

**NEW JERSEY COUNCIL OF COLLABORATIVE PRACTICE GROUPS**

**COLLABORATIVE PARTICIPATION AGREEMENT**

The undersigned parties \_\_\_\_\_ and \_\_\_\_\_ have chosen to use the Collaborative Process to resolve, without intervention from a court or other tribunal, the issues arising from their separation or dissolution of their marriage.

**1. Purpose**

The primary goal of the Collaborative Process is to settle the outstanding issues in a cooperative, non-adversarial manner. We aim to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to ourselves and their family. We have retained Collaborative Lawyers to assist us in reaching this goal.

**2. Principles**

We agree to work in good faith to honor the following principles which are fundamental principles to the Collaborative Process:

- Acting with honesty, transparency, and candor;
- Demonstrating cooperation, respect, integrity and dignity;
- Committing to resolve matters directly and without court intervention;
- Expressing our own needs, interests and goals and seek to understand those of the other;
- Focusing on the future well-being of ourselves and our children (where applicable);
- Searching for resolutions that address the needs of all family members.

We are each voluntarily choosing the Collaborative Process and the responsibilities that these principles entail.

**3. Professionals**

**a. Collaborative Lawyers**

(1) The lawyers' representation is limited to providing services within the Collaborative process. Neither lawyer, nor any member of his or her law firm, may represent either Party should the Collaborative Process end and the Parties proceed to a contested court proceeding.

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

(3) The conduct of the Collaborative Family Lawyers is governed by the Rules of Court and the Rules of Professional Conduct as adopted or promulgated by the Supreme Court of New Jersey, as well as the New Jersey Family Collaborative Law Act ("NJFCLA") which does not alter the Collaborative Family

Lawyer's responsibilities to the client under the Rules of Professional Conduct and any other applicable Rules of Court.

**b. Interdisciplinary Professionals and Experts**

The interdisciplinary model of Collaborative Process anticipates the interactive role and participation of the parties and their Collaborative Lawyers, with a Collaborative Coach, a Neutral Financial professional, and such other professionals as may be recommended to assist the process, such as a Neutral Child Specialist. The roles of each member of the Collaborative Team can be found on Schedule A. If we choose to work within the interdisciplinary team approach, we will independently and individually engage and retain professionals, other than joint neutral experts, which we shall engage and retain by mutual agreement. Each professional has his or her own retainer and fee agreement with us. There is no business, financial or legal relationship among the participating professionals in the interdisciplinary Collaborative Divorce model. However, as Collaborative professionals we all subscribe to the principles and process of Collaborative Divorce and have satisfied the membership requirements and standards of Collaborative Divorce Association of North Jersey.

**4. Children's Issues (if applicable)**

In the Collaborative Process, we are working toward a loving and involved relationship with both parents. Therefore, we shall make every reasonable effort to reach amicable solutions that promote the best interests of our children and consider the rights and responsibilities of each parent. We agree to avoid making economic threats or taking positions regarding parenting as strategies in negotiation.

We shall take particular care not to expose our children to inappropriate communications regarding marriage issues, and to protect them from the conflicts between us. We acknowledge that inappropriate communications regarding our divorce can be harmful to our children, and agree that our children shall not be included in discussions regarding the divorce, except as recommended by the Collaborative Team.

We further agree that we will not take any action affecting the children's health and/or general welfare without mutual agreement. If we cannot agree, we will seek the guidance of the Collaborative Team.

**5. Sharing of Information**

We each agree to promptly provide all information that would reasonably be material for resolution, including full disclosure of all assets, income, expectancies, debts, spending plans and other material information, without formal discovery, whether or not such

information has been requested. Additionally we will supplement and/or update information if it has materially changed as necessary to ensure its continued accuracy.

We acknowledge that by using informal discovery, we are giving up certain rights for the duration of the Collaborative Process including the right to court compelled discovery, formal court hearings, orders regarding dissipation of assets and other procedures provided by the adversarial legal system. We acknowledge that participation in the Collaborative Process, and the settlement reached, is based upon the assumption that we have acted in good faith and have provided complete and accurate information to the best of our ability. We agree to provide full and complete disclosure of our income, assets and debts. Because we are expected to provide complete and accurate information, the final settlement documents will include sworn statements that we have fully and fairly disclosed all material information. Any omitted property or liability which is not discussed shall be subject to future allocation or division. The terms of this paragraph shall survive any final judgment.

#### **6. Participation with Integrity**

We and our lawyers agree to deal with each other in good faith and to promptly provide all necessary and reasonable information requested. No formal discovery procedures will be used unless we specifically agree in advance.

No Party or Lawyer may knowingly withhold or misrepresent information material to the Collaborative process or otherwise act or fail to act in a way that knowingly undermines or takes unfair advantage of the Collaborative Process. If a Party knowingly withholds or misrepresents information material to the Collaborative Process, or otherwise acts or fails to act in a way that undermines or takes unfair advantage of the Collaborative Process, and continues after being advised of his or her obligations, continuing conduct will mandate withdrawal of the Collaborative Lawyers and termination of the Collaborative Process.

Each participant shall uphold a high standard of integrity, and shall not take advantage of inconsistencies or miscalculations of the other, but shall disclose them and seek to have them corrected.

#### **7. Confidentiality**

We understand that communications and information produced or discussed by us in this case shall be confidential and subject to an evidentiary privilege, (whether by parties, team members, or non-party participants) as provided for in the NJFCLA, Sections 12 – 14.

Accordingly, neither of us will introduce as evidence in court any information disclosed during the Collaborative Process for the purpose of reaching a settlement, including our

behavior or legal positions except documents otherwise compellable by law or unless this paragraph is expressly waived by all parties or participants in the Collaborative Process.

If we elect to work with an interdisciplinary team, we agree that our information may be discussed or shared among the members of the Collaborative Team where the team considers such information to be relevant and/or helpful to the Collaborative Process. We will sign a written authorization form which we will use for sharing of information among the Team members. If subsequent litigation occurs, no member of the Collaborative Team shall be required to testify about any aspect of this case. If our case leaves the Collaborative Process, then the Team will provide us with any temporary agreements kept in our file. However, our intra-team communications (by writing, email or notated verbal communication or other products of our discussions) will not be considered part of the file and will not be released by us.

#### **8. Beginning and concluding the Collaborative Process**

We agree that the Collaborative Process under NJFCLA and pursuant to this Collaborative Participant Agreement begins when we sign this agreement and that it concludes (1) upon resolution of the collaborative matter(s) as evidenced by a signed writing, or (2) upon termination of the collaborative process.

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

We agree that participation in the Collaborative Process is voluntary and that either of us has the unilateral right to terminate the process, with or without cause, at any time. As provided in section 7 of the NJFCLA, Termination of the Collaborative Process occurs upon the earliest events, including but not limited to (1) when one of us gives written notice to the other and the team that the process is ended, or (2) when one of us begins a judicial or other adjudicative proceeding related to a collaborative matter without our joint agreement, or (3) when one of us discharges a Collaborative Lawyer or a Collaborative Lawyer withdraws from further representation one of us..

##### **a. Substitution of Collaborative Lawyer by a Party**

If one of us wishes to withdraw from the Collaborative Process with their current lawyer, but intends to retain a new lawyer to continue the Collaborative Process, we agree to give prompt written notice to the other through his or her lawyer of that intention to withdraw and obtain a new lawyer. We must have a new lawyer execute a new Collaborative Divorce Participation Agreement within 30 days of giving notice to the other. If a new agreement is not executed within 30 days, then we shall be entitled to proceed as if the Collaborative Process were terminated as of the date written notice was given.

#### **b. Withdrawal of Party from Collaborative Law Process**

If one of us decides to withdraw from the Collaborative Process, prompt written notice shall be given to the other party through his or her Collaborative Lawyer. Upon termination of the Collaborative Process, there will be a thirty (30) day waiting period (unless there is an emergency) before any court hearing, to permit the parties to retain new lawyers and make an orderly transition. All temporary agreements will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to either of our rights and obligations. It is therefore mutually agreed that either of us may bring this provision to the attention of the Court to request a postponement of a hearing.

#### **c. Lawyer Disqualification**

We agree that a Collaborative Lawyer who represented one of us under this Collaborative Process, or any lawyer in a law firm with which a Collaborative Lawyer is associated, shall be disqualified from representing either of us in a court or other proceeding related to the collaborative matter(s) under this collaborative process. We agree that we will not engage for such purpose, a collaborative lawyer under this collaborative process, or any lawyer in a firm with which a Collaborative Lawyer is associated.

Notwithstanding the Collaborative Lawyer disqualification provision, we agree that a Collaborative Lawyer, or a lawyer in a law firm which the Collaborative Lawyer is associated, may represent a party to request a tribunal to approve an agreement resulting from the Collaborative Process, or to seek or defend an emergency order to protect the health, safety, welfare or interest of a party, if a successor lawyer is not immediately available to represent that person. However, when that party is represented by a successor lawyer, or when reasonable measures are taken to protect the health, safety, welfare or interest of that party, the Collaborative Lawyer disqualification provision shall apply.

#### **d. Withdrawal of Lawyer from Collaborative Law Process**

If either Collaborative Lawyer withdraws from the case for any reason except as set forth above, the Lawyer agrees to do so by written notice to the other Party through his or her Collaborative Lawyer. This may be done without terminating the status of the case as a Collaborative case. The party whose lawyer has withdrawn may elect to continue in the Collaborative Process and shall give prompt written notice of this intention to the other Party through his or her lawyer. The succeeding Collaborative Lawyer shall execute a new Collaborative Participation Agreement within 30 days of the withdrawing lawyer first giving notice. If a new agreement is not executed within 30 days, then the Parties shall be entitled to proceed as if the Collaborative Process were terminated as of the date of the first written notice was given and if the process is terminated, both parties cannot use their Collaborative Lawyers.

We understand that a Collaborative Lawyer must withdraw from the Collaborative Process in the event he or she learns that one of us has withheld or misrepresented information and continues to withhold and misrepresent such information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Process. The lawyer withdrawing will advise the other lawyer that he or she is withdrawing and that the Collaborative Process must end.

#### **10. Cautions and Limitations**

In electing the Collaborative Process, we understand that there is no guarantee that the process will be successful in resolving their case. We understand that the process cannot eliminate concerns about any disharmony, distrust or irreconcilable differences which have led to the current conflict. While intent on striving to reach a cooperative solution, success will ultimately depend on our commitment to making the process work. We understand that we are still expected to assert our respective interests and our respective lawyers will help each of us to do so.

#### **11. Responsibilities Pending Settlement**

During the Collaborative Process, unless agreed otherwise in writing or consistent with the ordinary course of business during the marriage, we agree that we will:

- (a) Maintain assets and property;
- (b) Maintain all existing insurance coverage without change in coverage or beneficiary designations;
- (c) Refrain from incurring any debts for which the other may be held responsible;
- (d) agree to discuss any proposed significant changes to the status quo, including parenting issues, in the collaborative process so we both can have input into how any such changes would be made and further to avoid any unilateral action that may impact negatively on the other..

#### **12. Professional Fees**

We agree that our Collaborative Professionals are entitled to be paid reasonable fees for their services. We agree to make funds available from our marital or separate property, as needed, to pay these fees. Any disagreements or issues as to unpaid fees will be resolved when other financial matters are resolved.

We understand that, if necessary, one of us may be asked to pay for all or some of the professionals' fees, from marital or separate property or funds. We agree that, to the

extent possible, all professional fees and costs incurred by us shall be paid in full prior to the entry of an agreed final decree of divorce.

**13. Enforceability of Agreements**

We may enter into temporary or partial agreements during the Collaborative Process. If either of us withdraws from the Collaborative Process or the Process terminates, a temporary signed agreement is enforceable and may be presented to the court as a basis for an Order. Any final agreement signed by the parties may be filed with the court for enforcement.

**14. Acknowledgment of Commitment to Collaborative Process**

We hereby acknowledge that we have read this Agreement, understand its terms and conditions and agree to abide by them and believe there is a significant possibility that the Collaborative Process will be successful based upon reasons including but not limited to the existing relationship between us.

We have chosen the Collaborative Process after full disclosure of the potential risks and consequences of the failure of the Collaborative Process and the alternatives provided by other dispute resolution mechanisms such as traditional litigation with its risks and consequences. Nonetheless, we have chosen the Collaborative Process to reduce emotional and financial costs, and to generate a final agreement that addresses our concerns. We agree to work in good faith to achieve these goals.

In this Collaborative Law Process \_\_\_\_\_ will be represented by \_\_\_\_\_, and \_\_\_\_\_ will be represented by \_\_\_\_\_,

\_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_

\_\_\_\_\_  
DATE

In signing below each of us affirms that we are the Collaborative Lawyers for the parties named above, and our intent is to represent our respective clients in the manner agreed between them consistent with the letter and spirit of this document and to abide by all applicable standards set forth in the rules of Professional Conduct and the New Jersey Family Law Collaborative Law Act.

\_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_

**Other Collaborative Team Members:**

\_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_

\_\_\_\_\_  
DATE



## **SCHEDULE A ROLES OF COLLABORATIVE PROFESSIONALS**

### **Collaborative Divorce Attorneys**

- assist clients in gathering and analyzing information;
- help clients examine needs and interests to develop settlement options and packages;
- help clients evaluate consequences and limitations of possible solutions;
- help clients evaluate settlement options in the context of established legal precedents;
- help clients weigh settlement options in relation to their values and interests;
- set the framework for negotiation;
- prepare the required legal documentation of the agreement and obtain a Judgment;
- help clients develop post-divorce agreements as needed; and
- coordinate with other team members.

### **Collaborative Coaches**

- help clients clarify their concerns;
- help clients manage their emotions;
- help clients develop and reinforce effective communication skills;
- help clients develop effective co-parenting skills;
- help clients develop a workable co-parenting plan that addresses the needs and interests of parents and children;
- help clients in their after-divorce adjustment with one year follow ups; and
- coordinates with other team members.

### **Collaborative Child Specialist**

- listens to each child and brings the voice of each child to the Collaborative Process;
- sensitizes the parents to the needs of each child in the context of the divorce;
- provides guidance to the parents about talking to the children about divorce and the Collaborative Process;
- provides recommendations to the team and to the parents to assist in developing an effective co-parenting plan, with 6 and 12 month follow ups; and
- coordinates with other team members.

### **Collaborative Financial Specialist**

- gathers financial data;
- prepares clients' statements of net worth;
- develops different financial scenarios for clients to evaluate;
- provides financial guidance, planning, support and budgeting throughout the divorce process, with follow up as needed;
- explains the tax consequences of alternate solutions;
- assists in evaluating assets that are part of the marital estate; and
- coordinates with other team members.