

## **COOPERATIVE NEGOTIATION PARTICIPATION AGREEMENT**

### **I. OVERVIEW/INTRODUCTION**

This Agreement ("CNPA") is made between \_\_\_\_\_ and \_\_\_\_\_ ("Parties" or "Participants"). We understand the Cooperative process (the "Process") and how it differs from other dispute resolution processes. Therefore, in consideration of our mutual promises, we agree to use the Process and follow the terms as set forth in this CNPA.

### **II. PARTICIPANTS' GOALS**

1. Negotiation of the terms of our Marital Settlement Agreement ("MSA") [or other Family Court Agreement] cooperatively, with honesty, cooperation, integrity and professionalism, geared toward ensuring the future well-being of the participants and their family members.
2. Avoiding, if at all possible, the negative economic, social, and emotional consequences to the participants – including children and other family members - of protracted litigation. Avoiding the publicity and potential harm to our family members that could be caused by litigation.
3. [If applicable] Putting children's interests first and keeping children out of conflict.

### **III. THE PROCESS**

In furtherance of the stated goals of this process, party-participants agree and promise to:

- Listen carefully to and try to understand interests of everyone in this Process;
- Treat everyone in the Process with sincere respect;
- Provide full, prompt, honest and open disclosure of all information pertinent to our case, whether requested or not, and to exchange Financial Declarations in a timely manner;
- Work to protect the privacy and dignity of all involved, including parties, our children (if any) and family members, attorneys and consultants;
- Refrain from disparaging each other to family, colleagues, mutual friends, and acquaintances;
- Engage in informal discussions, conferences and other communications with the goal of settling all issues that need to be resolved to complete our MSA.
- Engage in vigorous good-faith negotiation. Each party is expected to assert his/her own interests and our respective attorneys will help each of us to do so.
- Take a reasoned position in all disputed issues and use our best efforts to create proposals that meet the fundamental needs of both of the parties. We recognize that compromise may be needed in order to reach a settlement of all issues.
- Understand that "fair" does not always mean 50-50.
- Discuss the likely outcome of a litigated result during negotiations but refrain from using the threat of litigation as a way of forcing settlement.

*Names of Parties:* \_\_\_\_\_

#### **IV. ROLES**

We recognize that, while the attorneys share a commitment to the process described in this Agreement:

- (a) each of the lawyers has an attorney-client privilege solely with, and a professional duty to diligently represent, his or her client and not the other party;
- (b) as such, each of the lawyers may have confidential and privileged communications with his/her client; and
- (c) such communications are not inconsistent with a cooperative process.

We agree to direct all attorneys, therapists, appraisers, as well as experts and other consultants retained by us, to work in a cooperative effort to resolve issues, without resort to litigation or any other external decision-making process, except as agreed upon by participants and attorneys. If experts are needed, the parties together with their attorneys will consider retaining them jointly as neutrals, ensure their payment, and share their work product.

#### **V. FINANCIAL RESTRAINTS**

We agree that commencing immediately, neither party will:

- a) borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy, or permit any existing coverage to lapse, including life, health, automobile and/or disability held for the benefit of either party without the prior written consent of the other party.
- b) sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either party, without the prior written consent of the other party, except in the usual course of business or investing, payment of reasonable attorneys fees and costs, or for the necessities of life.
- c) incur any further debts that would burden the credit of the other, including but not limited to further borrowing against any credit line secured by the marital residence, or unreasonably using credit cards or cash advances against credit or bank cards or will incur any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life without the prior written consent of the other.
- d) Stop direct deposits/payments to or from joint accounts, unless agreed upon in writing by both parties.

#### **VI. LEGAL PROCESS**

Court Proceedings: Unless otherwise agreed or filed by either party prior to entering into this Agreement, no Summons and Complaint (or Supplemental Complaint) will be

*Names of Parties:* \_\_\_\_\_

served or filed prior to discussion between the attorneys, nor will any other motion or document be prepared or filed with the court which would initiate court intervention without prior discussion between the attorneys and attempts to resolve the issue without litigation. As part of a final agreement, a procedure for obtaining a legal dissolution of the marriage or final disposition of other types of family law matters will be discussed and agreed upon. Neither party nor their lawyer will use the court during the cooperative law process except as set forth in this Agreement.

Valuation Date: In recognition of the fact that the parties are by agreement delaying the date of filing of a Complaint in Family Court, the parties acknowledge and agree with the intent to bind themselves and their attorneys now and in the future, that a date agreed upon by the parties and their attorneys (in the CNPA Agreement for Production) shall be used by them, their attorneys, and the court in lieu of the actual date of the filing of the Complaint for determination of retroactive support, marital assets and liabilities, trust or will, or any other purpose set forth in relevant statutes and the case law interpreting same.

## **VII. ATTORNEYS' and PROFESSIONALS' FEES AND COSTS**

Parties agree that both parties' attorneys and all agreed-upon professionals retained are entitled to be paid for their services, and one task in this matter is to ensure payment is timely made to each of them. We agree to make funds available for this purpose.

## **VIII. CONFIDENTIALITY**

All communications among attorneys and parties exchanged within this process will be confidential and treated as settlement negotiations, which are inadmissible as evidence in court, except as to Rule 408 (attorneys' fees). However, non-privileged information which is obtained in this process and admissible shall not be rendered confidential or inadmissible because it is referred to or produced in this process. The work product of retained financial neutrals shall not be confidential for purposes of court proceedings.

We will treat as confidential all information obtained through this process about the other party's medical, psychiatric, or psychological treatment, and refrain from disclosing any such information except to our own lawyers, therapists, or others by agreement of participants.

## **IX. TERMINATION/ABUSE OF THE PROCESS**

We will make every reasonable effort to settle our case without court intervention. However, we understand that the process cannot eliminate the irreconcilable differences that underlie the current conflict. We acknowledge that there is no guarantee that the cooperative process will be successful in resolving our case.

Each party understands that his/her attorney may withdraw from our case as soon as possible upon learning that his or her client has failed to uphold this CPNA or acted so as to undermine or take unfair advantage of the process. Such failure or abuse of the process would include the withholding or misrepresentation of information, the secret disposition of marital property, the failure to disclose

the existence or the true nature of assets and/or financial obligations, or otherwise acting to undermine or take unfair advantage of this process.

To discourage either party from seeking court intervention, the parties agree to give each other no less than 15 days notice before filing any complaint, motion, or petition in court, in order to provide a "cooling-off" period that will enable the parties to reassess whether court involvement is needed. During this "cooling-off" period the parties shall make a good faith effort to resolve the matter through their attorneys and/or mediation, preferably using a mediator who is a member of the Charleston Cooperative Family Law Association. If parties agree to participate in mediation, a Complaint may be filed so that the mediation will satisfy the Court requirement for mediation in the event that a settlement is not reached. This paragraph shall not prevent either party from seeking immediate court intervention in the event of an emergency.

Upon withdrawal of either counsel, the withdrawing attorney will promptly cooperate to facilitate the transfer of the client's file and any information needed for continued representation of the client to successor counsel.

## **XI. PLEDGE**

Both parties and their attorneys hereby pledge to comply with and to promote the spirit and letter of this agreement, unless modified by written agreement signed by both parties and their attorneys.

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Attorney: \_\_\_\_\_  
Attorney for \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Attorney: \_\_\_\_\_  
Attorney for \_\_\_\_\_  
Date: \_\_\_\_\_

*Names of Parties:* \_\_\_\_\_

**CNPA RIDER FOR CASES INVOLVING CHILD/CHILDREN**

We agree to make every effort to reach amicable solutions about sharing the enjoyment of and responsibility for our child(ren) that promote the children's best interests. We agree to act quickly to mediate and resolve differences related to our child(ren) to promote a caring, loving, and involved relationship between the children and both parents.

We acknowledge that inappropriate communications regarding their separation/divorce can be harmful to our children and other family members. Settlement issues/negotiations will not be discussed in the presence of our child(ren) or other family members. The parties agree not to make any changes to the residence of the child(ren) without first obtaining the written agreement of the other party, and notifying both attorneys (and child specialist/co-parenting coordinator, if applicable).

**WE AGREE TO REFRAIN FROM:**

1. Discussing litigation/divorce with Child(ren) [*e.g. Telling Child(ren) that we are tired because all of this discussion about separation is exhausting*] unless agreed to in writing by both parents and attorneys, or as directed by child specialist/co-parenting coordinator;
2. Disparaging the other parent or anyone associated with the other parent, *such as:*
  - a. *Telling Child(ren) that we could do X but only if the other parent agreed, and s/he hasn't agreed;*
  - b. *Telling Child(ren) that the other parent was supposed to do something and didn't;*
  - c. *Referring to the other parent using a sneering tone of voice or snide nickname.*
3. Exposing Children to overnight romantic companions.
4. Exposing Children to age-inappropriate activities or situations, such as (for non-teens):
  - a. R-rated movies/ visual programs;
  - b. Adult parties with alcohol;
  - c. \_\_\_\_\_
5. Using unprescribed prescription or illegal drugs, cigarettes, or excessive alcohol while Child(ren) is/are in our physical custody.
6. Texting while driving with Child(ren) in our car.
7. Requiring clinical mental health professionals to be deposed, produce documents, or appear in court.
8. \_\_\_\_\_

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_

Names of Parties: \_\_\_\_\_

### **CNPA AGREEMENT FOR PRODUCTION OF INFORMATION**

*An integral part of the cooperative process is voluntary and timely production of requested information. Therefore, we agree to use our best efforts to provide the following information by the dates indicated, and if unable to comply with a deadline we will notify the other party in advance:*

<b>PARTY/PARTIES</b>				
<b>ITEM</b>	<b>DATE RANGE</b>	<b>TO PRODUCE</b>	<b>DUE DATE</b>	<b>NOTES</b>
Tax returns				
Bank (NAME) statements				
Bank [NAME] statements				
Bank [NAME] statements				
Credit card [NAME] statements				
Credit card [NAME] statements				
Mortgage [NAME] statements				
Appraisal of [PROPERTY]				
Appraisal of [PROPERTY]				
Retirement Account [NAME] statements				
Retirement Account [NAME] statements				
Retirement Account [NAME] statements				
Investment Account [NAME] statements				
Credit Report [NAME]				
Credit Report [B]				
Valuation Date ("VD")				VD= _____
Draft Financial Decs				
Sworn Financial Declarations				
Draft MSA				(MSA = Marital Settlement Agreement)
Signed MSA				

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_

Names of Parties: \_\_\_\_\_