

# PRENUPTIAL AGREEMENT

This Prenuptial Agreement (this "Agreement") is made and entered into as of (the "Effective Date"), by and between [PARTY A NAME], an individual residing at [FIRST PARTY ADDRESS] ("[PARTY A NAME]"), and [PARTY B NAME], an individual residing at [SECOND PARTY ADDRESS] ("[PARTY B NAME]"). [PARTY A NAME] and [PARTY B NAME] are each a "Party" and together the "Parties."

## Recitals

**A. Contemplated marriage.** The Parties contemplate being married to each other on or about at [ANTICIPATED WEDDING LOCATION CITY STATE] (the "Marriage"). This Agreement is made in contemplation of, and shall not become effective until, the Marriage is solemnized. If the Marriage is not solemnized, this Agreement shall be null and void.

**B. Current legal status.** [PARTY A NAME] is presently Never Married. [PARTY B NAME] is presently Never Married. Each Party represents that he or she is legally free to marry the other.

**C. Voluntary intent.** Each Party desires to define and clarify the property rights, debt allocations, support rights, and estate rights that will arise from the Marriage, and each enters into this Agreement freely and voluntarily, with full knowledge of the other's property, debts, and income, and after the opportunity to consult independent legal counsel.

**D. Full disclosure.** Each Party acknowledges that, prior to signing this Agreement, the other Party delivered a financial disclosure schedule (Exhibits A and B hereto) reflecting the extent and probable value of the disclosing Party's individual property, debts, and income, and that each Party signed the schedule received from the other to confirm receipt.

## 1. Effective Date

This Agreement shall not be effective until the Marriage contemplated by the Parties is solemnized. Upon solemnization of the Marriage, this Agreement shall be effective as of the Effective Date and shall continue in force during the Marriage and survive its dissolution by divorce, annulment, legal separation, or death, except as expressly provided herein.

## 2. Full Financial Disclosure

Each Party acknowledges that he or she has full knowledge of the other Party's property, debts, and income. The Parties acknowledge and agree that they have disclosed to the other Party (prior to the signing of this Agreement) the extent and probable value of their respective individual property interests, debts, and income as of the date of this Agreement, by delivering schedules to the other Party that reflect those interests, and which schedules were signed by the respective owner and by the Party receiving the

schedule. Such schedules are attached hereto as **Exhibit A** ([PARTY A NAME]'s disclosure) and **Exhibit B** ([PARTY B NAME]'s disclosure) and incorporated herein by reference.

Each Party represents and warrants that the disclosure schedule he or she delivered is true, accurate, and complete in all material respects, and that no material asset, liability, or source of income has been omitted. If a Party becomes aware of any material change to the disclosure between the Effective Date and the date of the Marriage, that Party shall promptly notify the other Party in writing.

### 3. Separate Property

"Separate Property" of a Party means and includes:

1. All property owned by that Party prior to the Marriage, as listed on the Party's disclosure schedule (Exhibit A or B);
2. All property acquired by that Party during the Marriage by gift, bequest, devise, or inheritance, titled or designated in that Party's individual name;
3. All appreciation, income, rents, profits, and proceeds of such Separate Property, provided such income and proceeds are maintained separately and not commingled with marital property except as expressly permitted herein;
4. All property acquired during the Marriage with traceable Separate Property funds; and
5. Any property the Parties expressly designate as Separate Property by a writing signed by both Parties.

Each Party shall have the absolute and unrestricted right to manage, control, sell, encumber, lease, mortgage, gift, transfer, or dispose of his or her Separate Property without the consent or joinder of the other Party.

### 4. Marital Property and Earnings During Marriage

**Earnings during marriage are marital.** All earnings, salary, wages, bonuses, and income for personal services performed by either Party during the Marriage shall be marital property, jointly owned by the Parties in equal shares, except as otherwise expressly designated in writing.

**Marital Property defined.** "Marital Property" means: (a) property acquired during the Marriage with joint funds or jointly titled; (b) the marital residence (if and when acquired during the Marriage with joint funds); (c) joint savings, joint investment, and joint checking accounts; and (d) any other property the Parties expressly designate as Marital Property by a writing signed by both Parties. Marital Property shall be allocated upon dissolution as set forth in Section 8 (Death) and Section 9 (Divorce).

### 5. Commingling Protection and Tracing

1. Each Party shall maintain Separate Property in accounts titled solely in that Party's individual name.

2. The use of Separate Property funds to pay joint household expenses shall not transmute the contributing Party's Separate Property into Marital Property.
3. If commingling occurs, the owning Party retains the right to trace and reclaim the Separate Property portion through reasonable tracing evidence.
4. Bank statements, brokerage statements, and account histories shall be sufficient tracing evidence; forensic-accounting proof is not required.
5. Neither Party shall deposit Separate Property funds into a joint account without a written acknowledgment that the deposit is a loan and not a gift or transmutation.

### **Joint Household Expense Account**

The Parties shall establish a joint checking account (the "Joint Account") for routine household expenses. Each Party shall contribute to the Joint Account in proportion to that Party's gross income, or in such other proportion as the Parties may mutually agree in writing. Items purchased through the Joint Account are jointly owned. Each Party shall use his or her own individual account for personal expenses.

