**COLLABORATIVE PARTICIPATION AGREEMENT- WITH CHILD(REN)**

# 1. **INTRODUCTION**

A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“\_\_\_\_\_” or “Wife”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“\_\_\_\_\_\_\_\_\_\_\_” or “Husband”), (together referred to as "the parties") have chosen to use the principles of the Collaborative Law Process ("Collaborative Process" or "Collaborative Law Process" or "Process") under the Uniform Collaborative Law Act §§ 20-168 through 20-187 of the Virginia Code, 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, Cheryl Watson Smith, Esquire who confirmed she represents \_\_\_\_\_ as set out in their Collaborative Law engagement agreement and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, Esquire** who confirmed she represents \_\_\_\_\_\_\_\_\_\_\_as set out in their Collaborative Law engagement agreement. (Both parties' attorneys are hereinafter referred to as "the attorneys"). The parties agree as follows:

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.

1. The parties agree to resolve their issues in the best interest of both of them and their children.
2. 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.

1. 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:

# 2. **NO LITIGATION**

1. Settlement Focused. The parties commit themselves to the principals of the Collaborative Process 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. During the Collaborative Process no pleading or motion will be prepared or filed.

B. Limited Scope. Each party understands that his or her Collaborative attorney's representation is limited to the Collaborative Process and non-adversarial representation.

C. Non-adversarial Representation. 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 either party with respect to this or any related matter in any court or on any court filings other than:

(i) for a mutually agreed submission of documents to obtain an uncontested divorce or other mutually agreed consent order:

(ii) to ask a tribunal to affirm, ratify, and incorporate any agreement resulting from the Collaborative Process into a court order;

(iii) to enter any uncontested order necessary to effectuate the terms of any agreement resulting from the Collaborative Process;

(iv) or to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a party's family or household member, if a successor lawyer is not immediately available to represent such person, until a successor attorney is obtained, or the protection is achieved.

# 3. **FULL DISCLOSURE**

1. Full and Voluntary Disclosure. The parties agree to provide, promptly and continually throughout the Collaborative Process, full and informal disclosure of all important information related to the Collaborative matter, whether requested or not. For purposes of this Collaborative Process, important information includes any information and/or documents, 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 authorizations requested that may be required to obtain such information.
2. Waiver of Formal Discovery. During the Collaborative Process, 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 necessary to make an informed settlement and will deal with each other in good faith.

# 4. **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 Collaborative attorneys and all non-party participants to assist them in correcting any mistakes and misunderstandings.
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. A party who needs to cancel a meeting for any reason shall give notice to all participants as soon as possible and not less than 48 hours before the meeting if possible as the parties understand that the cost for their meetings are substantial and requires everyone’s cooperation to make the best use of available resources.

# 5. **COMMUNICATION BETWEEN THE PARTIES**

1. **Meetings.** The parties agree to work toward the resolution of issues in a series of 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.**
3. The parties' written and verbal communications will be respectful and constructive.
4. They will not make accusations and claims which are punitive in nature.
5. 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.
6. Neither the parties or 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.
7. The parties will follow the Expectations of Clients and Professionals, which are attached.
8. **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 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.
9. **Focus of Communications.** The Collaborative Process is future focused. The parties will not focus on the problems that may have contributed to the breakdown of their relationship, but instead will focus on the issues that need to be resolved for both of them to move forward with their lives. They will bring up past problems in their history only when constructive.

E. **Communications Outside Collaborative Process.** To maintain as constructive a settlement process as possible, the parties agree not to pressure each other to discuss settlement issues outside of the Collaborative meetings. They may agree in advance with each other and their attorneys, to discuss certain issues as long as it is understood that the discussion will end if either party feels uncomfortable or pressured.

# 6. **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. **Assets (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 the Collaborative 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 child(ren), **without the written consent of the other**. They will not implement new or change current wills, or trusts, 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 or 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.

7. **CHILDREN'S ISSUES**

The parties recognize that children, no matter their ages, 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 Child(ren).** The parties acknowledge that communication regarding their settlement can be harmful to their child(ren). They will not discuss settlement issues in the presence or hearing of their child(ren), unless by prior agreement or with the advice of a Child Specialist.
2. **No Interrogation.** The parties will not question the child(ren) about the other parent or the events occurring in his or her residence.

 C. **Their Child(ren) will Not Be Placed in the Middle of Their Disagreements.**

The parties acknowledge that their child(ren), regardless of age, need both parents in his or her life and that they are hurt when one parent criticizes or blames the other parent. The parties will not criticize the other parent to their child(ren) or in their presence or hearing. They will encourage their child(ren) to have affection for both of them. Their child(ren) shall not be forced to choose between them. Neither party will use the child(ren) as a massager to deliver information to the other party.

1. **Access Will Not Be Withheld**. The parties will not attempt to impede access of their child(ren) to the other parent. The child(ren) shall have reasonable telephone and age-appropriate electronic access to both parents, and each parent will have reasonable telephone and age-appropriate electronic access to the child(ren). They will not deny access to extended family, unless specifically agreed otherwise.
2. **Information Will Not Be Withheld.** The parties will promptly inform the other parent of any serious accident, illness or other mishap involving their child(ren). The parties will have equal access to records and information regarding their child(ren)'s education, health, activities and general welfare.
3. **Removal from Area.** The parties will not remove, or threaten to remove, their child(ren) 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.
4. **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 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. **AGREEMENTS MADE DURING THE PROCESS**

**A.** **Temporary Agreements**. During the course of the Collaborative 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 signed, it is a legally enforceable contract and may be presented to the court in a subsequent action for divorce and/or enforcement.

D. **Meeting Minutes.** It is specifically understood and agreed that minutes of the meetings from the Collaborative Process are not Agreements To Be Relied upon and are not admissible in Court. The minutes are a record of the proceedings but are not binding on the parties and are not to be construed in any way as an agreement between the parties, except temporarily pursuant to paragraph 12(B). Neither party can use or refer to any minutes or discussions from the Collaborative Process in a Court proceeding.

## 10. **TEAM MEMBERS AND EXPERTS**

A. **Collaborative Attorneys.** One Collaboratively trained attorney representing each party is required for participation in the Collaborative Process.

1. **Process Options.** Each party has discussed with his or her attorney the alternative processes available to him or her including, but not limited to, litigation, mediation, expert evaluation, 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.
2. **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 as it exists in this Commonwealth and as it is typically applied in the jurisdiction where this case may arise and advise his or her client regarding the choices the client may make in this Process.

The parties acknowledge that having the attorneys provide legal advice to his or her client, with both present can be helpful to resolving the parties’ differences and agree that both of their attorneys may present them with a summary of the law on particular issues in the Collaborative meetings 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.

1. **Candid Advice.** The parties agree that their respective attorney will provide candid legal 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.
2. **Limited Scope.** Each party understands that his or her Collaborative attorney's representation is limited to the Collaborative Process consistent with the terms of this Agreement. However, nothing in this Agreement is intended to nullify the terms of any Collaborative Law engagement agreement between a party and his or her attorney. 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.

B. **Additional Team Members (nonparty participants).** In addition to retaining Collaborative attorneys, the parties may decide to use the team approach to the Collaborative Process in which case they may retain the following additional team members, with whom they must execute separate engagement agreements and the attached Team Pledge:

1. **Coaches.** 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 alternatively, One-Coach Option. One mental health professional to facilitate communication between them, facilitate the Collaborative Process, and assist with resolving parenting issues;

1. **Child Specialist.** One mental health professional with a practice that focuses on children may serve as a child specialist to meet with the parties and their child(ren), including adult children, to provide the parties with child development information, to voice the needs and/or concerns of their child(ren) when needed, and to provide information to parents and coaches to assist them with resolving parenting issues; and/or
2. **Neutral Financial Specialist.** A financial neutral to gather their financial information, to summarize, analyze and/or present it to them 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. **Future Roles of Team Members.** The parties understand and agree that their coaches and child specialist are members of the Collaborative Team only and cannot act as therapists for either of them or for their child(ren), even after the final agreement is signed and the Collaborative Process has concluded. They understand 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 agreement is signed and the Collaborative Process has concluded. The parties understand that, in the event of contested litigation, their Collaborative attorneys are barred from representing them as set forth in Paragraphs 2.C & D.

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.

1. **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.
2. **Subsequent Litigation.** Unless both parties and the nonparty participant (non-attorney professional) Team member, joint neutral, or expert retained to assist in the Collaborative Process agree otherwise, then such nonparty participant Team member, joint neutral, or expert, may not assist in any other capacity. Attorneys or their firms retained for the Collaborative Process cannot be retained to represent either party in contested litigation or any matter adverse to the other party or adversely impacting the other party’s interest, even if the parties are in agreement to do so, except in accordance with 2D(iii) & (iv).

## 11. **CONFIDENTIALITY OF COLLABORATIVE COMMUNICATIONS AND EXCEPTIONS TO CONFIDENTIALITY**

1. **Collaborative Communications Privilege.** Because the parties need to feel comfortable exchanging information freely and in testing out ideas and proposals within the Collaborative Process, they instruct their attorneys and nonparty participant Team members that all Collaborative Communications, except as provided in paragraphs 11 C & D, shall be kept confidential and confined to the Collaborative Process and shall not be 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. Collaborative Communications cannot be introduced in evidence or compelled to be produced as part of the court discovery process, absent consent of the parties and, in the case of a Collaborative Communication by a nonparty participant team member or joint expert, the consent of such Team member or expert.

1. **Shared Communications Among Team Members, Jointly Retained Experts, and the Other Party.** The parties understand that, by signing this Participation Agreement, they are authorizing the Team members to share the parties' individual communications in this Process, including otherwise privileged or confidential information, among all of the Team members, other professionals retained jointly by the parties in the Collaborative Process, and the other 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. By signing this Collaborative Participation Agreement, the parties also instruct their Team Members and jointly retained experts not to share their Collaborative Communications outside the Process.
2. **Asserting Party's Right to Confidentiality.** Either party has the right to assert his or her right to confidentiality at any time during the Process. To do so, he or she must specifically instruct his or her attorney or coach or the child specialist to keep specific information confidential and not reveal it to the Team or the other spouse. However, each party understands that such an instruction not to reveal important information to any professional Team member or the other party can result in the professional's withdrawal from the representation of that party and from the Collaborative Process as set forth in Paragraphs 12E(iv) & F.
3. **Exceptions to Confidentiality and Privilege.** The following are exceptions to confidentiality and are not protected by privilege from discovery or introduction into evidence in a court or adversarial proceeding:
	1. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
	2. A threat involving harm to the parties’ children or removal of their children from the place where they live;
	3. A communication sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult unless the protective services agency is a party or participant;
	4. Communications intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;
	5. Communications sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a Collaborative Law Process;
	6. A communication that is available to the public or made during a session of a Collaborative Process that is open or is required by law to be open to the public;
	7. Documents otherwise public and obtainable from a source outside of the Collaborative Process;
	8. Communications in an agreement, (an Agreement To Be Relied Upon and/or a final agreement) resulting from the Collaborative Process, evidenced by a record signed by all parties to the agreement;
	9. Communications necessary to respond to a disclosure or representation about a Collaborative communication that prejudices another person in a proceeding;
	10. Collaborative communications agreed to be disclosed by both parties in a signed record and, in the case of a Collaborative communication by a non-party participant Team member *(other than the attorneys),* agreed to be disclosed by the Team member;
	11. If a Court finds, after a hearing in camera, that the party seeking to obtain or use the Collaborative communication in discovery or court has shown (a) the evidence is not otherwise available, (b) the need for the evidence substantially outweighs the interest in protecting confidentiality, and (c) the proceeding involves a felony or misdemeanor or proceeding seeking rescission or reformation of a contract arising out of the Collaborative Law Process or in which a defense to avoid liability on the contract is asserted.
4. **Collaborative Communications and Subsequent Litigation.** 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 Paragraph 11D.
	2. Except by agreement of both parties and the nonparty participant Team member or neutral expert, they will not ask, or subpoena, any nonparty participant Team member or any joint neutral expert retained for the Collaborative Process, to testify in any court proceedings, nor take the deposition of any such Team member or joint neutral expert with regard to Collaborative communications.

iii. Except by agreement of both parties and, in the event that the communication sought is made by a nonparty participant Team member, the agreement of the nonparty participant Team member, the parties will not require production in discovery or at any court proceedings of any notes, records, or documents in the possession of any Team member, or any joint neutral expert retained for the Collaborative Process.

vi. The parties will not ask, or subpoena, either attorney to testify in any court proceedings, nor take the deposition of either attorney with regard to Collaborative communications.

v. The parties will not require production in discovery or at any court proceedings of any notes, records, or documents in the possession of either attorney retained for the Collaborative Process, as the file is otherwise available to a former client pursuant to 12(G)(i).

vi. Certain Collaborative communications and materials may be admissible in court as set forth in Paragraph 11D.

12. **TERMINATION OF COLLABORATIVE PROCESS AND WITHDRAWAL FROM COLLABORATIVE PROCESS**

1. **Conclusion or Termination of Collaborative Process.** The Collaborative Process is concluded by resolution by the parties of their issues, or a portion of their issues, set forth in a signed agreement provided, however, that if the parties by consent ask a court to approve and/or enforce their agreement, or any part of it, the Process does not conclude and continues for such purpose.

The Collaborative Process must be earlier terminated if any of the following occurs:

* 1. If either party gives notice to the other party that the process is ended (see Paragraph 12B;
	2. When either party begins a litigation or adjudicative proceeding related to a Collaborative matter without the agreement of all parties;
	3. If, in a pending litigation or adjudicative proceeding related to the Collaborative Matter, either party requests to lift a stay of litigation that has been stayed in order to commence the Collaborative Process; initiates a pleading, motion, an order to show cause, or a request for a conference with the tribunal; requests that the proceeding be put on the tribunal's calendar; takes similar action requiring notice to be sent to the parties or otherwise initiates or resumes a proceeding inconsistent with the stay; or,

 If a party discharges his or her Collaborative attorney, or a Collaborative attorney withdraws, and is not replaced within thirty (30) days after such discharge or withdrawal in accordance with the procedure provided in Paragraph 12E.

1. **Termination by a Party.**

i. **Thirty Day Waiting 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 such withdrawal, in order to provide the other party with the opportunity to retain another attorney and make an orderly transition, 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.

During this thirty (30) day period, all temporary agreements, even if unsigned, set forth in approved Minutes, and the parties' agreement herein to preserve the status quo, will remain in full force and effect. 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, or ensuring that the terms of temporary agreements and the parties' status quo agreement are followed during the thirty (30) day period.

ii. **Exception to Thirty Day Waiting Period.** In the event that a party terminates the Process under 12A(ii) or (iii), the other party is not bound by the 30-day waiting period described herein.

1. **Survival of Collaborative Participation Agreement.** The parties acknowledge that this Collaborative Participation Agreement establishes provisions and conditions for the resolution of issues arising from their separation and/or ultimate divorce. Upon conclusion or termination of the Collaborative Process for any reason, the parties’ obligations set forth herein shall survive and either party may request a Court to affirm, ratify and incorporate this Collaborative Participation Agreement into an Order pursuant to the Terms of Virginia Code § 20-109.1.
2. **Retain New Counsel.** The parties understand that in the event of the termination of the status of this case as a Collaborative case and the commencement of a contested court or adjudicative proceeding, they must select new attorneys and additional fees will likely be required in retaining new counsel.
3. **Withdrawal or Discharge of Attorney from Collaborative Process.**
4. Any attorney who withdraws from representation of his or her client, or has been discharged, shall provide written Notice of Withdrawal to his or her client, the other attorney, and to all other nonparty participants involved. The unrepresented party may elect to continue in the Collaborative Law Process and to timely replace his or her attorney.
5. The Collaborative Law Process can continue if within thirty (30) days of the attorney's withdrawal or discharge (1) the unrepresented party engages a successor Collaborative lawyer; (2) the parties consent to continue the process by reaffirming the Collaborative Law Participation Agreement; (3) the Participation Agreement is amended to identify the successor Collaborative lawyer; and (4) the successor Collaborative lawyer confirms in writing the lawyer's representation of a party in the Collaborative Law Process.
6. If a new agreement is not executed within thirty (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.
7. 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 or 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.
8. **Withdrawal of Other Team Member.** Any nonparty participant Team member may deem it appropriate to withdraw from the case if her or she learns that either client has withheld or misrepresented information that should properly be shared as part of the Collaborative Process and continues to withhold or misrepresent such information, or otherwise acts so as to undermine or take unfair advantage of the Collaborative Process. 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 thirty (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 the case may proceed without replacing such professional.
9. **Transition of Files.** Each party understands that if the Collaborative Law 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 generally entitled to the divorce coach's or child specialist's file but not to “personal notes” from the files; and (iii) is entitled to the financial reports prepared by the financial professional if the party has complied with terms of payment. In such a case, the Collaborative attorney is authorized to disclose communications made during the Collaborative Process to any successor attorney, if so requested by the party.

13. **EMERGENCY ORDERS**

## Notwithstanding 2.A above, during a Collaborative Process, a court may issue

## emergency orders to protect the health, safety, welfare, or interest of a party or a party's family or

## household member. even though no notice of termination of the Collaborative Process has been given. The Collaborative Process terminates if a party seeks such an emergency order.

B. Notwithstanding 2.C above, a Collaborative attorney is authorized to seek or defend an application for an emergency order to protect the health, safety, welfare, or interest of a party or a party's family or household member, if a successor attorney is not immediately available to represent such person until such person is represented by a successor attorney or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

### 14. **FEES AND COSTS**

1. **Collaborative Attorney.** 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. **Collaborative Coach.** 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. In the event that the parties retain a single coach, they shall decide in the Collaborative Process how that coach will be paid.
3. **Other Team Member or Joint Expert.** 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 will be paid.
4. **Payment.** 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 discussed and resolved before moving on to other issues.

## 15. **STAY OF COURT PROCEEDING**

If the parties to this Collaborative Participation Agreement are currently parties to pending litigation with each other, they agree to file a consent motion to seek a stay of such litigation pursuant to VA Code § 20-172 and to comply with such section. If either party opposes the stay, this Collaborative Participation Agreement shall be null and void and the provisions barring the attorneys from continuing to represent the parties in contested litigation shall not apply. If the pending litigation is stayed and the parties participate in the Collaborative Process and if either party thereafter seeks to have the stay lifted, this Collaborative Participation Agreement continues in full force and validity and the provisions of Paragraph 2C disqualifying the attorneys from representing the parties in contested litigation shall apply.

16. **CHOICE OF LAW AND ENFORCEMENT OF PARTICIPATION AGREEMENT**

* 1. 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.
	2. This Collaborative Participation Agreement shall be interpreted and enforced under the laws of the Commonwealth of Virginia.

17. **ACKNOWLEDGEMENT OF INFORMED CONSENT**

Each party understands that his or her Collaborative attorney's representation is limited to the Collaborative Law Process.

Each party has discussed with his or her attorney:

1. factors reasonably related to whether a Collaborative Process is appropriate;
2. information reasonably sufficient to allow that party to make an informed decision about the material benefits and risks of a Collaborative Process;
3. the fact that participation in a Collaborative Process is voluntary and any party has the right unilaterally to terminate a Collaborative Process with or without cause;
4. the fact that filing in court unilaterally will terminate the process;
5. the fact that if the Collaborative Process terminates prior to full resolution of all Collaborative matters, the party will need to obtain another attorney or proceed without an attorney.

Each attorney has made a reasonable inquiry into whether there exists a history of family abuse between the prospective parties and, if such circumstances exist, the party has requested to proceed with the Collaborative Process and the attorney reasonably believes that the safety of the party can be adequately protected during the process.

Each attorney has explained to the client that a Collaborative attorney who represents a client in a Collaborative Process pursuant to a Collaborative Participation Agreement and the attorney's firm may not represent a party in a contested proceeding related to the Collaborative matter, notwithstanding any subsequent agreement between the client and the attorney, except as provided in Paragraph 2.D.

17. **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.

18. **INSTRUCTIONS TO THEIR ATTORNEYS**

Each of the parties instructs his or her attorney, and any other nonparty participant Collaborative Professionals engaged by the parties, to help them honor the promises made in this Agreement. Each party also instructs his or her attorney, and such other engaged professionals, not to act in any way in a manner inconsistent with the promises they have made herein.

Each party by his or her signature below agrees to follow and instructs his or her attorney, and any other nonparty participant Collaborative Professionals engaged by the parties, to follow this Collaborative Participation Agreement and to promote both the spirit and written word of this Agreement.

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

[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.

**TEAM PLEDGE TO COLLABORATION PARTICIPATION AGREEMENT**

All parties, attorneys, coaches, financial neutral, child specialist, and other neutral experts or consultants hereby pledge to comply with and to promote the spirit and written word of the Collaborative Participation Agreement, signed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by the parties.

**Parties:**

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Collaborative Professionals:**

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

Collaborative Attorney for Collaborative Attorney for

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Collaborative Coach for Party Collaborative Coach for Party

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone:

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email:

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

Neutral Financial Specialist Child Specialist

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Other Neutral Experts or consultants:**

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

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_