

SOUTH DAKOTA SEPARATION AGREEMENT

I. **THE PARTIES.** This South Dakota Separation Agreement ("Agreement") made this _____, 20____, is made between:

Husband: _____ ("Husband") with a mailing address of _____, and

Wife: _____ ("Wife") with a mailing address of _____.

When mentioned in a singular version, "Husband" and "Wife" shall be known as a "Spouse," and when mentioned together, the Husband and Wife shall be known as the "Couple."

II. **THE MARRIAGE.** The Couple was married on _____, 20____, at the following location: _____.

III. **SEPARATION DATE.** The date of separation, or the date the Couple has stopped living together, began on _____, 20____.

IV. **ARMED FORCES.** The following are current members of the Armed Forces: (check one)

- None of the Spouses
- Husband
- Wife
- Both Spouses

V. **NAME CHANGE.** After the separation is complete: (check one)

- **NEITHER** Spouse will be changing their name.
- The following **WILL BE** changing their name: (check all that apply)
 - Husband to _____.
 - Wife to _____.

VI. **MINOR CHILDREN.** Before or during the course of the marriage, the Couple recognizes that: (check one)

- There **ARE** minor children of the Couple. The details related to child support, custody, and any other terms related to the minor children are found in Attachment A.
- There are **NO** minor children of the Couple.

VII. FINANCIAL DISCLOSURE. The Couple has: (check one)

- **ALREADY DISCLOSED** to one another their financial disclosures in accordance with State law.
- **WAIVED** their right to view each other's financials along with any other disclosures, forms, or discovery proceedings as by right under State law.

VIII. SPOUSAL SUPPORT (ALIMONY). The Couple agrees that: (check one)

- There **SHALL NOT** be Spousal Support. Neither Spouse shall be obligated to pay, provide for, or support one another upon commencement of legal separation ("Spousal Support").
- There **SHALL BE** Spousal Support starting on _____, 20____. The Husband Wife ("Paying Spouse") shall pay to Husband Wife ("Receiving Spouse"): (check one)
 - In **Perpetuity**. Payment of \$_____ shall be due on the ____ of each month until either Spouse's death, the remarriage of the Receiving Spouse, or modification or termination by further court order, whichever occurs first ("Spousal Support").
 - Until an **End Date**. Payment of \$_____ shall be due on the ____ of each month until _____, 20____ ("Spousal Support").
 - On a **Payment Schedule** found in Attachment B ("Spousal Support").

IX. HEALTH INSURANCE. The Couple agrees that: (check one)

- Each Spouse is responsible for **THEIR OWN** health insurance.
- Health insurance **IS PROVIDED** by Husband Wife ("Health Insurance Paying Spouse") to Husband Wife ("Health Insurance Receiving Spouse"). Health insurance shall include: (check all that apply)
 - Medical
 - Dental
 - Vision Care
 - Other. _____.

To facilitate the use of such coverage for the Health Insurance Receiving Spouse, the Health Insurance Paying Spouse shall cooperate fully and in a timely manner, including, but not limited to, obtaining and providing all necessary insurance cards and claim forms, completing and submitting all necessary documents, and delivering all insurance payments.

X. MARITAL HOME. At the time of writing this Agreement, the Couple: (check one)

- **DO NOT** own a home, either separately or jointly.
- **OWN** a home, either separately or jointly, at the property address of: _____ (“Marital Home”).

The Marital Home is currently owned by: (check one)

- Husband
- Wife
- Both Spouses

The following currently lives at the Marital Home: (check one)

- Husband
- Wife
- Both Spouses

The Marital Home shall be: (check one)

- Placed for sale as part of this Agreement.
- Not placed for sale.

XI. HUSBAND’S PROPERTY. It is declared by the Couple that, under this Agreement, the Husband shall be the sole owner of the following assets and property upon commencement of legal separation:

XII. WIFE’S PROPERTY. It is declared by the Couple that, under this Agreement, the Wife shall be the sole owner of the following assets and property upon commencement of legal separation:

XIII. HUSBAND’S LIABILITIES & DEBTS. It is declared by the Couple that, under this Agreement, the Husband shall accept the following debts, outstanding balances, and liabilities upon commencement of legal separation:

XIV. WIFE’S LIABILITIES & DEBTS. It is declared by the Couple that, under this Agreement, the Wife shall accept the following debts, outstanding balances, and liabilities upon commencement of legal separation:

XV. RETIREMENT BENEFITS. Due to either investment or employment during the marriage, either the Husband or Wife: (check one)

- **DO NOT** have retirement plans.
- **HAVE** retirement plans. The Couple has the following retirement plans: _____ (“Retirement Plans”).

Upon signing this Agreement, the Retirement Plans shall be owned by: (check one)

- Husband
- Wife
- Both Spouses
- Other. _____.

XVI. PAYMENT TO BALANCE DIVISION. To achieve an equal division of the property, the Couple agrees that: (check one)

- There **SHALL BE** a cash payment in the amount of \$_____ from the Husband Wife to the Husband Wife. Payment must be made on or before _____,

20 _____. If payment is late, interest shall accrue on the outstanding amount due, from the due date, at the maximum rate under State law or ten percent (10%) per annum, whichever is greater.

- There **SHALL NOT** be a payment from one Spouse to the other. The Couple agrees that a split of the assets and property was fair and divided in good faith.

XVII. CHANGE OF CIRCUMSTANCES. The Couple agrees that: (check one)

- Spousal Support **CANNOT** Change. No court shall have jurisdiction to change the Spousal Support payment or non-payment by Husband or Wife to the other Spouse at any time. This shall be regardless of any change of circumstances that may arise. If there is Spousal Support, it cannot change **EXCEPT** by the Receiving Spouse’s death, remarriage, or termination by further court order, whichever occurs first, which shall terminate the Spousal Support payments.

- Spousal Support **CAN** Change. Spousal Support may be ordered payable only upon a proper showing in a change of circumstances with either Spouse. A change of circumstance is limited to: (check all that apply)

- Job Loss
- Injury
- Disability
- Illness/Disease
- Other. _____.

XVIII. GROUNDS FOR LEGAL SEPARATION. Irreconcilable differences, the irretrievable breakdown of the marriage, and the incompatibility of temperament have led to this separation with the possibility of reconciliation.

XIX. OTHER PROPERTY PROVISIONS. All income, earnings, assets, or other property acquired by either Spouse after the date of this Agreement shall be the separate property of the Spouse acquiring them, and each Spouse disclaims and waives all rights and interest in each asset acquired by the other after that date.

XX. ASSETS DISCLOSURE. Each Spouse warrants to the other that they do not have any knowledge of any assets other than those disclosed in accordance with Section VII. If the Spouses have waived their rights to financial disclosures, then this Section shall not apply to this Agreement. If either Spouse has any knowledge of any asset other than those disclosed in accordance with Section VII, that warrantor shall transfer or pay to the warrantee, at the warrantee’s election, one of the following:



- a.) If the asset is reasonably susceptible to division, a portion of the asset equal to the warrantee's interest in it;
- b.) The fair market value of the warrantee's interest in the asset on the effective date of this Agreement, plus interest at the maximum rate under State law or ten percent (10%) per annum, whichever is greater, from the effective date to the date of payment; or
- c.) The fair market value of the warrantee's interest in the asset on the date on which the warrantee discovers the existence of the asset, plus interest at the maximum rate under State law or ten percent (10%) per annum, whichever is greater, from the discovery date to the date of payment.

This provision shall not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from the nondisclosure of assets.

XXI. LIABILITIES DISCLOSURE. Each Spouse warrants to the other that he or she has not incurred nor shall incur, on or before the effective date of this Agreement, any liability not disclosed and listed in this Agreement for which the other is or may become personally liable or that could be enforced at any time against an asset held or to be received under this Agreement by the other Spouse.

If either Spouse has incurred or does incur, on or before the effective date of this Agreement, any liability not disclosed and listed in this Agreement for which the other is or may become personally liable or that could be enforced at any time against an asset held or to be received under this Agreement by the other Spouse, that warrantor shall fully indemnify the other with respect to the obligation, including, but not limited to, any and all liability on the obligation, attorney fees, and related costs. This provision shall not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from the nondisclosure of such liabilities.

XXII. UNDISCLOSED GIFTS. Either when this Agreement is signed or when the divorce petition is first filed, whichever occurs earliest, no gift shall be made without the other Spouse's consent. If such gift-giving does occur without the other Spouse's consent, that warrantor shall pay to the warrantee a sum equal to half of the fair market value of the asset transferred, with the fair market value to be determined, at the warrantee's election, as of either (a) the effective date of this Agreement or (b) the date on which the warrantee discovers the transfer, less any appreciation in the asset's value attributable solely to acts of the transferee(s) and successor(s). The warrantor shall further pay to the warrantee interest at the maximum rate under State law or ten percent (10%) per annum, whichever is greater, from the date elected for determination of the fair market value of the asset to the date of payment.

This provision shall not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from undisclosed gifts or transfers for less than adequate consideration.

XXIII. FUTURE LIABILITIES. Each Spouse warrants to the other that they shall not incur, after the effective date of this Agreement, any liability for which the other shall be or may become personally liable or that could be enforced against an asset held by the other Spouse.

If either Spouse incurs, after the effective date of this Agreement, any liability for which the other shall be or may become personally liable or that could be enforced against an asset held by the other Spouse, that warrantor shall indemnify the other for any liability on the obligation, attorney fees, and related costs.

XXIV. RELEASE OF LIABILITIES AND CLAIMS. Except as otherwise provided in this Agreement, each Spouse hereby releases the other from all interspousal obligations, whether incurred before or after the effective date, and all claims to the property of the other. This release extends to all claims based on rights that have accrued before the marriage, including, but not limited to, property and support claims. The Couple has considered such claims in this Agreement.

XXV. STATUS OF TEMPORARY ORDERS. All temporary orders previously rendered by the court in the pending dissolution action of the Couple shall be deemed fully satisfied as to those acts whose performance was required on or before the effective date of this Agreement and shall be deemed superseded by this Agreement as to those acts whose performance was not required.

XXVI. WAIVER OF RIGHTS ON DEATH OF OTHER SPOUSE. Except for any Child Support statements made in Attachment A, each Spouse hereby waives the right to receive any property or rights whatsoever on the death of the other, unless such right is created or affirmed by the other under a will or other written document executed after the effective date of this Agreement. Each Spouse believes that he or she has received a fair and reasonable disclosure of the property and financial obligations of the other Spouse.

Except for rights listed in this Agreement, the rights waived include, but are not limited to, rights to any of the following:

- a.) Property that would pass from the decedent by intestate succession;
- b.) Property that would pass from the decedent by testamentary disposition;
- c.) A probate homestead;
- d.) The setting aside of exempt property;
- e.) A family allowance;

- f.) The setting aside of an estate;
- g.) An election to take property against the decedent's will;
- h.) The statutory share of an omitted Spouse;
- i.) An appointment as executor or administrator of the decedent's estate, except as the nominee of a third Spouse legally entitled to make such a nomination;
- j.) Property that would pass from the decedent by non-probate transfer, such as the survivorship interest under a joint tenancy, a Totten trust account, or a payable-on-death account; and
- k.) Proceeds as a beneficiary of any type of insurance policy.

XXVII. RECONCILIATION. If the Couple reconciles, this Agreement shall nevertheless remain in full effect unless and until it is modified or revoked in writing and signed by the Couple.

XXVIII. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the Couple only by an instrument in writing signed by both of them, an oral agreement to the extent that the Couple executes it, or an in-court oral agreement made into an order by a court of competent jurisdiction.

XXIX. NOTICE OF BANKRUPTCY FILING. If either Spouse decides to claim any rights under the bankruptcy laws, that Spouse must notify the other of this intention in writing at least ten (10) days before filing the petition. Such notice must include, but not necessarily be limited to, the name, address, and telephone number of the attorney, if any, representing the Spouse in that proceeding and the court in which the petition shall be filed.

XXX. ATTORNEY FEES TO ENFORCE OR MODIFY AGREEMENT. Except as to reserved issues, the prevailing Spouse in any action or proceeding to enforce or modify any provision of this Agreement, or any corresponding provision of a subsequent judgment into which the provision is merged, shall be awarded reasonable attorney fees and costs for the Spouse to be deemed the prevailing Spouse for purposes of this provision, he or she must, at least ten (10) days before the filing of any motion, provide written notice to the other Spouse specifying the alleged breach or default, if capable of being cured, or the modification requested. The other Spouse must then be allowed to avoid implementation of this provision by curing the breach or default specified or executing an agreement for the modification requested during the ten (10) day period.

XXXI. COOPERATION IN IMPLEMENTATION. On demand of the other Spouse and without undue delay or expense, each Spouse shall execute, acknowledge, or deliver any instrument, furnish any information, or perform any other acts reasonably necessary to carry out the provisions of this Agreement. If a Spouse fails to execute any document as required by this

provision, the court may appoint the court clerk or his or her authorized designee to execute the document on that Spouse's behalf.

XXXII. EFFECTIVE DATE. The effective date of this Agreement shall be the date of its execution by the second of the Couple to do so.

XXXIII. COURT ACTION. If a judgment of dissolution of marriage is obtained by either Spouse, the original of this Agreement shall be attached to the judgment. The court shall be requested to do the following:

- a.) Approve the entire Agreement as fair and equitable;
- b.) Order the Couple to comply with all of its executory provisions;
- c.) Merge the court's provisions relating to all other matters, including child custody, visitation rights, child support, future acts with respect to property division, attorney fees and costs, and income tax, and only those provisions, into the judgment; and
- d.) Incorporate the remainder of the Agreement in the judgment for the sole purpose of identification.

XXXIV. ACKNOWLEDGMENTS. Each Spouse acknowledges that he or she respectively (1) is fully informed as to the facts relating to the subject matter of this Agreement and as to the rights and liabilities of the Couple; (2) enters into this Agreement voluntarily, free from fraud, undue influence, coercion, or duress of any kind; (3) is representing themselves in an "in pro per" status and is therefore not represented by legal counsel; (4) prior to executing this Agreement, either Spouse may have this Agreement reviewed by an attorney; and (5) has read, considered, and understands each provision of this Agreement.

XXXV. SEVERABILITY. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

XXXVI. ADDITIONAL TERMS & CONDITIONS.

XXXVII. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the Couple on these matters, superseding any previous agreement between them.

XXXVIII. SIGNATURES AND DATES. This Agreement and the foregoing are agreed to by:

Husband's Signature: _____ **Date:** _____
Print Name: _____

Wife's Signature: _____ **Date:** _____
Print Name: _____

ATTACHMENT A (CHILD SUPPORT)

I. MINOR CHILDREN. There are/is ___ minor child(ren) that are the direct offspring of the Couple. The minor child(ren) are as follows:

Child's Name: _____ Date of Birth (DOB): _____

Child's Name: _____ Date of Birth (DOB): _____

Child's Name: _____ Date of Birth (DOB): _____

Aforementioned and hereinafter known as the "Minor Children."

II. FUTURE CHILDREN. The Couple: (check one)

- **IS NOT** expecting a child in the future.

- **IS EXPECTING** a child on the date of _____.

III. PHYSICAL CUSTODY. The Couple chooses to enter into the following custody schedule: (check one)

- **SOLE CUSTODY** is given to Husband Wife.

- **JOINT CUSTODY**

IV. PARENTING TIME/VISITATION. The Couple shall have parenting time/visitation with the Minor Children are as follows:

Husband will have the following schedule with the Minor Children: (check one)

- Monday thru Friday

- Every Weekend

- Every Other Weekend

- Limited Visitation

- Other. _____.

Wife will have the following schedule with the Minor Children: (check one)

- Monday thru Friday

- Every Weekend

- Every Other Weekend

- Limited Visitation

- Other. _____.

V. NOTICE OF CHANGE OF RESIDENCE. The Couple agrees to the following:

- **ALLOWED** to Move. Either Spouse may move their residence by providing at least ___ days' notice.

- **NOT ALLOWED** to Move. Neither Spouse shall be allowed to move their residence more than ___ miles away from another without the other Spouse's consent.

VI. PREVIOUS COURT ACTIONS. The Couple has: (check one)

- **ALREADY** had custody and visitation rights administered by a court in the County of _____, State of _____, with a Case Number of _____.

- **NOT** had custody and visitation rights administered by a court.

VII. CHILD SUPPORT. Under this Agreement, there shall be: (check one)

- **NO CHILD SUPPORT.** Neither Spouse is obligated to pay child support. Each Spouse shall provide direct support for the Minor Children for those periods when the Minor Children are in their physical custody.

- **DEFERRED** child support to the local court or Child Support Services Department in the State of _____ ("Child Support").

- **CHILD SUPPORT PAYMENTS.** Child Support payments shall be made by the Husband Wife to the Husband Wife in the following manner:

Payments of \$_____ shall be due on the ___ of each month commencing on _____, 20____ ("Child Support").

Child Support shall continue until the first of the following events:

- a.) The Minor Children attains age 19 or has attained age 18, and either is not a full-time high school student or is self-supporting;
- b.) The Minor Children die;
- c.) The Minor Children enters into a valid marriage, is on active duty with any of the armed forces of the United States of America, receives a declaration of emancipation under State law, or otherwise becomes emancipated by leaving home and becoming self-supporting;
- d.) The custodial parent dies, and the other parent assumes custody of the Minor Children; or
- e.) Further court order.

VIII. ADDITIONAL SUPPORT. Under this Agreement, there shall be: (check one)

- **NO ADDITIONAL SUPPORT.** Neither Spouse is obligated to pay Additional Support other than the Child Support in this Agreement.

- **DEFERRED** additional support to the local court or Child Support Services Department in the State of _____ (“Additional Support”).

- **ADDITIONAL SUPPORT PAYMENTS.** Additional Support payments shall be made in the following manner: (check all that apply)

- **Health and Dental Insurance.** Husband Wife shall maintain coverage for each minor child under the medical and dental insurance provided through his/her employment. To facilitate the use of such coverage for the child(ren), the Couple shall cooperate fully and in a timely manner, including, but not limited to, obtaining and providing all necessary insurance cards and claim forms, completing and submitting all necessary documents, and delivering all insurance payments. For purposes of duration and modification, this provision shall be deemed part of the child support orders made by the local court in the Couples’ dissolution action.

- **Uncovered Health Care Expenses.** Husband Wife shall be responsible for medical, dental, orthodontic, optical, psychiatric, psychological, and other health care expenses of the Minor Children, to the extent not covered by insurance. The Spouse incurring the expense shall present to the other Spouse an itemized statement of costs accrued or paid, proof of payment of any costs paid by the Spouse, and any necessary information about how to make payment to the provider within a reasonable time, but not more than ____ days after accruing the costs. The reimbursing Spouse shall make the required payment or reimbursement within a reasonable time, but not more than ____ days after notification of the amount due. For purposes of duration and modification, this provision shall be deemed part of the Child Support orders made by the court in the Couples’ dissolution action.

- **Other.** Husband Wife agrees to make payment to the other Spouse for the following: _____.

IX. DEPENDENTS. The following Minor Children can be used as dependents for tax-related benefits: (check all that apply and write the Minor Children’s names)

- Husband shall have: _____.

- Wife shall have: _____.

X. CHILD SUPPORT ACKNOWLEDGMENTS. The Couple declares the following with regard to their agreement regarding Child Support:

- a.) The Couple is fully informed of their rights concerning Child Support, including the right to have Child Support awarded in accordance with legislatively determined guidelines;
- b.) This order is being agreed to without coercion or duress;
- c.) The agreement is in the best interests of the child(ren) involved; and
- d.) The needs of the child(ren) shall be adequately met by the stipulated amount.

This Attachment A has been agreed signed by the Couple below:

Husband's Signature: _____ Date: _____
Print Name: _____

Wife's Signature: _____ Date: _____
Print Name: _____