



## **ADOPTION SERVICES AGREEMENT**

(Revised: March 2024)

### **Preamble**

Prior to offering the Kirsh & Kirsh Directed Approach, explained below, all prospective adoptive parents who engaged Kirsh & Kirsh, P.C. (“Kirsh & Kirsh”) for legal services in an adoption were responsible for identifying adoption opportunities on their own. They did so primarily through word of mouth and newspaper advertising. Some prospective adoptive parents still opt for that approach, which is described in this Agreement as the “Self-Directed or Self-Directed Plus” Approach. Given the stress, strain, uncertainty, emotional investment, and the like, many prospective adoptive parents have experienced in pursuing infertility treatments and otherwise, some prospective adoptive parents have requested that Kirsh & Kirsh take responsibility for identifying potential adoption opportunities for them. For more than 40 years, Kirsh & Kirsh has expended time and substantial financial resources developing a referral network of expectant mothers. Kirsh & Kirsh continues to pursue those strategies that have worked and test new ideas.

Indiana statutes recognize that attorneys licensed to practice law in Indiana may be compensated for providing “adoption services”, which are defined to include, among other things, arranging for the placement of a child, identifying a child for adoption, matching adoptive parents with biological parents, and arranging or facilitating an adoption.<sup>1</sup>The amounts payable in this Agreement are for adoption services and are not for legal services. In other words, the amounts payable under this Agreement are not attorney fees.

For some prospective adoptive parent(s), they are fortunate to be successful in adopting on the first match with an expectant mother. Others have experienced one or more disappointments before they go home with a baby. Historically at Kirsh & Kirsh, one in three matches have proven unsuccessful. The Initial Payment of the Kirsh & Kirsh Directed amount covers the efforts of Kirsh & Kirsh in pursuing adoption opportunities for all prospective adoptive parent(s) who have opted for the Kirsh & Kirsh Directed Approach, as well as assisting individual prospective adoptive parent(s) with their preparation to become “active”. Nearly all prospective adoptive parent(s) who pay the Initial Payment begin doing what is necessary to become “active” and have their profile shown to expectant mothers. However, if prospective adoptive parent(s) pay the Initial Payment and then take no action to complete their profile and Kirsh & Kirsh has not otherwise begun providing their profile to expectant mothers, Kirsh & Kirsh will refund some or all of the Initial Payment, on a case by case basis.

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<sup>1</sup> Indiana Code § 35-46-1-22(a)

In order to meet the differing needs of our Clients, Kirsh & Kirsh, P. C., offers three options for creating opportunities to adopt.

Kirsh & Kirsh encourages Client(s) to pursue the Self-Directed approach. However, Kirsh & Kirsh recognizes that this approach is not for everyone, and it is for that reason, that Kirsh & Kirsh is pleased to offer other options.

**The three options are as follows** (Please check the appropriate box):

- Self-Directed*** - Client(s) create(s) their own adoption opportunities by means of their own networking or advertising, or both. Their success is entirely dependent upon their own efforts. No additional charges apply.
- Self-Directed Plus*** - Like the Self-Directed approach, the Client(s) work(s) to create their own adoption opportunities; however, if Client(s) is/are connected to a birth mother through a referral from Kirsh & Kirsh and that referral results in an adoptive placement (i.e., after the birth of the baby, the court issues an order granting them custody of the baby), Client(s) shall pay to Kirsh & Kirsh \$27,500, in addition to all other amounts and expenses associated with the adoption, and, in particular, under any agreement with Kirsh & Kirsh for the payment of attorney fees and expenses. The ***Self-Directed Plus*** approach does not assure Client(s) that their adoption profile will be shown to a birth mother, but that if it is shown to a birth mother and that birth mother places her baby with Client(s), Client(s) will be responsible for paying the additional amount of \$27,500. **Rarely, if ever, will Kirsh & Kirsh have an opportunity to connect a birth mother to Client(s) under this option. Client(s) should only choose this option if they intend to identify an expectant mother on their own.**

