### sample -rOANOKE

### COLLABORATIVE PARTICIPATION AGREEMENT –with children

1. **Introduction**
	1. ­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 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 to assist them in achieving this goal, namely, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who represents \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_ who represents \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (Both parties’ attorneys are hereinafter referred to as "the attorneys").
	2. 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.
	3. The parties agree to resolve their issues in the best interest of both of them and their children.
	4. The parties adopt this form of alternative dispute resolution which does not rely on a court-imposed resolution and which does rely on honesty, cooperation, integrity, civility and full disclosure, and a focus on the future well-being of the whole family.

 The parties commit themselves to the Collaborative Process as a better way to resolve their differences. Each party agrees to participate in the spirit of the Collaborative Process in good faith. Specifically, the parties agree as follows:

1. **No Litigation**
	1. **Settlement Focused.** The parties commit themselves, and agree to devote all of their efforts, to settling the issues arising from the dissolution of their marriage and restructuring of their family without adversarial court intervention. The Collaborative Process is concluded by a Collaborative settlement agreement, signed by the parties, with respect to all matters considered in the Collaborative Process or an agreement, signed by the parties, resolving a portion of such matters and agreeing that the remaining portions will not be resolved in the Collaborative Process. During the Collaborative Process, no pleading or motion will be prepared or filed, nor will any request be made in any way which would initiate Court intervention, other than seeking a stay of litigation in order to participate in the Collaborative Process. If either party initiates contested legal proceedings against the other, the parties recognize that the Collaborative Process is immediately terminated.
	2. **Non-Adversarial Representation.** Each party understands that his or her Collaborative attorney's representation is limited to the Collaborative Process. Each party has discussed with his or her attorney the alternative processes available to him or her including, but not limited to, litigation, mediation, and traditional negotiation. Each party has discussed with his or her attorney the risks and benefits to the Collaborative Process including such aspects as transparency and voluntary disclosure, and the lack of confidentiality of communications. While each attorney is the advisor of his or her own client and serves as the client’s representative, counselor, and advocate, the parties agree that neither of their attorneys nor their firms can ever represent either party in a contested court proceeding against the other, or appear as counsel for them with respect to this or any related matter in any court or on any court filings even after the conclusion of the Collaborative Process, *other than a mutually-agreed submission of documents to obtain an uncontested divorce or other mutually-agreed consent order*
2. **Full Disclosure**
	1. **Full and Voluntary Disclosure.** The parties agree to promptly provide full and informal disclosure of all information related to the Collaborative matter, whether requested or not. For purposes of this Process, this information includes any information, including documents, which either party might need to make an informed decision about each issue in dispute. The parties also agree to provide voluntarily any written authorizations requested which may be required to obtain such information.
	2. **Waiver of Formal Discovery.** By entering into this Agreement, the parties will not employ formal discovery procedures and acknowledge that 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 specific understanding that they will both make a full and fair disclosure of all assets, income, debts and other information related to the Collaborative matter and will deal with each other in good faith. The parties understand that if either of them knowingly misrepresents or withholds important information, one or both attorneys may be forced to withdraw from the Process.
3. **Participation with Integrity**
	1. **Privacy and Dignity.** The parties will work to protect the privacy and dignity of everyone involved in the process.
	2. **Mistakes and Misunderstandings.** The parties will not take advantage of any mistakes, misunderstandings, inconsistencies or miscalculations of each other or any other participant, and shall disclose them and seek to have them corrected. The parties instruct their attorneys and the team members to assist them in correcting any mistakes.
	3. **Completing Homework and Rescheduling.** The parties commit to meeting regularly and when they do meet, they will be prepared, having done any homework assigned because they understand that the cost for their meetings are substantial and require everyone’s cooperation to make the best use of available resources. If homework cannot be completed prior to a scheduled meeting, they will inform all attendees at least 48 hours before the meeting so that a decision can be made about whether or not to postpone the meeting. A party who needs to cancel a meeting for any reason shall give notice to all participants as soon as possible but not less than 48 hours before the meeting.
4. **Communication**
	1. **Meetings**. The parties agree to work toward the resolution of issues in meetings with their attorneys and any mental health professionals, financial professionals and/or other experts that they and their attorneys agree to include as part of the Process.
	2. **Tone of Communications**.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 also try to avoid taking inflexible positions, understanding that accommodation of each other’s interests and the ability to compromise are essential to the success of this Process. The parties will follow the Expectations of Clients and Professionals, which are attached. Neither party nor neither attorney will use the threat to withdraw from the Process or go to Court as a means of achieving a desired outcome or forcing settlement.
	3. **Focus of Communications**.The parties will try not to focus on the problems that may have contributed to the breakdown of the marital relationship but instead will focus on the issues that need to be resolved for both of them to move forward with their lives.
	4. **Communications 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 criticism or judgment from the other. Each of them will respectfully listen to, acknowledge and attempt to understand the other’s point of view, even if they do not agree with it. They will use their best efforts not to interrupt each other or another participant in meetings.
	5. **Communications Outside Collaborative Process**. To maintain as constructive a settlement process as possible, the parties agree not to discuss settlement issues with each other outside of the Collaborative meetings. Discussion outside of such meetings must be agreed to by each party, his or her attorney, and any other participating professionals, in advance, and as long as it is understood that the discussion will end if either party feels uncomfortable or pressured.
	6. **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, including the law as it exists in this Commonwealth and as it is typically applied in the jurisdiction where this case may arise, and advice his or her client regarding the choices the client may make in this Process.

The parties agree that their respective attorney will provide this advice in group meetings, so that each party may have a full explanation of all possible outcomes before the parties arrive at a decision. The parties agree each attorney will give his or her client advice and experience in a straightforward candid and honest manner without regard as to whether the advice or experience is favorable or not to a party. The parties acknowledge that having the attorneys provide legal advice to his or her client, with both parties present can be helpful to resolving the parties’ differences. Both of their attorneys may present them with a summary of the law on particular issues in the Collaborative meetings and in the presence of both of them or in written communication to the Team, such as email messages.

While most legal advice will be given in the group meetings, a party may ask to communicate individually with his or her own attorney for advice and guidance. If the advice is substantive in nature that is dealing with the law and a party’s choices or potential options, the parties agree that the substance of that communication must be shared with the group at the next meeting or in written communication to the Team**,** such as in an email message. If a party wishes to communicate privately with his or her attorney on issues that do not materially pertain to the substantive issues being worked on in the group meetings, such as for emotional support, the substance of that communication need not be shared with the group.

The good faith undertaking by the participants set forth in this Agreement does not give rise under any circumstances to any claims, contractual or otherwise, by one party against the attorney for the other party.

* 1. **Privileged/Confidential Communications**. Each party understands that he or she has a right of confidentiality and has the right to instruct his or her attorney not to reveal specific confidential information. If either party so instructs his or her attorney to keep a particular communication confidential, the party understands that the Collaborative attorney may determine to withdraw from representation of that party under Section 13 of this Agreement. Each party understands that, by signing this Participation Agreement, the information shared with his or her attorney for the purpose of the Collaborative Process is with the understanding that the attorney is permitted to share it with all of the professional team members, the other spouseand other professionals retained by the parties to assist them in the Collaborative Process, as set forth in Section 9B and therefore is not subject to attorney-client confidentiality.

Similarly, the parties understand that, by signing this Participation Agreement, the information shared with their divorce coaches and child specialist for the purpose of this Collaborative Process is with the understanding that the divorce coaches and child specialist are permitted to share it with all of the professional team members, the other spouse, and other professionals retained by the parties to assist them in the Collaborative Process, as set forth in Section 9B and is therefore not confidential.

Either party, by specifically instructing his or her attorney or coach to keep specific information confidential and not reveal it to the team or the other spouse can assert his or her right of confidentiality with respect to such information offered to any attorney or coach. However, each party understands that such an instruction can result in the professional’s withdrawal from the representation of that party.

1. **Preservation of the Status Quo**

Commencing immediately and for the duration of the Collaborative Process, the parties agree to the following commitments and understand that if they do not abide by these commitments the Process may terminate:

* 1. **Real, Personal or Intangible Property or Accounts.** They will not sell, transfer, borrow against, encumber, pledge as security, 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 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.
	2. **Insurance Policies.** They will not borrow against, cancel, transfer, dispose of or change the beneficiaries or any terms of insurance or other coverage including, but not limited to, life, health, dental, vision, automobile, long term care, and disability insurance held for the benefit of either of them or their minor children, without the written consent of the other. They will not implement new or change current wills or estate plans without the written consent of the other.
	3. **Debts or Liabilities.** Without the written consent of the other, they will not incur any debt or liability for themselves of 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 assets, or using credit cards or cash advances, other than in the usual course of business 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 the Collaborative Process.
1. **Children’s Issues**

The parties recognize that children frequently suffer during the Process of divorce, and they commit themselves to minimizing the trauma to and disruption of their children’s lives. To that end, they agree as follows:

* 1. **No Discussion of Settlement Issues in Presence of Their Children**. The parties acknowledge that communication regarding their settlement can be harmful to their children. They will not discuss settlement issues in the presence or hearing of their children, unless by prior agreement, or with the advice of a Child Specialist.
	2. **No Interrogation**.The parties will not question their children about the other parent or the events occurring in his or her residence.
	3. **Their Children Will Not Be Placed in the Middle of Their Disagreements**. The parties acknowledge that their children need both parents in his or her life and that they arehurt when one parent criticizes or blames the other parent. They will endeavor not to criticize the other parent to their children or in their presence. They agree that their children shall not be forced to choose between them. They will encourage their children to have affection for both of them.
	4. **Access Will Not Be Withheld**. The parties will not attempt to impede access of their children to the other parent. Their children shall have reasonable and other age appropriate electronic access to both parents and each parent will have reasonable telephone and other age appropriate electronic access to their children.
	5. **Information Will Not Be Withheld**. The parties will promptly inform the other parent of any serious accident, illness or other mishap involving their children. The parties will have equal access to records and information regarding theirchildren’s education, health, activities and general welfare.
	6. **Removal from Area**. The parties will not remove, or threaten to remove, their 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.
1. **Agreements Made During the Process.**

A. **Temporary Agreements.** 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. Some of these temporary agreements will be contained in minutes of the meetings and signed by both parties; others may be oral agreements on day to day matters.Not respecting and following agreements made during the Process will impede the progress of the Process and may ultimately cause it to terminate.

B. **Signed Agreements That The Parties May Rely Upon.** The parties may decide to enter into a written agreement during the Collaborative Process that they intend shall survive and be binding after the Process terminates, even if the Process fails. They understand that such a written agreement, referred to as an “Agreement To Be Relied Upon,” shall be signed by both of them during the Collaborative Process and SHALL BE LEGALLY ENFORCEABLE AND SHALL SURVIVE THE TERMINATION OF THE PROCESS. It may be presented to the court as a basis for an order, and the court may make it retroactive to the date of the written agreement.

C.  **Comprehensive Written Agreement.** When the parties have reached an agreement on all issues, their temporary agreements will be reduced to a final settlement agreement, their Comprehensive Written Agreement. Once the Comprehensive Written Agreement is signed, it is a legally enforceable contract and may be presented to the court in a subsequent action for divorce and/or enforcement.

1. **Team Members and Experts**
	1. **Team Members**.The parties may decide to use the team approach to the Collaborative Process in which case they may retain the following team members, with whom they must execute separate engagement agreements and a Team Pledge:
		1. Coach(es). Two mental health professionals, each acting as a coach for one party to facilitate communication and management of emotions, facilitate the Collaborative Process, and assist with resolving parenting issues; or, in the alternative one mental health professional to facilitate communication between them, facilitate the Collaborative Process, and assist with resolving parenting issues;
		2. Child Specialist. One mental health professional acting as a child specialist to meet with their children, to provide them with child development information, to voice the needs and/or concerns of their children when needed, and to assist with resolving parenting issues; and/or
		3. Neutral Financial Specialist. A financial neutral to gather their financial information, to summarize, analyze and/or present it to them and the team, as requested, and to assist with resolving financial issues.

 The above-listed professionals and the attorneys constitute the Collaborative Team (sometimes referred to as “the Team or “the Professional Team”).

* 1. **Communications Among Team Members**. Each party recognizes and agrees that his or her individual communications in this Process, including otherwise privileged or confidential information, may be shared by and among his or her respective attorney, his or her spouse attorney, the coach(es), the child specialist and the financial neutral who are serving on their team, and other professionals retained jointly by the parties to assist them in the Collaborative Process. This will include discussions the substance of which may or may not be shared with the parties. However, a privileged or confidential communication that a party specifically instructs his or her Collaborative attorney or coach or child specialist not to reveal will be kept confidential, but, under the circumstances described in **Section 13** below, may result in the professional’s withdrawal from representation of that party. Each party instructs his or her attorney and other team members to have whatever discussions among themselves as are necessary to assist the parties to resolve their differences during the Collaborative Process, including discussions outside of their presence, and including the disclosure of otherwise privileged or confidential information. Each party understands that, if the Collaborative Process terminates, each party: (i) has the right to his or her file from his or her attorney, and may direct that his or her file be provided to a successor attorney; (ii) is not entitled to the divorce coaches’ or child specialist’s “personal notes”; and (iii) is entitled to the financial reports prepared by the financial professional if the party has complied with terms of payment.
	2. **Future Roles of Team Members**.The parties understand and agree that their divorce coaches and child specialist are members of the Collaborative Team only and cannot act as therapists for either of them or for their children, even after the final settlement agreement is signed and the Collaborative Process has concluded. The parties understand and agree that their financial neutral is a member of the Collaborative Team only, and cannot act as a financial advisor for either of them, or sell products to them, even after the final settlement agreement is signed and the Collaborative Process has concluded. The parties understand and agree that the Collaborative attorney for each party is a member of the Collaborative Team only, and cannot act as litigation counsel in any contested matter related to the Process, even after the final settlement agreement is signed and the Collaborative Process has concluded. The parties also understand that in the event the Collaborative Process is terminated and is not reconvened, no member of the Collaborative Team may continue in the Collaborative Team role except to assist with the transition to a new professional.
	3. **Neutral Experts**. When appropriate and needed, the parties will use neutral experts for purposes of valuation, cash flow analysis, mortgage application, appraisal of real or personal property, and for any other issue that requires expert advice and/or recommendations. They will agree in advance as to how the costs of this third-party expert will be paid. When an expert is engaged, they agree that the team members and the expert may engage in whatever discussions are useful 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.
	4. **Subsequent Litigation**. Unless the parties and the professional team member or expert agree otherwise, if they select and retain a team member and/or a joint neutral expert to assist in the Collaborative Process, neither of them may retain such non-attorney team member or expert, nor may such team member or expert participate, in any subsequent litigation between them, whether as an expert, a witness, or in any other capacity**. Attorneys retained for the Collaborative Process may not be retained for litigation, even if the parties are in agreement to do so.**
1. **Confidentiality Within Collaborative Process**
	1. The parties wish to feel comfortable exchanging information freely and in testing out ideas and proposals within the Collaborative Process. They instruct their attorneys and other team members that all Collaborative communications except as provided in Section 9above (communication among team members) and in this Section shall be kept confidential and confined to this Process and shall not be subject to discovery or admissible in evidence in any subsequent litigation. Collaborative communication shall be defined as an oral, written, or recorded statement that is made to conduct, participate in, continue, or reconvene a Collaborative Process after the Collaborative Participation Agreement is signed and before the Collaborative Process is concluded. Recorded statement is defined as information which is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

* 1. **Disclosures**. The following are exceptions to confidentiality and are not protected by privilege from discovery or introduction into evidence:
		1. 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 or in a claim filed for fees owed to a Collaborative professional;
		2. A threat or statement to inflict bodily injury or commit a crime;
		3. If a threat is made involving harm to the parties’ children or removal of their children from the place where they live;
		4. Communications sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or an adult unless the child or adult protective service agency is a party or participant;
		5. A disclosure in a report of suspected domestic violence to an appropriate agency;
		6. If a Collaborative Process communication is intentionally used to plan, conceal, attempt to commit or commit a crime;
		7. Documents otherwise public and obtainable from a source outside of the Collaborative Process;
		8. Communications necessary to respond to a Collaborative communication which is disclosed in a court proceeding and prejudices another person;
		9. A signed agreement made by the parties during the Collaborative Process, either a final agreement or an Agreement to be Relied Upon;
		10. Collaborative communications agreed to be disclosed by both parties and, in the case of a Collaborative communication by a team member (including the attorneys), agreed to be disclosed by the team member ; and
	2. If subsequent litigation occurs, the parties mutually agree as follows:
		1. They will not introduce Collaborative communications, including statements, admissions, or offers as evidence in court except as provided in **Section 10 B** above.
		2. Except by agreement of both parties and the team member or neutral expert, they will not ask or subpoena either attorney, any team member or any joint neutral expert retained for the Collaborative Process, to court to testify in any court proceedings, nor take the deposition of either attorney, any such team member or any such joint neutral expert with regard to Collaborative communications.
		3. They will not require production in discovery or at any court proceedings of any records, or documents in the possession of either attorney, any team member, or any joint neutral expert retained for the Collaborative Process, including minutes from meetings.
		4. They understand that certain communications and materials may be admissible in court as permitted by legal rules with respect to claims against a Collaborative professional or threats to inflict harm or commit a crime and otherwise as set forth in **Section 10 B** above.
	3. **Transition of Case**. 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. The parties are not entitled to “personal notes” from the files of the coach(es) or child specialist. Each party has the right to the financial reports prepared by the financial professional if the case terminates and the party has complied with terms of payment.
1. **Cautionary Acknowledgements and Commitments.**

The parties acknowledge and understand that the Collaborative Process is designed to resolve legal issue arising from their separation or potential divorce. Collaboration is not personal marriage counseling. And, the parties understand there is no guarantee that they will be successful in resolving their case in the Collaborative Process.