### **6. Debt Allocation**

**Pre-marriage debts.** All debts incurred by a Party prior to the Marriage shall remain that Party's sole and separate obligation. The non-debtor Party shall have no obligation to repay such debts and shall be held harmless by the debtor Party from any claim, demand, lien, or judgment arising therefrom.

**Debts incurred during marriage.** Debts incurred during the Marriage for joint household expenses shall be the joint obligation of both Parties. All other debts incurred during the Marriage by a Party for personal or individual purposes shall remain the separate obligation of the borrowing Party.

### **7. Spousal Support**

Each Party hereby knowingly, intentionally, and voluntarily waives and relinquishes any and all rights to alimony, spousal support, maintenance, or similar payments from the other Party, whether temporary or permanent. **This waiver shall not apply, and shall be modified to the minimum extent necessary, if its enforcement would render the waiving Party eligible for public assistance or otherwise be unconscionable at the time of enforcement.**

### **8. Death and Estate Rights**

**Mutual and complete waiver of statutory spousal estate rights.** Each Party waives any right of dower, curtesy, homestead allowance, family allowance, exempt property, intestate share, distributive share, or elective share in the estate of the other Party as though no Marriage had taken place.

**Voluntary bequests preserved.** Nothing in this Agreement shall prevent a Party from naming the other Party as a beneficiary in a will, trust, life insurance policy, or retirement plan, and any such voluntary

designation takes precedence over the waivers herein to the extent of the voluntary instrument.

**ERISA retirement-plan supplement notice.** Under ERISA §205 (29 U.S.C. §1055) and IRC §417, waiver of qualified retirement-plan survivor benefits requires a separate plan-level spousal consent executed after the Marriage. The waiving Party agrees to execute such consents promptly after the Marriage with respect to each qualified plan.

## 9. Divorce and Marriage Dissolution

In the event of dissolution: (a) each Party's Separate Property shall be confirmed to that Party; (b) Marital Property shall be divided in accordance with this Agreement; (c) debts shall be allocated in accordance with Section 6; and (d) spousal support shall be governed by Section 7.

**No child support or custody provisions.** This Agreement contains no provision regarding the support, custody, or visitation of any child. Those matters are reserved to the courts based on the best interests of the child.

## 10. Tax Provisions

Nothing in this Agreement shall be construed as waiving any spousal tax rights, including joint filing under federal and state income-tax law, the unlimited marital deduction (IRC §§2523, 2056), or tax-free transfers incident to divorce (IRC §1041).

## 11. Voluntariness and Disclosure

Each Party represents that he or she: (1) is of lawful age and competent; (2) is legally free to marry the other; (3) has received the other's disclosure schedule; (4) has had the opportunity to consult independent counsel; (5) enters into this Agreement freely and without duress; (6) has been provided with a copy at least 14th (14) days prior to signing; and (7) understands the nature and effect of this Agreement.

## 12. Independent Counsel

[PARTY A NAME] has been represented by \*\*\*\*.

[PARTY B NAME] has been represented by \*\*\*\*.

## 13. Governing Law

This Agreement shall be interpreted and enforced under the laws of the State of [STATE].

**Future domicile lock.** This Agreement shall be governed by the laws of the State of [STATE] **regardless of the Parties' future domicile.** Any court shall give full faith and credit to this election.

#### 14. Amendment, Revocation, and Severability

Amendment and revocation require a signed writing with notarial acknowledgment. If any provision is invalid, the remaining provisions continue in force. This Agreement is the entire agreement and binds the Parties' heirs, executors, and successors.

#### 15. Dispute Resolution

Any dispute shall first be submitted to non-binding mediation for thirty (30) days; if unresolved, by binding AAA arbitration in the State of [STATE]. **Each Party waives the right to a jury trial.**

#### Signatures

IN WITNESS WHEREOF, the Parties have executed this Prenuptial Agreement as of the Effective Date, intending to be legally bound upon the solemnization of the Marriage.

**[PARTY A NAME]**

\_\_\_\_\_ PRINTED NAME

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ DATE

**[PARTY B NAME]**

\_\_\_\_\_ PRINTED NAME

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ DATE

#### Certificate of Independent Legal Review

The undersigned attorneys certify that each has advised the identified Party regarding the terms of this Agreement, the rights being waived, and the legal effect of this Agreement.

#### Attorney for First Party

\_\_\_\_\_ PRINTED NAME

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ DATE

**Attorney for Second Party**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Exhibit A — Financial Disclosure of [PARTY A NAME]**

*Schedule of assets, liabilities, and annual income of [PARTY A NAME] as of the Effective Date.*

Disclosing Party:

**[PARTY A NAME]**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Receiving Party:

**[PARTY B NAME]**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Exhibit B — Financial Disclosure of [PARTY B NAME]**

*Schedule of assets, liabilities, and annual income of [PARTY B NAME] as of the Effective Date.*

Disclosing Party:

**[PARTY B NAME]**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Receiving Party:

**[PARTY A NAME]**

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE