

# **COOPERATION PARTICIPATION AGREEMENT FOR \* AND \***

We agree to use our best efforts to settle issues arising from the separation and dissolution of our marriage. Our primary goal is to attempt to settle all issues and disputes in a non-adversarial manner.

## **PURPOSE**

We agree to negotiate a mutually-acceptable settlement in an efficient, cooperative manner by focusing on the merits and exploring interests. Our goal is to minimize, if not eliminate, the negative economic, social and emotional consequences of litigation to the participants and their families and to create the best possible outcome. The parties have retained cooperative attorneys to assist them in reaching this goal. The Cooperative Process is based on honesty, compromise, cooperation, moderation, integrity and professionalism and will rely upon Court imposed solutions if reasonable efforts to resolve an issue is unsuccessful or unproductive. We and our attorneys are signing this document to reflect our agreement and our attorneys' agreement to all of the provisions set forth herein.

## **COMMUNICATION**

We and our attorneys shall use our best efforts to effectively communicate to each other our concerns, problems, interests, goals, differences and plausible solutions. Our written and verbal communications will be respectful and constructive. Neither we nor our attorneys shall make any accusations or claims not based in fact.

Communication during any four-way conferences will be focused on the issues and constructive resolution of those issues. We understand the costs for settlement meetings are substantial and require everyone's cooperation to make the best possible use of available

resources. We, therefore, agree not to engage in unnecessary discussions of past events or events which are not relevant to our discussions or to settlement.

Communication between the parties outside of the four-way conference setting may result in a breakdown of communications and may undo the gains made during this process. If we communicate directly, we agree to handle such communications carefully and respectfully. Settlement issues will not be discussed in our children's presence, nor at unannounced or inappropriate times by telephone calls or by appearing at the other person's residence or in public places such as church, school, outside activities, events and such occasions. We realize and expect our attorneys to privately discuss settlement issues with each other as a means to facilitate a potential resolution in this cooperative process.

### **NEGOTIATION WITH INTEGRITY AND GOOD FAITH**

We will be respectful toward each other even if we disagree with each other. We understand that the cooperative process, even with full and honest disclosure, will involve vigorous good-faith negotiation. We recognize that the success of the cooperative process will depend upon whether we take reasonable positions on disputes and whether we can find ways to make compromises that we both can accept. To that end, we agree to develop and consider an array of options for settlement for the purpose of negotiating a mutually-acceptable solution. When our positions differ, each of us will use our best efforts to create proposals that meet the fundamental needs of both parties. We understand compromise may be necessary to reach a settlement of all issues. We agree to deal with each other in good faith.

We will work to protect the privacy and dignity of everyone involved in the cooperative process. Neither of us will harass the other. Both of us shall respect each other's privacy; we will

maintain a high standard of integrity. We will not take advantage of any factual mistakes anyone makes during the cooperative process and will immediately identify and correct any factual mistakes made by either party or his or her attorney.

Our attorneys will have the same duties and responsibilities that we have and must carry them out efficiently and productively.

### **CAUTIONS AND LIMITATIONS**

We understand there is no guarantee that the cooperative process will be successful in resolving all issues, disputes or differences. We further understand the cooperative process cannot eliminate concerns about disharmony, distrust or irreconcilable differences which led to the current process. While intent on striving to reach a cooperative solution, success will ultimately depend on our commitment to making the cooperative process work and finding solutions that both of us can accept.

### **ATTORNEY REPRESENTATION**

\*, Esquire, has been retained by \*, to represent him/her during the cooperative process. \*, Esquire, has been retained by \* to represent him/her during the cooperative process. The attorneys shall devote all of their efforts during the cooperative process to reach a negotiated settlement in an efficient, cooperative manner pursuant to the terms of this Agreement. The Parties understand they are expected to assert their respective needs and interests and their respective attorneys will help them do so. The Cooperative Process includes representation after an agreement is reached in order to implement the agreement and to complete an uncontested divorce.

Each attorney is entitled to be paid in a timely manner for his or her services throughout the Cooperative Process. The Parties shall make funds available to pay their attorneys in a timely manner throughout the Cooperative Process. Both attorneys and any neutral specialists shall be paid:

**CHOOSE ONE OF THE FOLLOWING**

\_\_\_\_\_ from joint marital funds. All statements for services shall be sent to \_\_\_\_\_ for payment each month.

\_\_\_\_\_ from separate assets held by the party who retained the attorney and/or the income their respective client earns during the Cooperative Process.

\_\_\_\_\_ shall provide the funds to pay for \_\_\_\_\_'s attorney's services. All statements for services shall be sent to \_\_\_\_\_ for payment each month.

While cooperative attorneys share a commitment to the cooperative process described in this Agreement and will negotiate in an atmosphere of fairness, honesty and integrity, each attorney has a professional duty to represent his or her own client and is, therefore, not acting as the attorney for the other party. Each attorney is independent from the other attorney and has been retained by only one party in the cooperative process. Each attorney has a separate retainer agreement. Each attorney continues to have a duty to maintain confidential all information his or her client requests remain confidential. Each party shall rely upon the legal advice and representation provided to him or her by his and her respective attorney and shall have no right to claim he or she received legal advice or representation from the other party's attorney.

Each attorney and any attorney and respective staff member associated with the cooperative attorney in the practice of law is **not** disqualified from representing his or her client

in a contested court proceeding should the Cooperative Process fail and this matter not be resolved.

### **MINOR CHILDREN**

We agree to make every effort to reach amicable solutions that promote our children's best interests. We agree to act quickly to resolve differences related to the children to promote a caring, loving and involved relationship between the children and both parents. We acknowledge that conflict between parents is harmful to children. We will refrain from criticizing the other parent, or his or her partner or family to the children or in their presence. We shall be guarded and make an extra effort to protect our children when we are talking with others while the children may be present, especially regarding gestures and tone of voice which may be considered as critical of the other parent. We shall each support the other parent's relationship with the children. We will encourage positive contact by and with the children and will seek ways to improve the relationship of the children with the other parent. We shall not use the children to communicate with each other but shall communicate directly or through our attorneys.

We agree that settlement issues will not be discussed in the presence of a child. Communication with the children regarding these issues shall occur only if it is appropriate and done with mutual agreement, or on the advice of a Child Specialist jointly selected by us.

We agree not to make any changes to our children's residence during our negotiations without first obtaining the written agreement of the other parent. Neither parent shall relocate a child from Florida without the written agreement of the other parent.

We agree to mutually discuss any concerns regarding any difficulties the children may experience in coping with our situation and will jointly consider engaging the services of a Child

Specialist. We will not take any child or the children to a mental health professional for any reason unless we both agree.

### **EXCHANGE OF INFORMATION**

We shall promptly provide all important information which may affect any of the choices either Party has to make regarding the cooperative process or the issues to be resolved. We agree to provide full, accurate and fair financial disclosure of our income, assets and debts, and shall promptly update information previously provided as better information becomes available. A summary of our financial status as compiled in Financial Affidavit drafts by each of us shall be utilized by us and our attorneys as a basic financial disclosure document and work-in-progress until fully completed. Any changes, corrections and supplemental information to information previously provided shall be immediately disclosed. We shall provide written authorizations that may be required to obtain information or documentation, or to prepare documents necessary to implement a settlement agreement. We agree to deal with each other in good faith to promptly provide all necessary and reasonable information requested. Formal discovery procedures may be used as warranted, but attempts to obtain informally is encouraged as a first resort.

The Parties acknowledge that by using informal discovery, they are giving up certain investigative procedures and methods which would otherwise be available to them in the litigation process, which may include subpoenas, formal production requests, written interrogatories, formal court hearings, and deposition by oral examination. While not necessary, the Parties may give up these measures with the specific understanding that each shall make full and fair disclosure of all assets, income, debts and other information necessary for a fair settlement. Participation in the Cooperative Law process, and any settlement reached, is based upon the assumption that both

parties have acted in good faith and have provided complete and accurate information to the best of their ability.

## **CONFIDENTIALITY OF COMMUNICATIONS**

All oral and written communications between the Parties, their Attorneys, neutral Experts, and any other participants in the Cooperative Process shall be construed as part of settlement negotiations and therefore privileged and confidential and not subject to discovery or disclosure by the Parties or their attorneys in any subsequent litigation. Each Party has a privilege to refuse to testify and to prevent any other person from testifying in any subsequent proceedings regarding communications during the Cooperative Process.

There is no confidentiality or privilege for any communication (1) that is intentionally used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity or threaten violence; (2) that requires a mandatory report of child abuse or neglect or elder abuse, neglect or exploitation for the purpose of making a mandatory report to the entity requiring the report; (3) offered to report, prove, or disprove professional malpractice, solely for the purpose of the proceeding; (4) offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during the collaborative process, or (5) for purposes of the determination and award of fees and costs at the conclusion of any subsequent litigation.

## **LEGAL PROCESS**

We and our attorneys will devote all of our efforts to obtain a negotiated settlement in an efficient, cooperative manner. However, either Party or attorney for either Party may file or serve any Petition, Summons, motion or other pleading or any document seeking court intervention with

the Clerk of Court or the Court at any time prior to reaching final agreement on all issues. We may also participate in mediation, if we all agree or, if not, upon court order.

### **CUT-OFF DATE FOR DIVORCE PURPOSES**

In recognition of the fact that we may be delaying the date of filing of a Petition for Dissolution of Marriage, we each acknowledge and agree, with the intent to bind ourselves and our attorneys now and in the future, that the date of this Agreement shall be utilized by us (or as we would mutually agree otherwise), our attorneys, and the Court in lieu of the actual date of filing of a Petition for Dissolution of Marriage for determination of retroactive support, establishing a cutoff date for what constitutes marital assets and liabilities, or any other purpose set forth in Florida Statutes Chapter 61 and case law interpreting those laws. Valuation of each asset and liability shall be at such date or dates as we both agree is fair and reasonable under the facts and circumstances.

### **RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

While the cooperative process is ongoing, either party may:

- (1) Make expenditures and incur debt for reasonable and necessary living expenses for food, clothing, shelter, transportation, medical care and reasonable attorney's fees and costs incurred during the cooperative process.
- (2) Change checking, savings, charge or debit accounts into individual names or open new accounts with prior consultation and agreement by the other party. Any inappropriate use of any accounts shall be a matter of our discussions and subject to resolution in our cooperative process.
- (3) All currently available insurance coverage must be maintained and continued without change in coverage or beneficiary designation until we jointly agree to make changes.
- (4) Engage in acts reasonable and necessary to the conduct of either party's usual business or occupation.

While the cooperative process is ongoing, neither party shall:



- (1) Dispose of any assets, change beneficiaries or change title to property except for the preservation of assets.
- (2) Sell, transfer, assign, mortgage, or encumber any of the property of either party, whether personal property or real property, whether marital or non marital property, except as we may jointly agree to in writing.
- (3) Misrepresent or refuse to disclose the existence, amount or location of any property of one or both parties.
- (4) Withdraw or borrow for any purpose from any retirement, profit sharing, pension or other employee benefit plan or employee savings plan, deferred compensation account, or IRA or Keogh account, except as we may jointly agree to in writing.
- (5) Incur any debts or liabilities for which the other may be held responsible other than in the ordinary course of business or for the necessities of life.
- (6) Violation of any of these provisions or failure to proceed in good faith in accordance with the terms of this agreement may result in sanctions by the court to include award of attorney's fees and costs.

**ACKNOWLEDGMENT AND AGREEMENT  
TO BE SUBMITTED TO THE COURT AS A STIPULATION  
OF THE PARTIES AND ATTORNEYS**

We each acknowledge that we have read this Agreement, understand its terms and conditions, and agree to abide by them. The parties have chosen the Cooperative Law process to reduce emotional and financial costs, and to generate a final agreement that addresses their concerns. We agree to work in good faith to achieve these goals. This agreement takes effect on the date we all have signed it.

Upon the filing of a Petition to dissolve the marriage (at any time before or after reaching a full agreement), this Cooperation Participation Agreement shall be filed in the court case and adopted as an order which may be enforced by the court.

Family Court Judge's Involvement With Cooperation. The Family Court Judge, if amenable, including the Magistrate and Case Manager, may be requested by the attorneys to participate in the cooperative participation process in the following manner:

1. Setting case management conferences and hearings promptly in order to address any procedural obstacles, allowing this case to proceed timely;
2. Award and/or withhold attorney's fees in addressing allegations by one or both parties against the other in not acting in a cooperative manner or otherwise behaving in a way which provides for needless litigation solely as a result of the conduct and behavior of the party and pursuant to Rosen v. Rosen, 698 So. 2d 697 (Fla. 1997) and those cases which follow, including but not limited to Becker v. Becker, 778 So 2d 438 (Fla. 1<sup>st</sup> DCA 2001) and Sell v. Sell, 949 So. 2d 1108 (Fla 3<sup>rd</sup> DCA 2007).
3. Entertain by stipulation of the attorneys and parties proffer hearings and otherwise respond to mutual requests of the attorneys for hypothetical, non-binding rulings based upon informal information provided by the attorneys.

#### **OPTIONAL, VOLUNTARY PROCESS**

We, the parties to this agreement, the parties and attorneys, understand the terms and provisions of this agreement; have been explained by our respective attorneys that entering into this agreement is not required, but optional; that while the parties and attorneys are bound by these provisions set forth herein, the circuit judge, magistrate and case manager may or may not participate in this cooperative process; and there is complete understanding that there is no infringement upon the right to proceed in a court process which, under certain circumstances, may be suggested or even encouraged by one or both of the attorneys. We all understand no matter

the forum, in or out of court, we are bound by these provisions and are perfectly content to be so bound.

Finally, should any issues of this case be heard by the judge or magistrate, we reaffirm our cooperation and we will act and behave with respect, courtesy and dignity throughout this process.

**I HAVE CAREFULLY READ AND UNDERSTAND EACH AND EVERY PAGE OF THIS AGREEMENT PRIOR TO SIGNING IT.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

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\*Client Name

\_\_\_\_\_  
\*Client Name

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\*, Esquire  
Attorney for \*Client Name

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Attorney for \*Client Name