

COLLABORATIVE SETTLEMENT PARTICIPATION AGREEMENT

This Collaborative Settlement and Participation Agreement is by and between _____, "Wife", and _____ "Husband" (hereinafter jointly and severally "The Parties," "Parties," or "Party,"). The parties have retained the following: _____ "Wife's Attorney", _____ "Husband's Attorney" (hereinafter "the Lawyers," "Lawyers," or "Lawyer,") and _____ (hereinafter the "Financial Professional") and _____ (hereinafter the "Coach" or "Marriage and Family Therapist"), other collaborative professionals which are made a part of the team (hereinafter jointly and severally the "Collaborative Professionals"). The parties have chosen to enter into this agreement (the "Agreement") to use the principles of the collaborative process (hereinafter the "Collaborative Process") to settle the issues arising from the dissolution of the Parties' relationship. This Agreement is effective _____ (the "Effective Date"). All definitions and terms set forth in this Preamble are to be considered part of this Agreement.

I. Purpose

The State of South Carolina passed a statute governing family law. The intent as set forth by the legislature is restated below. The signers of this Agreement agree with the intent of this legislation and adopt the legislative purpose as our intent for our Agreement and for our work together under this Agreement towards the betterment of the family outside of the court system – to create the best possible version of this family on the other side of this collaborative process.

SECTION 20-1-710. Legislative purpose. [SC ST SEC 20-1-710]

The General Assembly finds that the family is the fundamental building block of society. Within healthy families children are instilled with values essential to the vitality of our State. These values include personal responsibility, honesty, duty, commitment to others, a work ethic, respect for authority, and sound educational habits. Because the family plays such a crucial role in developing these and other civic virtues essential to self-government, parents have a duty to themselves, their children, and society at large to instill these virtues in their children. Therefore, as much as it is able, the State should promote strong families, for the family is the cradle of an ordered and vibrant republic. Self-government depends upon civic virtue, and civic virtue in turn depends upon healthy families. The purpose of this act is to emphasize the importance of families to the success and well-being of our State.

The primary goal of the Collaborative Process is to incorporate the intentions set forth

above to help settle outstanding issues in a non-adversarial manner outside of court. The Parties aim to minimize, if not eliminate, the negative economic, social, and emotional consequences of protracted litigation to themselves and their family. The Parties have retained Collaborative Professionals to assist them in reaching this goal.

II. Communication

The Parties intend to communicate effectively with each other to settle, efficiently and economically, the dissolution of their material and financial relationship. Written and verbal communications will be respectful and constructive and will not make accusations or claims not based in fact. It is agreed that communication during settlement meetings will be focused on the economic and parenting issues in the dissolution and the constructive resolution of those issues. The Parties are encouraged to discuss and explore the interests they have in achieving a mutually agreeable settlement, and each is encouraged to speak freely and express his or her needs, desires, and options without criticism or judgment by the other. Although the Parties should be informed by their Lawyers about, and may discuss with each other, the litigation alternatives and the outcomes they might attain, neither Party nor their Lawyers will use the threat to withdraw from this process or to go to court as a means of achieving a desired outcome or forcing a settlement.

III. Valuation Date

The Parties agree that the valuation date for all legal purposes, including the valuation of the marital estate (for collaboration, mediation, and/ or any future litigation) will be the Effective Date set forth above. This provision will survive the termination of this Agreement or collaboration for any reason. Both parties request that a Court of competent jurisdiction rely on this Agreement for the specific purpose of the date of valuation of this marital estate. The purpose of this provision is to allow the participants to focus on the settlement of the division of the estate and not to focus on posturing or wasting assets in an effort to put one of them in a better position for litigation.

IV. Child/Children's Issues

In resolving issues about sharing the enjoyment of and responsibility for any child/children, the Parties agree to make every effort to reach amicable solutions that promote the child's/children's best interests. The Parties agree to act quickly to resolve differences related to the child/children in order to promote a caring, loving and involved relationship between the child/children and both parents. The Parties acknowledge that inappropriate communications regarding their dissolution can be harmful to their child/children. They agree that settlement issues will not be discussed in the presence of their child/children, or that communication with the child/children

regarding these issues will occur only if appropriate and by mutual agreement or with the advice of a child specialist on their collaborative team. The Parties agree not to make any changes to the residence of the child/children without first obtaining the written agreement of the other Party.

V. Participation with Integrity

Each participant shall uphold a high standard of integrity and shall not take advantage of inconsistencies or miscalculations of the other, but shall disclose and seek to have them corrected. To facilitate the integrity of this collaborative process, the Parties agree as follows:

- a) Each agrees to not remove the children from the state without the prior written consent of the other or order of a court of competent jurisdiction; and
- b) Each agrees not to borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or other coverage including but not limited to life, health, automobile, and disability held for the benefit of one or both of the Parties and/or the children; and
- c) Each agrees not to transfer, encumber, hypothecate, conceal, or in any way dispose of any property, real or personal, whether marital or not, without the written consent of the other party, or an order of a court of competent jurisdiction, except in the usual course of business or for the barest necessities of life; and
- d) Except in an emergency, each party will notify the other of any proposed extraordinary expenses at least five (5) business days prior to incurring such expenses. The Parties agrees that the cost of this collaboration will not be considered an extraordinary expense and neither Party will deny access to marital funds for the payment of the collaborative professionals. Upon presentment of a request for a retainer or for payment of services rendered, each collaborative professional will be paid within fifteen (15) days using the _____ account. If any amount is disputed, the Party and / or Parties agree to bring the dispute to the Collaborative Professional immediately; and
- e) Each agrees not to incur any other debt or liability for which the other party may be liable without prior consent. If consent is given, the collaborative team must decide whether the liability will be considered a marital liability or debt.

This provision will survive the termination of this Agreement or collaboration for any reason. Both parties request that a court of competent jurisdiction rely on this Agreement for the specific purpose of the matters set forth in this provision.

VI. Negotiation in Good Faith

The Parties, their Lawyers, and all other Collaborative Professionals agree to deal with each other in good faith and promptly to provide all necessary and reasonable information requested. No formal discovery procedures will be used unless specifically agreed to in advance by the parties. The Parties acknowledge that by using informal discovery, they are giving up certain rights for the duration of the Collaborative Process, including the right to formal discovery, formal court hearings, restraining orders, and other procedures provided by the adversarial legal system. They give up these measures with the specific understanding that both Parties agree to make full and fair disclosure of all all assets, income, debts and other information. The Parties acknowledge that participation in the Collaborative Process and the settlement reached are based upon the assumption that both Parties have acted in good faith and have provided complete and accurate information to the best of their ability. The Parties agree to provide sworn statements making full and fair disclosure of their income, assets and debts, if requested.

VII. Cautions and Limitations

In electing the Collaborative Law Process, the Parties understand that there is no guarantee that the process will be successful in resolving their case. They understand that the process cannot eliminate concerns about any disharmony, distrust, or irreconcilable differences that have led to the current conflict. While intent on striving to reach a cooperative solution, success ultimately will depend on their commitment to making the process work. The Parties understand that they are expected to assert their respective needs and interests and their respective Lawyers will help each of them do so. The Parties further understand that while the Collaborative Lawyers share a commitment to the process described in this document, each of them has a professional duty to represent his or her own client and is not the Lawyer for the other party.

_____ The parties agree by initialing here that they are giving their informed consent to work with their lawyer, whose representation will be diligent, and to allow such lawyer to work in a collaborative setting with their spouse. This informed consent is required to comply with Rule 1.7 of S.C. Rules of Professional Conduct.

VIII. Experts and Consultants

When appropriate and needed, the Parties will use neutral experts. The Parties will agree in advance of retaining the Expert as to how the costs of the third-party expert will be paid. Unless the parties agree otherwise, the report of the expert will not be covered by the confidentiality clause.

IX. The Collaborative Team

When appropriate and as needed, the parties will use the services of one or more of the following professionals: Divorce Coaches, Child Specialist, Certified Divorce Financial Analyst (Collectively referred to as "the Collaborative Professional(s)"). When a Collaborative Professional is engaged, the parties agree that the Collaborative Professional(s) and the Lawyers may engage in whatever discussions are necessary for resolution of the case. In the event that the Collaborative Law Process comes to an end, the Confidentiality provisions as set out in this Agreement apply to the Collaborative Professionals. The Collaborative Professionals agree to enter into this Agreement and also any retainer agreements they may need for their practice. The Collaborative Professionals agree that unless other payment arrangements are made, they will accept a retainer and will provide the Financial Professional or the appropriate party with a billing each month that will account for any monies earned by the Collaborative Professional. Please note that billing between an attorney and the attorney's client may contain information that is attorney-client privileged and confidential information; therefore, if either party desires to see the billings from the other attorney, the attorney may redact information as needed before providing the billings requested.

X. No Court Intervention

Unless otherwise agreed, prior to reaching final agreement on all issues, no summons or complaint will be filed or served, nor will any other motion or document that would initiate court intervention be prepared or filed.

_____The parties agree by initialing here (if not initialed, this provision is not applicable to this Agreement) that they hereby stipulate that if the collaborative process comes to an impasse, the Parties agree to mediate _____, or arbitrate_____ (as initialed) the remaining issues which caused the impasse. Such mediation and / or arbitration must be completed before the filing of any action, except for any action regarding the immediate well-being of the children.

XI. Lawyers' Limited Scope of Employment

The Parties understand that their collaborative Lawyers' representation is limited in scope to providing services within the Collaborative Process. Thus, while each Lawyer is the advisor of his or her client and serves as the client's representative and negotiator, the Parties mutually acknowledge that both Lawyers, and any one in each Lawyer's office, will be disqualified from representing the Parties in a contested court proceeding against each other. This means that should the collaborative process not result in a

settlement, each party would need to secure a litigation attorney (not their collaborative attorney) to represent them in such litigation. If an emergency situation regarding the child(ren) arises, the collaborative attorneys may consult with the Parties to recommend and help secure a litigation attorney to handle the emergency situation regarding the child(ren). If requested by a Party or the Parties, an emergency litigation attorney may be kept on stand by and kept abreast of the collaborative process in the event that such litigation attorney is needed. By initialing here the Parties acknowledge that they have read and understand the limited scope of representation available through the collaborative process.

We have read the above and understand the limited scope of representation.

_____ (client initials)

We would _____ or would not _____ like a litigation attorney on standby for issues involving our child(ren). (clients initial one)

XII. Withdrawal of Party from Collaborative Law Process

If a Party decides to withdraw from the Collaborative Process, prompt written notice shall be given to the other Party through his or her Lawyer. Upon termination of the Collaborative Process by a Party or a Lawyer, 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 litigation 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 the rights of the other Party. Therefore, it is agreed mutually that either Party may bring this provision to the attention of the Court to request postponement of a hearing, among other things.

If a Party wishes to withdraw from the Collaborative Law Process with his or her current Lawyer, but retain a new collaborative lawyer to continue with the Collaborative Law Process, the Party shall give prompt written notice to the other party, through his or her Lawyer, of their intention to obtain a new lawyer. The new lawyer, along with the other parties shall execute a new Collaborative Participation Agreement within thirty (30) days of the Party giving notice. The effective date of the original Agreement shall still be binding as the valuation date of the marital estate as set forth above. If a new agreement is not executed within thirty (30) days, then the other party shall be entitled to proceed as if the Collaborative Process were terminated as of the date written notice was given.

XIII. Withdrawal of Lawyer from Collaborative Law Process

If either Lawyer withdraws from the case for any reason they agree to do so promptly by a written notice to the other party, through his or her Lawyer. This may be done without terminating the status of the case as a Collaborative Law case. The party whose Lawyer has withdrawn may elect to continue in the Collaborative Law Process and shall give prompt written notice of this intention as well to the other party, through his or her Lawyer. The new Lawyer shall execute a new Collaborative Participation Agreement within thirty (30) days of the Lawyer first giving notice. If a new agreement is not executed within thirty (30) days, then the other party shall be entitled to proceed as if the Collaborative Process were terminated as of the date the first written notice was given.

XIV. Termination of Collaborative Law Process

A Collaborative Lawyer must withdraw from the Collaborative Process in the event they learn that their client has withheld or misrepresented information and/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 is withdrawing and that the Collaborative Process must end.

XV. Confidentiality

Except as set forth below, all communication exchanged within the Collaborative Law Process will be confidential and without prejudice. If subsequent litigation occurs, the Parties mutually agree to the following:

- a) that neither Party will introduce as evidence in Court information disclosed during the Collaborative Law Process for the purpose of reaching a settlement, except documents otherwise compellable and / or discoverable by law including any statements as to financial status made by the parties;
- b) that neither Party will introduce as evidence in Court information disclosed during the Collaborative Law Process with respect to either Parties' behavior or legal position with respect to settlement;
- c) that neither Party will ask or subpoena either the Lawyers or any of the Collaborative Professionals to Court to testify in any court proceedings. Further, any privileges of confidentiality, and/or privileged information that a Party would have had with a Collaborative Professional outside of the collaborative process shall remain intact during and after collaboration; and
- d) that neither Party will require the production at any Court proceedings of any notes, records, or documents in the Lawyers' possession or in the possession of one of

the Collaborative Professionals unless same is discoverable by statute or the applicable rules of the Court of competent jurisdiction; and

e) that the Parties agree that these Guidelines with respect to confidentiality apply to any subsequent mediation, litigation, arbitration, or other process for dispute resolution; and

f) that both parties agree that should either party terminate the collaborative process, each collaborative Lawyer shall copy their client's litigation attorney on all materials they believe necessary for the litigation attorney's representation of their client. This does not mean that all such materials are discoverable; however, it is not the intention of collaboration to cause the Parties to re-create information that is otherwise needed in litigation.

The confidentiality clause does not apply in the event that a Party or Collaborative Professional is obliged by law to report to the South Carolina Department of Social Services information arising out of the collaborative process which gives the Party(ies), the Lawyer(s) or Collaborative Professional(s) reasonable grounds to believe that a child or adult may be in need of protection.

XVI. Rights and Obligations Pending Settlement

Although the parties have agreed to work outside the court system, the parties agree that:

- a) neither Party may harass the other Party; and
- b) all decisions regarding the children will be made jointly unless otherwise agreed during the Collaborative Process; and,
- c) the Parties will not disparage the other to the child(ren), will not have the child(ren) call any other person by the name of Mother or Father (or the like), will not use the child(ren) as messengers or confidantes, and will protect the child(ren) as much as possible from exposure to the separation process; and
- d) will not hire any private investigators or others to spy on or gather information without the knowledge of the other Party; and
- e) will not work to defeat the rights of the Party with regard to the child(ren) and the marital estate; and
- f) will not disparage the other in as much as is reasonably possible.

XVII. Enforceability of Agreements

a) The Parties agree that the most convenient and appropriate forum for the interpretation and enforcement of this Agreement is the family court ("Family Court") in the jurisdiction in which a complaint for any Family Court matter could have been filed. The parties agree to subject themselves to the jurisdiction and venue of the Family Court in the jurisdiction in which they could file a Family Court matter. The Parties

agree and choose that the interpretation and enforcement of this Agreement is subject to such Family Court under a then existing case within its jurisdiction.

b) In the event that the Parties require a temporary agreement during the Collaborative Law Process, the agreement will be put in writing and signed by the Parties and their Lawyers. If either Party withdraws from the Collaborative Law Process, the written agreement is enforceable and may be presented to the court as a basis for an order, which the Family Court should make retroactive to the date of the written agreement. Similarly, once a final agreement is signed, if a Party should refuse to honor it, the final agreement may be presented to the Family Court in any subsequent action.

XVIII. Acknowledgment

Both Parties and their Lawyers acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them. Each party acknowledges that they have had sufficient time to ask their respective attorneys any and all questions they had regarding this Agreement, and that they specifically understand the Agreement, believe it to be fair and equitable to all involved, and desire for any Court of Competent jurisdiction to include the terms hereof in any order of the Court to which it may be relevant. The Parties agree to work in good faith to achieve the goals set forth herein.

XIV. Miscellaneous

a) This Agreement was entered into in Richland County, South Carolina. Venue and jurisdiction will rest with the Family Court of such county.

b) The headings set forth above are for ease of reading. The headings are not to be considered as part of the Agreement for any purpose.

c) This Agreement was entered into after discussions, deliberation, and review in the presence of all signers. This Agreement is not to be construed against one party or the other, but should be interpreted and enforced under its plain and ordinary meaning.

d) Each party represents that they have reviewed this Agreement and have had the opportunity to speak with, and ask any questions regarding the Agreement to their respective Lawyer.

e) This Agreement merges all prior writings and discussions which are of no further effect.

The parties hereto agree that they have read this Agreement, understand its terms, and agree to be bound by them.

We, the Collaborative Professionals hired by the Parties agree that we will work as the Collaborative Team for the Parties pursuant to the terms of this Agreement and IACP standards.

ATTORNEY FOR: _____

ATTORNEY FOR: _____

CDFA

Marriage/Family Therapist

DATE AGREEMENT EFFECTIVE
