

## **COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT**

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YYYYYYYYYYYY

and her lawyer

**XYXYX**

- and -

**XXXXX**

and his lawyer

**XXXXX**

### **1. Choosing Collaborative Practice**

We choose Collaborative Practice to resolve the issues arising from our separation. In doing so, we agree to be respectful in our negotiations and to work together to achieve a mutually acceptable out of court settlement.

We realize that we are responsible for the decisions we make. We understand that the process of separation takes place on legal, financial and emotional levels. We recognize that achieving our goals may require the assistance of professionals other than our lawyers.

## **2. Guidelines for Participation in the Collaborative Process**

- a) We will deal with each other in good faith.
- b) wxw and yxy agree to make every effort to reach solutions that promote their children's best interests as well as a loving and involved relationship between the children and each parent.
- c) Written and verbal communication will be respectful and constructive.
- d) We agree to follow the problem-solving steps set out in Schedule "A" to resolve our concerns.
- e) wxw and yxy will express his and her interests, needs, goals and proposals and seek to understand those of the other.
- f) wxw and yxy will develop an array of options for settlement and use their best efforts to negotiate a mutually acceptable settlement.
- g) We will not use the threat to withdraw from the Collaborative process or to go to court as a means of achieving a desired outcome or forcing a settlement.
- h) We will not take advantage of mistakes made by another, but will disclose them and seek to have them corrected. We will immediately correct mistakes and advise of changes to information previously given.

## **3. Collaborative Lawyers**

- a) The Lawyers' representation is limited to providing services within the Collaborative process. Neither lawyer, nor any member of his or

her law firm, may represent either party should the Collaborative process end and the parties proceed to a contested court proceeding.

- b) While the lawyers share a commitment to the Collaborative process and the well-being of the family, each lawyer has a professional duty to represent his or her own client diligently, and is not the lawyer for the other party.

#### **4. Collaborative Professionals**

When needed, wxw and yxy may engage other Collaborative professionals. Upon retaining a financial professional, Schedule B will be signed. Upon retaining a family professional, Schedule C will be signed.

#### **5. Other Professionals**

When needed, wxw and yxy may engage other neutral Collaborative professionals such as actuaries, business valuers, tax experts, mediators, experts regarding children's special needs.

## **6. Exchange of Information/Communication**

a) wxw and yxy agree to exchange, on an ongoing basis, all information which may affect any choices or decisions either wxw or yxy has to make in this process.

b) We will decide together how to collect and exchange all information and documentation regarding income, assets and debts. The form of this information exchange may be by:

- Net Family Property Statements;
- Net Worth Statements;
- Asset and Debt Summaries;
- Monthly Budget Summaries;
- Sworn Financial Statements; or
- Other agreed upon formats.

c) When other professionals are engaged, wxw and yxy consent to the exchange of information between the Collaborative lawyers and other Collaborative professionals. From time to time it will be necessary for the Collaborative lawyers and the Collaborative professionals to

communicate in order to co-ordinate efforts on behalf of wxw and yxy.

## **7. Confidentiality**

All communication and information exchanged within the Collaborative process is confidential and without prejudice. Unless we agree otherwise in writing, if subsequent litigation occurs, only the fact that Collaborative process was attempted and final settlement was not reached may be introduced into evidence in court. In particular wxw and yxy agree that:

- a) Neither of us will introduce as evidence in court any written or oral information or documents prepared or disclosed during the Collaborative process, including any notes, records, e-mails, voice mails, letters, progress notes, meeting notes, budgets and projections and proposals for settlement. Only documents otherwise compellable by law such as sworn financial statements and original financial documents may be introduced in court.
- b) Neither of us will introduce as evidence in court or require the production of any reports, opinions or notes of any other professional prepared in the Collaborative process.

- c) Neither of us will compel either lawyer or any other professional retained in the Collaborative process to produce notes records or documents in their possession, attend court to testify, or attend for examination under oath, with regard to matters discussed in the Collaborative process.
- d) The confidentiality clause does not apply in the event that either of us or a Collaborative professional is obliged by law to report to the Superintendent of Family and Child Services information arising out of the collaborative process which gives either of us or a Collaborative professional reasonable grounds to believe that a child may be in need of protection.

## **8. Withdrawal of Party or Lawyer from Collaborative Process**

- a) If either wxw or yxy decides to withdraw from the Collaborative process, he or she will provide written notice of the intention to withdraw and wait thirty days before starting any court proceeding, to permit both wxw and yxy to retain new lawyers and make an orderly transition. Either wxw or yxy may bring this provision to the attention of the court to request a postponement of a hearing. Both

wxw and yxy will provide a copy of this Agreement to their new lawyer.

- b) If either wxw or yxy end their professional relationship with his or her lawyer, but wish to continue with the Collaborative process, he or she will provide written notice of this intention to everyone. The new lawyer will sign a new Participation Agreement within 30 days of the party giving notice. If a new Agreement is not signed within 30 days, the other person will be entitled to proceed as if the Collaborative process was terminated as of the date written notice was given.
- c) If either lawyer withdraws from the Collaborative process for any reason other than those outlined and contemplated by paragraph 9, they will do so promptly and provide written notice to everyone of this intention. If the party whose lawyer has withdrawn wishes to continue with the Collaborative process they will provide written notice to everyone. The new lawyer will sign a new Participation Agreement within 30 days of the party giving notice. If a new Agreement is not signed within 30 days, the other party will be entitled to proceed as if the Collaborative process was terminated as of the date written notice was given.

## **9. Mandatory Termination of the Collaborative Process**

A lawyer must withdraw from the Collaborative process if his or her client has withheld or misrepresented important information and continues to do so; refuses to honour agreements; delays without reason; or otherwise acts contrary to the principles of the collaborative process. A lawyer withdrawing under this section will simply advise that they are withdrawing from the process pursuant to this section of the agreement.

## **10. Responsibilities Pending Settlement**

During the Collaborative process, unless agreed otherwise in writing, wxw and yxy will:

- a) maintain assets and property;
- b) maintain all existing insurance coverage without change in coverage or beneficiary designations;
- c) maintain all existing health and dental benefit coverage;
- d) maintain the ordinary residence of the children;
- e) refrain from incurring any debts for which the other may be held responsible.



## **11. Enforceability of Agreements**

wxw and yxy may enter into temporary, partial, or final agreements during the Collaborative process. Temporary, partial or final agreements must be in writing, signed by wxw and yxy and witnessed by their lawyers. If either wxw or yxy withdraws from the Collaborative process or the process terminates, a temporary, partial, or final agreement is enforceable and may be presented to the court as a basis for an Order. Only written agreements signed by wxw and yxy and witnessed will be enforceable in a court of competent jurisdiction. Verbal agreements and concessions or statements of any kind which may be made during the Collaborative process in progress notes, minutes of meetings, and communications between parties to this Agreement are unenforceable, confidential, and without prejudice.

## **12. Privacy Policy**

- a) wxw and yxy consent to allow the lawyers and Collaborative professionals to collect, use, disclose and retain personal information in order to provide services to wxw and yxy, and to administer client time and billing data bases.

- b) wxw and yxy may withdraw their consent to the collection, use, disclosure and retention of their personal information as described above by giving the lawyers and Collaborative professionals reasonable written notice. Their withdrawal of consent still allows the lawyers and Collaborative professionals to use and disclose their personal information to collect or enforce payment of amounts owing as a result of their prior or continuing use of the Collaborative law firm or Collaborative professionals.
- c) We consent to the use of information to be used for statistical, research or educational purposes, on an anonymous basis.
- d)

### **13.Limitation Period**

wxw and yxy acknowledge that their lawyers have advised them of the following limitation periods:

- a) No applications for a division of property shall be brought after the earliest of two years after from a divorce or six years after the date of separation (applies to married spouses only).

- b) There may be other limitation periods that apply to other claims.
- c) A court may or may not extend these limitation periods.
- d) wxw believes the date of separation was \_\_\_\_\_. yxy believes the date of separation was \_\_\_\_\_. wxw and yxy agree that the earliest possible limitation date is \_\_\_\_\_. If a limitation period is imminent or approaching, wxw and yxy will file court documents necessary to preserve the limitation period for a court action only, and, notwithstanding the filing, agree to continue the collaborative process. The consensual filing of court documents solely to preserve the limitation period or to obtain an uncontested divorce does not violate the Collaborative Practice agreement

#### **14. Acknowledgement of Commitment to Collaborative**

##### **Process**

We have read this Agreement in its entirety, understand its content and agree to its terms.

In the collaborative process hereunder, wxw will be represented by XXX, and yxy will be represented by \_\_\_\_\_.

Dated on \_\_\_\_\_, 20...

Clients:

Lawyers:

\_\_\_\_\_  
**Wxw**

\_\_\_\_\_  
**XX**

\_\_\_\_\_  
**Yxy**

\_\_\_\_\_  
**ZZ**

## **Schedule “A”**

### **Collaborative Negotiation**

#### **Steps For Effective Problem-Solving**

##### **Step 1 BUILD THE FOUNDATION**

- Introduction and overview of the collaborative process
- Decide problems to be solved
- Discuss the role for other professionals, such as family, child and/or financial specialists

##### **Step 2 GATHER AND EXCHANGE INFORMATION**

- Identify goals, needs and interests
- Identify what financial information is needed
- Agree upon and initiate any joint valuations

##### **Step3 IDENTIFY INTERESTS**

- Prioritize goals, needs and interests – immediate and long-term – regarding issues and process

**Step 4 IDENTIFY CHOICES**

- Explore widest range of possible solutions
- Consider everything, rule out nothing

**Step 5 EVALUATE CONSEQUENCES OF EACH CHOICE**

- How would each option affect each person and the children?
- Consider immediate, intermediate, long-term impacts

**Step 6 COME TO A DECISION AND IMPLEMENT DECISION**

- Generate settlement proposals that satisfy interests of both
- What do you see as the best solution for both?
- Prepare Separation Agreement incorporating joint decisions

## **Schedule “B”**

### **Financial Professional Agreement**

**1.** The Financial Professional will assist clients and their legal representatives in reaching a financial settlement that reflects the needs of the clients and their family. In this role the Financial Professional has no authority or decision-making power but can help to ensure that financial outcomes meet client expectations by providing critical financial information. The Financial Professional can help the clients gather and understand financial information and examine options developed during the Collaborative process. More specifically, the Financial Professional can:

- Help clients gather relevant financial information
- Help the clients identify needs
- Help clients understand the financial information and various options developed
- Develop realistic budgets that reflect accurate future needs
- Provide long-term cash-flow analysis
- Illustrate potential long-term consequences of various settlement options

## **2. Obligation to Provide Relevant Information:**

The clients agree to provide the Financial Professional with relevant financial information and understand that the Financial Professional will rely on this information, along with agreed upon assumptions, to develop her/his analysis.

The clients agree that the Financial Professional will not be held accountable for any errors or omissions in his/her work product resulting from the client's failure to provide accurate, reliable and complete financial information.

## **3. Independent Legal Advice:**

The Financial Professional provides supporting financial information and evaluations to be utilized by both the clients and their respective lawyers. The Financial Professional does not provide legal advice.

## **4. Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Financial Professional and other Collaborative team professionals. Clients must provide written consent for the



release of any information to anyone who is not a Collaborative team professional.

### **5. No Court Appearance:**

Should either client decide to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Financial Professional will remain confidential and may not be used in any court proceedings between wxw and yxy. The clients agree that they will not require the Financial Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation between wxw and yxy. If either client subpoenas the Financial Professional and/or any of the records, notes or documentation produced by the Financial Professional during the Collaborative process, then the client who has issued the subpoena shall be deemed to have agreed to pay all the costs required for the Financial Professional to quash the said subpoena.

### **6. Withdrawal From the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable, he or she agrees to immediately inform the other client, the Financial Professional and

all Collaborative team members in writing, about the decision to end the Collaborative process.

If either client wishes to end the engagement with the Financial Professional, in order to retain the services of a new Financial Professional or to proceed without the services of a Financial Professional, the client agrees to immediately inform the other client and all Collaborative team members in writing.

The Financial Professional reserves the right to withdraw from the case for any reason. The Financial Professional has an obligation to withdraw from the case if either client is not acting in good faith. Should the Financial Professional decide to withdraw, he/she agrees to inform the clients and all Collaborative team members in writing. If the Collaborative process has not been terminated, the withdrawing Financial Professional will make every effort to provide suitable referrals to other Financial Professionals to facilitate the engagement of a new financial Professional.

In the event of a decision to withdraw by any person, all incurred fees are due and payable.

**7. No Product Sales and No Future Dealings:**

The Financial Professional’s responsibility in this role terminates once the settlement has been reached or the Collaborative process has been terminated.

The Financial Professional may not work with either client post-settlement excepting as noted in this paragraph. The Financial Professional shall not take assets under administration or sell any financial products. The Financial Professional may assist either or both clients in the implementation of their settlement agreement and in a post-settlement evaluation if agreed upon as part of the Collaborative proceedings. It is critical that the Financial Professional maintain his/her neutrality even after negotiations have been concluded.

We have read the above agreement in its entirety, understand the content and agree to the terms.

Dated on \_\_\_\_\_, 20...

Clients:

Financial Professional:

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

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

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## **Schedule “C”**

### **Collaborative Family Professional Agreement**

#### **1. The Role of the Collaborative Family Professional:**

The Collaborative Family Professional can be helpful in assisting family members to move through the separation process in a positive way. Their role may include:

##### **(a) The Separation Coach**

- helps clients clarify their concerns;
- helps clients manage their emotions;
- helps clients develop effective communication skills and reinforce those skills;
- helps clients develop effective co- parenting skills; and
- helps clients develop a parenting plan.

##### **(b) The Child Consultant**

- is neutral;
- listens to each child;

- sensitizes parents to the needs of each child in the context of the divorce; and
- provides information to parents to help them in the development of their parenting plan.

(c) **The Facilitator**

- is neutral
- helps members of the Collaborative team to communicate more effectively at and between meetings
- helps manage client emotions to enable the process to be more productive and resolution-focused

Although the work may continue when the legal intervention is completed, Collaborative Family Professionals remain focused on assisting family members with the separation related issues.

**2. Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Collaborative Family Professionals and other Collaborative team professionals. Clients must provide written

consent for the release of any information to anyone who is not a Collaborative team professional.

Should either client elect to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Collaborative Family Professionals, will remain confidential and may not be used in any court proceedings between the clients.

The clients agree that they will not require the Collaborative Family Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation.

If either client subpoenas the Collaborative Family Professional's records or notes in any legal or administrative proceeding, then the client, who has issued the subpoena, shall be deemed to have agreed to pay all the costs required for the Collaborative Family Professional to quash the said subpoena

### **3. Confidentiality of Work with Children:**

Should parents request that a neutral Child Consultant meet with the children, they agree that the Child Consultant will only provide them with verbal feedback about the children's concerns or thoughts. The parents further agree that the Child Consultant will not provide verbatim comments from the children, nor will he/she provide a written report.

Although the Child Consultant will encourage open communication between the children and their parents, the parents agree that the Child Consultant will not release information to them or to anyone, that the children have asked her to keep confidential unless she has reason to believe that the children's safety, or any other person's safety, is in danger.

### **4. Limitations to Confidentiality:**

The clients have been made aware that there are certain times when the Collaborative Family Professional may disclose or are required to disclose information. These include reporting suspicions of child abuse to the Children's Aid Society; reporting information that suggests an actual or potential danger to

human life or safety to the appropriate authorities; providing information to the courts as directed through subpoena, search warrant, or other legal order; for research or educational purposes on an anonymous basis.

## **5. Withdrawal from the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable and decides to end the Collaborative process, he or she agrees to immediately inform the other client, the Collaborative Family Professional, and all Collaborative team members in writing, about the decision to end the Collaborative process.

The Collaborative Family Professional reserves the right to withdraw from the case for any reason. Should the Collaborative Family Professional decide to withdraw, he/she agrees to provide written notice of withdrawal to the clients and their lawyers.

If the Collaborative process has not been terminated, the withdrawing Collaborative Family Professional will make every effort to provide suitable



referrals to other Collaborative Family Professionals to facilitate the engagement of a new Collaborative Family Professional.

**6. Limitations:**

While the Collaborative process is not a guarantee of success and cannot eliminate past disharmony and irreconcilable differences, we believe it offers a positive method of developing a cooperative solution. For couples with children, it helps them move towards a positive co-parenting relationship.

We have read the above schedule in its entirety, understand the content and agree to its terms.

Dated on \_\_\_\_\_, 20...

Clients:

Collaborative Family

Professional(s):

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[full name of client]