

## NJCCPG COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT

We the undersigned \_\_\_\_\_ and \_\_\_\_\_

**(also referred to as the “parties”) have chosen to use the Collaborative Process to resolve any issues arising from our separation or dissolution of our marriage or \_\_\_\_\_ without intervention from a court or other tribunal.**

### **1. Purpose**

Our primary goal in this Collaborative Process is to settle our 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 our 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 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 party;
- 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**

We understand the roles of the professionals who will assist us. The roles of each member of the Collaborative Team can be found on Schedule A.

#### **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 party.

(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/Team Members**

The interdisciplinary model of Collaborative Divorce anticipates our interactive role and participation with the Collaborative Lawyers, a Collaborative Coach, a Collaborative Neutral Financial professional, and such other professionals as may be recommended to assist the process, such as a Neutral Child Specialist. If we choose to work within the interdisciplinary team approach, we shall engage and retain the team member professionals by mutual agreement. Each professional has his or her own retainer and fee agreement with us. Each professional has disclosed to us any business, financial or legal relationship with any other participating professional.

We understand that our Collaborative Professionals all subscribe to the principles and process of Collaborative Divorce and have satisfied the membership requirements and standards of their practice groups.

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

In the Collaborative Process, 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 are 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, debts, spending plans and other material information or other anticipated events, 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 (as may be required by Court rule for future review of support matters). Because we are expected to provide complete and accurate information, our final settlement will include certified statements that we have fully and fairly disclosed all material information. Any omitted income, property or liability which is not disclosed shall be subject to future allocation or division.

## **6. Participation with Integrity**

We agree to deal with each other in good faith and to promptly provide and update all necessary and reasonable information. No formal discovery procedures will be used.

Neither of us will knowingly withhold nor 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 either of us 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 our respective obligations, that continuing conduct will mandate withdrawal of our Collaborative Lawyer and termination of the Collaborative Process.

Each of us 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 and Privilege**

We understand that communications and information produced or discussed by us in this case whether by attorneys, parties, or non-party participants (i.e., team members) shall be confidential subject to an evidentiary privilege and therefore not admissible in any tribunal.

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 Collaborative Divorce Release & Consent Form which we will use for sharing of information among the Team members.

If our case leaves the Collaborative Process, then the Team will provide us with any signed agreements

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 to us or by us.

If subsequent litigation occurs, no member of the Collaborative Team shall be required to testify about any aspect of this process.

We will not introduce as evidence in court any family law collaborative communication made during the Collaborative Process for the purpose of reaching a settlement. Unless this paragraph is expressly waived by both parties and in the case of a non-party participant (team member), by the non-party participant having the right to exercise the privilege.

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

We agree that the Collaborative Process under this Family Collaborative Law Participation Agreement begins when:

(a) we sign this agreement, and

(b) 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.

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 including an action for emergency relief, or

(3) either of us files or obtains an temporary or final restraining order against the other, or

(4) when one of us discharges a Collaborative Lawyer or a Collaborative Lawyer withdraws from further representation of one of us.

*If one of us terminates this Collaborative case, then the Collaborative Team, and each member (lawyers, coach or coaches, financial professional(s) and child specialist) is discharged and the Collaborative Lawyers, or the firm with whom the Lawyer is associated, cannot continue to represent either of us in our family law dispute including post judgment matters related to our family law dispute.*

a. Withdrawal of Party from Collaborative Process

If one of us decides to withdraw from the Collaborative Process, prompt written notice shall be given to the other party through his Collaborative Lawyer. Upon withdrawal from 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.

b. Reinstatement of Collaborative Process

Notwithstanding the previous provision, we can agree to continue the Collaborative Process if not later than 30 days after a discharge or withdrawal of a Collaborative Lawyer, the unrepresented party engages the same or a successor Collaborative Lawyer and we consent in writing to continue the process and amend this agreement to continue the process or identify the successor Collaborative Lawyer and the successor Collaborative Lawyer confirms in writing his or her representation of a party in the continued Collaborative Process.

## **10. 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 any tribunal or other proceeding related to the matter(s) which is the subject of 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 file an action based on the final 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.

## **11. 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 and 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 Family Law 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.

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

If one of us wishes to retain a new lawyer as a successor Collaborative Lawyer and to continue the Collaborative Process, we agree to give prompt written notice to the other through his or her lawyer of that intention to obtain a new Collaborative Lawyer. We must have a new Collaborative 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.

### **13. Enforceability of Agreements**

We may enter into signed temporary or partial agreements by written consent during the Collaborative Process. If either of us withdraws from the Collaborative Process or the Process terminates, a signed temporary or partial agreement is enforceable and may be presented to the court as a basis for an Order. Only an agreement that we sign by consent will survive this process and may be filed with the court for enforcement.

### **14. Cautions and Limitations**

In electing the Collaborative Process, we understand that there is no guarantee that the process will be successful in resolving our 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. We understand the risks and benefits of this Process and we wish to use this process to reach an agreement.

### **15. Maintaining Status Quo during Collaborative Process**

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.

### **16. Professional Fees**

We agree that our Collaborative Professionals will be paid their contracted fees for their services. We agree that Collaborative Professionals cannot continue to provide services without being paid. 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 all professional fees and costs incurred by us shall be paid in full prior to the entry of an agreed final decree of divorce.

**17. 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, protect our privacy and to generate a final agreement that addresses our concerns. We agree to work in good faith to achieve these goals.

In this Collaborative Process \_\_\_\_\_ will be represented by  
(Name of Party)

\_\_\_\_\_ and \_\_\_\_\_ will be represented by \_\_\_\_\_.  
(Name of Lawyer) (Name of Party) (Name of Lawyer)

\_\_\_\_\_  
Signature of Party

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Party

\_\_\_\_\_  
DATE

In signing below each of us affirms that we are the Collaborative Lawyers for the parties, \_\_\_\_\_ and \_\_\_\_\_, 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, Rules of Court and the New Jersey Family Law Collaborative Law Act.

\_\_\_\_\_  
Signature of Lawyer

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Lawyer

\_\_\_\_\_  
DATE

In signing below each of us acknowledge that we are part of this Collaborative Process. We intend to assist the parties and other professionals consistent with the letter and spirit of the Participation Agreement signed by the parties and to abide by all applicable standards in our profession.

\_\_\_\_\_  
Signature of Divorce Coach

\_\_\_\_\_  
Signature of Financial Neutral

\_\_\_\_\_  
Signature of Child Specialist

## **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;
- coordinate with other team members.

### **Collaborative Financial Specialist**

- gathers financial data;
- prepares clients' statements of net worth;
- prepares cash flow analysis and provides business evaluation
- develops different financial scenarios for clients to evaluate;
- provides financial guidance, planning, support and budgeting throughout the divorce process;
- explains the tax consequences of alternate solutions;
- assists in evaluating assets that are part of the marital estate; coordinates 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;
- coordinate 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 parents to assist in developing an effective co-parenting plan
- coordinates with other team members.

## Collaborative Divorce Release and Consent Form

We, the Parties, \_\_\_\_\_ and \_\_\_\_\_ request and authorize our respective counsel and Collaborative Professionals listed below, to exchange information between them as part of our Collaborative Team to better facilitate our Collaborative Divorce Process. We understand that communications may not always be shared with us but at the discretion of our Team.

Attorney: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Attorney: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Divorce Coach: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Divorce Coach: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Address: \_\_\_\_\_

Child Specialist: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Financial Neutral: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_

Unless otherwise stated, this Release and Consent will terminate upon written notice of the termination of this Collaborative Process or entry of a Final Judgment of Divorce between the parties.

_____	_____	_____	_____
PARTY	Date	PARTY	Date
Address: _____		Address: _____	
_____		_____	