

This is a model form agreement for parties who want to use a Cooperative negotiation process (and includes a lawyer-client retainer agreement at the end of this document). It is adapted, with permission, from copyrighted forms developed by the Mid-Missouri Collaborative and Cooperative Law Association (www.mmcccla.org). Lawyers and parties should modify this form to fit their particular situations. Some optional language is in brackets and there may be variations depending on whether this is used in a family or other type of case.

John Lande

AGREEMENT TO USE A COOPERATIVE NEGOTIATION PROCESS

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

Our goal is to reach a fair and reasonable agreement and avoid prolonged and harmful conflict without using the courts. We promise to listen carefully, honestly provide all information required under this Agreement, try to understand the interests of both Parties, seek solutions that satisfy the interests of both Parties, and treat everyone in the Process with respect. We shall not disparage each other to [family members, colleagues, or mutual friends and acquaintances]. 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 we direct our lawyers to do so as well. As we go through the Process, we shall decide the best way to proceed, such as using meetings with all Parties and lawyers, conversations just between the lawyers, conversations just between the Parties, and inclusion of other professionals in our discussions, among others.

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 diligently represent his or her own client 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.

B. We shall each direct our lawyers 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 respect. We shall each ask our lawyers 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 that we may not agree with.

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. We agree that, if we litigate this case, no Party will: (a) introduce as evidence in court any communications made or information disclosed in this Process unless it is otherwise discoverable, (b) disclose to the court any settlement offer or responses to a settlement offer made in this Process, (c) subpoena any lawyer or expert in this Process to testify in any court proceeding, or (d) seek the production in any court proceedings of any notes, records, or documents in the possession of the lawyers or any experts in this Process unless they are otherwise discoverable.

IV. Information Exchange

[Alternative 1 - for family cases] We agree to completely and honestly disclose all relevant documents and information in this matters. 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 shall give complete responses within agreed 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 miscalculations or inadvertent mistakes of fact or law. If we or our lawyers discover such miscalculations or other mistakes, we shall promptly inform each other and direct our lawyers to do the same.

[Alternative 2 - more likely for non-family cases] We agree to promptly exchange information, documents, and any other materials (hereafter "information") needed to negotiate in this Process. We understand that to negotiate successfully and efficiently, we will not need all the information that would be produced in litigation. Instead, at the beginning of the Process, we shall agree on what information each Party will initially provide and the deadlines for doing so. After negotiating based on this information, if we need additional information to negotiate, we shall cooperate to provide such information promptly. To provide confidence in the information provided, we may agree that the Parties will sign declarations under the penalty of perjury that the information provided is true and correct. We shall not take advantage of miscalculations or inadvertent mistakes of fact or law. If we or our lawyers discover such miscalculations or other mistakes, we shall promptly inform each other and direct our lawyers to do the same.

V. Use of Experts

If experts are needed, we shall consider retaining them jointly and sharing their work product. If we jointly retain an expert, the retention agreement shall describe the use of the work product and expectations about confidentiality. Either Party may consult an expert separately. If a Party separately consults an expert, the Party need not share that expert's work product with the other Party [but must notify the other Party, in advance, that the expert is being consulted].

[for family cases] VI. Maintaining a Reasonable Environment During the Process

At the beginning of the Process, we shall 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 shall 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: _____

VII. Dealing with Apparent Impasse; Termination of this Agreement

A. Either Party may terminate this Agreement at any time by giving written notice to the other Party or the Party's lawyer.

B. If either Party wants to use litigation or administrative agency action to resolve any issues in this matter, we shall do so only after a [30] 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 the Party's lawyer. During this period, we shall discuss with our lawyers every plausible idea for negotiating an appropriate resolution and we shall discuss the hiring of a mediator or neutral evaluator to help resolve the problems. Such mediation or neutral evaluation would be voluntary and take place only by our agreement. We shall share equally the costs of mediation or neutral evaluation unless otherwise agreed.

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

D. Either Party 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, after discussing the matter with their client, the client is withholding or misrepresenting relevant information, secretly disposing of property in this case, or otherwise undermining the Process. In this situation, the lawyer shall 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.

VIII. 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: _____

**ADDENDUM TO LAWYER RETAINER AGREEMENT
FOR PARTICIPATION IN COOPERATIVE NEGOTIATION PROCESS**

Client agrees to retain Lawyer in a Cooperative Negotiation Process (the “Process”) regarding the matter identified in the Lawyer Retainer Agreement. In consideration of the mutual promises contained in this Addendum, Client and Lawyer agree as follows:

1. Client is committed to resolve disputes in the Process without using litigation if possible. Lawyer will not file documents in court during the Process except as provided in the Cooperative Negotiation Agreement with the other Party in this matter.

2. Client will have confidential communications with Lawyer that are protected by attorney-client privilege.

3. Client understands that the Process requires the Client to disclose [all relevant or certain] information to the other Party and the other Party’s lawyer. Disclosures to and discussions with them are subject to the confidentiality provisions of the Cooperative Negotiation Agreement, including certain exceptions.

4. If after consulting with Client, Lawyer believes that Client is withholding or misrepresenting relevant information, Client consents to Lawyer’s withdrawal from representation of Client. In this situation, Lawyer shall not disclose to the other Party or the other Party’s lawyer the reason for this withdrawal. Client understands that Client may incur additional expense if the Process terminates without a settlement and Client hires a new lawyer.

5. Client understands that there is no guarantee that the Process will successfully resolve all issues. Nothing in this agreement and nothing in Lawyer’s statements to Client is a promise or guarantee about the outcome of any matter. Client understands that the Process cannot eliminate concerns about the trustworthiness of the other Party or relationship between the parties. [In family cases: Client understands that the Process is not personal therapy or marriage counseling.]

Dated: _____ Client: _____

Dated: _____ Lawyer: _____