

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

EAD CONTROL SYSTEMS, L.L.C.,

Plaintiff,

vs.

BESSER COMPANY USA,

Defendant.

No. C 11-4029-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## **No. 1 — INTRODUCTION**

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

As I explained during jury selection, this is an action between plaintiff EAD and defendant Besser. EAD and Besser each claim that the other breached their contract for EAD to produce a controls system for operating robotic cranes at a concrete pipe-producing facility that Besser was installing in Calgary, Canada, for a company called Inland.

You have been chosen and sworn as jurors to try the issues of fact related to the parties' "breach of contract" claims. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. EAD and Besser stand equal before the law, and each is entitled to the same fair consideration. You should also give business entities, like EAD and Besser, the same fair consideration that you would give to individuals.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

You will indicate your verdict on the parties' "breach of contract" claims in a Verdict Form, a copy of which is attached to these Instructions. A Verdict Form is simply a written notice of your decision. When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

In these Instructions, I will explain how you are to determine whether or not either party has proved its "breach of contract" claim. First, however, I must explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

## No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Unless I tell you otherwise, facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
  - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
  - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

### No. 3 — DEFINITION OF EVIDENCE

Evidence is

- Testimony
  - Testimony may be either “live” or “by deposition”
  - A “deposition” is testimony taken under oath before the trial and preserved in writing or on video
  - Consider “deposition” testimony as if it had been given in court
- Answers to interrogatories
  - An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing
  - Consider interrogatories and the answers to them as if the questions had been asked and answered here in court
- Exhibits admitted into evidence
  - Just because an exhibit may be shown to you does not mean that it is more important than any other evidence
- Stipulations
  - Stipulations are agreements between the parties
  - If the parties stipulate that certain facts are true, then you must treat those facts as having been proved

Evidence is not

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers
- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether it is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

## No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## **No. 5 — ACTIONS OF BUSINESS ENTITIES AND AUTHORITY OF AGENTS**

In this case, the parties are both business entities. I will now explain how you are to determine the actions of business entities and the authority of their agents to act for them.

### *Actions of business entities*

- A business entity acts only through its agents or employees
- Any agent or employee of a business entity may bind the business entity by
  - acts and statements made while acting within the scope of the authority delegated to the agent by the business entity, or
  - acts and statements made while acting within the scope of his or her duties as an employee of the business entity
- An agent or employee of a business entity may also bind the business entity if
  - the business entity had notice that a third party believed that the agent had the authority to act for the business entity, and
  - the business entity did not take steps to notify the third party of the lack of authority
- An agent or employee of a business entity may also bind the business entity if the business entity knowingly accepted the benefits of a transaction entered into by the agent or employee

### *Authority of agents*

An agent or employee may have had either “actual” or “apparent” authority to act for the business entity. “Actual” and “apparent” authority are determined by what the business entity did, not by what the agent did.

- A business entity gave an agent “actual” authority if
  - the business entity intentionally gave the agent authority, either in writing or through other conduct, and
  - the writing or conduct, reasonably interpreted, allowed the agent to believe that he or she had the power to act
- A business entity gave an agent “apparent” authority if
  - the business entity knowingly permitted or held the agent out as possessing the authority to act for it in specific matters
  - the business entity did so in actions or communications to a third party, and
  - that third party reasonably relied upon the apparent authority of the agent

## No. 6 — BREACH OF CONTRACT

EAD and Besser each claim that the other breached their contract. Somewhat more specifically, EAD's claim is that Besser breached their contract by failing to pay EAD in full for work performed under the contract. Besser's claim, called a "counterclaim" to EAD's claim, is that EAD breached the contract by failing to provide a working controls system for operating the cranes. This explanation of a "breach of contract claim" applies equally to EAD's claim and to Besser's counterclaim.

A "breach of contract" claim consists of "elements," which are the factual parts of the claim. Therefore, to win its "breach of contract" claim, the party asserting the claim must prove all of the elements by the greater weight of the evidence.

The elements of a "breach of contract" claim are the following:

***One, a contract between the parties existed.***

The parties have stipulated, that is, they have agreed, that they entered into a contract on or about March 14, 2008. That contract is identified as Plaintiff's Exhibit 1. Therefore, you must consider this element to be proved.

***Two, the terms of the contract.***

"Material" terms of a contract are those that are significant to the contract. However, a written contract signed by the parties

- need not contain all the material terms of their agreement

- need not state precisely the material terms that it does contain

The terms of a written contract

- may not be contradicted, but
- may be “supplemented”—that is, “added to”

The terms of a written contract may be supplemented in the following ways:

- by a “course of dealing” or a “course of performance,” which means
  - the manner in which the parties acted, as shown by their statements, acts, or conduct after the contract was made, to which the other party did not object
- by evidence of consistent additional terms, unless the writing was intended as a complete and exclusive statement of the terms of the agreement

***Three*, the party asserting the claim did what the contract required or was excused from doing what the contract required.**

“Excuses” for failure to perform a contract or failing to comply with certain terms of a contract are explained in Instruction No. 7.

