

**BERKS COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM  
ARBITRATION AGREEMENT AND STIPULATION**

**Introduction:**

It is hereby agreed by and between the parties that the arbitration of this matter shall follow the provisions of the Revised Statutory Arbitration Act (hereinafter called the "RSSA"), effective July 1, 2019.

**Selection of Arbitrator:**

The undersigned parties agree that within twenty (20) days from the date the Arbitration Agreement and Stipulation has been submitted to the Bar Association, the name of the mutually agreeable arbitrator will be forwarded to the Bar Association. If the Bar Association has not heard from the parties within twenty (20) days, it will make a random, rolling assignment of one of the arbitrators from the approved list to serve as the arbitrator in your case. The selected or appointed arbitrator will, in turn, forward to you three (3) proposed dates for the initial arbitration session.

According to the RSAA, a determination must be made as to whether the arbitration is requested pursuant to an agreement entered before the effective date of July 1, 2019. The answer to that question dictates the options the parties have available for arbitration. A preliminary conference call or meeting will be scheduled and held among counsel and the arbitrator to address this question and to discuss the available options. Should the arbitration in question be pursuant to an agreement entered before July 1, 2019, the option of a common law arbitration still exists, or the parties can choose to submit the matter through the RSAA procedure. Should the arbitration be requested pursuant to an agreement entered after July 1, 2019, the option of a common law arbitration does not exist and the case must proceed under the RSAA.

The selected or appointed arbitrator has sole authority to set deadlines, hearing dates, and to grant continuances in the proceeding. The arbitrator may, depending on the case, create a case management order for the proceeding after consult with counsel.

The parties may, by stipulation submitted to the Arbitrator, agree to select expedited hearings, limit the length of arbitration memoranda, limit the number of exhibits or witnesses and/or limit the length of the hearing. Should it be necessary, the arbitrator may by stipulation have authority to decide motions presented by the parties governing the witnesses, expert or otherwise, or evidence to be presented at the arbitration hearing. The parties may select by stipulation a specific type of arbitration to be conducted, i.e. a high/low arbitration, baseball arbitration or some other style of arbitration, and/or limit the issues to be decided by the arbitrator.

Prior to the preliminary conference, counsel for the parties should confer and decide whether they agree to waive any of the provisions set forth in Section 7321.5(b)(1)(i) through (vi). In the event that specific waivers are not agreed upon, it will be assumed that the parties have chosen not to waive any of those provisions. The parties will also be advised that under the RSAA, there is an absolute prohibition to waiving the requirements of any of the subjects contained in 7321.5(c) in which absolute prohibitions are outlined in Sections (1) through (12).

**Evidence:**

The parties agree that by stipulation they adopt the provisions of Pennsylvania Rule of Civil Procedure 1305 in regard to evidentiary issues. However, these rules may be changed with the agreement of all parties.

**No Attorney/Client Relationship:**

No attorney/client privilege attaches to any communications with the arbitrator. **The arbitrator is not serving as an attorney for any party.**

**Arbitrator not to be Called as Witness:**

The parties agree not to call the arbitrator or any member of the Berks County Bar Association Civil Dispute Resolution Program as a witness or an expert in any pending or subsequent litigation as to any matter related to this arbitration. The parties will defend the arbitrator and any members of the Berks County Bar Association Civil Dispute Resolution Program from any subpoena from any party as to the subject of this arbitration. **The arbitrator and members of the Berks County Bar Association Civil Dispute Resolution Program are not liable to any party for any act or omission in connection with this arbitration.**

**Exchange of Pre-arbitration Memoranda:**

Unless otherwise modified by stipulation of parties, the following rules shall govern Pre-arbitration Submissions. No later than fourteen (14) days prior to the date of the arbitration hearing, the parties will exchange among themselves and with the arbitrator a short arbitration memorandum of the facts of the case, as well as any legal issues of liability and damages deemed relevant by the parties. The pre-arbitration memorandum shall likewise include a list of proposed witnesses, exhibits, and stipulations. Copies of expert opinions shall not be attached to the Pre-arbitration Memoranda.

**Award:**

The award decision shall be in writing consistent with the general format of the Berks County Bar Association Civil Dispute Resolution Program, and shall be signed by the arbitrator. The parties further stipulate that if damages for delay are sought, they shall be determined pursuant to Pennsylvania Rule of Civil Procedure 238(d)(1). The award decision shall be served by the arbitrator on the parties after all arbitrator's fees have been paid, by placing a copy of the award in the mail, addressed to each party at its last known address, or to its counsel of record.

### **Fees and Expenses of the Arbitrator:**

The parties have agreed that they will each be responsible for an equal share of the fees and expenses of the arbitrator, unless there is specific written agreement otherwise. The initial cost is \$1,100.00.

The initial \$275.00 administrative fee paid to the Bar Association is not refundable. The \$825.00 initial arbitrator fee is only refundable up until the point in time that an arbitrator has been appointed. After the appointment of the arbitrator, the \$825.00 is not refundable.

The initial \$825.00 covers the first three (3) hours of the arbitrator's time. In the event that the three (3) hours are exceeded, the parties agree to pay an equal share of the arbitrator fee of \$275.00 per hour for all hours or portions of hours exceeding the initial three (3) hours covered by the base fee. Depending on the number of Parties to the proceeding and the complexity of issues present, the arbitrator may request the Parties to make a prepayment of fees for additional estimated time prior to the time of the hearing. An award will be entered by the arbitrator, unless the parties notify the arbitrator prior to the award that the matter has been settled.

Consistent with the provisions of the Civil Dispute Resolution Program, the arbitrator, following the hearing and deliberation, shall promptly issue invoices to all parties for the value of time spent by the arbitrator which exceeds the initial three (3) hour base fee paid by the parties. Upon receipt of all such additional fees from all parties, the arbitrator shall promptly make a record of an award, signed or otherwise authenticated by the arbitrator, and shall give notice of the award including a copy of the award, to each party to the arbitration proceeding.

Any expenses of the arbitrator incurred such as travel outside of Berks County, long distance telephone calls, and/or photocopies, shall likewise be borne equally by the parties.

While the initial base fee and forms should be made payable and submitted to the Berks County Bar Association, all invoices for additional time will be issued directly by the arbitrator, with payment likewise being made directly to the arbitrator.

**Disclaimer Notice: The Arbitration Agreement and Stipulation form has been organized by the Berks County Bar Association Civil Dispute Resolution Committee ("BCBA CDRC") in its interpretation of the Pennsylvania Revised Statutory Arbitration Act ("RSAA"); 42 Pa. C.S.A. § 7321.1 et seq., effective July 1, 2019. Endorsements by counsel for their clients and any unrepresented parties constitute their collective consent and agreement to the BCBA CDRC interpretation and application of the RSAA requirements by and through the arbitrator designated for their dispute.**

**The undersigned parties, intending to be legally bound, do hereby execute this document in acknowledgment and agreement with the terms and scope set forth above.**

Name of Party: \_\_\_\_\_ Name of Party: \_\_\_\_\_

By (Signature): \_\_\_\_\_ By (Signature): \_\_\_\_\_

By (Typed Name): \_\_\_\_\_ By (Typed Name): \_\_\_\_\_

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

Name of Party: \_\_\_\_\_ Name of Party: \_\_\_\_\_

By (Signature): \_\_\_\_\_ By (Signature): \_\_\_\_\_

By (Typed Name): \_\_\_\_\_ By (Typed Name): \_\_\_\_\_

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

Please sign this Stipulation and return it to:

**BERKS COUNTY BAR ASSOCIATION  
CIVIL DISPUTE RESOLUTION PROGRAM**

Berks County Bar Association  
Attention: Karen A. Loeper  
P.O. Box 1058  
Reading, PA 19603-1058