

COLLABORATIVE PARTICIPATION AGREEMENT

1. Introduction

A. _____ and _____, (“the parties”) have chosen to use the principles of the Collaborative Process to settle, in a non-adversarial and private manner, the issues arising from the dissolution of their marriage and the restructuring of their family. They have retained Collaborative attorneys (“the attorneys”) to assist them in achieving this goal, namely, _____ who represents _____; and _____ who represents _____.

B. The parties acknowledge that the essence of the Collaborative Process is the shared belief that it is in the best interests of their family to commit themselves to avoid the use of litigation and litigation-based strategic negotiation techniques.

C. The parties adopt this form of alternative dispute resolution which does not rely on a court-imposed resolution but instead relies on honesty, cooperation, integrity, civility and full disclosure, with a focus on the future well-being of the whole family in reaching an acceptable solution.

The parties commit themselves to the Collaborative Process as a better way to resolve their differences. Specifically, the parties agree as follows:

2. No Litigation

A. The parties commit themselves and agree to devote all of their efforts to settle the issues arising from the dissolution of their marriage and the restructuring of their family without adversarial court intervention. During the Collaborative Process, unless otherwise agreed, prior to reaching final agreement on all issues, no pleading or motion will be prepared or filed. If either party initiates a contested legal proceeding against the other, the Collaborative Process is immediately terminated.

B. Each party understands that the representation of his or her Collaborative attorney is limited to the Collaborative Process and non adversarial representation. While each attorney is the advisor to his or her own client and serves as that client’s representative, counselor, and advocate, the parties agree that neither of the attorneys, nor their firms, can ever represent either party in a contested court proceeding against the other, or appear as counsel for either of them in any court other than a mutually-agreed upon submission of documents to obtain an uncontested divorce or other mutually-agreed upon consent order.

3. **Full Disclosure**

A. The parties will promptly, and continually throughout the Process, provide full and informal disclosure of all important information, whether requested or not and whether or not it is directly considered relevant to the Process. Important information shall mean any information which either party might need to make an informed decision about each issue that needs to be resolved. The parties also agree to provide voluntarily any written authorization which may be required to obtain such information.

B. During the Process, the parties will not employ formal discovery procedures and acknowledge that by agreeing to this they are giving up certain investigative procedures and methods that would be available to them in the litigation Process. The parties give up these measures with the understanding that they will each make a full, fair and complete disclosure of all assets, income, debts and other information necessary for an informed settlement. The parties understand that if either of them knowingly misrepresents or withholds important information, whether or not he or she thinks the information is relevant, the Process will be terminated.

4. **Participation with Integrity**

A. The parties will work to protect the privacy and dignity of everyone involved in the Process.

B. The parties will not take advantage of any mistakes, misunderstandings, inconsistencies or miscalculations of any participant. Such mistakes will be disclosed promptly, making corrections where needed.

5. **Communication**

A. **Meetings.** The parties agree to work toward the resolution of issues in a series of meetings which will include the attorneys and any mental health professionals, financial professionals and/or other experts that the parties and the attorneys agree to include as part of the Process. The parties commit to meet regularly and when they do meet, they will come prepared, having done any homework assigned for that meeting. If homework cannot be completed prior to a scheduled meeting, they will inform all of the members of the group at least 48 hours before the meeting so that a decision can be made about whether or not to reschedule the meeting.

B. **Tone of Communication.** The parties' written and verbal communications will be respectful and constructive. They will not make accusations or claims which are punitive in nature. They will try to avoid taking inflexible positions, understanding that the accommodation of each other's interests and the ability to compromise are essential

to the success of this Process. Neither the parties nor the attorneys, will use the threat to withdraw from the Process or to go to Court as a means of achieving a desired outcome on an issue or to try to force settlement.

C. **Focus of Communication.** The parties will try not to focus on the problems that may have contributed to the breakdown of the marital relationship but will focus instead on the issues that need to be resolved for both of them to move forward with their lives.

D. **Communication Without Criticism or Interruption.** To achieve a mutually agreeable settlement, the parties must be able to speak freely and express their respective interests, needs, desires and options without concern that they will be criticized or judged by the other. Each party will listen respectfully to the other's point of view and attempt to understand it even if they do not agree with it. They will use their best efforts not to interrupt each other or any other participant during the meetings.

E. **Communication Outside Collaborative Process.** The parties agree not to pressure each other to discuss settlement issues outside of the Collaborative meetings. They may agree in advance to discuss certain issues, such as the division of personal property or the children's schedules, as long as it is understood that the discussion will end if either party feels uncomfortable or pressured.

F. **Legal Advice.** The parties understand that each attorney has an ethical obligation to represent only his or her client and a duty to advise his or her client regarding the law and choices in this process. Despite this, the parties agree that any legal advice of a substantive nature, that is dealing with the law and a party's choices or potential options, should be given in the group meetings. If legal advice of a substantive nature is communicated individually to a party, the substance of that communication must be shared with the group at the next meeting or next reasonable opportunity.

If a party wishes to communicate privately with his or her attorney on issues that do not involve legal advice of a substantive nature, the substance of that communication need not be shared with the group.

G. **Privileged and Confidential Communications.** The parties understand that there is an attorney-client privilege between each party and his or her individual attorney so each has the right to instruct his or her individual attorney not to reveal specific information. However, if either party so instructs his or her attorney to keep a communication about substantive matters confidential from the group as a whole, the Collaborative Process may be subject to termination due to the violation of the full disclosure commitment.

6. Preservation of the Status Quo

A. The parties agree that they will not sell, transfer, borrow against, encumber, hypothecate, conceal, assign, remove, or in any way dispose of any property, real or personal, whether or not marital, individually or jointly held by them, without the written consent of the other, except in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this Process.

B. The parties agree that they will not borrow against, cancel, transfer, dispose of or change the beneficiaries of any insurance policy or other coverage including, but not limited to, life, health, dental, vision, automobile and disability insurance held for the benefit of either of them or their minor children, without the written consent of the other.

C. The parties agree that they will not incur any debt or liability for which the other may be held responsible, including, but not limited to, further borrowing against any credit lines secured by the family residence, further encumbering of any asset, or using credit cards or cash advances, other than in the usual course of business and consistent with past practice or for payment of usual and customary household expenses, reasonable expenses consistent with the past practice of the family or for reasonable professional fees in connection with this Process.

7. Children's Issue [to be omitted if no minor children]

The parties recognize that their children may suffer as a result of their divorce, and therefore they commit themselves to minimizing the trauma to and the disruption of their children's lives. To that end, they agree as follows:

A. **Settlement Issues Will Not Be Discussed in the Presence of the Parties' Children.** Communication with the children, or in the children's presence, regarding settlement issues will occur only if it is appropriate and done by mutual agreement and/or with the advice of a neutral mental health professional.

B. **The Children will not be Interrogated.** The parties will not question the children about the other parent or the events occurring in his or her residence.

C. **The Children Will Not Be Placed in the Middle of The Parties' Disagreements.** The parties will not criticize each other to their children or in their presence, nor will they allow others to criticize the other when the children are present.

They agree that their children shall not be forced to choose between them, and will encourage them to love both parents equally. Neither party will use the children as a messenger to deliver information to the other party.

D. Access to the Children. The parties will not attempt to impede access of the children to the other parent. The children shall have reasonable telephone access with both parents, and each parent will have reasonable telephone access to the children when they are not with them. They agree they will not deny access of the children to extended families, unless they specifically agree otherwise.

E. Information Regarding the Children. The parties will promptly inform the other parent of any accident, illness or other mishap involving the children. The parties will have equal access to records and information regarding their children's education, health, activities and general welfare.

F. Removal from Area. The parties will not remove, or threaten to remove, the children from the area, absent the explicit written consent of the other parent. However, they further agree that consent to such removal for vacations or other legitimate activities will not be unreasonably withheld.

8. Agreements

A. During the course of the Process, the parties will arrive at "temporary" agreements that will not be binding contracts, but will be respected and followed by the parties during the course of the Process. Not respecting and following agreements made during the Process will impede the progress of the Process and may ultimately cause it to terminate.

B. The parties understand that a written binding agreement signed by both of them during the Collaborative Process is a legally enforceable agreement to be relied on. Such agreement will survive the termination of the Process and may be presented to the court as a basis for a court order.

C. When the parties have reached an agreement on all issues, their temporary agreements will be reduced to a written document which will be an enforceable contract, binding the parties to its terms. This contract may be presented to a court in a subsequent action for divorce.

9. Team Members

A. **Team Members.** The parties may decide to use the team approach to the Collaborative Process in which case they may retain any or all of the following team members with whom they must execute separate engagement agreements.

i. Two mental health professionals who each act as a coach for each party. Their role is to facilitate communication in the process between all team members. The parties may alternatively choose to hire only one mental health professional to act as a neutral coach for both of them.

ii. A mental health professional with a practice focus on children to meet with the parties and their children in an effort to give a voice to the needs of the children and assist in resolving parenting issues.

iii. A financial neutral to gather the financial information and to assist with resolving financial issues.

B. Communications Among Team Members. The parties recognize and agree that their individual communications in the Process, including otherwise privileged information, may be shared by and among their respective attorneys and the other team members. Each party instructs their attorney and the other team members to have whatever discussions among themselves as are necessary to assist them in resolving their issues. This will include discussions the substance of which may or may not be shared with the parties.

C. Future Role of Team Members. The parties understand that no team member may act in another capacity for the parties once the Process has concluded.

D. Subsequent Litigation. No team member can participate in any subsequent litigation between the parties even if the parties agree otherwise and desire the team members' participation.

10. **Neutral Experts**

When appropriate the parties may employ neutral experts for purposes of valuation, cash flow analysis, appraisal of real or personal property, or investigation of any other issue that requires expert recommendations. They will agree in advance as to how the costs of these experts will be paid. They agree that the team members and the expert may engage in whatever discussion is necessary for resolution of the case, including discussions outside of their presence. In the event of litigation a neutral expert may be called as a witness but only if the expert and both parties agree.

11. Confidentiality of Communication Within the Collaborative Process

A. Because the parties need to feel comfortable exchanging information freely and in testing out ideas and options within the Collaborative Process, they instruct the team members to keep all Collaborative communications exchanged within the Collaborative Process confidential and confined to this Process, except as the parties may agree. A Collaborative communication is defined as any oral, written, or recorded statement that is made to conduct, or participate in, the Collaborative Process. No Collaborative communication shall be subject to discovery or admissible as evidence in any subsequent litigation except in the following situations:

- i. If an ethics complaint, or claim of malpractice or misconduct, is filed or made against either of the parties' Collaborative attorneys or against any mental health or financial professional involved in this Process;
- ii. If a claim is filed for fees owed to a Collaborative professional;
- iii. If a threat or statement is made regarding an intention to inflict bodily injury or to commit or conceal a crime;
- iv. If a threat is made involving harm to the parties' children or removal of their children from the place where they live;
- v. If a communication is sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of the children;
- vi. If a Collaborative communication is not provided or prepared specifically for the use of the Process as, for example, bank records, credit card statements, tax documents, insurance policies, etc.;
- vii. If a signed agreement to be relied on is made by the parties during the Collaborative Process pursuant to paragraph 8.B.;
- viii. If a party agrees that a communication may be disclosed;
- ix. If a communication is needed to prove or disprove the validity of a written agreement signed as part of the Process; and

- x. If a Collaborative communication is used to assist in obtaining an uncontested divorce or other court ordered resolution of matters subject to and resolved within the Collaborative Process.

B. Subject to the exceptions set forth in 11.A, if the Collaborative Process is terminated and litigation occurs, the parties agree as follows:

- i. They will not introduce as evidence Collaborative communications, including any statements, admissions or offers disclosed during the Collaborative Process or documents generated during the Collaborative Process (including minutes from meetings, records and notes).
- ii. They will not ask or subpoena either attorney or any team member to appear in court to testify in any court proceedings, nor will they attempt to take the deposition of either attorney, or any team member with regard to matters disclosed in the Collaborative Process. A jointly retained neutral expert may be called to testify or deposed so long as the neutral expert and both parties agree.
- iii. The parties will not require the production in any court proceeding any documents generated during the Collaborative Process, including any notes, records, and minutes from meetings in the possession of either attorney or any team member.

C. Notwithstanding the foregoing, if the attorney-client relationship between either of the parties and their current Collaborative attorney is terminated, then the Collaborative attorney is authorized to disclose communications made during the Collaborative Process to any successor attorney, if so requested by the party. Pursuant to Rule 1.16(e) of the Rules of the Virginia Supreme Court, the Collaborative attorney must also deliver the file of the client to the client or successor attorney.

12. **Termination of the Collaborative Process**

A. **Termination of Collaborative Process by a Party.** If either party decides to withdraw from the Collaborative Process, he or she will give prompt written notice. Upon withdrawal from the Collaborative Process, unless there is an emergency, there is a thirty (30) day period, before either party can file motion in any court or administrative agency regarding an issue dealing with separation or divorce so as to permit the other party to retain another attorney and make an orderly transition. [It is agreed that either party may bring this provision to the attention of a court in requesting a postponement of a hearing.] (see 11.C.)

B. Termination of the Collaborative Process by a Party's Attorney. A Collaborative attorney must withdraw from and terminate the Collaborative Process in the event he or she learns that their client despite their advice to the contrary has withheld or misrepresented information that has a bearing on issues in the Collaborative Process as part of the Collaborative Process, or otherwise acts so as to undermine the Collaborative Process. The attorney withdrawing and terminating the Collaborative Process shall advise the other attorney that he or she is withdrawing but shall not reveal the reason for the termination. The parties understand that, if the Collaborative Process terminates, each of them has the right to his or her file from their attorney or they may direct that his or her file be provided to a successor attorney in accordance with the Rules of Professional Conduct.

13. Withdrawal of Attorney or Other Team Member from the Collaborative Process Without Terminating the Process

A. Withdrawal of Attorney. If either attorney deems it appropriate to withdraw from the case for any reason except that set out in 12.B. he or she agrees to do so by a written notice of withdrawal to his or her client, the other attorney, and to all other professionals involved. This may be done without terminating the Collaborative Process. The party whose client has terminated his or her representation will use his or her best efforts to replace their attorney in a timely fashion.

B. Withdrawal of Other Team Member. If another team member deems it appropriate to withdraw from the case for any reason except those set out in 12.B. below, he or she agrees to do so by a written notice of withdrawal to his or her client, the attorneys and to all other professionals involved. This may be done without terminating the Collaborative Process. The parties will use their best efforts to reach agreement on whether to replace the withdrawing team member with another professional, or proceed without replacing such professional.

14. Fees and Costs

A. Attorneys' Fees. Each party has retained his or her own attorney and will pay for that attorney's services unless otherwise agreed to in the Collaborative Process.

B. Coaches' Fees. In the event that both parties retain individual coaches, they will each pay for his or her coach's services unless otherwise agreed to in the Collaborative Process.

C. Neutrals' Fees. In the event that the parties agree to retain a neutral coach, child specialist, financial neutral or other joint neutral expert, they shall decide in the Collaborative Process how that professional will be paid.

D. Retainers and Outstanding Balances. The parties will work together to provide the requested retainers and remain current in payments to each Collaborative professional and/or joint neutral expert retained to assist either or both of them. If any Collaborative professional or neutral expert has an outstanding balance that has remained unpaid for over 60 days, then the unpaid balance shall be the first subject of the next meeting, and shall be resolved before moving on to other issues.

15. Incentive to Work Toward a Successful Resolution

The parties realize that the Collaborative Process requires a considerable investment of time and money and that the possibility of having to give up, not only their respective attorneys but also the mental health professionals and neutral professionals that were involved in this Process is substantial incentive for the parties to work toward the success of the Collaborative Process.

16. Instructions to The Attorneys

Each party instructs his or her attorney to help them honor the promises made in this Agreement. Each party also instructs his or her attorney not to act in any way in a manner inconsistent with the promises they have made herein.

Each party agrees to follow this Collaborative Participation Agreement and to promote both the spirit and written word of this Agreement.

Date_____

Date_____