***Four*, the party against whom the claim is asserted materially breached the contract.**

A “material breach of the contract” occurred if a party failed to perform a material term of the contract.

Again, the “material” terms of a contract are those that are significant to the contract.

If a party does not prove all of these elements as to its “breach of contract” claim, then your verdict should be for the opposing party on that claim. On the other hand, if a party has proved all of these elements, then you must consider whether the opposing party has proved that its breach of the contract was excused, as “excuses” for failing to perform a contract or failing to comply with certain terms of a contract are explained in Instruction No. 7.

## No. 7 — EXCUSES FOR NON-PERFORMANCE

The party asserting a claim of “breach of contract” can prove that it was “excused” from doing what the contract required, as stated in element *three* of Instruction No. 6, and a party against whom a claim of “breach of contract” is asserted can prove that its “breach,” identified in element *four* of Instruction No. 6, was “excused,” by proving one or more of the following “excuses.”

### ***“Prior breach” by the other party***

A party’s performance of a particular term of a contract or performance of the contract as a whole is excused by the other party’s prior material breach of the contract. A party must prove the other party’s “prior material breach” by the greater weight of the evidence.

### ***“Waiver”***

A party’s right to insist on compliance with a specific term of a contract or performance of the contract as a whole can be given up or “waived.” The elements of a waiver, which must be proved by the greater weight of the evidence, are the following:

***One***, the party had a right to compliance with a specific term of the contract or performance of the contract as a whole.

***Two***, the party knew that it had a right to compliance with a specific term of the contract or performance of the contract as a whole.

**Three, the party indicated by its actions, in the surrounding circumstances, that it intended to give up a right to compliance with that specific term of the contract or to give up a right to performance of the contract as a whole.**

You must determine whether a party intended to waive only compliance with a specific term of the contract or performance of the contract as a whole, based on the circumstances of the waiver.

For example, a party can waive a contract term requiring acceptance of a change order by:

- knowing of, agreeing to, or acquiescing in extra work performed by the other party without acceptance of a change order
- a course of dealing that repeatedly disregarded the requirement of acceptance of a change order, or
- making a promise to pay for extra work that the party requested and the other party performed in reliance on that request

A party can waive performance of the contract as a whole by conduct demonstrating that the party no longer expects or wants performance by the other party.

### ***“Misrepresentation or concealment”***

A party’s performance of a contract can also be excused, if the opposing party engaged in “misrepresentation or concealment.” “Misrepresentation or concealment” must be proved by a higher burden of proof, proof by “clear, convincing, and satisfactory evidence.” Evidence is “clear, convincing, and

satisfactory,” if there is no serious or substantial uncertainty about the conclusion to be drawn from it. The elements of “misrepresentation or concealment” are the following:

***One, the opposing party made a representation that misrepresented or concealed a material fact.***

A “representation” is any word or conduct asserting the existence of a fact. “Representations” include

- opinions expressed for the deliberate purpose of deceiving another
- promises to perform acts in the future

A “misrepresentation” is a “representation” that

- the maker knew or believed was false at the time it was made
- the maker made without belief in its truth
- the maker made in reckless disregard of whether it was true or false
- the maker knew or believed was materially misleading, because it left out unfavorable information
- the maker made about an intention to do or not to do something when the maker did not actually have that intention

“Concealment” is a failure to disclose a material fact.

A “misrepresentation” or “concealment” involved a “material fact,” if

- it involved a fact that a reasonable person would consider important in making a decision
- the maker knew or had reason to know that the other party considered, or was likely to consider, the fact to be important in making a decision
- it influenced a person to enter into a transaction that the person would not otherwise have entered into

***Two*, the party asserting this excuse lacked knowledge of the true facts.**

***Three*, the opposing party intended the party asserting this excuse to rely on the representation.**

The maker intends another to rely on a representation that misrepresented or concealed material facts, if

- the maker wanted to deceive the other party or believed that the other party would, in all likelihood, be deceived
- the maker had information from which a reasonable person would conclude that the other party would be deceived, or
- the maker made the misrepresentation without concern for its truth
- the maker made the concealment without regard to its materiality to the other party

***Four, the party asserting this excuse actually relied on the representation to its disadvantage.***

The party asserting this excuse must actually have relied on the representation and that reliance must have been justified.

