

MASTER RULES AND PROCEDURES

MISS DIG System, Inc.

THESE MASTER RULES AND PROCEDURES are adopted and made effective by MISS DIG System, Inc, a Michigan nonprofit corporation (“MISS DIG”), having its principal office at 3285 Lapeer Road West, Auburn Hills, Michigan 48326-2383, as of November __, 2019, and hereby incorporated into the Membership Agreement between MISS DIG and its members (each member of MISS DIG is individually referred to herein as “Member”).

RECITALS:

MISS DIG is a Michigan nonprofit corporation whose purposes include, but are not limited to, establishing, maintaining and promoting a 24 hour one-Notification System in Michigan as provided for in Act 174 of the Public Acts of Michigan, 2014, as may be amended from time to time (referred to herein as either the “MISS DIG Act” or “Act”), to receive and transmit (i) design tickets, and/or (ii) dig notices and/or tickets concerning excavation or blasting activities having the potential to affect facilities, in order to prevent damage to those facilities and to protect the public safety and environment as more specifically specified in the MISS DIG Act; to provide consulting, educational, operational and other related services to the Notification System and others consistent with its purpose of preventing damage to facilities and protecting the public safety and environment; and to perform related services.

Member is a member of MISS DIG to receive tickets, participate in educational events or otherwise receive the benefits of membership of being a member of MISS DIG.

NOW, THEREFORE, the following rules and procedures shall apply to membership in and operation of MISS DIG as follows:

ARTICLE I

1.01 MISS DIG has and shall continue to operate a Notification System as required by the MISS DIG Act, and more specifically MCL 460724, to be located at its principal office or at such other place(s) as shall be established from time to time by MISS DIG (hereinafter referred to as the “Notification System”), at which there shall be installed or placed in use from time to time such communication systems as MISS DIG may deem appropriate to effectuate its purposes.

1.02 Subject to funding by its members, MISS DIG shall furnish and provide such supervision, labor, transportation, materials, equipment, supplies, and services as it may deem necessary to operate and maintain the Notification System and to otherwise effectuate its purposes.

1.03 A telephone number, website or other similar communication system as deemed appropriate by MISS DIG (hereinafter referred to as the "MISS DIG Notification Information") shall be maintained at the Notification System to which contacts may be placed by those persons, firms, corporations and other entities intending to carry on proposed work. The MISS DIG Notification Information shall be advertised and promoted by MISS DIG. Member shall cooperate with MISS DIG in every reasonable manner in the advertisement and promotion of the MISS DIG Notification Information.

1.04 Dig notifications and design ticket requests made to the MISS DIG Notification Information will normally be accepted by MISS DIG on a 24 hour per day, seven day per week basis, subject to modification by MISS DIG upon a minimum of 30 days` prior written notice to Member. MISS DIG may arrange for the acceptance of dig notification by telephone, website entry or other methods it deems appropriate.

1.05 When MISS DIG accepts dig notifications and design ticket requests made to the MISS DIG Notification Information, the person will be requested to supply information sufficient to complete the MISS DIG "Ticket", then in effect.

1.06 All dig notifications and design ticket requests to the MISS DIG Notification Information accepted by MISS DIG shall be sequentially numbered. Each such dig notification shall also be recorded or otherwise stored, and the recording or stored information shall identify the time the dig notification was received.

1.07 Member will be notified of receipt of a dig notice or design ticket by MISS DIG, which are accepted at the MISS DIG Notification Information, concerning the Member in the format established by the member by means of electronic transfers dispatched by MISS DIG to Member during scheduled operating hours as soon as may be reasonably practicable after receipt thereof. MISS DIG may also, at such times as it may deem appropriate and practicable to do so, communicate by telephone to Member notification of information received from dig notifications made to the MISS DIG Notification Information. MISS DIG shall use reasonable judgment in determining the sequential order in which such information is to be transferred.

1.08 Member shall maintain, at each of its business offices, or such of its offices as may be agreed upon by Member and MISS DIG, computer and/or other equipment (as may be required by MISS DIG) to receive messages dispatched by MISS DIG from the Notification System, and agrees to provide personnel to operate the equipment on the days and during the hours indicated on the "Manning Sheet" as posted on the MISS DIG website, and to provide MISS DIG with emergency notification information at which Member will have will personnel available during all other hours.

1.09 Member shall be individually responsible for taking such action as it may deem necessary to protect its respective facilities and to prevent interruption of its respective utility or related service to the public.

1.10 The recordings and/or storing of information made pursuant to section 1.06 of this Agreement and the computer or otherwise generated messages dispatched pursuant to section 1.07 of this Agreement shall be preserved by MISS DIG for a period of six (6) years. Any such recording or information shall be made available by MISS DIG to a Member requesting the same in writing; provided that MISS DIG may charge a requesting Member a reasonable fee for investigation, research, transcription, reproduction and related matters.

