

Appendix 1

Mid-Missouri Collaborative and Cooperative Law Association

PARTICIPATION AGREEMENT IN COOPERATIVE LAW PROCESS

This Agreement (“Agreement”) is made between _____ and _____ (“the Parties”). The Parties commit to use our best efforts in a Cooperative Law Process (“the Process”) to negotiate and fair and reasonable agreement about _____.

We promise to listen carefully to everyone in this Process, provide all information relevant to this matter, try to understand the interests of both Parties (and their loved ones), seek solutions that satisfy the interests of both Parties and any children involved, and treat everyone in the Process with sincere respect. We understand the Process and how it differs from other dispute resolution processes. Therefore, in consideration of our mutual promises, we agree to use the Process as follows.

I. Focus on Direct Negotiation

By making this Agreement, we agree to work hard to negotiate a reasonable agreement in this matter and to direct our lawyers to do so as well. If we reach agreement in the Process, we will direct our lawyers to file in court the agreement and any other appropriate documents.

II. Lawyers’ Duty to Serve Their Own Clients

A. Each party has retained an independent lawyer to provide legal advice. We understand that each lawyer has a professional duty to represent his or her own client with competence and diligence and that our lawyers represent only their own clients and not the other party. There is no lawyer-client relationship between one Party and the other Party’s lawyer. There is no legal duty of one Party’s lawyer to the other Party.

B. We will each direct our lawyer to listen carefully to other party and lawyer, try to understand their interests, seek solutions that satisfy the interests of both Parties, and treat everyone in the Process with sincere respect. Each of us will ask our lawyer to advise us privately if they believe that it is in our interest to use a different approach than we want. We understand that our lawyers are trying to represent our individual interests when they consider how others’ interests may affect us and when they give advice with which we may not agree.

III. Confidentiality

Except as we agree in writing, any and all statements made and information provided by Parties and lawyers during the Process shall be considered as settlement negotiations, with all the

confidentiality protections provided by law. We agree to broaden this confidentiality protection by precluding the use of any statement or information for any purpose to the extent allowed by law except as follows. Statements or information cannot be protected as confidential if they (a) assist a criminal or fraudulent act, or (b) give reasonable cause to suspect that a child has been or may be subjected to abuse or neglect. In addition, evidence of a fact disclosed in negotiation that is independently discoverable outside of negotiations is admissible. We agree to be barred and to refrain from disclosing any statement made by any party and from requesting the testimony of any party with regard to statements made during the Process, except as provided above or as we later agree in writing.

IV. Full Disclosure and Information Exchange

We agree to completely and honestly disclose all relevant documents and information in this matter. At least three days before our first meeting in the Process, we shall each provide to the other the following statements notarized under oath: (1) Statement of Marital and Non-Marital Property and Liabilities, (2) Income and Expense Statement, and (3) copies of any existing documents that substantiate each answer made. After the first meeting, we will give complete responses within agreed upon time deadlines to all requests for other relevant documents and information. Relevant information is information needed to make an informed decision. (In other words, we agree to provide all information that we would want to know if in the other party's position.) We shall not take advantage of each other or of miscalculations or inadvertent mistakes of fact or law. If we or our lawyers discover such miscalculations or other mistakes, we will promptly inform each other and direct our lawyers to do the same.

V. Maintaining a Fair and Reasonable Environment During the Process

At the beginning of the Process, we will negotiate interim arrangements to maintain a fair and reasonable environment while we negotiate in the Process. We may agree to submit temporary agreements to court. We will begin the Process by discussing the need for interim agreements to achieve the following goals:

- A. Ensure frequent and meaningful contact between parents and children;
- B. Ensure adequate financial support for the care of the children;
- C. Refrain from transferring, encumbering, concealing or in any way disposing of any property, except in the usual course of business or for the necessities of life and then with a full accounting, if requested;
- D. Refrain from harassing, abusing, molesting or disturbing the peace of each other or of any child; and

E. Maintain without change in coverage or beneficiary designation, all existing contracts of insurance covering the life, health, dental or vision of the children and/or the spouse.

F. Other interim issues: _____.

VI. Dealing with Apparent Impasse; Termination of this Agreement

A. If either of us wants to use litigation or administrative agency action to resolve any issues in this matter, we shall do so only after a ten-day “cooling off” period or in case of an emergency. The cooling off period begins by serving a written notice to the other party (or his or her lawyer). During this period, we will discuss with our lawyers every plausible idea for negotiating an appropriate resolution and we shall discuss the hiring of a mediator to help resolve the problems. Such mediation would be voluntary and take place only by our agreement. We shall share equally the mediator’s fee and any administrative costs unless otherwise agreed.

B. If we use the courts or an administrative agency to resolve any issues in this matter, we may litigate in a cooperative spirit under this Agreement or we may terminate this agreement.

C. If we litigate under this Agreement, we will direct our Cooperative lawyers to focus solely on the merits of the issues and avoid tactics that would unnecessarily aggravate the conflict. If we terminate the Cooperative Process, we make no such commitment to litigate in a cooperative spirit.

D. Either of us may discharge a Cooperative lawyer to hire another Cooperative lawyer, who would be bound by all the terms of this Agreement. If we discharge a Cooperative lawyer, we (or our lawyer) shall provide prompt written notice to the other party. The opportunity to retain a new Cooperative lawyer shall be available for a period of thirty days from the date of service of the notice. Failure to retain a substitute Cooperative lawyer within the thirty-day period shall constitute a termination of the Process.

E. We have directed our lawyers to withdraw from the Process if one of them believes that his or her client is withholding or misrepresenting relevant information or otherwise undermining the Process. In this situation, the lawyer will not disclose to the other party or the other party’s attorney who decided to terminate the process or the reason for the termination.

F. If the Process is terminated, the provisions of this Agreement related to confidentiality shall continue in effect.

VII. Acknowledgment

We have read this Agreement, understand its terms, and agree to comply with it. We understand that by agreeing to this Process, we may give up certain rights, including formal court

procedure rules for discovery of information. We understand that there is no guarantee that we will reach agreement in this Process. We voluntarily enter into this Agreement.

Dated: _____ Party: _____

Approved as to Form by His/Her Lawyer: _____

Dated: _____ Party: _____

Approved as to Form by His/Her Lawyer: _____

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