- The representation did not have to be the only reason for the party's actions, as long as it was a substantial factor in bringing about the party's action
- Whether reliance was "justified" depends on what a party can reasonably be expected to do in light of its own information and intelligence. Reliance is not justified, if
  - the representation concerned an unimportant fact
  - the representation was obviously false

A party relied on a representation to its disadvantage, if the representation was a proximate cause of the party's injury or damage in the party's contractual relationship. The representation was a "proximate cause" of injury or damage to another if

- it was a substantial factor in producing the injury or damage, and
- the damage or injury would not have happened if the representation had not been made

*Effect of proving an “excuse”*

If a party asserting a “breach of contract” claim proves that its own compliance with a term or terms of the contract was “excused,” in one or more of the ways set out above, and that the party otherwise did what the contract required, then you must find that party has proved element *three* of its own “breach of contract” claim, as set out in Instruction No. 6.

If a party against whom a “breach of contract” claim is asserted proves that its breach of the contract, as identified in element *four* of the claim against it, was “excused,” in one or more of the ways set out above, then you must find in that party’s favor on the “breach of contract” claim against it.

## **No. 8 — DAMAGES: IN GENERAL**

You should not consider the fact that I am instructing you on damages to be an indication that I have any view as to whether either party has proved its “breach of contract” claim. Instead, I am giving you instructions on damages for your guidance, if you find that a party has proved its “breach of contract” claim in accordance with the other instructions.

I will explain in the next Instruction how you are to determine a winning party’s specific damages. First, however, I will explain some general rules for awarding damages.

If you find in favor of one of the parties on its “breach of contract” claim, then you must determine the amount of damages to which that party is entitled. You must award a winning party such sum as you find will fairly and justly compensate it for any damages that you find it sustained as a direct result of the opposing party’s breach of contract.

In deciding what amounts, if any, to award for damages,

- Decide what damages, if any, have been proved, based upon the evidence
- Do not base the amount of damages upon speculation, guesswork, conjecture, sympathy, a desire to punish, or prejudice
- Do not decide the amount of damages by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your award of damages; instead, use your sound judgment based upon an impartial consideration of the evidence

## No. 9 — DAMAGES: KINDS OF DAMAGES

You must decide whether to award a winning party “compensatory damages” or only “nominal damages.”

### *“Compensatory damages”*

#### *The measure of damages*

Damages for “breach of contract” are the amount that would place the winning party in as good a position as it would have enjoyed if the opposing party had not breached the contract. The damages that you award must have been

- foreseeable at the time that the parties entered into the contract, or
- reasonably foreseen at the time that the parties entered into the contract

*As to EAD’s claim of breach of contract*, this amount is the amount that will reimburse EAD for the loss caused by Besser’s failure to perform the contract by paying EAD in full.

- EAD seeks the following items of damages:
  - the amount due for services EAD performed pursuant to the original contract
  - the amount due on “Time and Materials and Expenses” invoices above the fixed cost of the contract, and

- the amount due for drawings and documents that EAD was required to prepare in excess of the number estimated in the original contract

*As to Besser's claim of breach of contract*, this amount is the amount that will reimburse Besser for any additional expenses incurred as a result of EAD's failure to perform the contract by providing a working controls system.

- Besser seeks the following items of damages:
  - the amount of additional travel expenses incurred in Calgary by EAD
  - the amount of payments to third-parties to complete programming work
  - the amount of additional expenses for travel and labor for Besser employees to support EAD's performance, and
  - the amount of overbillings by EAD or overpayments to EAD based on a faulty exchange rate and EAD's improper 10% markup of expenses

### *Mitigation of damages*

A person asserting a "breach of contract" claim has a duty to "mitigate" its damages, which means that party had an obligation to use reasonable efforts to lessen the damages caused by the other party's breach. To prove that the winning party failed to mitigate damages, the opposing party must prove the following by the greater weight of the evidence:

***One***, there was something that the winning party could have done to lessen its damages.

***Two***, requiring the winning party to lessen its damages in that way was reasonable under the circumstances.

***Three***, the winning party acted unreasonably in failing to take the action to lessen its damages.

***Four***, the failure to take the action increased the damages to the winning party.

If the opposing party proves that the winning party failed to “mitigate” its damages, then

- You must determine the amount that the winning party’s damages could have been reduced by “mitigating” the damages, and
- Subtract that amount from the amount of damages that you would otherwise award the winning party

### ***“Nominal damages”***

You may award “nominal damages” instead of “compensatory damages” to vindicate a winning party’s rights under a contract.