ARTICLE II

2.01 Member shall be responsible for the reimbursement to MISS DIG of its proportionate share of all costs and expenses incurred or to be incurred by MISS DIG in the establishment, operation or maintenance of the

Notification System and in otherwise carrying out its purposes. Such costs and expenses shall include, without limitation, the following:

- (a) The cost of purchasing, leasing or renting any property, equipment or services associated with the Notification System or other MISS DIG purposes.
- (b) Any charges for telephone service or other data transmission directly associated with the operation of the Notification System or other MISS DIG purposes.
- (c) Wages and salaries (and loadings and overheads in accordance with MISS DIG's customary practices) of MISS DIG employees during the periods in which they are engaged in providing services for the Notification System or other MISS DIG purposes, including educational, promotional, advertising, billing, collection and any other similar activities.
- (d) Any other costs incurred in obtaining labor and services directly associated with the establishment, operation or maintenance of the Notification System or other MISS DIG purposes not covered by paragraph (c) of this section 2.01 and conducted in accordance with the MISS DIG Act.
- (e) Any taxes or levies directly associated with the Notification System or other MISS DIG purposes and the cost of any licenses or permits required for the establishment, operation or maintenance of the Notification System or other MISS DIG purposes.
- (f) Any rent or other charge(s) for the area utilized in the operation of the Notification System or other MISS DIG purposes, including supervision, cleaning and utilities.
- (g) Any cost directly associated with the storage, retention or preservation of records relating to the Notification System or other MISS DIG purposes.
- (h) The premiums for any insurance maintained by MISS DIG respecting the operation and maintenance of the Notification System or other MISS DIG purposes.
- (i) Any and all other costs or expenses incurred or to be incurred by MISS DIG in connection with MISS DIG operating the Notification System as required by the MISS DIG Act, inclusive of supervision, labor, transportation, material, equipment, supplies and services for the Notification System or other MISS DIG purposes.

MISS DIG will annually provide its members with a breakdown showing in reasonable detail the basis of the charges billed at its annual meeting of members.

2.02 The costs and expenses incurred by MISS DIG in the operation and maintenance of the Notification System and in otherwise carrying out its purposes, as set forth in section 2.01 above, shall be totaled by MISS DIG. The amount so determined shall be allocated among members and shall be payable by Member in accordance with the then current billing system approved by the MISS DIG Board of Directors. Such bills shall be due 30 days after mailing.

2.03 Member shall be individually responsible for all costs and expenses incurred in the establishment, operation and maintenance of communication equipment on its premises to receive a "ticket", as that term is defined in MCL 460.723(dd).

ARTICLE III

3.01 Except to the extent covered by insurance carried by MISS DIG, MISS DIG and its directors, officers, employees and agents shall not be liable to Member, its officers, directors, agents, employees, customers, members, partners or other similarly situated persons or entities, or to any other person or entity for any loss, cost, damage or expense incurred by any Member, its officers, directors, agents, employees, customers, members, partners or other similarly situated persons or entities, or other person or entity as a result of any action or failure to act by MISS DIG (or its employees, agents or contractors) in carrying out any of the provisions of Article I of this Agreement.

3.02 Except as otherwise provided in this Agreement, Member shall not be liable to MISS DIG for any loss, cost, damage or expense incurred by MISS DIG or other person or entity as a result of any action or failure to act by MISS DIG (or its employees, agents or contractors) in carrying out any of the provisions of this Agreement which relate to the notification of proposed work as provided for in sections 1.07 and 1.09 of this Agreement.

ARTICLE IV

4.01 This Agreement, along with the Membership Agreement, shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of the State of Michigan. All claims and/or disputes between MISS DIG and Member shall be submitted to arbitration, in Oakland County, Michigan, pursuant to the rules set forth in this Agreement below, and to the extent the parties cannot otherwise agree and the arbitrator needs additional guidance on procedural issues, pursuant to the rules for commercial disputes, then existing, of the American Arbitration Association; provided, however, that the arbitration shall be conducted by a single arbitrator chosen by MISS DIG and Member as set forth in this Agreement below, outside the scope and jurisdiction of the American Arbitration Association. The decision in arbitration shall be conclusive and binding on the parties, and may be made enforceable by entry thereof with the Oakland County Circuit Court. In the interest of the timely and less costly resolution of any disputes between the Member, and the MISS DIG, pursuant to and in furtherance of this Section, the parties hereto acknowledge and accept the following procedure for the arbitration of any and all claims and/or disputes they may have with each other:

- (a) The request for arbitration shall be made in writing to the other party, and the party to whom the suggestion is made shall respond in writing within fifteen (15) days of receipt of the written request. At this, or any other stage in the process, each party may be represented by another person of whose identity the other party shall be promptly informed.
- (b) Once the parties have requested to arbitrate the dispute, they will discuss the desired qualifications of the arbitrator, and make suggestions as to whom that arbitrator should be. The arbitrator must be selected by agreement between the parties and their respective representatives, if any, from suggestions made by either party or from a list of arbitrators provided by the Oakland County Bar Association. In the event that no agreement can be reached as to the identity of an arbitrator, each party shall select an arbitrator and those two (2) arbitrators will then agree as to a third arbitrator, which third arbitrator shall thereby solely arbitrate the dispute.
- (c) Each party shall promptly disclose to the other party any circumstances known to that party or that party's representative that would cause reasonable doubt regarding the impartiality of any such selected or considered arbitrator or arbitrators. Any selected or considered arbitrator shall

promptly disclose any such circumstances to the parties. In the event that any such circumstances have been disclosed, before or after the individual's selection, the individual shall not serve, unless both parties and the individual agree in writing.

(d) The amount and terms of the arbitrator compensation will be agreed upon between the parties and that arbitrator, prior to the appointment of that individual. Such compensation, and other costs of the process, will be shared equally by the parties, unless they otherwise agree in writing.

(e) Upon the selection of an arbitrator and his/her agreement to serve, the parties and the arbitrator shall meet to discuss the rules and procedures which shall govern the arbitration. Provided, however, that the following shall be complied with in the arbitration proceedings:

- (1) The process shall be final and binding;
- (2) The arbitrator shall be neutral, fair, and impartial;
- (3) The arbitrator shall control all procedural aspects of the arbitration, with the only restriction being compliance with these specified rules and procedures;
- (4) The arbitrator shall not be allowed to meet and communicate separately with each party;
- (5) The arbitrator may not withdraw except by written agreement with the parties;
- (6) The arbitrator will decide when to hold hearings, and will fix the time, date, and location of each such session, in consultation with the parties;
- (7) The representative of a party may, but need not, be an attorney. Each party shall be solely and exclusively responsible for any fee for services and disbursement charged by the party's own representative;
- (8) The arbitration shall be conducted expeditiously. Each party and representative will make every effort to be available when scheduled;
- (9) The parties will not be precluded from attempting to resolve the dispute during the arbitration procedure;
- (10) The parties will disclose any and all documents, name of potential witnesses, exhibits, and other "evidence" which they contemplate presenting during the arbitration;
- (11) The actual process of the arbitration will be kept confidential, and any written or oral statement made regarding settlement will not be "admissible" as "evidence" during the arbitration;
- (12) The parties will refrain from, waive, and forego pursuing any and all administrative and/or judicial remedies. If an administrative action and/or litigation is pending between the parties regarding the subject matter of the arbitration process and the name of the arbitrator, and the parties will consent to and request a dismissal with prejudice of such proceeding(s);
- (13) The arbitrator shall not be liable for any act or omission in connection with his or her role as arbitrator;

(14) The arbitrator may obtain assistance and independent expert advice with the agreement and at the expense of the parties;

(15) At the commencement of the arbitration process, each party and representative will agree in writing to all provisions of this procedure, as modified by any mutual written agreement of the parties.

(f) The arbitrator may request any part at any stage of the proceedings to submit clarification and additional information. The arbitrator may ask questions of any witness called by either party and may request the calling of experts.

The arbitrator shall keep confidential any written materials or information submitted to him/her; except that the parties and their representative shall be entitled to receive or review any such materials or information submitted or relied upon. At the conclusion of the arbitration process, the arbitrator will return all written materials and information to the party who had provided them to the arbitrator.

Regardless of whether party disputes the finding and/or recommendation of the arbitrator, the decision shall be final and binding upon the parties and neither party shall thereafter bring any action or proceeding to enforce any contractual common law or statutory right inconsistent with the terms of the arbitrator's decision. If any administrative action or litigation was previously pending, the arbitrator's decision will effectively void and/or terminate action or litigation, and the parties will arrange for the dismissal of the case promptly upon issuance of the written decision. The parties have agreed that the arbitration of a dispute will constitute a waiver of any rights, claims, or causes of action based upon the dispute which was the subject of the arbitration and shall be a complete defense to any such charge, complaint, action, or proceeding.

4.02 In the event that any provision of this Agreement or the Membership Agreement, or the application of any such provision to any party or circumstance, shall be held to be invalid or unenforceable, the remainder of this Agreement and the Membership Agreement, or the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

4.03 Any waiver at any time by any party hereto of its rights with respect to any other party, or with respect to any other matter arising in connection with this Agreement, shall not be considered a waiver with respect to any subsequent default or matter.

4.04 Any amendment of this Agreement shall be in writing signed by MISS DIG. Written notification of any amendment of this Agreement shall be given each member of MISS DIG by either mailing a copy thereof to such member or posting such change to the MISS DIG website. Such amendment shall automatically become effective on the 61st day after the earlier of either posting of the amendment to the MISS DIG website or mailing of such amendment.

4.05 This Agreement shall become effective on the day and year above first written and shall continue in effect thereafter until terminated in accordance with Section 5 of the Membership Agreement. All written notice under this Agreement shall be addressed to the following:

MISS DIG:
MISS DIG System, Inc.
Attn.: Member Services Department
3285 Lapeer Road West
Auburn Hills, MI 48326-2383

Member: Address as provided by Member to MISS DIG

4.06 Any termination of this Agreement, as provided in this Agreement, shall not discharge any party to any such Agreement of any obligation it owes any other party or person by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time or such termination.

IN WITNESS WHEREOF, the MISS DIG has adopted this Master Rules and Procedures as of the day and year first above written.

MISS DIG:
MISS DIG System, Inc., a Michigan nonprofit corporation

By: _____
Bruce Campbell, CEO