

INSTRUCTIONS AND FORM FOR STIPULATION AND SETTLEMENT AGREEMENT WITH MINOR CHILDREN

These forms are related to specific South Dakota Codified Laws (SDCL) concerning divorce matters. You can find these laws on the South Dakota Legislature website. If you have any legal questions, it is highly recommended that you consult with an attorney. Court staff are unable to provide legal advice or assist with form completion. For specific questions related to the forms, you can also contact the Legal Form Help Line at 1-855-784-0004 or email UJS staff at ujssrlhelp@uj.s.state.sd.us. Remember that legal matters are better addressed by professionals who specialize in this field.

IMPORTANT NOTICES:

The Stipulation and Settlement Agreement is an agreement made between the Plaintiff and the Defendant on the dissolution of their divorce case. The Stipulation and Settlement Agreement is required for the Court to grant a divorce without either party appearing in court. Although, in some cases, a hearing may still be required.

To complete this form, you will need to:

- Read each page in detail.
- Complete the caption by filling in the name of the county you are filing in, the judicial circuit number, name of the Plaintiff and Defendant on the lines provided, and case filing number.
- Pages 1 and 2 – Read and fill in the lines provided.
- Page 3 Number 3 – List the name(s), date of birth(s), and date of adoption, if applicable.
- Page 3 Section A – Mark the appropriate box regarding the custody of the child(ren).
- Page 4 Section B – Provide the parenting time schedule for both the Plaintiff and the Defendant.
- Pages 4 and 5 Section C – Provide the transportation arrangement of the child(ren) during holidays.
- Page 8 Number 4 Section A – Provide the agreed upon child support obligation.
- Page 8 Number 4 Section B – List the parties percentage of health care coverage for the child(ren) that exceeds \$250.
- Page 9 Section D – List the month and year the child support obligation will begin.

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- Pages 9 and 10 Section H – Mark who will be responsible for obtaining health insurance for the child(ren).
- Page 11 Number 5 Section C – List property that the Plaintiff will receive as a part of the divorce. Property would include vehicles, boats, motorcycles, ATV/Mobile homes, etc. Include make and model number for each.
- Page 11 Number 5 Section D – List property the Defendant will receive as part of the divorce. Property would include vehicles, boats, motorcycles, ATV/ Mobile homes, etc. Include make and model number for each.
- Pages 11 and 12 Section E – List any property that either party has possession of but is to be given to the other party within thirty days of entry of the Judgment and Decree of Divorce.
- Page 13 Number 6 Sections A and B – List any debt each party will be responsible for. This will include debt such as credit cards, banks loans, personal loans, vehicle loans, outstanding bills, student loans, medical bills, etc.
- Page 14 Number 7 – Set the timeframe for the parties to remove the others name from any property or debt received as a part of this Agreement.
- Page 14 Number 8 – Provides for the parties to equalize the property and debt distribution by requiring one party to make an equalization payment to the other party. If the parties believe the distribution of assets and debts is equal, you should mark the second box.
- Pages 15 and 16 Number 9 – Request the distribution of real property such as houses, land, and buildings.
- Pages 16 and 17 Number 10 – List investment and retirement account information, if any, and the division of each.
- Pages 17 and 18 Number 11 – Include life insurance information, if any, and the division of such.
- Pages 18 and 19 Number 12 – Mark if either party is currently a member of the military.
- Page 19 Number 13 – Select whether alimony is appropriate and if so, enter the amount and payment details.
- Page 20 Number 14 – Enter income tax return agreement.

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- Page 20 Number 15 – Indicate if either the Plaintiff or Defendant would like to be restored to a maiden or former name and if so, provide that information.
- Page 20 Number 16 – Provide any other agreement the Plaintiff and Defendant have agreed upon if not listed previously.
- Page 21 Number 17 – Select if either party is awarded attorney fees.
- Each page must be initialed by each party.
- Each party will need to sign and date in front of a notary or Clerk of Court.

STATE OF SOUTH DAKOTA)
)
) :SS
)
COUNTY OF _____)

IN CIRCUIT COURT

_____ JUDICIAL CIRCUIT

| | |
|---|---|
| <p>_____ , Plaintiff</p> <p>v.</p> <p>_____ , Defendant</p> | <p>Case No.: _____</p> <p style="text-align: center;">STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN)</p> |
|---|---|

THIS STIPULATION AND SETTLEMENT AGREEMENT (WITH MINOR CHILDREN), made and entered into this _____ day of _____, 20_____, by and between the Plaintiff, _____ and the Defendant, _____. Within this document we understand that we may be referred to individually as Plaintiff/Defendant, or together as party(ies).

WHEREAS, the parties were married in the City of _____, in the State of _____, on the _____ day of _____, 20_____, and ever since that time have been and are now married; and

WHEREAS, irreconcilable differences and disputes have arisen between the parties and have or will separate with the intent to live apart; and

WHEREAS, Defendant was served with a true and correct copy of the Summons and Complaint (with Minor Children) on the _____ day of _____, 20_____, and;

WHEREAS, At the time of the commencement of this divorce action Plaintiff resided in the City of _____, in the County of _____, in the State of _____, and presently

Plaintiff's Initials

Defendant's Initials

resides in the City of _____, in the County of _____, in the State of _____, and the Defendant at the time of the commencement of this divorce action resided in the City of _____, in the County of _____, in the State of _____, and presently resides in the City of _____, in the County of _____, in the State of _____.

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 _____ (#) 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, the spouse is due on the _____ day of _____, 20_____, and

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

NOW THEREFORE, it is hereby stipulated and agreed by and between the parties herein 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. 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 of this Agreement, 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 future 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/marriage:

| <u>Name</u> | <u>Date of Birth</u> | <u>Date of Adoption</u> |
|-------------|----------------------|-------------------------|
|-------------|----------------------|-------------------------|

| | | |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

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

- The parties share joint legal custody of the minor child(ren) with **Plaintiff / Defendant (circle one)** having primary physical custody;
- The parties share joint legal and joint physical custody of the minor child(ren);
- Plaintiff / Defendant (circle one)** has sole legal and physical custody of the minor child(ren);
- The parties 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 ____%.

B. Parenting Time Schedules: The parties agree to the following parenting time schedules with the minor child(ren):

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

During the school week, including pick-up and return times and location, the **Defendant** shall have the minor child(ren): _____

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

During the summer, including pick-up and return times and location, the **Defendant** shall have the minor child(ren): _____

C. Holidays: In addition to the custodial arrangement designated above, and unless the parties otherwise agreed, major holidays shall be alternated as set forth in the South Dakota Parenting Guidelines (Form UJS-302). When there is a conflict between a holiday and the regular parenting schedule, the holiday takes precedence. Therefore, if the Defendant misses a regular weekend because it is Plaintiff's holiday, the regular parenting time schedule will resume following the holiday. If the Defendant receives two consecutive weekends

because of a holiday, the regular alternating weekend schedule will resume the following weekend with the Plaintiff. Unless mutually agreed, there will be no makeup parenting time after any conflicts between the 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:

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 to both support and 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 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 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 their 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 early or late. 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 while 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 various activities (for example, music or sports) involving parental participation. If a child is taking medications, each parent shall have a sufficient amount of medication and appropriate instructions during their parenting time.
- J. Future Disputes: If the parties develop disputes in the future, they agree to first review the South Dakota Parenting Time Guidelines (UJS-302) 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-17-19.
- L. Parenting Course Requirement: Because this stipulation involves issues of custody and parenting time, the parties recognize that they must complete a court-approved parenting course pursuant to SDCL § 25-4A32. The parties have therefore each filed a certificate of completion or an Affidavit on the Court-Approved Parenting Course with the Clerk of Court within sixty days of the service of the Complaint on the other party.

4. Child Support.

A. The parties agree that _____ shall pay child support to _____ for the support and maintenance of the minor child(ren) in the amount of \$_____ per month, which includes:

(check all that apply)

- Their pro rata share of the health insurance provided by the **Plaintiff / Defendant (circle one)** for the parties' minor child(ren).
- Their pro rata share of daycare expenses for the minor child(ren).
- An annualized abatement of \$_____ per month in consideration for the months _____ has the child(ren) six or more over-nights 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: _____

B. Any reasonable medical costs, including optometrist, dental, 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 option would not be applicable in shared parenting arrangements.)

C. The child support calculation is attached to this document and was prepared by the **Plaintiff / Defendant (circle one)**. (You may want an attorney to calculate child support or you can determine the support obligation by using the child support calculator provided by the Department of Social Services and found at:

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

D. The child support obligation shall commence on the 1st day of _____, 20_____.

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

F. 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.

G. Until otherwise notified by the Department of Social Services – Division of Child Support, all payments shall be made payable to “Division of Child Support” and mailed to:

Division of Child Support
700 Governor’s Drive
Suite 84 Pierre, SD 57501-2291

H. 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, policy number, and the names of persons covered within thirty days of entry of the Judgment

and Decree of Divorce. **Plaintiff / Defendant (circle one)** 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, 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). Health 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 health insurance shall notify the Department of Social Services of the insurance company name, address and policy number and name of persons covered within thirty days and shall also notify the Department of Social Services 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, 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 their own clothing, personal effects, and all personal property in their 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 marriage/relationship within ninety 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 shall exclusively receive, as their sole and separate property, the following items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

D. Defendant shall exclusively receive, as their sole and separate property, the following items:

- | | |
|---------|---------|
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |
| ▪ _____ | ▪ _____ |

E. Property in Possession of the Other: If Plaintiff has property to be given to Defendant, then Plaintiff shall, within thirty days of execution of entry of the Judgment and Decree of Divorce, give to Defendant the following personal property items:

- _____
- _____
- _____
- _____
- _____
- _____

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

- _____
- _____
- _____
- _____
- _____
- _____

F. Checking and Savings Accounts: It is acknowledged by the parties, that they have divided their bank accounts, encompassing checking and/or savings accounts. Each party shall maintain exclusive ownership of the cash balance in their individual accounts, unencumbered by any claims from the other party. Furthermore, any joint accounts that remain, shall be promptly closed and the funds shall be divided equally between the parties.

G. 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 their tax returns filed after this Agreement is signed.

6. **Debt Division:** The parties agree the following martial debt of the parties shall be divided as follows: *(list all debts and outstanding balances incurred by one or both 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 they incur from the date of execution of this Agreement. Each party agrees not to incur any debt or liability that could potentially hold the other party, their property, or estate responsible in the future.

- D. 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 their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.
- E. Unless otherwise provided herein, each of the parties promise, at all times, to keep the other party free, harmless and indemnified 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. 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. As set forth above, the party receiving the property or debt listed in this agreement shall assume receipt commencing on the date of this agreement. Further, the party receiving the asset or debt obligation, shall remove the other party's name therefrom within _____ days from entry of the Judgment and Decree of Divorce. The other party shall also cooperate in transferring titles to the party receiving the asset(s) once their name is removed.

8. 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.

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

The parties have no real property (*check if applicable and then proceed to #10*).

The parties have an interest in the following real property:

A. Physical Address: _____

B. Legal description (obtained from a document such as a Warranty Deed, Mortgage or Title Insurance):

C. Regarding the property, the parties agree (check one):

That the **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) = Equity)
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 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 shall sign a quit claim deed releasing all interest in the property to the other party.

Plaintiff's Initials

Defendant's Initials

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 if they do 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 their 20____ income tax return and **Plaintiff / Defendant (circle one)** shall claim the mortgage interest on their 20____ income tax return.

10. 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 retirement and investment accounts and you are strongly advised to consult an attorney if you are dividing such property.

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

Each party specifically waives any and all claims, if any, to the other's 401K, 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 will 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

Effective the date this Agreement is signed by both parties, the Plaintiff shall receive the following investments and retirement accounts (list the current value of each): _____

_____ and;

Effective the date this Agreement is signed by both parties, the Defendant shall receive the following investments and retirement accounts (list the current value of each): _____

B. 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.

11. 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 one**):

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) and shall be responsible for any premium associated with said policy:

Defendant shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium associated with said policy:

12. Military Benefits (If one of the parties is a military member) (check one)

Plaintiff / Defendant (circle one or both, if applicable) confirms they are not 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.

OR

Plaintiff / Defendant (circle one or both, if applicable) was a member of the military (includes the National Guard and Reserves) during 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, and 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 Service 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 Service and, if necessary, an Order requiring Survivors Benefit Protection (SBP).

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 they 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:

13. 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 beginning the 1st of _____, 20____ for the following duration:

- A period of _____ months; or
 Until remarriage of the person receiving alimony or death of either party.

OR

No permanent, general, rehabilitative or restitutional alimony shall be granted to either party. Both parties waive any right they may have to alimony and accepts this Agreement (with Minor Children) in full and final

satisfaction of all marital claims.

14. 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 and accurate income tax return for subsequent tax years. The parties 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.

The parties further agree that the minor child(ren) shall be claimed as dependents on their individual tax returns as follows: _____

15. Former Name. If one party would like their maiden name or former name restored to them, complete this section: *(Leave section blank if not applicable)*

Plaintiff / Defendant (circle one), presently known as

_____ DOB _____, will be restored to their full former or maiden name of:

_____ in any Judgment and Decree of Divorce issued herein and will be known hereafter as: _____

16. Other Agreements Not Covered Previously.

17. **Attorney's Fees.** (Check one if appropriate and fill in where necessary):

Each party shall be solely responsible for their 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 their spouse within _____ days of entry of the Judgment and Decree of Divorce.

18. **Address.** Until all provisions herein are satisfied, the parties agree that each will promptly notify the other of any change of address and/or telephone number.

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

20. **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.

21. **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.

22. Enforcement. The parties agree 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 if one party determines modifications are necessary without consent of the other party, each shall be free to petition the Court to have this Agreement modified/enforced in accordance with the law.

23. Release of Inheritance Rights. Unless otherwise specified herein, each party releases all rights to shares in the estate of the other or shares 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 after the date of this Agreement.

24. Modification and Waiver. Any modification/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 shall not be construed as waiver of any subsequent default of the same or similar nature.

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

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

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

28. 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.

29. 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.

30. 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) they have fully disclosed the existence of and value of all assets and debts in which they have 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.

(SIGNATURE PAGE TO FOLLOW)

Dated this _____ day of _____, 20_____.

Plaintiff Signature

Sworn/affirmed before me this _____ day
of _____, 20_____.

Plaintiff Printed Name

Plaintiff Address

Notary/Deputy Clerk/Clerk of Court

City, State, Zip Code

My Commission Expires:_____

Phone Number

Dated this _____ day of _____, 20_____.

Defendant Signature

Sworn/affirmed before me this _____ day
of _____, 20_____.

Defendant Printed Name

Defendant Address

Notary/Deputy Clerk/Clerk of Court

City, State, Zip Code

My Commission Expires:_____

Phone Number