- You can only award “nominal damages” if the opposing party’s breach of the contract has not caused injury that can be valued in monetary terms
- Do not award “nominal damages” if you award any “compensatory damages”

- “Nominal damages” cannot exceed one dollar

## No. 10 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
  - An opening statement is not evidence
  - It is simply a summary of what the lawyer expects the evidence to be
- EAD will present evidence and call witnesses and the lawyer for Besser may cross-examine them
- Besser may present evidence and call witnesses, and the lawyer for EAD may cross-examine those witnesses
- The parties will make their closing arguments
  - Closing arguments summarize and interpret the evidence for you
  - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict

## No. 11 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## No. 12 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
  - to decide how certain evidence is to be treated
  - to avoid confusion and error, and
  - to save your valuable time
- We will do our best to keep such conferences short and infrequent

## No. 13 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## No. 14 — QUESTIONS BY JURORS

When the attorneys have finished questioning a witness, you may propose questions in order to clarify the testimony.

- Do not express any opinion about the testimony or argue with a witness in your questions
- Submit your questions in writing by passing them to the Court Security Officer (CSO)

I will review each question with the attorneys. You may not receive an answer to your question:

- I may decide that the question is not proper under the rules of evidence
- even if the question is proper, you may not get an immediate answer, because a witness or an exhibit you will see later in the trial may answer your question

Do not feel slighted or disappointed if your question is not asked. Remember, you are not advocates for either side, you are impartial judges of the facts.

## No. 15 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

## No. 16 — DELIBERATIONS

In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

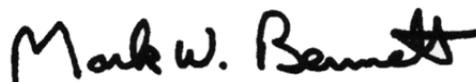
- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court.
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment. However, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors.
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.
- Remember that you are not advocates, but judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.
- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in

writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.
- Your verdict on each question submitted must be unanimous.
- Complete and sign one copy of the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 8th day of November, 2012.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

EAD CONTROL SYSTEMS, L.L.C.,

Plaintiff,

vs.

BESSER COMPANY USA,

Defendant.

No. C 11-4029-MWB

**VERDICT FORM**

On the claims presented in this case, we, the Jury, find as follows:

<b>I. EAD’S CLAIM OF BREACH OF CONTRACT</b>	
<b>Step 1:</b> Verdict	On EAD’s claim of “breach of contract,” as explained in Instruction No. 6, in whose favor do you find? <i>(If you find in favor of Besser, then do not answer the questions in Step 2 concerning EAD’s damages. Instead, please go on to consider your verdict on Besser’s claim of “breach of contract” in Part II of the Verdict Form. However, if you find in favor of EAD, then please consider the questions in Step 2 concerning EAD’s damages. )</i>
	<input type="text"/> EAD <span style="margin-left: 150px;"><input type="text"/> Besser</span>
<b>Step 2:</b> EAD’s damages	<i>If you found in favor of EAD, please indicate the amount of damages that EAD has proved were caused by Besser’s breach of the contract, as explained in Instruction No. 9. Remember that you may only award (a) “compensatory damages” or (b) “nominal damages,” but not both. (When you have answered this question, please go on to consider your verdict on Besser’s claim of “breach of contract” in Part II of the Verdict Form.)</i>

<b>(a)</b>	Compensatory damages:	
	\$ _____ due for services EAD performed pursuant to the original contract	
	\$ _____ due on “Time and Materials and Expenses” invoices above the fixed cost of the contract	
	\$ _____ due for drawings and documents that EAD was required to prepare in excess of the number estimated in the original contract	
	\$ _____ TOTAL COMPENSATORY DAMAGES	
<b>OR</b>		
<b>(b)</b>	\$ _____ in nominal damages ( <i>Remember that nominal damages cannot exceed \$1.</i> )	
<b>II. BESSER’S CLAIM OF BREACH OF CONTRACT</b>		
<b>Step 1: Verdict</b>	On Besser’s claim of “breach of contract,” as explained in Instruction No. 6, in whose favor do you find? ( <i>If you find in favor of EAD, then do not answer the questions in Step 2 concerning Besser’s damages. Instead, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict. However, if you find in favor of Besser, then please consider the questions in Step 2 concerning Besser’s damages.</i> )	
	___ Besser	___ EAD
<b>Step 2: Besser’s damages</b>	<i>If you found in favor of Besser, please indicate the amount of damages that Besser has proved were caused by EAD’s breach of the contract, as explained in Instruction No. 9. Remember that you may only award (a) “compensatory damages” or (b) “nominal damages,” but not both. (When you have answered this question, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
<b>(a)</b>	Compensatory damages:	
	\$ _____ for additional travel expenses incurred in Calgary by EAD	
	\$ _____ for payments to third-parties to complete programming work	
	\$ _____ for additional expenses for travel and labor for Besser employees to support EAD’s performance	
	\$ _____ for overbillings by EAD or overpayments to EAD based on a faulty exchange rate and EAD’s improper 10% markup of expenses	
	\$ _____ TOTAL COMPENSATORY DAMAGES	

<b>OR</b>	
<b>(b)</b>	\$_____ in nominal damages ( <i>Remember that nominal damages cannot exceed \$1.</i> )

\_\_\_\_\_  
Date

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror