

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL CIRCUIT

<p>_____ Plaintiff</p> <p>vs</p> <p>_____ Defendant</p>	<p>FILE NO: _____</p> <p><b>STIPULATION, CUSTODY, PARENTING TIME &amp; SUPPORT AGREEMENT (PATERNITY ACTION)</b></p>
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**THIS STIPULATION, CUSTODY, PARENTING TIME & SUPPORT AGREEMENT**, is made and entered into between the parties named above, with the following declarations:

1. The parties hereto are the natural parents of the following child(ren):

<u>Name of Child on Birth Cert.:</u>	<u>Date of Birth:</u>	<u>City, County, and State of Birth:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Father, \_\_\_\_\_ (name), does not contest that he is the natural father of the children named above, because Father (put an "X" before each statement that applies):

- \_\_\_\_\_ Signed the Affidavit of Paternity agreeing he is the biological father of the above-named child(ren) and the Affidavit complies with SDCL 25-8-50;
- \_\_\_\_\_ Submitted to a DNA test performed by a testing laboratory and with certified documentation that complies with SDCL 25-8-7.1 to 25-8-7.3, inclusive, verifying that he is the child(ren)'s biological father;
- \_\_\_\_\_ Is listed as the natural father on the child(ren)'s birth certificate; and/or
- \_\_\_\_\_ Father does not object to being identified as the biological father of the child(ren) named above.

3. On \_\_\_\_\_ 20\_\_\_\_, Plaintiff served Defendant a Summons and Verified Complaint as shown by the Admission of Service on file in this case.

4. The parties now desire to enter into an agreement settling all claims, custody, parenting time, child support, and all other matters between the parties in this paternity action. The terms of this agreement may be incorporated by reference in any Order that may be entered in this case.

\_\_\_\_\_  
Plaintiff's Initials

\_\_\_\_\_  
Defendant's Initials

**NOW, THEREFORE,** it is agreed by the parties as follows (*choose only one*):

\_\_\_\_\_ The parties agree to joint legal custody of the child(ren) with Mother / Father (*circle one*) having primary physical custody, subject to reasonable parenting time with the other parent. **Complete Section 1 below and draw a line through Sections 2 & 3 to indicate these sections do not apply to you. Resume completing the form with Section 4 until the end of the form.**

\_\_\_\_\_ The parties agree that Plaintiff / Defendant (*circle one*) is the fit and proper person to have sole legal and physical custody of the minor child(ren), subject to parenting time with the other parent. **Complete Section 2 below and draw a line through Sections 1 & 3 to indicate these sections do not apply to your situation. Resume completing this form with Section 4 until the end of the form.**

\_\_\_\_\_ Both parties are fit and proper persons to share the joint legal and physical custody of the minor child(ren), with the parents sharing the duties and responsibilities of parenting the child(ren), the child(ren) residing no less than 180 nights per calendar year in each parent's home and the parents dividing the expenses of the child(ren) in proportion to their incomes. **Draw a line through Sections 1 & 2 below and complete the remainder of the form starting with Section 3.**

## SECTION 1.

**Joint Legal Custody Plan.** The parties agree that they shall share joint legal custody of the minor child(ren) with \_\_\_\_\_ (*insert name of parent*) having primary physical custody subject to the other parent's right to reasonable parenting time with the minor child(ren). The minimum parenting time awarded to the non-custodial parent is set forth in the South Dakota Parenting Guidelines, which are incorporated herein by reference. The South Dakota Parenting Guidelines also address the sharing of holidays and summer visitation, which the parties agree to abide by.

The parties agree to modify the South Dakota Parenting Guidelines as follows:

A. The parties agree that they will consult each other and jointly consider the major decisions affecting the child(ren)'s welfare. "Such areas of responsibility may include the child's primary physical residence, child care, education, extracurricular activities, medical and dental care, religious instruction, the child's use of motor vehicles, and any other responsibilities which the court finds unique to a particular family or in the best interest of the child." SDCL 25-5-7.1. However, during the time the child(ren) resides with either parent, that parent shall decide all routine matters concerning the child(ren). SDCL 25-5-7.2.

B. Each party shall have full power and authority to obtain and consent to any medical treatment which may be necessary during such time as the minor child may be in the custody of that parent. Each party has the right to speak to the medical personnel and insurance company directly about the minor child and obtain copies of the minor child(ren)'s medical reports, including but not limited to

medical reports, test results, EOB's, etc. Both parties agree to consult with the other before incurring any non-routine medical expenses for the minor child(ren).

C. Grade Reports and Medical Information. Each parent shall provide the other parent with grade reports and notices from school as they are received and shall authorize the other parent to communicate concerning the child(ren) directly with the daycare, the school, and the child's doctors and other professionals outside the presence of the other parent. Both parents shall also be listed as the child(ren)'s parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the child(ren). Each parent shall, as soon as reasonably possible, notify the other parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, both parents shall provide a sufficient amount and appropriate instructions to the other parent.

