the Expert's indemnification obligations set out in the Indemnity Section of this Contract, the Expert shall maintain the below listed insurances during the term of this Contract:

Worker's Compensation Insurance: Worker's Compensation in compliance with statutory requirements.

Employer's Liability Insurance: Employer's liability insurance in the amount of at least \$500,000 each occurrence, \$100,000 each accident and \$100,000 each employee.

General Liability Insurance: Comprehensive general liability insurance covering operations, completed operations, contractual agreements, and independent contractors, each with minimum limits of liability no less than as set forth below: Bodily Injury, including

death: \$1,000,000 each person; \$1,000,000 each accident Property Damage: \$500,000 each accident.

Motor Vehicle Liability Insurance: Motor vehicle liability insurance including all hired or non-owned vehicle equipment for no less than minimum limits of: Bodily Injury, including death: \$1,000,000 each person; \$1,000,000 each accident Property Damage: \$500,000 each accident.

Professional Liability Insurance: Professional liability insurance in the amount of at least \$2,000,000 total limit of liability per claim and annual aggregate claim limit of \$2,000,000 with a maximum deductible amount of \$50,000.

20. **Exhibit A.** The parties of Expert and Client are defined in Exhibit A.