

RETAINER AGREEMENT

Dibble & Miller, P.C.

This Retainer Agreement is a binding contract between the Law Firm of Dibble & Miller, P.C. and you, the Client of the Law Firm of Dibble & Miller, P.C.

It is important that you read this Retainer Agreement and that you understand each and every part of this Agreement. Do not sign this Retainer Agreement until you are comfortable that you agree to be bound by the terms and conditions of this Retainer Agreement.

The Law Firm of Dibble & Miller, P.C. ("Firm") has been asked to provide legal representation to the Client listed below in connection with certain legal matters listed below. The Firm is pleased to have the opportunity to provide such legal representation and will do so upon the terms and conditions in this Agreement.

Required Agreements. This Agreement is intended to inform the Client of the Firm's policies and procedures. In addition to this Agreement, the Client will receive a document entitled "Disclosure Statement of Client's Rights and Responsibilities", which the Client should read immediately. Until both of these documents are signed and returned, the Firm can perform no work for the Client.

Office Hours. Our office is open at 8:30 a.m. each morning during normal business days. The Client should try to make advance arrangements to see an attorney because the attorney may be busy and unable to see the Client if the Client just drops in; although, if the Client does drop in, the Firm will attempt to accommodate the Client. Also, the office officially closes at 5:00 p.m., but the attorneys are often in the office for a longer period of time, and a secretary is in the office until 5:30 p.m.

During the time when the office is closed, the Firm has an answering machine on its telephone line. Please use it to leave a message for anyone in the office. The answering machine is checked each morning that the Firm is open. If the office is closed and the Client has an emergency, please call the responsible attorney at home. Each home telephone number for the attorneys at this office is listed in the telephone book.

General Legal Services. The legal services to be provided include, as applicable, time spent on legal research, document reviewing and drafting, correspondence, depositions, court appearances, conferences, telephone calls, negotiations and other services related to matters about which the Firm has been retained. These legal services will be provided by the Firm as needed without need for consultation with or authorization from the Client. Unless specifically stated in writing, this Agreement does not include charges for, or obligate the Firm to, (1) appeal

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(or to file a notice of appeal) any matter on behalf of the Client, or (2) enforce any Order, Judgment or Decree brought by or against the Client.

Result of Legal Services. Because of the nature of the matters for which this Firm has been retained and because of the possibility of the occurrence of unpredictable or unforeseen circumstances, the Client recognizes that the Firm has not, cannot and will not guarantee a particular result and that the Firm has not made any representation or forecast, express or implied, of the outcome of the legal matters of the Client.

Initial Conference with Client. The initial meeting or telephone conversation with the Client is intended to provide the Client, without cost to the Client, an opportunity to "get to know" this Firm and the attorney with whom the Client will be working. Therefore, it is the practice of this Firm not to charge for the initial meeting or conversation with the Client (which conversation could have been on the telephone).

However, if the Firm is later retained by the Client, the Firm reserves the right, without further notice, to charge for such initial meeting or conversation if substantive legal or factual matters were discussed. If the Firm was not able to charge for such initial meeting or conversation, an attorney might hesitate to become deeply involved in the Client's legal matters or to render legal consultation until a later meeting or conversation with the Client. Such a result might not be in the Client's best interests.

Delegation of Work. The attorney with whom the Client primarily works may assign parts of the Client's work to other professionals or personnel in the Firm who will work under the attorney's supervision. The supervising attorney will continue to be responsible to the Client for the entire assignment. It is the Firm's practice to assign tasks to others in such a way as to produce quality work at reasonable cost to the Client given the nature of the specific project. While the attorney with whom the Client primarily works will endeavor to inform the Client when any of the Client's work is assigned, information about the assignment of the Client's work, and to whom it was assigned, will be given to the Client upon request.

Office Manager. The Firm's Office Manager is David B. Nickason, who is responsible for the day-to-day business management of the Firm. The Office Manager does the client billing, keeps the books, and pays the Firm's bills. If the Client has any questions about the administration of the Firm, please call the Office Manager.

Fee for Professional Services. Because of the nature of the matters for which the Client retained this Firm and because of the possibility of the occurrence of unpredictable and unforeseen circumstances, unless otherwise stated in writing, this Firm is unable to quote the Client a specific fee for professional services.

While the time required to complete the Client's work, which is billed at the Firm's hourly rate, is the prime consideration for determining the fee to be charged the Client, the fee may be adjusted because of certain special factors: (1) the novelty and difficulty of the questions involved; (2) the likelihood that the retention of this Firm as counsel may preclude or limit the

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Firm in connection with other legal matters; (3) the unique or exceptional results obtained; and (4) the experience, reputation, ability or skill of the Firm in the area for which this Firm is retained to represent the Client. The Client agrees to pay the fee as determined by this criteria.

Hourly Rate. The hourly rate for time spent on Client matters is \$150.00 per hour for attorney time, \$100.00 per hour for paralegal and legal assistant time, and \$80.00 per hour for secretary time. The Client agrees to pay these amounts when they are billed to the Client. These rates are adjusted periodically and sometimes without advance notice, and any modifications of such rates are applicable to legal services performed after the new rates become effective.

It is anticipated that the Firm in the next 6 months will raise its rates as follows: the rate increase for attorneys will not exceed 25% of the present hourly, the rate increase for paralegals and legal assistants will not exceed 25% of the present hourly rate, and the increase rate for secretaries will not exceed 25% of the present hourly rate. If the rates are increased, this Agreement will be your only advance notice of such increase.

Attorney, paralegal and secretary telephone calls are billed at a minimum of 15 minutes per call.

Computer Research Services. In representing Clients, the Firm may use remote, on-line, data-base computers to research the law and to acquire information from public records (e.g., tax liens and warrants, real estate transactions, corporate information, mortgages, judgments, etc.). The Firm will use such computers in the course of representing a Client when it is believed that the cost is justified by saving the time of the attorney or the office staff or by its enhanced research capabilities.

The cost for such computer use varies, with legal research usually being the most expensive and public record access usually being the least expensive. Since the Firm maintains an in-house legal library, the use of remote computers for legal research is less than it would be if the in-house library was not maintained. However, public record access is frequently necessary and is usually required when the legal services involve the purchase or sale of real estate, non-payment of taxes, corporate formation and ownership, and bankruptcy or debtor/creditor matters.

The Client is responsible for the cost of all computer use for research, which costs will be billed to the Client as a disbursement. The amount billed to the Client depends on the computer services utilized by the Firm. If the Firm utilizes computer services that are billed to the Firm at a fixed monthly rate, the Client will be billed an amount not to exceed \$50.00 per month for each Client Code for which such computer services are utilized during the month. If the Firm utilizes computer services that are billed other than at a fixed monthly rate, the Client will be billed at the rate of 125% of the cost incurred by the Firm for the computer time.

Disbursements. The Client agrees to pay all disbursements made by the Firm on the Client's behalf. Disbursements include sums of money spent by the Firm (i.e., "out of pocket" costs) on the Client's behalf. These disbursements are usually billed as they are incurred and payment is due upon receipt by the Client of the Firm's bill. Retainers will not be used to pay disbursement

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as long as fees for professional services are intended to be paid by the retainer. The disbursements charges include the actual cost of the disbursement plus administrative charges to cover the Firm's services and costs for advancing funds on the Client's behalf.

Examples of typical disbursements are copy charges (at the rate of 20¢ per copy, for all copies made by the Firm, including copies of documents furnished by the Client for use by the Firm), long distance telephone charges, special mail or delivery charges, stamps, fees for the receipt and sending of faxes (at the rate of \$1.00 per page), shipping costs, overnight deliveries by national overnight delivery services (e.g., Federal Express), travel expenses, parking fees, filing fees, subpoena fees, court costs, process services, court reporters, transcript costs, witness fees, staff overtime, on-line data-base computer services, search fees in government offices, real property title searches, surveys, credit reports, vehicle title reports, State Department of Motor Vehicle Reports, accountant costs and deliveries by a messenger, including the Firm's Messenger (at the rate of up to \$15.00 per delivery, for deliveries in the City of Rochester, and at higher rates for deliveries to other locations), of documents on the Client's behalf.

Alternatively, in order to reduce the Client's expenses and the Firm's administrative expenses, to the extent practical, the Firm may ask the Client to arrange for the services for which the disbursement would have been incurred and to pay charges directly to outside vendor. The Firm may also send the Client the outside vendor's bill for the disbursement and ask the Client to pay the bill directly and to send to the Firm a copy of the payment check for the Firm's files.

Payment of Bills. Each month (but occasionally every two months) bills for services and unpaid disbursements are sent to the Client, except that unpaid disbursements of a significant amount are usually billed as incurred. The terms are "due upon receipt". If a Firm's bill is not paid when due, the Firm will charge a service charge on the unpaid balance at the rate of 1½ % per month, from the date of the original statement to the date of payment.

In some cases, such as real estate transactions where the Firm expects the closing to occur soon, the Firm may not bill the Client until the project is completed. Even in such cases, the Firm reserves the right, without further notice, to send progress bills if the project takes longer than expected.

It is the Firm's policy to ask for disbursements to be paid by the Client before the Firm has to advance the funds, or incur the disbursement, on the Client's behalf. The Client agrees to advance funds to the Firm for disbursements when asked.

Errors in Billing. Every effort is made to avoid errors in billing. If an error should occur, or if there is anything on a bill that the Client does not understand or disputes, the Client should, immediately upon receipt of the bill, contact the office manager, or the attorney with whom the Client is working, to discuss the Client's concern. There is no charge for discussions about the Client's bill.

Fee Dispute. The Client must inform the attorney working on the Client's legal matters immediately upon receipt of a bill if there is a fee dispute. The Firm will assume, and rely upon

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the fact, as more services are rendered to the Client, that there is no fee dispute if the Firm is not informed of a fee dispute within ten (10) days upon receipt by the Client of a bill.

Should a dispute arise concerning fees charged by this Firm, it is not, generally, the practice of this Firm to sue to settle fee disputes. Instead, either the Firm or the Client may seek fee arbitration with the Monroe County Bar Association Fee Arbitration Program; if this is done, the result will be binding on both the Client and this Firm. At any time that the Client requests, the Firm will provide the Client with information concerning fee arbitration.

Retainers. The Firm usually requests a retainer. A retainer is a "lump-sum" of money received by the Firm in advance of the time that services are rendered. The retainer is deposited into the Firm's operating account, not the Firm's escrow or trust account. No interest is paid on the retainer.

The amount of a retainer is entered as a credit on the Client's bill. As time charges are incurred, they are entered on the Client's bill, which charges then reduce the amount of the credit and retainer. When the time charges exceed the credit, a bill is sent to the Client. The Firm only sends bills that have credit balances when requested by the Client.

It is the practice of the Firm to request an additional retainer (i.e. additional "lump sum" payment) to cover estimated future costs after an existing retainer is depleted. This is especially true when the attorney is required to render services immediately or upon demand as may be dictated by the nature of the representation or before work is done for other existing clients. Additional retainer fees are required to cover the estimated legal fees necessary to respond to a lawsuit, hearing, Motion, Show Cause Order, Temporary Restraining Order or a government lien, levy or seizure. An additional retainer is also required if the Firm is retained to handle a new legal matter.

If the Firm completes the services for which it was retained, or if the Firm no longer represents the Client (either because the Firm terminated its representation of the Client or the Client discharged the Firm), at a time when there is a credit balance on a Client's bill, the amount of the credit balance will be returned to the Client, after deduction of all unpaid fees and disbursements, the later of the next time the Firm regularly bills its Clients or during the month following the month during which the Firm ceased rendering services to the Client. The Firm does not ask for, or accept, non-refundable retainers.

Security for Fees. It is usually the practice of the Firm not to request security (in the form of a mortgage on the Client's house or other real estate, a confession of judgment, etc.), for the payment of fees or disbursements. If such security is to be requested by the Firm, the Client will, generally, not be asked to give such security until the Client has been advised to seek independent advice from an attorney not associated with the Firm.

Hourly-Professional Time. Our policy regarding billing time is simple. If a professional records time, it is billed unless he or she indicates that all or a portion of the time should not be billed.

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Suspension of Work for Non-Payment. After notice to the Client, the Firm will suspend work on behalf of a Client under the following circumstances: (1) a Client check is returned for insufficient funds (the charge to the Client for returned checks is \$75.00 in addition to any other cost incurred by the Firm); (2) the Client misses an installment payment of the legal fees due to the Firm; (3) failure of a Client to pay a request for a retainer; and (4) failure of the Client to furnish requested information relevant to any matter upon which the Firm is working. Once the returned check is paid, the missing installment payment is made, the retainer is paid, or the relevant information is furnished, work will resume, unless the Firm determines that such failure seriously affected the lawyer-client relationship or the Firm believes that such failure is likely to occur again.

Fixed and Contingent Fees. It is, generally, the practice of this Firm to not charge a fixed or contingent fee for professional services. A *fixed fee* is a fee agreed upon for a specific amount of money for certain services, no matter, for example, if the agreed upon services required 1 hour or 10 hours of work. Examples of fixed fees that are charged by this Firm are house closings and formation of corporations. A *contingent fee* is a fee based on a percentage (usually 33 1/3%) of the proceeds received by the Client as a result of the attorney's work. An example of a contingent fee charged by this Firm is an attorney representing a victim of a car accident in order to receive damages for the injury.

If a fixed or contingent fee has been agreed upon, the Firm will give the Client a written agreement describing the services to be rendered. Without such an agreement signed by an attorney in this Firm, no professional services will be provided for a fixed or contingent fee, but rather will be charged as provided in this Retainer Agreement under the paragraph entitled Fee for Professional Services. Even if a fixed or contingent fee has been agreed upon, disbursements are still required to be paid when billed as set forth in the paragraph entitled Disbursements.

Professional services rendered for all commercial litigation (e.g., dispute resolutions and litigation involving corporations, partnerships, contracts, leases, mortgages, debt resolution, etc.) are not rendered for a fixed or contingent fee, because of the nature of the work, but rather will be charged as provided in this Retainer Agreement under the paragraph entitled Fee for Professional Services.

If the Client has retained this Firm to represent the Client (1) in the preparation of an IRS or NYS DTF Offer in Compromise; (2) in filing with the IRS an IRS Collection Information Statement, Form 433-A (Individual) or Form 433-B (Business); (3) when the IRS or the NYS DTF is attempting to collect taxes; (4) when the Client has failed to timely file tax returns, then all such professional services, because of the nature of the work involved, are also not rendered for a fixed or contingent fee, but rather will be charged as provided in this Retainer Agreement under the paragraph entitled Fee for Professional Services.

Status of Work; Copies of Client Files. The attorney working on the Client's legal matters will endeavor to keep the Client apprised of the status of the work that is being performed for the Client. The Client, also, can call for an update as the Client wishes. The Client is entitled to a

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copy of correspondence and documents relating to the work that the Firm is doing for the Client, and, if the Firm has not suspended work for a Client, the Firm will forward such copies to the Client upon request. Of course, the Client is billed for all copies.

Termination of Representation. The Client is free to terminate the services of the Firm anytime that the Client wishes by giving written notice to the attorney responsible for the Client's work. The Client will, of course, be liable for disbursements incurred and legal fees rendered up to the time of receipt by the Firm of the notice of termination. The Client will also be charged for the professional services rendered and disbursements incurred in order to withdraw from any court or administrative proceeding pending at the time of the termination. The Firm would like to know the reason for a termination, but the Client is not obligated to give a reason.

The Firm can terminate its representation of the Client at any time, even on the day of a motion, hearing, or trial, as may be permitted by law or the NYS Lawyer's Code of Professional Responsibility, and will do so (1) if the Firm determines that it is ethically required to do so; (2) if a conflict of interest develops; (3) if irreconcilable differences develop in the Firm's relationship with the Client; (4) upon receipt of a morally repugnant Client request; (5) if the Client has not paid timely any retainer, additional retainer, legal fee installment payment, or legal fees or disbursements incurred; (6) if the Client is unable to fulfill any of the Client's obligations as set forth in this Agreement, (7) if the Client fails to fully cooperate with the Firm in any matter upon which the Firm is working for the Client; (8) if the Client fails to provide all information relevant to any matter upon which the Firm is working for the Client; or (9) if, during the course of the Client's relationship with the Firm, there develops a failure of communication with the Client, or (10) if the Firm receives from the Client, at Client's direction or on Client's behalf, substantive inaccurate or misleading information pertaining to any aspect of the Firm's representation of the Client.

Upon a termination of the lawyer-client relationship, a bill will be forwarded to the Client with final charges, which bill is due upon receipt.

Retaining and Charging Liens. If the Firm is no longer acting as the Client's attorney, for any reason, and if the Client owes the Firm any fees or disbursement charges, the Firm reserves the right without further notice to hold the Client's files, and all documents, property and money of the Client in the Firm's possession or under the Firm's control, until all outstanding charges are satisfied. This is called a retaining lien. As a result, the Client agrees that all of Client's files will not be released to the Client or to the Client's new attorney, or any other entity or person, until all amounts owed pursuant to this Agreement are paid.

Any money that the Firm holds on the Client's behalf, whether or not in the Firm's escrow account, may be used by the Firm, without further written consent by the client, to pay any charges that the Client owes the Firm, including fees for professional services and disbursements.

Upon termination for any reason, the Firm reserves the right without further notice to assert a charging lien against the Client's files. A charging lien would entitle the Firm to be paid,

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for the services rendered up to the time of the termination, out of the proceeds of the final order or judgment when the case is resolved.

Files Copied Upon Termination. Clients often request a copy of their file (and/or a copy of documents originally given to the Firm by the Client), after there is a termination of the lawyer-client relationship. The Firm will provide such a copy at the Firm's normal copy charge. However, if the Client's files' comprise more than 50 pages to be copied, there will be an additional charge for a staff person to make the copies. The staff person will be billed at the rate charged for secretarial time as set forth in this Agreement. The Firm will have to be paid for all copy charges before the Client's files are copied. The charges will be estimated and the estimate will be given to the Client.

Once the Firm receives the estimated amount in good funds, the copies will be made within 14 business days, except in the case of exigent circumstances in which case the files will be copied as soon as practical after the expiration of the 14 business days, giving due regard to other work in the office at the time that the copies are requested. After the copying is completed, any amount of the estimated charges received in excess of the actual charges will be refunded; and, before the copies are released, payment will be made by the Client of any amount that was underestimated.

Miscellaneous. (1) The Client should not hesitate to contact the attorney in this Firm representing the Client if the Client has any questions about this Agreement. The Firm can be flexible if there is a need for it, but it must be worked out and agreed to in advance. (2) This Agreement constitutes the entire Retainer Agreement between the Client and the Firm and supersedes and cancels all such prior understandings between the Client and the Firm, if any. (3) No modification, amendment, renewal, extension or waiver of this Agreement, or any provision hereof, varying the terms and conditions hereof shall be binding upon either the Client or the Firm unless in writing and duly signed by the Client and the Firm. (4) If any provision of this Agreement or the application of any such provision to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provision other than to the extent it is held invalid, will not be invalidated or affected thereby.

Existing and Future Professional Services. After execution of this Agreement, unless the Firm agrees in writing to alter the terms of this Agreement, the terms of this Agreement will (1) apply to the matters set forth in this Agreement, (2) replace all prior Law Firm Retainer Agreements, except for the provisions entitled "Scope of Legal Service to be Provided" and "Amount of Retainer", (3) apply to matters being handled by the Firm prior to the execution of this Agreement, and (4) apply to all future services for which the Client employs this Firm. It is common for Clients to request the Firm to perform additional services not discussed or contemplated at the time of the signing of this Agreement.

With respect to such future services, this Agreement will automatically apply to all such future services unless the Client enters into a different written agreement with this Firm. It is the practice of the Firm to request an additional retainer amount for all future services at the time that the Client requests the Firm to perform such services.

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Execution of This Agreement. If the terms of the engagement are satisfactory, the Client should indicate their agreement to these terms by executing this Agreement, and returning it to the Firm's attorney representing the Client.

Acceptance of Agreement. I have read the above Agreement and I understand the terms and conditions, and I agree to accept the terms and conditions, set forth therein.

DATED: _____

SCOPE OF LEGAL SERVICE TO BE PROVIDED:

AMOUNT OF RETAINER:

PRINT OR TYPE CLIENT'S NAME:

X

Client's Signature

ATTORNEY:

Print or Type Attorney's Name

Attorney's Signature

Obtain & Describe Copy of Client Identification
(Copy of Drivers License Preferred)