

SAMPLE

RETAINER AGREEMENT

The undersigned, _____, residing at _____ ("**you**" or "**your**"), hereby retains and employs XXX ("**we**" or "**us**") as attorneys to represent you in all matters with regard to _____ [the formation of a New York corporation and the preparation of a Shareholders' Agreement - add: and the general representation of the corporation on an as-requested basis once it is operational] (the "**Engagement Matter**"). *[Note to Practitioner: Clearly define the Engagement Matter. For example, in a PI case are you required to prosecute or defend an appeal?]*

In consideration of the services that are to be rendered by us, the parties agree as follows:

A. Compensation. You will pay for services rendered [**SELECT ONE, DELETE THE REST**]:

a fee calculated on the basis of our hourly charges in accordance with our normal billing practices. These charges are based upon each professional's years of experience, specialization in practice and level of professional attainment. Records will be kept of all time expended by our personnel. Our current hourly rates, which are subject to change during the course of the Engagement Matter, are as follows:

| | |
|-----------|----|
| Partners | \$ |
| Associate | |
| Paralegal | |

a fee based primarily on the amount of time spent by lawyers, paralegals, other paraprofessionals and, in some cases, law clerks. The fee may be adjusted upward based upon other factors, such as the novelty or complexity of the issues and problems encountered, the extent of the responsibility involved, the result achieved, the efficiency of our work, the customary fee for similar legal services and other factors that will enable us to determine a fair fee.

a contingent fee of one-third (1/3) of the net proceeds of the matter, whether resulting from suit or settlement. Net proceeds are determined by subtracting from the recovery all Expenses (as defined below). Costs as taxed and interest on any judgment are included in the amount of the recovery.

a contingent fee of ___% of the total proceeds of the matter, whether resulting

from suit or settlement, but in all events and regardless of the outcome a minimum fee of \$____. [For non-PI and W/C cases: The contingent fee will be calculated before deduction of any Expenses (as defined below).]

a fixed fee of \$_____.

a fee computed as follows: _____.

B. Billing Cycle. Fees shall be billed **[SELECT ONE - DELETE THE REST]**

monthly semi-annually bi-monthly annually quarterly
at completion other (describe)

C. Expenses. Certain expenses (the "**Expenses**") may be incurred by us on your behalf during the course of the Engagement Matter. You will reimburse us for all Expenses, which may include but are not limited to filing fees, expenses for recording documents, obtaining deposition transcripts or abstracts, travel, computerized research, long distance telephone calls, photocopies, courier deliveries and secretarial overtime, as well as the fees and expenses of experts whose services may be engaged by us on your behalf, and all other expenses reasonably necessary for the proper performance of legal services. Expenses will be billed to you monthly. We reserve the right to have you pay Expenses directly to the service provider.

D. Payment. Payment of legal fees and Expenses is due within thirty (30) days after the date of the invoice. Invoices that are unpaid after thirty (30) days will be subject to a late charge of 1.0% per month (12% per year) on unpaid balances commencing from the date of the invoice and continuing until paid. If any invoice remains unpaid for more than sixty (60) days, we may, consistent with our obligations under the New York Rules of Professional Conduct, cease performing services until arrangements satisfactory to us have been made for payment of the arrearages as well as future fees and Expenses.

E. Retainer. You have deposited with us the sum of \$ ____ (the "**retainer**") on account for payment of legal fees and/or **[NOTE: omit the reference to fees if this is a contingent matter]** Expenses that you will be incurring. We will hold the retainer in trust until **[fees or]** Expenses are incurred, at which time the retainer may be used to pay the **[legal fees or]** Expenses. If a retainer is not paid at this time, or if the balance in the trust account falls below \$_____, we reserve the right to require payment of a retainer or an additional retainer, as the case may be, at any later time as a condition to our continuing to represent you.

F. Arbitration of Fee Disputes. Although we sincerely hope that we will not have any disagreements with respect to our legal fees, Part 137 of the Rules of the Chief

Administrator of the New York Courts provides that certain fee disputes are subject to arbitration at the Client's option. We will provide you with a copy of that Rule upon request. Information may also be obtained at www.courts.state.ny.us/admin/feedispute/index.shtml.

G. Attorney's Lien. We have a lien against any sums recovered or otherwise arising out of the Engagement Matter in an amount equal to the legal fee then earned and Expenses incurred for which payment has not been received. Our files are our work product and need not be turned over to you until full payment of any outstanding invoices and until the legal fee then earned and all Expenses have been paid.

H. Offers of Compromise. If the Engagement matter involves any offer of compromise or settlement is received, such offer shall be conveyed by us to you together with our recommendations, or by you to us with your instructions or recommendations. Neither party shall enter into any agreement for the compromise and settlement of any claim arising out of or based upon the Engagement Matter without the written consent of the other.

I. Our Representation of You. We will represent you to the best of our ability, consistent with all professional standards of competence and integrity. We have not made any warranties or given any guaranty regarding the ultimate success or outcome of our services.

J. Electronic Mail and Cellular Telephones. Although we have an email address, and although matters might be discussed on cellular telephones, neither medium is private or confidential. You should therefore be discreet in discussing private matters in emails or by cellular telephone.

K. Termination. You may terminate our representation at any time. We have the same right if we determine that our representation of you becomes infeasible for any reason, subject to reasonable notice for you to arrange other counsel, in compliance with the New York Rules of Professional Conduct. Upon termination, files shall be turned over to you upon payment of all legal fees and Expenses, as set forth above.

L. File Materials. We will store at our expense various documents and materials pertaining to the Engagement Matter for a period of three (3) years following termination of this representation, after which period we may destroy all such documents and materials without prior notice to you. Therefore, upon termination of the Engagement Matter, you should request copies of any documents and materials that you wish to retain.

Thank you for requesting us to represent you in the Engagement Matter. Please sign below to acknowledge your acceptance of this Agreement and your receipt of a duplicate copy of it.

Dated: _____

Client

Dated: _____

XXX

By: _____