## SECTION 2.

**Sole Legal & Physical Custody Plan.** The parties agree that the Mother / Father (circle one) shall have sole legal and physical custody of the minor child(ren), subject to the other parent's right to reasonable parenting time. The parties agree that the non-custodial parent's parenting time is as follows:

- **If you need help determining a parenting time plan, please refer to the SD Parenting Time Guidelines to use as your framework. Alternatively, you could seek the assistance of a mediator to help you resolve any issues. A list of mediators as well as forms can be found on the South Dakota Unified Judicial System website.**

## SECTION 3.

**Shared Parenting Plan.** The parties agree that they shall share joint legal and physical custody. Unless the parties otherwise agree, the following Parenting Time schedule shall be:

Alternating weekly parenting time with the minor child(ren) commencing Mondays at 8:00 a.m. when the child is dropped off for daycare or school.

This provides each party with no less than 180 nights per calendar year in each parent's home. The parties further agree that they will make reasonable accommodations (phone calls, short visit, etc) for each other if the minor child needs to see or would like to see the other parent during his/her parenting time.

- **Additional / alternative samples for parenting time schedules for shared parenting arrangements can be found on the South Dakota Unified Judicial System website.**

A. The parties agree that they will consult each other and jointly consider the major decisions affecting the child(ren)'s welfare. "Such areas of responsibility may include the child's primary physical residence, child care, education, extracurricular activities, medical and dental care, religious instruction, the child's use of motor vehicles, and any other responsibilities which the court finds unique to a

particular family or in the best interest of the child.” SDCL 25-5-7.1. However, during the time the child(ren) resides with either parent, that parent shall decide all routine matters concerning the child(ren). SDCL 25-5-7.2.

B. Both parties maintain an appropriate supply of the child’s clothing at each of their residences.

C. Child(ren)’s Expenses. The parties agree that they will share the duties and responsibilities of parenting the child and the expenses of the child in proportion to their incomes. Thus, Father shall be responsible for \_\_\_\_% of all mutually agreeable expenses; i.e. supplies for daycare, pre-school tuition, extra-curricular activities, lunches served at school, school supplies for the minor child, etc. Mother shall be responsible for \_\_\_\_%. The parties agree to discuss the child’s expenses prior to one party incurring them. Unless the parties otherwise agree, reimbursement to one parent from the other shall be made within 30 days of submission of the expenditures and receipts being providing to the other parent. Receipts and documentation of expenditures should be promptly provided to the other parent.

D. Grade Reports and Medical Information. Each parent shall provide the other parent with grade reports and notices from school as they are received and shall authorize the other parent to communicate concerning the child(ren) directly with the daycare, the school, and the child's doctors and other professionals outside the presence of the other parent. Both parents shall also be listed as the child(ren)’s parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the child(ren). Each parent shall, as soon as reasonably possible, notify the other parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, both parents shall provide a sufficient amount and appropriate instructions to the other parent.

E. Each party shall have full power and authority to obtain and consent to any medical treatment which may be necessary during such time as the minor child may be in the custody of that parent. Each party has the right to speak to the medical personnel and insurance company directly about the minor child and obtain copies of the minor child(ren)’s medical reports, including but not limited to medical reports, test results, EOB’s, etc. Both parties agree to consult with the other before incurring any non-routine medical expenses for the minor child(ren).

#### **SECTION 4.**

**Holidays & Basic Provisions.** In addition to the custodial arrangement designated in Section 1, 2 OR 3, and unless otherwise agreed to between the parties or indicated herein, major holidays shall be alternated as set forth in the South Dakota Parenting Guidelines.

When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence.

A. Unless otherwise agreed to by the parties, the parties shall share the responsibility of transportation of the minor children for the facilitation of the parenting plan with each parent picking up the children when his/her parenting time starts.

B. Both parties agree they will speak only favorably of the other when in the child(ren)'s presence and both will ensure that anyone in their presence will speak only favorably of the other parent when the minor child(ren) in his/her presence. Each will promote and foster good parental relations between the child(ren) and the other parent and avoid any communication of any kind which would be detrimental to the child(ren)'s respect or admiration for the other parent.

### SECTION 5.

The parties agree that they are the biological parents of the above-named child(ren) and all records of the child(ren), including but not limited to birth certificate(s), should be amended to include both parents on them.

### SECTION 6.

**Notice to Relocate.** If either party desires to relocate, the parties agree to comply with SDCL 25-4A-17 and, if applicable, SDCL 25-4A-18.

