***Recommended sample template for Open Adoption Agreements***

SUPERIOR COURT OF WASHINGTON FOR \_\_\_\_\_\_\_\_ COUNTY

JUVENILE DEPARTMENT

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| IN RE:  Minor Child. | NO.  STIPULATION, AGREEMENT AND ORDER REGARDING COMMUNICATION AND CONTACT BETWEEN BIRTH PARENT AND PROSPECTIVE ADOPTIVE PARENT(S) |

# DISCLOSURE AND LIMITATIONS

*All Open Adoption Agreements should include the following statements(the term   
“birth parent” can be substituted with “legal parent” if applicable):*

The prospective adoptive parent(s) and the birth parent hereby enter into an agreement regarding communication and/or contact between the birth parent and the child adoptee after the adoption of the child by the prospective adoptive parent(s). The following information should be considered by all parties before entering into such an agreement:

1.1 Court Authorization. This agreement is not legally enforceable unless the terms of the agreement are set forth in a written order signed by the court.

1.2 Agreement of Terms by Individuals/Entities. The court will not sign an order approving this agreement unless the terms are approved in writing by the prospective adoptive parent(s) and the birth parent and as set forth herein by a representative of the Department of Children, Youth, and Families. If the child is represented by an attorney or Guardian ad Litem appointed pursuant to chapter 13.34 RCW, the terms of this agreement must also be approved as set forth herein by the child’s representative(s). The prospective adoptive parent(s) acknowledge that the parental rights of the birth parent are not affected by this agreement and that no adoption can be finalized until the child becomes legally free.

1.3 Right to Consult Attorney. All parties, including the prospective adoptive parent(s), have the right to consult with an attorney regarding the proposed terms of the agreement before they sign it, and before it is approved and signed by the court.

1.4 Disclosure of Identity of Parties. This agreement need not disclose the full name or identity of the parties to be legally enforceable.

1.5 Best Interest of Child. This agreement is made in and to further the best interests of the child. Any interpretation of this agreement that is later necessary will be made to serve the best interests of this child. For purposes of any such interpretation, the child is to be considered the subject of this agreement and is not a party hereto. The court will not approve this agreement unless it finds that the agreed upon communication or contact between the child, the prospective adoptive parent(s), and the birth parent is in the child’s best interest.

1.6 Adoption is Final. Any party's failure to comply with the terms of the agreement regarding communication or contact shall not be grounds for setting aside a birth parent’s relinquishment of parental rights or an adoption decree or for revocation of a written consent to an adoption after it has been approved by the court.

# Parties and their attorneys

*All Open Adoption Agreements should include the following statements:*

Birth Parent:

Birth Parent Contact Information (list mailing address, email address, and/or phone number):

Attorney for Birth Parent:

Contact Information for Attorney for Birth Parent:

Prospective Adoptive Parent:

Prospective Adoption Parent Contact Information (list mailing address, e-mail address, and/or phone number):

Attorney for Prospective Adoptive Parent:

Contact Information of Attorney for Prospective Adoptive Parent:

# STIPULATION

*All Open Adoption Agreements should include the following statements:*

3.1 This agreement is the parties’ complete agreement. No terms other than those stated herein have been agreed to between the parties.

3.2 This agreement is entered into by all parties freely, willingly, and without force, duress, or coercion. All parties are competent to enter into this agreement. All parties understand and agree that failure to comply with the terms of this agreement shall not be grounds for setting aside the birth parent’s relinquishment of parental rights or an adoption decree or for revocation of a written consent to an adoption after consent has been approved by the court.

3.3 This agreement has not been entered into solely to negotiate a settlement with respect to a proceeding for the involuntary termination of parental rights. This agreement has been entered into because all parties, the Department of Children, Youth, and Families, and the child’s representative(s) agree that entering the agreement is in the child’s best interests.

3.4 This agreement shall not be modified after the court has approved it, unless the court finds that the modification is necessary to serve the child's best interests and the prospective adoptive parent(s) and the birth parent agree to the modification, or the court decides that exceptional circumstances exist which justify the modification, consistent with the child’s best interests.

3.5 If the prospective adoptive parent(s) do not adopt the child, this agreement will be without legal force or effect. Such an event will in no way affect the finality of the birth parent’s relinquishment of parental rights. Further, should there be a change in prospective adoptive parent(s), this agreement shall not be binding on future prospective adoptive parents.

3.6 This agreement is made subject to the approval of the child’s representative(s) and the Department of Children, Youth, and Families. The below signatures of the child’s representative(s) and the representative of the Department of Children, Youth, and Families are made solely to indicate that such approval of this agreement has been given by the respective signatories. The child’s representative(s) and the Department of Children, Youth, and Families are not parties to this agreement.

3.7 The parties stipulate and agree that this Agreement and Order shall be entered concurrently with the parent’s relinquishment of parental rights and shall be effective from the date the adoption is finalized. Any contact or communication in the period between the birth parent’s relinquishment of parental rights and the child’s adoption may be arranged via a separate agreement between the Department of Children, Youth, and Families and the birth parent, the existence and/or terms of which shall be in accordance with the child’s best interests.

3.8 In the event any section or portion of this agreement is found to be unenforceable, such finding shall not affect the enforceability of any other section or portion of this agreement.

3.9 The prospective adoptive parent(s) will notify the birth parent via the contact information listed in section 2 above, or via updated contact information provided in writing by the birth parent, within 30 days of the adoption finalization that this agreement is in effect.

3.10 This agreement automatically ends on the child’s 18th birthday.

# AGREEMENT REGARDING COMMUNICATION AND CONTACT

***Guidelines for Communication and Contact****: Suggested Language for Prospective Adoptive Parent(s) and the Birth Parent to Consider When Negotiating Contact*

Pursuant to RCW 26.33.295, the parties listed above agree to the following plan for communication with or contact between the child and the birth parent:

*If visitation is to be included in the plan, please include the following:*

4.1 The prospective adoptive parent(s) agree to facilitate a visit between the birth parent and the child at least \_\_\_\_\_ time(s) per year. The parties anticipate that visit(s) shall occur during the month(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(and)\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unless otherwise agreed by all parties. Each visit will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in duration, unless otherwise agreed by all parties. *(Please note that specific to the case, there could only be one visit a year or more than two. Consider whether the child after a certain age should have discretion as to whether visits occur.)*

4.2 Visits will be scheduled by agreement of the parties, following a request initiated by the birth parent at least *(specify timeframe)* in advance. The birth parent will contact the prospective adoptive parent(s) via the contact information listed in section 2 above in this agreement, or via updated contact information provided in writing by the prospective adoptive parent(s). The prospective adoptive parent(s) will respond and contact the birth parent via the contact information listed in section 2 above in this agreement, or via updated contact information provided in writing by the birth parent.

4.3 Visits shall be scheduled with reasonable advance notice and will occur at a site within *(specify distance)* of the child’s residence, or at a site agreed upon by all parties. The birth parent will be responsible for all expenses incurred to facilitate visitation unless otherwise agreed to by the parties. Visits may be supervised at the discretion of the prospective adoptive parent(s) or their designee.

4.4 The prospective adoptive parent(s) shall have the discretion to increase visitation/communication between the child and the birth parent based on their determination as to the best interests of the child.

4.5 The prospective adoptive parent(s) shall have the discretion to limit or restrict future visitation between the child and the birth parent if the birth parent fails to appear for any pre-scheduled visit without adequate advance notice.

4.6 The prospective adoptive parent(s) shall have no obligation to reschedule or provide make-up visits if the birth parent fails to appear for any scheduled visit without adequate *(or consider specifying timeframe)* notice.

4.7 The prospective adoptive parent(s) shall have the discretion to terminate a visit at any time if they reasonably deem the visit is harmful to the child based on the birth parent’s demeanor or conduct.

4.8 The birth parent shall not bring any other persons to any visit with the child except as agreed in advance by all the parties.

4.9 If the birth parent fails to request a visit for *(specify length of time),* then any further visits or contact between the birth parent and the child will be left to the discretion of the prospective adoptive parent(s) based on their determination as to the best interest of the child.

*If photographs/letters/cards/written or electronic communication to be exchanged, please include the following:*

4.10 The prospective adoptive parent(s) agree to provide the birth parent with a card/letter/photograph \_\_\_ time(s) per year. The communication(s) shall occur during the month(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(and)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, unless otherwise agreed by all parties.  *Consider specifying whether such communications may be shared with others who are not party to this agreement. Also consider specifying whether this would include the birth parent posting about the child on social media; an additional statement prohibiting the posting of pictures of the child on social media could be included here.*

4.11 The communication will be sent to the address for the birth parent listed in section 2 above, or to an updated address provided in writing by the birth parent. It is the birth parent’s responsibility to maintain a current address and to notify the prospective adoptive parent(s) in writing of any changes in address/contact. Such notification shall be provided to the prospective adoptive parent(s) at the address listed in section 2 above or to an updated address provided in writing by the prospective adoptive parent(s).

4.12 In the event the birth parent fails to maintain an address as provided by section 2 above, then the prospective adoptive parent(s)’ obligation to continue to provide *(state type of communication)* shall be terminated. Any subsequent communication may be provided at the discretion of the prospective adoptive parent(s) should they later obtain a valid address for the birth parent.

4.13 The birth parent may communicate with the child in writing \_\_\_ times per year in the month(s) of \_\_\_\_\_\_\_\_\_\_\_\_(and)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Such writings shall be sent to the address identified for the prospective adoptive parent(s) in section 2 above or to an updated address provided in writing by the prospective adoptive parent(s).

4.14 The prospective adoptive parent(s) may review all correspondence to the child from the birth parent and shall have discretion as to whether and when to share such communications with the child.

*If phone/Skype/Facetime or other similar real-time communication is to occur, please include the following:*

4.15 Real-time communication: *Specify whether contact/communication may occur via phone, Skype, Facetime or other similar means. If such contact will occur, specify frequency, expectations for initiation of such contact and phone numbers/addresses for the parties to contact each other.* The prospective adoptive parent(s) shall have the discretion to terminate a phone, Skype or other electronic contact at any time if they reasonably deem the contact is harmful to the child based on the birth parent’s statements, demeanor or conduct.

*All Open Adoption Agreements should include the following language:*

4.16 The parties agree to keep each other apprised of any changes of address and/or other contact information.

4.17 The birth parent agrees to notify the prospective adoptive parent(s) in the event that an immediate family member of the extended birth family (father/mother/sibling/grandparent/uncle/aunt/cousin) is diagnosed with or receives medical treatment for a potentially life-threatening illness.

4.18 The prospective adoptive parent(s) agree to make efforts to notify the birth parent *(consider adding within 7 days or other agreed upon timeframe)* in the event the child suffers a life threatening illness or injury, or if the child dies. Attempts to notify will be via the contact information provided in section 2 above or via updated contact information provided in writing by the birth parent.

4.19 The above plan for contact between the birth parent and the child is designed to set out a minimum of contact. Any increase or liberalization of contact between the birth parent and the child may occur by agreement of the parties without further court order.

4.20 If the birth parent makes any attempts to contact the child outside the parameters of this agreement (unless approved by the prospective adoptive parents), this agreement becomes null and void, and the prospective adoptive parents are under no obligation to provide further contact or communication.

4.21 Other:

# ENFORCEMENT

*All Open Adoption Agreements should include the following statements:*

5.1 This agreement shall be enforceable as a contract under Washington law and governed by the laws of the State of Washington and the rules, procedures and protocols set forth by the Superior Court. The parties agree that in the event an action is brought to enforce this agreement as provided herein, venue will lie in the county where the child resides at the time the enforcement action is filed. If the birth parent does not know the county where the child resides at the time the enforcement action is filed, then venue will lie in \_\_\_\_\_\_\_\_\_\_ County Superior Court. The parties may agree to mediation as an alternative method to resolve their dispute(s). *Consider specifying whether mediation must be attempted before an enforcement action may be heard by the court.*

5.2 Enforcement of this agreement shall be by civil action in accordance with RCW 26.33.295.

5.3 The party who prevails in such an action may be awarded a reasonable amount in attorney fees.

5.4 The Department of Children, Youth, and Families shall not be responsible for enforcement of this agreement between the birth parent and the prospective adoptive parent(s).

5.5 Service of process of any enforcement action shall be accomplished as follows: The prospective adoptive parent(s) consent to service of process via the contact information listed in section 2 above or via updated contact information provided in writing by the prospective adoptive parent(s). The birth parent consents to service of process via the contact information listed in section 2 above or via updated contact information provided in writing by the birth parent.

# FINDINGS OF FACT

*All Open Adoption Agreements should include the following statements:*

Based upon the foregoing Agreement, the court finds:

6.1 The agreement for communication/contact set forth above is in the best interest of the child adoptee;

6.2 The above agreement was entered into by the undersigned parties freely, willingly, and without force, fraud, duress, or coercion; and

6.3 Each of the parties has been represented by an attorney or has had the opportunity to consult an attorney before signing and entering into the agreement.

# CONCLUSIONS OF LAW

*All Open Adoption Agreements should include the following statements:*

7.1 This court has jurisdiction over the subject matter, the above-named child, and the parties in this matter.

7.2 It is in the best interests of the child to enter an order that approves the agreement recited in this document.

# ORDER APPROVING AGREEMENT

*All Open Adoption Agreements should include the following statements:*

8.1 IT IS HEREBY ORDERED that the agreement recited above in Parts III-V of this document is approved and shall be an order of this court.

8.2 IT IS FURTHER ORDERED that each of the parties shall comply with the terms of the agreement, and that in the event of the failure of any person to comply, appropriate enforcement proceedings may be brought; however, in no event shall the violation of the terms of the agreement constitute a basis for vacating or setting aside the adoption.

8.4 IT IS FURTHER ORDERED that the **Clerk** of the Court shall provide ONE (1) certified copy of this document to the Department of Children, Youth, and Families at no cost.

Dated this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGE/COURT COMMISSIONER

The undersigned parties declare under the penalty of perjury of the laws of the State of Washington that they have read the foregoing Stipulation, Agreement and Order Regarding Communication And Contact Between Birth Parent, Child Adoptee And Prospective Adoptive Parent(s), understand and agree with the contents thereof, and consent to its entry by this court.

**Agreed to by Parties: Approved for Entry:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Birth Parent Date Signed Attorney for Birth Parent

Place Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Prospective Adoptive Parent Date Signed Attorney for Prospective Adoptive Parent

Place signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Prospective Adoptive Parent Date Signed Attorney for Prospective Adoptive

Parent

Place signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Approved by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_

DCYF Area Administrator or designee & Date Signed

Place signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_/\_\_/\_\_

Assistant Attorney General Signature & Date Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

GAL Signature (if applicable) & Date Signed Attorney for Guardian ad Litem

Place signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_/\_\_\_/\_\_\_

Child’s Attorney (if applicable) Signature & Date Signed

Place signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_