Client(s) Initials: \_\_\_\_\_

- Kirsh & Kirsh Directed*** - Kirsh & Kirsh, creates adoption opportunities for Client(s) without Client(s) having to network or advertise on their own. The additional cost for this service is \$27,500, in addition to all other amounts and expenses associated with the adoption, and, in particular, under any agreement with Kirsh & Kirsh for the payment of attorney fees and expenses. The amount of \$5,500 is payable upon opting into this program and the balance of \$22,000 is payable upon adoptive placement. Under the ***Kirsh & Kirsh Directed*** approach, Kirsh & Kirsh will present Client('s)(s') adoption profile to birth mothers as often as necessary until a birth mother selects Client(s) as the family for her baby and until Client(s) actually assume custody of the child

after birth.

Client(s) Initials: \_\_\_\_\_

If choosing the *Kirsh & Kirsh Directed Approach*, please check the appropriate box:

- Caucasian child
- African-American child, in whole or part
- Either Caucasian or African-American child, in whole or part

Client(s) acknowledge and agree that if their preference is for a child who is only African-American, in part, the child may appear or develop into a child or person who appears to be wholly African-American and that even if the child appears completely Caucasian, the issue of race will still exist for Client(s) and the child. In other words, Client(s) should not assume that because the child appears completely Caucasian, neither they nor the child will ever have to address the child's African-American Ancestry. Client(s) seeking to adopt a child whose race is different, in whole or part, from their own, should consult experienced professionals to fully understand the issues they and the child will face. If Client(s) seek to adopt a child that is only partially African-American, Kirsh & Kirsh does not permit Client(s) to specify a percentage of African-American, with which Client(s) would be comfortable adopting. In other words, while Client(s) may specify that they are interested in adopting an African-American and Caucasian mixed child, Client(s) may not limit themselves to adopting a child that is 50% African-American and 50% Caucasian, or any other ratios for the reason that Kirsh & Kirsh cannot assure that whatever percentages have been specified are met. Likewise, Kirsh & Kirsh cannot assure Client(s) that a child will be 100% Caucasian or 100% African-American. To do so would require an extensive study of ***both*** birth parents' ancestries, which is simply not feasible in an adoption. In specifying race, Client(s) understand that statements by birth mother is the only information Kirsh & Kirsh receives about the race of the child, and that Kirsh & Kirsh does not independently verify the information the birth mother provides. Client(s) understand(s) and accept(s) the risk that the information provided by a birth mother may not be accurate.

Client(s) Initials: \_\_\_\_\_

**Limitation of Liability.** Adoptions are highly emotional – they have the potential for great excitement and joy and also devastating loss and disappointment. Kirsh & Kirsh tries to provide adoption services to the highest standards of ethics and competence; however, adoptions are often unpredictable, information incomplete or inaccurate, and individuals fickle. In spite of the efforts of Kirsh & Kirsh to provide adoption services under Agreement to the highest standards of ethics and competence, mistakes happen and/or situations do not turn out as hoped or expected. When those events happen, Client(s) may be inclined to make a claim against Kirsh & Kirsh for compensation for their losses. Those losses usually fall into two categories: (1) actual, out-of-pocket expenses (“Actual Damages”) and (2) mental injury, emotional distress, mental anguish,

disappointment, pain and suffering, and the like (“Intangible Damages”). Client(s) freely, knowingly, and voluntarily waive all claims against Kirsh & Kirsh for Intangible Damages and all other forms of loss other than Actual Damages. This waiver of liability for Intangible Damages and other losses is referred to as the “Limitation of Liability Provision”.

Limitation of liability provisions in attorney-client contracts are not permitted in Indiana except when clients have received the benefit of independent legal counsel. Since Kirsh & Kirsh is a party to this Agreement and the Limitation of Liability Provision is for the direct benefit of Kirsh & Kirsh, Kirsh & Kirsh is not independent and cannot provide advice to Client(s) as to the legal consequences of this Limitation of Liability Provision.

Client(s) acknowledge(s), agree(s), and understand(s) that Client(s) must consult with independent legal counsel to acquire a full and complete understanding of the restrictions, limitations, and nuances of agreeing to this Limitation of Liability Provision. Having consulted with independent legal counsel, by signing in the blank following this Limitation of Liability Provision, Client(s) confirm(s) that Client(s):

1. have/has, in fact, consulted independent legal counsel in regard to this Limitation of Liability Provision,
2. acknowledge(s) that Kirsh & Kirsh has agreed to represent Client(s) and include this Limitation of Liability Provision in this Agreement in reliance on the confirmation contained in the immediately preceding paragraph, and
3. agree(s) to be bound by this Limitation of Liability Provision.

\_\_\_\_\_  
 \_\_\_\_\_  
 “Client(s)”

**Additional terms and conditions:**

1. Kirsh & Kirsh, does not make any warranties, express or implied, about Client’s(s’) success in adopting under any of these options.
2. Regardless of the option selected, Kirsh & Kirsh, shall use its best efforts to help Client(s) achieve success in adopting within the parameters of the option selected by Client(s).
3. Payment of additional amounts under the *Self-Directed Plus* and the *Kirsh & Kirsh Directed* options do not provide any greater protection against a contested adoption. In all adoptions handled by Kirsh & Kirsh, Kirsh &

Kirsh, strives to provide the highest quality legal services in the most compassionate manner. There are risks inherent in adopting regardless of how adoption opportunities are created.

4. The additional amounts payable under this Agreement are not subject to increase for a period of two years from the date this Agreement. Thereafter, the additional amounts payable under this Agreement shall be equal to the additional amounts then being quoted by Kirsh & Kirsh to new client(s) in Agreements similar to this Agreement at the time of the placement of a child for adoption with Client(s).
5. Client(s) may change from *Self-Directed* to the *Self-Directed Plus* or *Kirsh & Kirsh Directed* approach or from the *Self-Directed Plus* to the *Kirsh & Kirsh Directed* approach at any time by executing a new Adoption Services Agreement; however, switching from the *Kirsh & Kirsh Directed* approach to *Self-Directed* or the *Self-Directed Plus* approach may not result in a refund of the *Kirsh & Kirsh Directed* Payment paid under this Agreement, depending on the circumstances.
6. If Client(s) opt(s) for the *Kirsh & Kirsh Directed* approach and then create(s) their own adoption opportunity, the balance otherwise payable under the *Kirsh & Kirsh Directed* approach, would not be payable upon that adoptive placement.
7. If Client(s) create(s) a “baby-in-the-bank”<sup>2</sup> opportunity for themselves, no additional amounts under this Agreement are payable upon an adoptive placement pursuant to the “baby-in-the-bank”. However, if Client(s) had opted for the *Kirsh & Kirsh Directed* approach and then created a “baby-in-the-bank” opportunity for themselves, Client(s) would not be entitled to a refund of the initial *Kirsh & Kirsh Directed* Payment but would not be responsible for paying the balance otherwise payable under the *Kirsh & Kirsh Directed* approach upon the adoptive placement resulting from the “baby-in-the-bank”.
8. The phrases “additional charges” and “additional amounts” used in this Agreement refer to charges and amounts in addition to the attorney fees and expenses paid under any separate agreement with Kirsh & Kirsh for legal services.
9. Client(s) failure to initial any of the places calling for Client(‘s)(s’) initials does not in any way abrogate Client(‘s)(s’) obligations under this Agreement. Kirsh & Kirsh has added the place for initials in hopes that Client(s) will carefully read this Agreement. Kirsh & Kirsh encourages

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<sup>2</sup> “Baby in the Bank” is explained in the Kirsh & Kirsh informational video, which is approximately 2 hours in length. If Client(s) would like further explanation of what this means, Client(s) should ask Kirsh & Kirsh. Likewise, if Client(s) has/have not seen the informational video, immediately contact Kirsh & Kirsh to arrange to see it.

Client(s) to ask questions if they do not fully understand any part of this Agreement.

- 10. The term “birth mother” is defined to include an “expectant mother”. Those terms are used interchangeably.

DATED: \_\_\_\_\_

**CLIENT(S):**

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