

# Kaltman

DEVELOPMENT GROUP

*architect*

*general contractor*

*528981*

*construction manager*

*forensic services*

## TERMS OF ENGAGEMENT: SAMPLE

CLIENT TBA

ATTORNEY: TBA

### NOW, THEREFORE:

KALTMAN DEVELOPMENT GROUP (KDG) SHALL UNDERTAKE THIS ASSIGNMENT BASED UPON THE FOLLOWING TERMS AND CONDITIONS.

### SCOPE OF WORK:

THE SCOPE OF WORK SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

- 1) SITE VISITS,
- 2) MEETINGS WITH OTHER EXPERTS, ATTORNEYS, INSURANCE ADJUSTERS, ETC.,
- 3) DOCUMENT REVIEW,
- 4) PREPARATION OF PHOTO LOG(S), PREPARATION OF REPORTS AS REQUIRED,
- 5) PREPARATION FOR AND ATTENDANCE AT MEDIATIONS AND MEDIATION RELATED MEETINGS,
- 6) PREPARATION FOR AND ATTENDANCE AT DEPOSITIONS,
- 7) PREPARATION FOR AND ATTENDANCE AT TRIAL TO GIVE TESTIMONY,
- 8) AID ATTORNEY IN TRIAL PREPARATION,
- 9) ADDITIONS TO THE SCOPE AS REQUESTED BY CLIENT.

KDG WILL PERFORM ALL WORK IN ACCORDANCE WITH GENERALLY ACCEPTED PROFESSIONAL PRACTICE. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE CONCERNING WORK PERFORMED UNDER THESE TERMS AND CONDITIONS, INCLUDING FINDINGS, RECOMMENDATIONS, SPECIFICATIONS, OR PROFESSIONAL ADVICE.

KDG WILL PROCEED DILIGENTLY WITH THE ASSIGNMENT AND WILL PROVIDE ITS REPORTS IN A TIMELY MANNER, EXCEPT FOR DELAYS OCCASIONED BY FACTORS BEYOND ITS CONTROL,

## Kaltman

DEVELOPMENT GROUP

*architect*

*general contractor*

*528981*

*construction manager*

*forensic services*

OR WHICH WERE NOT REASONABLY FORESEEABLE, OR WHICH WERE INITIATED BY CLIENT.

WORK UNDER THESE TERMS AND CONDITIONS MAY BE TERMINATED UPON RECEIPT BY KDG OF TWO (2) DAYS WRITTEN NOTICE FROM CLIENT. KDG SHALL BE COMPENSATED FOR ANY EXPENSE OF TERMINATION INCLUDING BUT NOT LIMITED TO THE COST OF OTHER CONSULTANTS, LAB FEES, OTHER FEES AND TIME SPENT IN COMPLETING SUCH ANALYSES, RECORDS, AND REPORTS AS ARE REASONABLY NECESSARY TO PROTECT ITS PROFESSIONAL REPUTATION AND ADEQUATELY DOCUMENT THE WORK PERFORMED THROUGH TERMINATION. IN SUCH EVENT, KDG SHALL BE ENTITLED TO BILL AT THE HOURLY

RATES DEFINED IN THESE TERMS AND CONDITIONS FOR THE TIME REQUIRED TO EXECUTE AN ORDERLY TERMINATION OF THE PROJECT.

### **RATES AND CHARGES**

A RETAINER FEE OF **TBD** DOLLARS (\$TBD) IS PAYABLE IN ADVANCE, AND WILL BE APPLIED TO THE FINAL INVOICE ONLY, WITH ANY UNUSED PORTION RETURNED WITH A FINAL ACCOUNTING.

**WORK WILL BE PERFORMED ON A TIME AND EXPENSE BASIS. ANALYSIS, PREPARATION TIME, AND MEETINGS ARE BILLED AT \$225 PER HOUR. DEPOSITION TESTIMONY OR TESTIMONY IN COURT DURING TRIAL WILL BE BILLED AT \$450 PER HOUR WITH A FOUR-HOUR MINIMUM FOR EACH DAY OF TESTIMONY. THE MINIMUM SHALL APPLY REGARDLESS OF WHICH PARTY, PLAINTIFF OR DEFENSE, HAS NOTICED THE DEPOSITION OR TRIAL TESTIMONY.** IN THE EVENT TESTIMONY IS REQUIRED BY CLIENT'S OPPONENT AND SUCH OTHER PARTY IS NOT LEGALLY OBLIGATED TO PAY THE MINIMUM DEFINED HEREIN ABOVE, THEN CLIENT SHALL BE RESPONSIBLE FOR THE REMAINDER OF TIME TO FILL THE FOUR HOUR MINIMUM.

STANDARD COSTS OF OFFICE OPERATION SUCH AS TELEPHONE CALLS, FACSIMILES, AND **SMALL** NUMBERS OF BLACK AND WHITE PHOTOCOPIES ARE NOT BILLED UNLESS THERE IS AN EXTRAORDINARY REQUIREMENT.

## Kaltman

DEVELOPMENT GROUP

*architect*

*general contractor*

*528981*

*construction manager*

*forensic services*

REIMBURSABLE EXPENSES ARE BILLED AT COST AND INCLUDE BUT ARE NOT LIMITED TO PARKING COSTS, MILEAGE CHARGED AT \$0.50 PER MILE, REPRODUCTION COSTS AND OTHER EXTRAORDINARY DIRECT EXPENSES. COLOR COPIES PROVIDED BY KDG FROM ITS EQUIPMENT SHALL BE BILLED AT \$0.50 PER COPY. ANY DOCUMENTATION PROVIDED ON CD-ROM SHALL BE PROVIDED AT A COST OF \$35.00 PER CD-ROM.

### TERMS OF PAYMENT

**STATEMENTS WILL BE PRESENTED AT THE BEGINNING OF EACH MONTH AND ARE DUE IMMEDIATELY UPON RECEIPT. OUTSTANDING BALANCES PAST DUE OVER THIRTY DAYS ARE SUBJECT TO A DELINQUENCY CHARGE OF ONE- PERCENT PER MONTH UNTIL PAID.** FAILURE TO ADD SAID DELINQUENCY CHARGE WILL NOT PRECLUDE ENFORCEMENT AT A LATER DATE.

KDG, WITHOUT LIABILITY, MAY WITHHOLD DELIVERY OF REPORTS AND OTHER DATA AND MAY SUSPEND PERFORMANCE OF ITS OBLIGATIONS TO CLIENT PENDING FULL PAYMENT OF ALL CHARGES. IF KDG FAILS TO SO SUSPEND PERFORMANCE, SUCH FAILURE WILL NOT PREJUDICE ITS RIGHTS TO DO SO AT ANY TIME IN THE FUTURE.

**ALL OUTSTANDING INVOICES MUST BE PAID BEFORE KDG WILL MAKE A DEPOSITION OR COURT APPEARANCE ON BEHALF OF THE SUBJECT CASE/PROJECT. KDG MAY WAIVE THIS REQUIREMENT AT IT'S DESCRETION. FAILURE TO INVOKE THIS PROVISION AT ANY TIME SHALL NOT PREVENT OR PRECLUDE KDG FROM INVOKING IT AT ANY ANOTHER TIME.**

CLIENT SHALL PAY ALL COLLECTION EXPENSES, RELATED ATTORNEYS' FEES, AND ANY LEGAL COSTS INCURRED IN COLLECTION.

**CLIENT AGREES THAT COMPENSATION FOR KDG'S SERVICES IS NOT CONTINGENT UPON THE PAYMENT TO, OR PERFORMANCE OF, ANY OTHER PARTIES, NOR IS COMPENSATION CONTINGENT UPON THE RESULTS OF KDG'S INVESTIGATION. FURTHERMORE, COMPENSATION IS NOT CONTINGENT UPON THE OUTCOME OF ANY LEGAL CASE(S), SUBSEQUENT COMMERCIAL DECISIONS, OR OBLIGATIONS TRANSFERRED TO NON-CONTRACTING PARTIES.**