* 1. **Vigorous Discussion.** The parties understand the Collaborative Process will involve vigorous good faith discussions.
	2. **Compromise as Option.** Where there are differences as to what is important to each, the parties we will each use best efforts to create proposals that meet the fundamental needs of both of them and, if necessary, to make the compromises needed to reach an acceptable agreement.
	3. **Not a Panacea.** The parties understand that the Collaborative Process may not eliminate concerns about any distrust and differences, which may exist between them.
	4. **Need to Assert Interests.** Each party understands that each is expected to assert his or her respective interests and that their respective attorneys will help them to do so.
	5. **Expectations Should be Realistic.** The parties understand that they should not lapse into a false sense of security that the Collaborative Process will protect each of them, especially if either or both choose to make decisions the attorneys have advised against.
	6. **Failure of the Collaborative Process.** Each party understands that the Collaborative Process may fail for various reasons such as:
		1. The attorneys, the divorce coaches, or the financial specialists do not spend enough time educating the parties about the Collaborative Process and do not spend enough time preparing them for the Collaborative Process;
		2. Any of the Collaborative professionals fail to follow the expectations of clients and professionals (attached as **Schedule A** to this Agreement) in conversations with each other or in the Collaborative Process;
		3. Either of the parties fail to follow the expectations of clients and professionals (attached as Schedule A to this Agreement) in conversations with each other inside or outside of the Collaborative Process;
		4. Either of the parties fail to follow temporary agreements we may make in Collaboration;
		5. Either of the parties fail to do tasks he or she has agreed to do in Collaboration;
		6. Either of the parties take one sided actions during the Collaborative Process
		7. Either of the parties dispose of property without the consent of the other;
		8. Either of the parties misrepresent or withholds information;
		9. Either of the parties fail to provide information when requested or fails to provide information needed to make decisions whether requested or not;
		10. Either of the parties or any of the Collaborative Professionals fails to participate in the spirit of Collaboration.
1. **Withdrawal of Party from Collaborative Process**
	1. **Thirty Day Period.** If either party decides to withdraw from the Collaborative Process, the party shall give prompt written notice to the other party or team members. Such notice may be given through his or her attorney. Such withdrawal by a party terminates the Collaborative Process. Upon withdrawal from the Collaborative Process, there will be a thirty (30) day period (unless there is an emergency) before either of them files any pleading or motion with, or otherwise makes any request to, a court, to permit the other to retain another attorney and make an orderly transition. All temporary agreements, even if unsigned, set forth in approved Minutes will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other party. It is therefore mutually agreed that either party may bring this provision to the attention of the Court in requesting a postponement of a hearing or dismissing the case.
	2. **Retaining New Attorneys.** The parties understand that in the event of the termination or conclusion of this case as a Collaborative case **and the pursuit of contested litigation** they must select new attorneys and additional fees will likely be required in retaining new counsel.
2. **Withdrawal of Attorney or Other Team Member from Collaborative Process.**
	1. **Withdrawal of Attorney.** Any attorney who withdraws from representation of his or her client shall provide written Notice of Withdrawal to his or her client, the other attorney, and to all other professionals involved. The party whose attorney has withdrawn may elect to continue in the Collaborative Process and to timely replace his or her attorney. If within 30 days of the attorney’s withdrawal the parties execute a new Collaborative Participation Agreement identifying the successor attorney, and the successor attorney confirms his or her representation of the party in the Collaborative Process, then the Collaborative Process can continue. If a new agreement is not executed within 30 days, then the parties are entitled to proceed as if the Collaborative Process were terminated as of the date the first written notice of withdrawal was given. Each party agrees and acknowledges that, under certain circumstances, an attorney is required to withdraw from representation of a party in the Collaborative Process. A Collaborative attorney must withdraw from the representation in the event he or she learns that his or her client has withheld or misrepresented information that should properly be shared as part of the Collaborative Process, and **continues to withhold and misrepresent such information, or otherwise acts so as to undermine or take unfair advantage of the Collaborative Process, or in the event that either party initiates contested litigation.** The attorney withdrawing shall advise the other attorney that he or she is withdrawing, **but shall not reveal the reason for the withdrawal.** The parties understand that each of them has a right of confidentiality and the right to instruct his or her attorney not to reveal specific information; however, in such event, the attorney must determine whether his or her withdrawal is required under this Paragraph.
	2. **Withdrawal of Other Team Member.** Any other team member may deem it appropriate to withdraw from the case for any reason set out in Section 13Aabove. 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 status of the case as a Collaborative case. Within 30 days thereafter, the parties will use their best efforts to reach agreement on whether to replace the withdrawing team member with another professional, in which case a new Team Pledge must be executed, or proceed without replacing such professional.
3. **Termination of Collaborative Process**

The Collaborative Process is concluded by resolution by the parties of their issues, or a portion of their issues, by a signed agreement. The Collaborative Process must be terminated if any of the following occurs: (i) if either party gives notice to the other party or team members that he or she is terminating the Process; (ii) when either party commences a contested litigation matter against the other party that is related to the Collaborative Process; (iii) if either party requests to lift a stay of litigation that has been stayed in order to commence the Collaborative Process, or otherwise initiates or resumes an action inconsistent with the stay; or, (iv) if a party discharges his or her Collaborative attorney, or a Collaborative attorney withdraws, and is not replaced within 30 days after such discharge or withdrawal in accordance with the procedure provided in **Section 13A** above. If the Collaborative Process is terminated and not reconvened, no member of the Collaborative Team may continue in the Collaborative Team role except to assist with the transition to a new professional.

1. **Fees and Costs**
	1. **Attorney’s 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.
	2. **Coach(es)’ Fees.** In the event each party retains his or her own coach, each party will retain and pay for that coach’s services, UNLESS OTHERWISE AGREED TO IN THE COLLABORATIVE PROCESS.
	3. **Neutrals’ Fees.** In the event that the parties agree to retain a child specialist, financial neutral or other joint neutral expert, they shall decide in the Collaborative Process how that professional(s) will be paid.
	4. **Retainers and Outstanding Balances.** The parties acknowledge that the fees and costs of this Process, including each Team member’s fees, are a family expense. 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.
2. **Choice of Law and Enforcement of Participation Agreement.**

 A. In the event that the parties live in two different jurisdictions, the parties, after receiving advice from their respective attorneys, may agree on which jurisdiction’s substantive law shall apply to the case for purposes of providing legal information to the parties.

 B. This Participation Agreement shall be enforced under the laws of the Commonwealth of Virginia.

1. **Incentive to Work Toward a Successful Resolution**

The parties realize that the Collaborative Process requires a considerable investment of time and effort and that the possibility of having to give up not only their respective attorneys but also the mental health professionals and financial professionals involved in this Process is intended to serve as a substantial disincentive to withdraw from the Collaborative Process.

1. **Instructions to Their Attorneys**

Each of the parties 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 and instructs his or her attorney to follow this Collaborative Participation Agreement and to promote both the spirit and written word of this Agreement.

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[CLIENT- [CLIENT]

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE A**

**Expectations of Clients and Professionals**

1. Be respectful. Be respectful to everyone in the meetings.
2. Be informal in our sessions. Use first names for each other and the professionals. Avoid “he” or “she”.
3. Speak for yourself. Use “I” statements. When you speak for yourself, you use “I’, “me” or “my”. When you speak for yourself you take responsibility for what you say, and own your statements. This helps your messages be clear and easier for others to hear. Others will be more likely to accept what you say and less apt to discount your thoughts, feelings, and wants. For example:

“I need more time to think about…”

“Here are my thoughts on that question…”

“Your understanding of this is helpful for me…”

1. Listen without interruption. You will listen better and hear more if you avoid going into your head to think up a response to what is being said. Instead, listen in order to understand. Try not to judge the person or his/her message. See if you can summarize what the other person has said. Ask questions about what you have heard. This will keep you from getting defensive and/or becoming reactive in the meetings. Each of you will have a chance to say what you need to say. This is one of the many benefits of the Collaborative practice.
2. Avoid blaming. Address the problems and concerns at hand without blaming. Stay away from “you” statements. “You” statements mean that you are speaking for others. This tends to stimulate defensiveness in others and resistance to what you say. Others may see this as an attempt on your part to control their thoughts, feelings, or wants. For example:

 “You think our children would be better off without…”

 “You always come across as arrogant and selfish.”

 “You have no intention…”

 “You never listen.”

1. Avoid positions. Problem-solve by looking at all the options. Be open to hear from your spouse and/or others about thoughts and concerns.

“I want to be fair…I’d like to discuss…”

“I feel resistant to what you’re saying, but I’m willing to hear you out and think about what you’ve said.”

Let’s see if we can come up with a solution. Here’s my idea…”

1. Best interests. Think about what is in the best interests of your children and family. Work towards the most constructive agreement – one that is acceptable to you, your spouse, and your family.
2. Complaints. When you have a complaint, raise it as your concern, and, when possible, follow it up with a constructive suggestion as to how it might be resolved.
3. Personal Concerns. If something is not working for you, please tell your attorney and/or your coach so your concern can be addressed. Talk to your attorney about anything you do not understand. Your attorney can clarify matters for you.
4. Commitment to the Collaborative Process. Be willing to commit time to meet on a regular basis. Be prepared for each meeting.
5. Patience. Be patient with each other and the Collaborative professionals. Delays in Collaborative Process can happen even with everyone acting in good faith. Everyone is tempted to go straight to his or her own answers.
6. Trust the Collaborative Process. Everyone, clients and attorneys included, is tempted to go straight to their own answers. It doesn’t work. If it did, you wouldn’t need professionals. Following the Process will lead to mutually acceptable solutions that can sustain an amicable family relationship.

Prepared by Palliser Conflict Resolution with thanks to Stuart Webb and adapted for use in this jurisdiction.