



**WHEREAS**, Plaintiff resided at \_\_\_\_\_, (city) \_\_\_\_\_, County, \_\_\_\_\_ (state), at the time of the commencement of this divorce action and presently resides at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state). Defendant resided at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state), at the time of the commencement of this divorce action and presently resides at \_\_\_\_\_, (city) \_\_\_\_\_ County, \_\_\_\_\_ (state). Both parties

agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue, and **WHEREAS**, the parties are the parents of \_\_\_\_\_ (insert number of child(ren)) minor child(ren) born to or adopted by the parties during the course of their relationship / marriage. Spouse is / is not (circle one) pregnant at the time of this action. If pregnant, Spouse is due on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and

**WHEREAS**, the parties hereto now desire to enter into an Agreement settling all claims, custody, visitation, child support, property division and all other matters between the parties with regard to the divorce action,

**NOW THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, it is agreed and understood by and between the parties as follows:

- 1. Release.** Except as herein specified, each of the parties is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and each of the parties releases the other from any and all liabilities, debts and/or obligations of any kind or character incurred by the other from and after the date of this Agreement and from any and all claims and demands, it being expressly understood and agreed this Agreement is intended to settle the rights of the parties in all respects, except as hereinafter provided.
- 2. After-Acquired Property.** Any and all property, whether real or personal, acquired by either party from and after the date hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same, and each of said parties hereby respectfully grants to the other all such other and further acquisitions of property as the sole property of the one so acquiring the same.
- 3. Custody & Visitation.** The parties are the parents of the following minor child(ren) born to or adopted

by them during their relationship or marriage:

<u>Name</u>	<u>Date of Birth</u>	<u>Date of Adoption</u>	<u>Age</u>	<u>Sex</u>

A. Legal & Physical Custody: The parties agree that custody of the minor child(ren) shall be (*check one box*):

- The parties share joint legal custody of the minor child(ren) with Plaintiff / Defendant having primary physical custody (*circle one party*);
- The parties share joint legal and joint physical custody of the minor child(ren);
- Plaintiff / Defendant has sole legal custody and physical custody of the minor child(ren) (*circle one party*);
- The parents agree to joint legal and physical custody with a shared parenting plan, as set forth below, in which the child(ren) reside no less than 180 nights per calendar year in each parent's home. The parents further agree to share the duties and responsibilities of parenting the child(ren) and shall divide the expenses of the child(ren) in proportion to their incomes; i.e. Plaintiff paying \_\_\_\_% and Defendant paying \_\_\_\_% (*these percentages are obtained from the child support calculation form*).

B. Parenting Time Schedules: The parties agree to the following parenting time schedules with the minor child(ren) (*you may review the South Dakota Parenting Guidelines to assist you in designing these schedules*):

During the school week, Plaintiff shall have the minor child(ren) (including pick-up and return times and location): \_\_\_\_\_

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and Defendant, during the school week, shall have the minor child(ren) (including pick-up and return times and location): \_\_\_\_\_

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During the summer, Plaintiff shall have the child(ren) (including pick-up and return times and location):

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and Defendant, during the summer, shall have the child(ren) (including pick-up and return times and location:

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C. Holidays: In addition and unless the parties otherwise agreed, major holidays shall be alternated in the following manner:

**Even Years:**

Plaintiff shall enjoy the following holidays with the minor child(ren):

Martin Luther King, Jr. Day weekend (in January)

Spring Break, if one is separate from Easter

4<sup>th</sup> of July

Labor Day weekend

First Half of Christmas Break

Child(ren)'s Birthday(s)

Defendant shall enjoy the following holidays with the minor child(ren):

President's Day (in February)

Easter

Memorial Day weekend

Thanksgiving

Second Half of Christmas Break, including New Year's Eve and Day

**Odd Years:**

Plaintiff shall enjoy the following holidays with the minor child(ren):

President's Day weekend (in February)

Easter

Memorial Day weekend

Thanksgiving

Second Half of Christmas Break, including New Year's Eve and Day

Defendant shall enjoy the following holidays with the minor child(ren):

Martin Luther King, Jr. Day weekend (in January)

Spring Break, if one is separate from Easter

4<sup>th</sup> of July

Labor Day weekend

First Half of Christmas Break

Child(ren)'s Birthday(s)

Mother shall also have the child(ren) every Mother's Day and Father shall have the child(ren) every Father's Day. It is also agreed that the child(ren) will spend the day with the parent who is celebrating his or her birthday, unless it interferes with a major holiday or scheduled vacation (which is different than regular parenting time). If a parent's birthday falls on a holiday that is allocated to other parent that year, that parent may elect to exercise parenting time on another day during that month, upon sufficient advance notice to the other parent.

Unless the parties otherwise agree, Thanksgiving shall begin on Wednesday at 5:30 p.m. and end on Sunday at 7:00 p.m.; Martin Luther King Jr Day, President's Day, Memorial Day and Labor Day weekends shall begin on Friday at 5:30 p.m. and end on Monday at 7:00 p.m.; Mother's Day and Father's Day shall begin on at 9:00 a.m. on Sunday and end at 8:00 p.m. that same day; Easter weekend shall begin on Thursday at 5:30 p.m. and end on Sunday at 7:00 p.m. The 4<sup>th</sup> of July will begin the evening of July 3 at 5:00 p.m. and end the

morning of July 5 at 10:00 a.m.

The parties agree to equally share the Christmas break, based on the school calendar in the child(ren)'s district. The break begins at 5:30 p.m. on the day the child(ren) are released from school and continues until 7:00 p.m. of the day before the child(ren) return from school. If the parents are unable to work out a shared arrangement for the Christmas / New Year holiday and they celebrate the holidays in the same or a nearby community, in those years when Christmas does not fall in a parent's week, that parent shall have from 11:00 a.m. to 8:00 p.m. on Christmas Day.

Unless there is a holiday conflict, Plaintiff shall have the child(ren) on the child(ren)'s birthday(s) in even-numbered years and Defendant shall have the child(ren) on the child(ren)'s birthday(s) in odd-numbered years. If the parents do not otherwise agree, the birthday parenting time begins at 11:00 a.m. and concludes that same day at 8:00 p.m. If the child's birthday conflicts with a holiday, the parent who has parenting time on that holiday shall have the child(ren).

When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence. Therefore, if Defendant misses a regular weekend because it is Plaintiff's holiday, the regular alternating parenting time schedule will resume following the holiday. If Defendant receives two consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with Plaintiff. Unless mutually agreed, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. Parenting time "missed" during the summer period is not made up.

The parties agree to arrange transportation for the child(ren) for holiday visits as follows (*examples: Defendant picks up at the start of the holiday period and Plaintiff picks up at the end of the holiday period; or parties agree to meet at a specific location at the start and end of the holiday period*):

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**The parties may, by mutual agreement, alter the parenting time schedule above which shall be in writing and signed by both parties. Text messages and emails are sufficient in amending this agreement as long as the text messages and emails are retained.**

D. Failure to Comply: Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and to parenting time, neither of which is dependent upon the other. In other words, if you do not receive child support, you still have to allow parenting time and if you are denied parenting time, you still have to pay child support. **If there is a violation of either a parenting time or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.**

E. Telephone Calls: Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent, if it is a long distance call. The parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. Messages or voice mails left for a child should be returned in a timely manner.

F. Clothing: If one parent has primary physical custody, that parent shall send an appropriate supply of the child(ren)'s clothing with them during the other parent's parenting time, which shall be returned clean (when reasonably possible), with the child(ren). The parent exercising parenting time shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the child(ren) may be sent.

If the parties are exercising shared parenting, it is expected that they will each maintain clothing at their individual homes for the child(ren). However, the parents agree to cooperate in returning clothing to the appropriate parent so each parent can maintain a supply of clothing.

G. Transportation: Unless otherwise agreed to herein, the transportation between the parents shall be handled equally. When the parents live in the same community, the parent commencing his/her parenting time will pick up the child(ren) from the other parent's home and upon conclusion of the parenting time, the other parent shall retrieve the child(ren) from the home of the parent who just had parenting time. The parents have an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

H. Parental Affection: Each of the parents shall take all measures deemed advisable to foster a feeling of affection between the minor child(ren) and the other parent and neither will do anything which may estrange the child(ren) from the other parent nor impair their high regard for the other parent. Both parties agree they will speak only favorably of the other when in the child(ren)'s 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.

I. Grade Reports and Medical Information: If the parties share joint legal custody, 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(ren)'s doctors and other professionals outside the presence of the other parent. Unless there are abuse, neglect, criminal or protection orders to the contrary, 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 a child is taking medications, both parents shall provide a sufficient amount and appropriate instructions to the other parent.

J. Future Disputes: If the parties develop disputes in the future, they agree to first review the South Dakota Parenting Time Guidelines to determine if a resolution can be reached.

K. Relocation: The parties acknowledge that if either of them desire to relocate, they must abide by specific provisions required by law. These provisions can be found at SDCL §§ 25-4A-17, -18, -19.

L. S.M.I.L.E. Certificate: The parents understand that they may be required to attend a parenting education class and file the certificates of their completion before their divorce can be finalized. [*Please check with your local clerk of court to determine if attendance is required in your circuit prior to the granting of the divorce.*]

**4. Child Support.**

A. The parties agree that \_\_\_\_\_ (*insert name of party*) shall pay child support to \_\_\_\_\_ (*insert name of party*) 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 pro rata share of the health insurance provided by the Plaintiff / Defendant (*circle one*) for the parties' minor child(ren);

his / her pro rata 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) 10 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;

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 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

B. 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 Plaintiff paying \_\_\_\_% and Defendant paying \_\_\_\_%. Pursuant to SDCL § 25-7-6.16, the parent with 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.*

**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 <http://dss.sd.gov/childsupport/services/obligationcalculator.asp>).

C. The child support obligation shall commence on the 1<sup>st</sup> day of \_\_\_\_\_, 20\_\_\_\_\_.

D. Pursuant to SDCL § 25-5-18.1, the support obligation shall continue until each child attains the age of eighteen (18) or until each child attains the age of nineteen (19) if the child is a full time student in a secondary school.

E. The employer of the parent who is required to pay child support shall be immediately directed to withhold amounts for current support and arrearages as specified herein and as provided in SDCL § 25-7A-23 and shall transmit said amount as provided in SDCL § 25-7A-34.

F. Until otherwise notified by the Office of Child Support Enforcement all payments shall be made payable to “Office of Child Support Enforcement” and mailed to:

Office of Child Support Enforcement  
700 Governor’s Drive  
Pierre, SD 57501-2291

G. Regarding health insurance (*choose one*):

- Plaintiff / Defendant (*circle one*) shall obtain and/or maintain health insurance coverage for the minor child(ren) if available through employment or other group carrier at a reasonable cost. Plaintiff / Defendant (*circle one*) shall notify the Department of Social Services of the insurance company name, address and policy number and the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce and shall also notify the Department of any changes in coverage. Plaintiff / Defendant (*circle one*) shall also 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 the names of persons covered within thirty days of entry of the Judgment and Decree of Divorce;

**OR**

- Neither parent currently has medical insurance for the minor child(ren). Medical insurance shall be provided for the child(ren) by a parent if the insurance is accessible for the child(ren) and available to a parent at reasonable cost. SDCL § 25-7-6.16. The cost shall be apportioned between the parents. Id. The parent providing medical insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within 30 days and shall also notify the Department of any changes in coverage. The parent providing medical insurance shall also 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 the names of persons covered within thirty days.

**5. Property Division:** The parties agree that the following marital property shall be divided as follows and such division is equitable:

A. Clothing, Personal Effects, Personal Property: Each of the parties shall receive his/her own clothing, personal effects, and all personal property in his/her possession, free and clear of any claim from the other, unless otherwise specified herein.

B. Photographs, Memorabilia: The parties agree to equally split the photographs and any special memorabilia acquired during the course of the marriage / relationship within 90 days of execution of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Plaintiff's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Plaintiff shall exclusively receive, as his/her sole and separate property, the following vehicle(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (provide year,

make and model), subject to any debts against the asset(s). Plaintiff shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

D. Defendant's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Defendant shall exclusively receive, as his/her sole and separate property, the following vehicle(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (provide year,

make and model), subject to any debts against the asset(s). Defendant shall be solely responsible for the debt

associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

E. As set forth above, the party receiving the assets listed above in 5(C) and 5(D) shall assume the debt associated with them and remove the other party's name therefrom within \_\_\_\_\_ days from entry of the Judgment and Decree of Divorce. The other party shall cooperate in transferring the titles to the party receiving the assets once his/her name is removed from the debt.

F. Property in Possession of the Other: If either party has property to be given to the other, then Plaintiff shall, within 30 days of execution of this Agreement, give to Defendant the following personal property items: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

and Defendant shall, within 30 days of execution of this Agreement, give to Plaintiff the following personal property items: \_\_\_\_\_

\_\_\_\_\_

G. Checking and Savings Accounts: The parties represent that they have separated their bank accounts including checking and/or savings, and each shall keep the cash balance in any bank accounts in his/her name, free and clear of any claim by the other. The parties shall immediately close any remaining joint accounts with the proceeds to be divided equally.

H. Tax Consequences: The parties agree that the foregoing transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on his or her tax returns filed after this Agreement is signed.

6. Debt Division: In addition to the allocation of the debts associated with the property distributed herein, the remaining marital debt of the parties shall be divided as follows (*list all debts incurred by one or both of the parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans,*

medical bills, etc.):

A. Plaintiff shall be solely responsible for and take over the following debts: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

B. Defendant shall be solely responsible for and take over the following debts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

C. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts he/she has incurred since (mark one)  date of separation on \_\_\_\_\_ (fill in date you starting living apart); or  date of execution of this Agreement. Each of the parties agrees not to contract any debt, charge or liability whatsoever for which the other or his or her property or estate shall or may become liable or answerable in the future.

Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during the course of their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.

D. In respect to equalizing the property distribution, the parties agree (check one):

That Plaintiff / Defendant (circle one) shall pay to the other the amount of \$ \_\_\_\_\_ to equalize the property / debt distribution within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce;

**OR**

That the allocation of personal property and debt is equitable and no amount is necessary to equalize the distribution.

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

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

E. Unless otherwise provided herein, each of the parties promises at all times to keep the other party free, harmless and indemnified of and from any and all debts, charges or liabilities previously contracted or incurred by said party individually, and to be hereafter contracted or incurred by said party individually, and each shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors involved will approve a release from liability. If a creditor denies a release presently, the parties agree to renew their applications for formal transfer or assumption in the future at reasonable intervals.

**7. Real Property (house, land or buildings):**

- The parties have no real property (*check if applicable and then proceed to #8*).
- The parties have an interest in the following real property:

Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Legal description (*obtained from a document such as a Warranty Deed, Mortgage or Title Insurance*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In regards to the property, the parties agree:

Plaintiff / Defendant (*circle one*) will receive the house / land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$\_\_\_\_\_ (*Value – Debt(s)*). The party receiving the real estate shall pay \$\_\_\_\_\_ to the other to equalize this division within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. If there is a

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

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

mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and sign a quit claim deed releasing all interest in the property to the other party.

**OR**

The parties agree that the house / land and all the fixtures therein and/or the improvements thereon shall be listed for sale by \_\_\_\_\_, 20\_\_\_\_ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market value. During the pendency of sale of the home, Plaintiff / Defendant / Not Applicable (*Circle One*) shall have exclusive possession of the marital home as long as he/she does not commit waste thereto. Commencing \_\_\_\_\_, 20\_\_\_\_, the parties agree that Plaintiff / Defendant / Not Applicable (*Circle One*) shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agree that the net proceeds of the sale of the home shall be divided with Plaintiff receiving \_\_\_\_\_% and Defendant receiving \_\_\_\_\_%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Plaintiff receiving \_\_\_\_\_% and Defendant receiving \_\_\_\_\_%. The parties agree, if they are not able to file a joint return, Plaintiff / Defendant (*circle one*) shall claim the real estate taxes on his/her 20\_\_\_\_ income tax return and Plaintiff / Defendant (*circle one*) shall claim the mortgage interest on his/her 20\_\_\_\_ income tax return.

**8. Investments and Retirement Funds and Pension Plans:** Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirements and investments and you are strongly advised to consult an attorney if you are dividing this type of property.

The parties agree (*check the appropriate box*):

Each party specifically waives any and all claims, if any, to the other's 401 K, IRA, stock options, retirement, pension, and profit sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or to become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including both present and future benefits; **OR**

Plaintiff shall receive the following investments and retirement accounts:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ; and

Defendant shall receive the following investments and retirement accounts:

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

The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

**9. Life Insurance.** Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree (*check the appropriate box*):

The parties do not have any life insurance policies to distribute;

**OR**

The parties agree to the allocation of the life insurance policies as follows:

Plaintiff shall receive the following (term/whole life) life insurance policy(ies):



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Defendant shall receive the following (term/whole life) life insurance policy(ies):

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**10. Military Benefits (If one of the parties is a military member).**

Neither party was or currently is a member of the military. (*Mark if applicable and then move to section 11*).

**OR**

Plaintiff / Defendant (*circle one or both, if applicable*) was a member of the military (includes the National Guard and Reserves) during a time period of the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, the Survivor Benefit Plan. There are numerous and complicated laws and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Center to understand and protect all benefits you may be entitled to.

When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Center.

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that he/she were in service (ex. 1992 – 2004) and the specific years of service during marriage (ex. 1994-2004): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In respect to military benefits of the service member, the parties agree as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**11. Alimony (Spousal Support).** Please check the appropriate box and fill in the appropriate blanks. (*You are strongly encouraged to consult with an attorney before completing this section*):

Plaintiff / Defendant (*circle one*) shall receive alimony in the sum of \$\_\_\_\_\_ each month for a period of \_\_\_\_\_ months, or until remarriage of the recipient or death of either party. Alimony is tax-deductible to the spouse paying it and taxable income to the spouse receiving it.

**OR**

No permanent, general, rehabilitative or restitutional alimony shall be granted to either party.

Both parties waive any right he / she may have to alimony and accepts this Stipulation and Settlement Agreement (With Minor Children) in full and final satisfaction of all marital claims.

**12. Income Tax Returns.** The parties agree to share historical accounting and tax information, documents and records with the other as may be necessary for each to prepare a complete an accurate income tax return for subsequent tax years. The parties further agree:

File a joint tax return if possible for the \_\_\_\_\_ tax year, if allowed by law, and share the expenses and tax liability or refund as follows: \_\_\_\_\_% to Plaintiff and \_\_\_\_\_% to Defendant;

**OR**

File as single persons for the \_\_\_\_\_ tax year.

Commencing with the tax year that the Judgment and Decree of Divorce is signed, the parties shall file as single persons on their IRS returns and every year thereafter.

**12. Former Name.** If one party would like his/her maiden name or former name restored to them, complete this section:

Not applicable (*check if neither party wants their maiden or former name restored*);

**OR**

Plaintiff / Defendant (*circle one*), presently known as \_\_\_\_\_ DOB \_\_\_\_\_, will be restored to her / his former or maiden name of “ \_\_\_\_\_ ” in any Judgment and Decree of Divorce issued herein and will be known hereafter as \_\_\_\_\_.

**13. Other Agreements Not Covered Above.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14. Attorney’s Fees.** (*Check the appropriate box and fill in where necessary*):

Each party shall be solely responsible for his/her own attorney fees, costs and expenses incurred in this proceeding;

**OR**

Plaintiff / Defendant (*circle one*) will pay the sum of \$ \_\_\_\_\_ towards the attorney fees, costs and expenses of his / her spouse within \_\_\_\_\_ days of entry of the Judgment and Decree of Divorce.

**15. Address.** Until the youngest minor child is of majority age and the parties’ names are removed from the other party’s debts, the parties agree that each will promptly notify the other of any change of address and/or

\_\_\_\_\_  
Plaintiff’s Initials

\_\_\_\_\_  
Defendant’s Initials

telephone number. It is imperative that as long as a child support order exists, the parties MUST keep the Office of Child Support notified of any change of address.

**16. Other Documents.** The parties shall, at any and all times upon request by the other party or his or her legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

**17. Grounds.** The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL 25-4-17.3. The parties have executed an Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.

**18. Interference.** The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

**19. Enforcement.** The parties agree that this Agreement shall be binding upon them until otherwise mutually agreed 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.

**20. Release of Inheritance Rights.** Unless otherwise specified herein, each party releases all right to share in the estate of the other or to share in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed subsequent to the date of this Agreement.

**21. 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.

**22. Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

**23. Titles.** The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.

**24. Conflict of Laws.** This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

**25. Waiver and Incorporation.** The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce.

It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

**26. Military Service.** Plaintiff confirms that he/she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

Defendant confirms that he/she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act.

**27. Written Memorandum.** This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

**28. Ratification.**

A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.

**B. The parties represent to the court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The**

**parties acknowledge that it is a legal document and binding upon them.**

C. Each party covenants and warrants to the other: (a) he or she has fully disclosed the existence of and value of all assets and debts in which he or she has any interest whatsoever; and, (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them individually, or in conjunction with a third party; and, (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff's Signature

STATE OF SOUTH DAKOTA )  
 )SS  
COUNTY OF \_\_\_\_\_ )

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

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

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(SEAL)

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Defendant's Signature

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

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