## Kaltman

DEVELOPMENT GROUP

*architect*

*general contractor*

*528981*

*construction manager*

*forensic services*

CLIENT AND KDG AGREE AND ACKNOWLEDGE THAT FROM TIME TO TIME THERE MAY BE OTHER ENTITIES ENTERING THE CASE/PROJECT THAT SHARE THE RESPONSIBILITY TO PAY FOR KDG'S WORK IN ACCORDANCE WITH THIS AGREEMENT. CLIENT AGREES THAT IT WILL BE RESPONSIBLE TO INFORM KDG OF SUCH OTHER RESPONSIBLE ENTITIES AND PROVIDE APPROPRIATE INFORMATION TO KDG FOR PURPOSES OF CONTACT AND INVOICING. CLIENT AND KDG AGREE THAT KDG WILL MAKE ADJUSTMENTS IN ITS MONTHLY INVOICING AS CLIENT MAKES KDG AWARE THAT OTHER ATTORNEYS, INSURANCE COMPANIES OR OTHER RESPONSIBLE ENTITIES BECOME A PART OF THE CASE/PROJECT WHICH IS THE SUBJECT OF THIS AGREEMENT. CLIENT AND KDG ADDITIONALLY AGREE THAT CLIENT SHALL BE RESPONSIBLE TO PAY ANY INVOICE THAT KDG HAS FORWARDED TO ANY OTHER SUCH RESPONSIBLE ENTITY THAT HAS ENTERED THE CASE/PROJECT WHEN SUCH INVOICE(S) HAVE BEEN UNPAID FOR A PERIOD OF NINETY (90) DAYS AFTER SUBMISSION TO SUCH OTHER RESPONSIBLE ENTITY.

### **MISCELLANEOUS**

**KDG MUST APPROVE ANY EXPERT DESIGNATION PRIOR TO THAT DESIGNATION BEING FILED WITH THE COURT HAVING JURISDICTION.**

KDG WILL HAVE NO LIABILITY IN THE EVENT OF AN UNFAVORABLE RESULT FOR CLIENT, UNLESS THERE HAS BEEN GROSS NEGLIGENCE ON THE PART OF KDG. KDG'S LIABILITY SHALL BE LIMITED TO THE GROSS AMOUNT IT HAS INVOICED AND RECEIVED FROM CLIENT IN THE PERFORMANCE OF THE WORK DESCRIBED HEREIN ABOVE. CLIENT ACKNOWLEDGES THAT BUT FOR THE FOREGOING LIMITATION ON LIABILITY, KDG WOULD NOT UNDERTAKE THIS ASSIGNMENT.

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL REPORTS, RECOMMENDATIONS, PROCEDURES, AND OTHER INFORMATION PROVIDED TO THE CLIENT UNDER THESE TERMS AND CONDITIONS ARE THE JOINT PROPERTY OF THE CLIENT AND KDG AND MAY BE USED WITHOUT RESTRICTION BY EITHER.

# Kaltman

DEVELOPMENT GROUP

*architect*

*general contractor*

*528981*

*construction manager*

*forensic services*

SPECIALIZED FORMATS, SOFTWARE, METHODOLOGIES, OR OTHER PRODUCTS DEVELOPED BY KDG, ARE AND WILL REMAIN THE PROPERTY OF KDG. ANY USE THEREOF FOR SUBSEQUENT PROJECTS WITHOUT THE PRIOR WRITTEN CONSENT OF KDG IS STRICTLY PROHIBITED.

**IN THE EVENT OF ANY DISPUTE OR LITIGATION REGARDING THE ENFORCEMENT OR INTERPRETATION OF ANY PROVISION OF THESE TERMS OF ENGAGEMENT, THE PREVAILING PARTY WILL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ALL REASONABLE EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS, IN ADDITION TO ANY OTHER RELIEF GRANTED, WHETHER OR NOT SUIT IS BROUGHT OR JUDGMENT IS RENDERED.**

DATE:

\_\_\_\_\_  
I. LAWRENCE KALTMAN  
FOR KALTMAN DEVELOPMENT GROUP

RECEIPT OF TERMS OF ENGAGEMENT

BY: \_\_\_\_\_

DATE \_\_\_\_\_