**AGREEMENT TO USE CONTINGENT ARBITRATION**

1. Husband and Wife are the only parties to this agreement.
2. If a petition for dissolution of marriage has been filed, the parties will file an arbitration agreement with the court asking for an abeyance of the matter in order to allow the parties to attempt a cooperative resolution of their divorce. This will include the terms of this agreement to arbitrate.
3. Cooperative Law is based on principles of non-adversarial approaches to resolving differences based upon meeting, as much as practicable, the needs of the parties. Cooperative Law is NOT Collaborative Law as defined by C.R.S. 13-24-101 et seq. When a solution cannot be reached, one possible way to resolve an outstanding issue is to submit it to binding arbitration. However, the parties will not proceed to arbitration without fully exploring resolution through the cooperative process.
4. In this case, Husband and Wife have agreed that if in the future they cannot reach agreements pursuant to their Cooperative Law Agreement, they will submit to arbitration with a mutually agreed upon Arbitrator, who shall be authorized to resolve all unresolved issues, both procedural and substantive, pursuant to C.R.S. 13-22-201 et seq.
5. Qualifications for this position will be that the Arbitrator has experience arbitrating and has had significant collaborative training as well.
6. The parties have agreed that they will jointly pay the Arbitrator pursuant to their collaborative agreement. [The Arbitrator will consent to coordinate with the Judicial District Court if a case has been filed to assure that the court record and any other requirements are satisfied.]
7. The parties further agree and certify that they will pay all expenses incurred in this proceeding, such as the expense of making a record of the arbitration hearing if either party wishes to do so. The parties will share equally in such expenses. The Arbitrator will be collaboratively trained and will determine, pursuant to his or her discretion as outlined C.R.S. 13-22-215 and as set forth below, the procedures he or she will follow, the admissibility, relevance and weight of evidence.
8. The parties acknowledge that the arbitration process can be designed to address their particular concerns and needs. To that end they agree that the Arbitrator may proceed in an inquisitorial fashion and may meet with relevant persons such as benefit administrators, therapists, or other persons with pertinent information, and may inquire of the parties. Any of the cooperative experts may also give the Arbitrator opinions or reports, providing same are in writing and provided at least 14 days in advance of the arbitration or at such time as agreed by the parties.
9. The parties acknowledge that they have chosen to use this process as an alternative to litigation in an effort to reduce the adversarial nature of the conflict resolution process. The information collected will be available to both parties and counsel, except in extraordinary circumstances, at the discretion of the Arbitrator. The parties agree that the Arbitrator may address any issues of claimed non-disclosures or missing information in the event such claims exist when the matter moves to arbitration. The Arbitrator shall also be authorized to address issues of the sale and use of assets, including the use of the marital residence, by way of example and not limitation.
10. Immunity of Arbitrator: Pursuant to C.R.S. 13-22-214, the Arbitrator shall be immune from liability in any claim for injury that arises out of an act or omission of the Arbitrator occurring during the performance of his or her duties or during the performance of an act that the Arbitrator reasonably believed was within the scope of his or her duties unless the act or omission causing such injury was willful and wanton.
11. The parties agree that arbitration will be structured as follows:
    1. The parties will proceed primarily by offers of proof and explanations of their relative positions. They have already stipulated that they will take reasoned positions designed to meet both their needs and the needs of their family.
    2. In particular, the parties will state what about their position meets their needs and how their position meets and does not meet the needs and interests of the other party.
    3. The parties agree that they will not cross examine each other. They may state why they do not believe the representations or positions of the other party, and they may suggest items that they believe should be inquired into by the Arbitrator.
    4. The parties may present offers of proof as to the testimony of another person. Either party may ask for direct testimony of a witness.
    5. Hearsay may be permitted, subject to the Arbitrator’s sole discretion as to the admissibility, weight and relevance of the evidence proffered.
    6. Documents may be submitted without objections as to foundation, and the Arbitrator will have the discretion as to the weight and relevance of such evidence. The parties will identify, in advance, all documents they wish to tender. If necessary, to avoid surprise, the Arbitrator may allow in new documents by continuing the hearing.
    7. The parties will attempt to stipulate to all documents beforehand, and the parties will proceed in a transparent fashion so that there are no planned surprises. We acknowledge that issues may come up that were unanticipated, but such surprises would be inadvertent as opposed to planned.
    8. The Arbitrator may inquire on any issue, as the parties recognize that cooperation is founded on transparency and access to all relevant information and this assumption will be the assumption at the arbitration as well.
    9. The Arbitrator will have jurisdiction to decide any outstanding issue in the divorce that is not resolved by the time the parties proceed to arbitration. The parties will jointly prepare a statement, prior to the arbitration, as to all unresolved issues to be decided.
    10. All exhibits and positions will be exchanged at least ten days prior to arbitration.
    11. The Arbitrator has the discretion to set time limits, and it is assumed that both parties will have equal access to the Arbitrator’s time in terms of presenting their evidence and their positions.
    12. The parties further agree to schedule arbitration within 30 days of the final cooperative meeting or termination of the negotiation process, or, if another meeting is a good idea, within 30 days of the next meeting.
    13. In the event the claim(s) being submitted to arbitration involve disputed issues of law, or mixed issues of law and fact, the parties and counsel will confer with one another and with the Arbitrator in an effort to determine the most expeditious way to address and determine the issues of law, keeping in mind that an arbitrated determination of the disputed issue of law may provide the parties with the framework to reach a negotiated resolution on the remaining unresolved issue(s).
12. The parties believe that the best interests of justice and the parties are served by being allowed to proceed cooperatively and to have remaining issues subject to binding arbitration as outlined above should they fail to resolve all issues cooperatively.
13. The parties, after thorough consideration and opportunity to ask questions, have elected to use Arbitration to resolve any future disputes. They understand by electing Arbitration, that they are giving up the right to take any future issues or disputes before a District Court Judge.
14. The Arbitrator shall be bound to make an Award within any agreed upon parameters or ranges of values by the parties.

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Date Date