

## **PRIVATE BINDING ARBITRATION AGREEMENT**

This Private Binding Arbitration Agreement (“Agreement”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”).

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**WHEREAS,** \_\_\_\_\_; and

**WHEREAS,** by contract dated \_\_\_\_\_ (“Project Contract”); and

**WHEREAS,** issues have been raised and continue to exist over the parties’ performance of their obligations under the Project Contract; and

**WHEREAS,** \_\_\_\_\_ and

**WHEREAS,** the parties now wish to resolve all claims and defenses that they have asserted against each other in connection with the Project Contract by submitting the same to binding private arbitration under this Agreement.

**NOW, THEREFORE,** in consideration of the foregoing and following described covenants, terms, and conditions, the receipt and sufficiency of which are hereby acknowledged, the parties agree to proceed as follows:

1.     **Selection, Appointment, and Acceptance of Arbitrator.** The parties, with assistance of their legal counsel, agree to designate and appoint Timothy C. Cook, Esq., Cook Law & ADR, PLLC, 580 Rosedale Tower, 1700 West Highway 36, Roseville, MN 55113 (“Arbitrator”) as their sole arbitrator in this matter. The Arbitrator hereby accepts the appointment to serve as private arbitrator in this matter and to decide the same.

3. **Agreement To Be Bound.** Subject only to their rights to seek confirmation, vacation, or any other relief under the Federal Arbitration Act, the parties agree to be bound by the final decision of the Arbitrator in this proceeding.

3. **Arbitration Process and Proceedings.** The arbitration shall proceed in accordance with the provisions of the Federal Arbitration Act, this Agreement, and as further directed by the Arbitrator.

4. **Hearing Date and Location.** The arbitration hearing shall take place on \_\_\_\_\_, and thereafter as may be necessary until the arbitration record is declared closed by the Arbitrator. The hearing shall take place at the offices of Timothy C. Cook, Esq., Cook Law & ADR, PLLC, 580 Rosedale Tower, 1700 West Highway 36, Roseville, MN 55113. Cook Law & ADR, PLLC's offices shall be provided at no charge to the parties, and each party shall have a separate break-out room to have private consultations during the course of the arbitration hearing. [Alternative provision: The hearing shall take place at \_\_\_\_\_].

5. **Arbitration Claims/Answering Statements.** The parties may, but need not, submit or exchange any further formal arbitration statements or position papers in advance of the arbitration hearing. To the extent that the parties may elect to provide the Arbitrator with such position papers or statements in advance of the hearing, the parties must copy each other on any and all such submissions.

6. **Pre-Hearing Exchanges, Disclosures, and Submissions.** A preliminary list of potential hearing witnesses shall be exchanged on or before \_\_\_\_\_. On or before \_\_\_\_\_, the parties shall provide to the Arbitrator, and exchange with each other, a list of

final hearing witnesses who are reasonably expected to actually testify at hearing, and a complete binder of exhibits that will be used at the arbitration hearing.

7. **Arbitrator's Fees and Expenses.** The Arbitrator's fee shall be \$290 per hour, and shall include all preparation, hearing, deliberation, and decision time. Within ten (10) days after execution of this Agreement, each party shall make a deposit of \$\_\_\_\_\_ payable to the "Cook Law & ADR, PLLC Trust Account." The Arbitrator shall retain these amounts as advanced payment on his arbitration fee. The arbitrator shall advise the parties when his final award has been prepared. At that time, the Arbitrator shall bill the parties for an equal share of his fees and expenses, and issue refunds on deposited amounts, if appropriate. Final payment due, if any, on the Arbitrator's bill shall be paid by both parties within ten (10) days of receipt. Final payment shall be a condition precedent to release of the decision. If either party does not make payment within this time, the Arbitrator may, in his discretion, grant an additional period of time for payment or may declare, at any time thereafter, the non-paying party in default and amend his final award as appropriate. While the parties shall initially share equally in payment of the Arbitrator's fees and expenses, the Arbitrator may be allowed to assess all or a portion of his arbitration fees and expenses against the non-prevailing party, as determined solely by the Arbitrator, as a component of the final arbitration award.

8. **Arbitrator Authority/Form of Award.** The Arbitrator shall have all authority and power under this Agreement and the Federal Arbitration Act, including the power to issue subpoenas and to otherwise direct the proceedings in an efficient and economical manner. After hearing the testimony, and after giving due consideration to the evidence, the Arbitrator shall issue a final award that shall take the form of a simple line-item summary of the types or amounts of relief awarded to the parties, if any at all. The Arbitrator shall also provide a

concise, written explanation for the underlying basis of his final arbitration award, which explanation shall not exceed \_\_\_ (\_\_\_) double-spaced typewritten pages.

9. **Satisfaction of Award/Judgment.** The party against whom the award is issued, if any, shall take steps to pay any and all such award amounts promptly after the award is issued. If the award is not paid within sixty (60) days following issuance, then the prevailing party may, but need not, move to confirm the award and reduce it to judgment in the form and manner provided by law. The other party may, but need not, seek to vacate the award on grounds provided for by law. The prevailing party in any subsequent district court action to either confirm or vacate the award shall be entitled to claim and recover their reasonable attorneys' fees in further pursuing such relief.

10. **Execution in Counterpart/Facsimile Signatures/Authority.** This Agreement may be executed in counterpart, meaning that not all signatures need appear on the same document. Facsimile copies of signatures shall be deemed as originals. The signatories hereto represent that they have the authority to bind their respective entities to the terms and conditions of this Agreement.

**PARTY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**COUNSEL FIRM**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

ADDRESS

**ATTORNEYS FOR** \_\_\_\_\_

**PARTY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**COUNSEL FIRM**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

ADDRESS

**ATTORNEYS FOR** \_\_\_\_\_

**ACCEPTANCE OF APPOINTMENT**

Timothy C. Cook, Esq. hereby accepts his appointment to serve as arbitrator in the this matter, and acknowledges this Agreement as constituting his initial stipulated Scheduling Order with respect to further proceedings. Cook reserves the right to amend provisions of this Stipulation as necessary based on the request of the parties, following reasonable opportunity to be heard.

**TIMOTHY C. COOK**, Arbitrator

Date: \_\_\_\_\_