

## RIGHT OF FIRST REFUSAL FOR CHILDCARE

This Right of First Refusal for Childcare Agreement ("Agreement") is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between:

Parent 1: \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

and

Parent 2: \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

(Hereinafter collectively referred to as "Parents" and individually as "Parent").

### RECITALS

**WHEREAS, the Parents are the natural parents of the minor child(ren): Child's Name:**

\_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Child's Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

(Hereinafter collectively referred to as "Child" or "Children"); and

WHEREAS, the Parents share legal and physical custody of the Children and have established a parenting plan or custody order governing their respective parenting time; and

**WHEREAS, the Parents desire to establish clear terms and procedures regarding the Right of First Refusal for childcare, ensuring that each Parent has the opportunity to care for the Children before alternate childcare arrangements are made during the other Parent's scheduled parenting time.**

**NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parents agree as follows: I. PURPOSE**

The purpose of this Agreement is to establish the terms and conditions under which a Parent must offer the other Parent the opportunity to care for the Children before arranging alternate childcare when they are unable to fulfill their scheduled parenting time. This Agreement clarifies the rights, responsibilities, and communication procedures regarding such first refusal situations, promoting the Children's best interests by maximizing their time with both Parents.

## II. APPLICABILITY OF RIGHT OF FIRST REFUSAL

a. **Triggering Event:** The Right of First Refusal shall apply whenever a Parent is unable to personally care for the Children during their scheduled parenting time for a continuous period of four (4) hours or more, and would otherwise arrange for an alternate childcare provider who is not a family member as defined in Section VII.

b. **Definition of "Unable to Personally Care":** A Parent is deemed "unable to personally care" for the Children when they are not physically present with the Children and are not directly supervising their care, requiring another individual to assume primary caregiving responsibilities. This includes, but is not limited to, situations where a Parent is working, traveling, or engaged in social activities away from the Children.

c. **Definition of "Alternate Childcare Provider":** An "Alternate Childcare Provider" refers to any individual or entity, other than the other Parent or an exempted family member as defined in Section VII, who provides care for the Children during a Parent's scheduled parenting time.

## III. COMMUNICATION PROCEDURES

a. **Notice Obligation:** The Parent who is unable to personally care for the Children (the "Offering Parent") shall provide prompt notice to the other Parent (the "Offered Parent") of the need for childcare.

b. **Method of Notice:** Notice shall be provided by:

- Text Message
- Email
- Phone Call
- Other: \_\_\_\_\_

The Parents agree that the primary method of communication for exercising the Right of First Refusal shall be \_\_\_\_\_.

c. **Content of Notice:** The notice shall include:

1. The specific dates and times when the Offering Parent will be unavailable.
2. The reason for the unavailability (general nature, e.g., "work," "travel," "appointment").
3. The location where the Children will need care.

4. Any specific needs or instructions for the Children during that period.

d. **Timing of Notice:** The Offering Parent shall provide notice to the Offered Parent as far in advance as reasonably possible, but no less than seventy-two (72) hours prior to the commencement of the period of unavailability, unless an emergency situation prevents such advance notice. In emergency situations, notice shall be provided immediately upon the Offering Parent becoming aware of the need for alternate childcare.

#### **IV. RESPONSE BY OFFERED PARENT**

a. **Response Time:** The Offered Parent shall respond to the notice from the Offering Parent within twenty-four (24) hours of receiving the notice if the notice was provided seventy-two (72) hours or more in advance. If the notice was provided less than seventy-two (72) hours in advance due to an emergency, the Offered Parent shall respond within four (4) hours of receiving the notice.

b. **Method of Response:** The response shall be provided using the same method of communication as the notice, unless otherwise agreed upon by the Parents.

c. **Failure to Respond:** If the Offered Parent fails to respond within the specified timeframe, it shall be deemed a refusal of the Right of First Refusal, and the Offering Parent shall be free to arrange for an alternate childcare provider.

#### **V. ACCEPTANCE AND REFUSAL**

a. **Acceptance:** If the Offered Parent accepts the Right of First Refusal, they shall assume care of the Children for the specified period. The Offering Parent shall make the Children available to the Offered Parent at the agreed-upon time and location.

b. **Refusal:** If the Offered Parent refuses the Right of First Refusal, or fails to respond within the allotted time, the Offering Parent may then arrange for an alternate childcare provider of their choice. The Offering Parent is not required to offer the Right of First Refusal again for that specific period of unavailability once it has been refused or deemed refused.

#### **VI. TRANSPORTATION**

Unless otherwise agreed upon by the Parents, the responsibility for transportation of the Children to and from the Offered Parent's residence or other agreed-upon location shall fall upon the Offering Parent when exercising the Right of First Refusal.

#### **VII. EXCEPTIONS**

**The Right of First Refusal shall not apply in the following circumstances:** a. **Short Absences:** When the Offering Parent's absence is for a continuous period of less than four (4) hours.

b. **Family Members:** When the Children are cared for by a grandparent, aunt, uncle, or adult sibling (over the age of 18) of the Children.

c. **Emergency Situations:** In genuine emergencies where immediate childcare is necessary and providing notice or waiting for a response from the Offered Parent would jeopardize the Children's safety or well-being. In such cases, the Offering Parent shall notify the Offered Parent as soon as reasonably possible after securing emergency care.

d. **Overnight Stays:** The Right of First Refusal does not apply to overnight stays where the Children are staying with a Parent's significant other or a close friend, provided the Parent is also present and supervising.

## **VIII. COSTS**

Unless otherwise agreed upon in writing, the Offering Parent shall not be obligated to pay the Offered Parent for childcare services provided under the Right of First Refusal. Each Parent shall bear their own costs associated with caring for the Children during such periods.

## **IX. ENFORCEMENT AND DISPUTE RESOLUTION**

Any disputes arising under this Agreement shall first be addressed through good faith communication between the Parents. If an agreement cannot be reached, the Parents agree to participate in mediation to resolve the dispute before seeking judicial intervention.

## **X. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, without regard to its conflict of laws principles.

## **XI. MISCELLANEOUS PROVISIONS**

a. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parents concerning the Right of First Refusal for childcare and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

b. **Amendment:** This Agreement may not be amended or modified except by a written instrument signed by both Parents.

c. **Waiver:** No waiver of any provision of this Agreement shall be effective unless made in writing and

signed by the Parent against whom the waiver is sought to be enforced. The failure of either Parent to enforce any provision of this Agreement shall not be construed as a waiver of any subsequent breach or default of the same or any other provision.

d. **Headings:** The headings of the sections of this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

e. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.

f. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parents and their respective heirs, executors, administrators, and permitted assigns.

IN WITNESS WHEREOF, the Parents have executed this Agreement as of the date first written above.

**PARENT 1**

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

**Address:** \_\_\_\_\_

**PARENT 2**

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

**Address:** \_\_\_\_\_