### SECTION 7.

**Child support is mandatory in the state of South Dakota, even if you have a shared parenting agreement. An order will not be entered if no child support is entered. If you already have a child support amount established, please provide the following and skip the remainder of this section:**

**The case number of the case:** \_\_\_\_\_

**The county in which the order was filed:** \_\_\_\_\_

**The amount of the order:** \_\_\_\_\_

**The parent who is ordered to pay child support:** \_\_\_\_\_

A. **Child Support.** The parties agree that \_\_\_\_\_  
(insert name of person paying child support) shall pay child support to \_\_\_\_\_  
\_\_\_\_\_ (insert name of person receiving child support) for the support and  
maintenance of the minor child(ren) in the amount of \$ \_\_\_\_\_ per month, which includes  
(check all the boxes that apply):

- his/her proportionate share of the health insurance provided by the Plaintiff / Defendant (circle one) for the parties' minor child(ren);
- his / her proportionate share of day care expenses for the minor child(ren);
- an annualized abatement of \$ \_\_\_\_\_ per month in consideration for the months \_\_\_\_\_ (insert name of parent paying support) has the child(ren) six or more overnights per month. Pursuant to SDCL 25-7-6.14, it shall be presumed that the parenting time is exercised for the purposes of the abatement, although if the noncustodial parent does not exercise this extended parenting time, the noncustodial parent is required to repay the abated amount of child support to the custodial parent;
- a cross-credit calculation for the shared parenting plan, as allowed in SDCL 25-7-6.27;

a deviation of \$ \_\_\_\_\_ per month pursuant to SDCL 25-7-6.10(\_\_\_\_), based on the following facts:

**The child support calculation is attached to this document and was prepared by \_\_\_\_\_ . (You may want an attorney to calculate child support or you can determine the support obligation by using the child support calculator provided by DSS and found at <https://dss.sd.gov/childsupport/services/obligationcalculator.aspx>).**

### SECTION 8.

**Medical Expenses.** Any reasonable medical costs, including optometric, dental or orthodontic, counseling or other health care costs for the minor child(ren) which exceed \$250.00 in any year and are not covered by insurance shall be split between the parents with Mother paying \_\_\_\_\_% and Father paying \_\_\_\_\_%. Pursuant to SDCL § 25-7-6.16, the parent with primary physical custody, which is \_\_\_\_\_, is solely responsible for the first \$250.00 of health care expenses incurred for each child in any calendar year. *(This last sentence would not be applicable in shared parenting arrangements. Please mark "N/A" on the blank.)*

**Medical Insurance.** As set forth above, the parties agree that \_\_\_\_\_ shall provide health insurance for the minor child(ren) as long as it is available to them at a reasonable expense through their employer. The parent providing the health insurance coverage shall provide the other parent with a card or copy of the health insurance card setting forth the insurance company name, address and policy number and names of persons covered within thirty days. Unless otherwise provided herein, reimbursement for any deductible and uninsured expense made by either party shall be paid within thirty (30) days of written notification and documentation (including the statement from the provider and the Explanation of Benefits from the health insurance provider) of such expenses by one party to the other. Documentation of expenditures should be promptly provided to the other parent.

### SECTION 9.

**Income Tax Returns.** Beginning with the current tax year, the parties agree to allocate the federal income tax dependency exemptions for the minor child(ren) as follows:

- In all future odd-numbered tax years, Mother / Father (circle one) shall claim the minor child(ren) and in all future even-numbered tax years, Mother / Father (circle one) shall claim the minor child(ren); or

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## SECTION 10.

**Enforcement.** The parties agree that this Agreement shall be binding upon them until otherwise mutually agreed in writing or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or in the event that one party determines that modifications are necessary which are not consented to by the other party, each shall be free to petition the Court to have this Agreement modified or enforced in accordance with the law.

## SECTION 11.

**Waiver and Incorporation.** Each of the parties hereto hereby waives findings of fact and conclusions of law in this action, and further waives any notice of hearing or notice of trial herein, and consents to the entry of an Order without further notice.

The parties agree that all provisions of this Agreement shall be incorporated by reference into any Order which may be issued in this matter.

## SECTION 12.

**Military Service.** Each party hereby acknowledges that he/she is not currently a member of the military service of the United States of America as defined in applicable federal law.

## SECTION 13.

**Modification and Waiver.** Any modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement and approved by the Court. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

## SECTION 14.

**Written Memorandum.** This Agreement contains the entire understanding of the parties who acknowledge there have been no representations or understandings other than those expressly set forth in this Agreement.

## SECTION 15.

### **Ratification.**

A. This Agreement was entered with the full knowledge of both parties, and each has read the above provisions and each has signed of their own free will.

B. Neither party is represented by counsel, but both acknowledge they can obtain separate, independent legal counsel prior to signing this document.

\_\_\_\_\_  
Plaintiff's Signature Date  
(Sign in front of Notary or Clerk of Court)

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF \_\_\_\_\_ JUDICIAL CIRCUIT

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes therein contained.

**IN WITNESS WHEREOF**, I have set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public / Clerk of Courts  
If Notary, my commission expires:

\_\_\_\_\_  
Defendant's Signature Date  
(Sign in front of Notary or Clerk of Court)

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF \_\_\_\_\_ JUDICIAL CIRCUIT

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same for the purposes therein contained.

**IN WITNESS WHEREOF**, I have set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public / Clerk of Courts  
If Notary, my commission expires: