

## COLLABORATIVE LAW PARTICIPATION AGREEMENT

The undersigned parties (“Clients”) intend to resolve a collaborative matter through a collaborative law process (“Process”) pursuant to Pennsylvania’s Collaborative Law Act, 42 Pa.C.S.A. §7401 et seq (“PCLA”), a copy of which is attached hereto and made a part hereof.<sup>1</sup> The nature and scope of their matter is as follows (*insert nature and scope of matter on line below*):

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### **1. Introduction.**

The Clients acknowledge that the basis of the Process is their belief that it is in their best interest to avoid the unnecessary conflict that litigation causes in trying to resolve their legal matter. The Clients agree to engage in this Process which does not rely on a court-imposed resolution based, in part, on past behavior, but instead relies on a problem-solving approach conducted in an atmosphere of honesty, cooperation, integrity, and professionalism geared toward the future well-being of the parties. The Clients agree that their goal is to maximize settlement options in reaching a resolution of their collaborative matter, as well as to minimize the negative economic, social, and emotional consequences that would be caused by litigation of their legal matter.

### **2. The Process.**

The Process is a voluntary procedure to resolve a dispute by reaching an agreement without court intervention. Each Client is represented by their own attorney. A nonparty participant is defined in the PCLA. The Clients and attorneys and the nonparty participants, if any, are referred to as the “Participants.” A collaborative communication is a statement that concerns the Process or the collaborative matter and which occurs after this Agreement is signed but before the Process is concluded.

### **3. Beginning and Concluding the Process.**

The Process begins when the Clients sign this Agreement. The Process concludes when the matter is resolved with a signed agreement or is terminated as set forth in the PCLA. A Client may terminate the Process with or without cause by sending written notice to all Participants. A Client may discharge their attorney without stating a reason, or an attorney may withdraw from representing a Client also without stating a reason, by written notice to all Participants. An attorney discharge or withdrawal terminates the Process unless, within thirty (30) days of the written notice, a successor attorney signs this Agreement as the successor collaborative attorney for the Client. If a notice of termination or discharge or withdrawal of an attorney is sent, neither Client shall file any document with a tribunal for a period of thirty (30) days after the date on the notice unless an emergency order is needed to protect the health, safety, or welfare of a party or family member.

### **4. Disqualification.**

When the Process concludes, the Clients agree that their respective attorneys and their law firms are disqualified from representing any Participant in any proceeding related to the collaborative matter unless the attorney is seeking or defending an emergency order to protect the health, safety, or welfare of a party or a family member. The Clients also agree that an attorney may file agreed-upon documents with a court necessary to document on the court record the Parties’

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<sup>1</sup> For the sake of brevity, this Agreement summarizes the terms of the PCLA in places. The terms of the PCLA govern any conflict between this Agreement and the PCLA.

agreement. When the Process concludes, the Clients agree that the nonparty participants are also disqualified from participating in any proceeding related to the collaborative matter unless both parties and the nonparty participant agree in writing that the nonparty participant may participate in the proceeding. After termination of the Process, a nonparty participant shall not provide any services to any Client unless both Clients agree in writing to the type and scope of services to be performed.

## **5. Role of Attorneys and Nonparty Participants.**

Each Client shall be represented by a separate collaboratively trained attorney in the Process. A collaboratively trained attorney means an attorney who has attended a basic collaborative training as defined by the International Academy of Collaborative Professionals (IACP). Each collaborative attorney represents their respective client exclusively and does not represent nor owe any professional duty to any other Participant. Each Client understands and agrees that they should rely upon the legal advice and opinions of their attorney **only**, and they shall **not** rely upon the legal advice and opinions of the attorney representing the other Client.

Nonparty participants are jointly retained by the Clients and work for both Clients. If the nonparty participant is asked to prepare a written report or recommendation, the Clients are free to agree, and are encouraged to agree, on whether the report or recommendation is binding upon them. If the Clients agree it is not binding, then either Client is free to obtain an additional report or recommendation from a third party at their own expense and submit the additional report or recommendation at a subsequent meeting. The Clients agree that any nonparty participant retained (separately or jointly) in the Process may not be later retained separately by either party after the Process has concluded unless the Clients agree otherwise in writing.

This Agreement shall not affect the professional responsibility obligations and standards applicable to attorneys or any person professionally licensed or certified under state law.

## **6. How the Process Works.**

The attorneys and the nonparty participants, if any, work with the Clients to: (1) identify the Clients' goals and interests; (2) identify the information needed to generate options for resolution; (3) generate options for resolution; (4) test the consequences of the options; (5) select an option mutually acceptable to the Clients; and (6) record the Clients' agreement in written form. The Process moves forward via one or more meetings with attorneys and Clients and nonparty participants, if any, present as the Clients agree. In most cases, an agenda is created for each meeting and notes are taken at each meeting. If all Participants agree, the meetings may be online. The details regarding when, where, and other matters related to meetings (recording, presence of others, who takes notes) should be discussed prior to this Agreement being signed.

## **7. Disclosure of Information.**

The Clients agree that the PCLA requires them to provide timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery and that they shall update promptly all previously disclosed information that has materially changed.

## **8. Confidentiality.**

A collaborative communication shall be confidential to the extent provided by Pennsylvania law, by the rules of professional conduct of each licensed professional, or as otherwise specified in this Agreement.

## **9. Privilege.**

A collaborative communication is privileged except as provided otherwise in the PCLA. The Clients understand that in any proceeding they will not request or subpoena a collaborative attorney, a party, or a nonparty participant in the Process to make disclosure or to testify as a witness regarding a collaborative communication unless, during the proceeding, the agreement under this paragraph is waived in writing. In the case of communications by an attorney, the waiver of the agreement under this paragraph shall be effective only if the attorney and their client both agree in writing to the waiver. In the case of a collaborative communication by a nonparty participant, the waiver of the agreement under this paragraph shall be effective only if the Clients and the nonparty participant agree in writing to the waiver. The Clients agree that any documents prepared for use during the collaborative process, including but not limited to meeting minutes, lists of goals and interests, budgets, and asset charts, shall not be admissible during a legal proceeding for any purpose and shall not be subject to discovery pursuant to the Pennsylvania Rules of Civil Procedure.

## **10. Informed Consent.**

The Clients agree that their choice to engage in the Process is made after careful consideration of the benefits and costs of the various processes available to them as discussed with their respective attorney. The Clients have read the American Bar Association Handbook for Clients which describes the dispute resolution options available to clients. The Clients understand that the Process cannot eliminate disharmony, distrust, or differences of opinion and that there is no guarantee that the Process will be successful in resolving their collaborative matter. The Clients understand that the success of the Process depends upon their commitment to actively listen to and consider each other's goals and interests and their good faith efforts to satisfy the most important goals and interests of both Clients but not necessarily all their goals and interests.

## **11. Good Faith Participation.**

Participants in the Process should negotiate in good faith. Good faith participation means: (1) Participants shall not take advantage of any mistake or miscalculation made by another Participant and shall take steps to correct any mistake or miscalculation; (2) Participants shall communicate respectfully and constructively; (3) Participants shall honor each other's ability to speak freely; (4) Clients and their attorneys shall take a reasoned approach which they understand may involve vigorous negotiation in favor of the Client's goals and interests but should not involve disrespectful comments, threats to terminate the Process, or threats to engage in some other action or inaction not related to the collaborative matter that would harm the other Client; and (5) Participants shall use their best efforts to participate in the Process as agreed and to abide by the ground rules established for the meetings.

## **12. Children's Issues.**

In resolving issues about sharing the enjoyment of and the responsibility for their children, the Clients agree to make every effort to reach amicable solutions that promote the children's best interests. The Clients agree to promote a caring, loving, and involved relationship among the children and both parents and other family members. The Clients agree to insulate their children from their disputes by not discussing issues in their children's presence or hearing unless they mutually agree to do so. The Clients further acknowledge that any agreement with regard to the parenting of their children and/or the payment of child support and child support-related matters

such as, among other things, who provides health insurance and how extracurricular activities are paid for, is always subject to review and modification as provided by Pennsylvania law.

### 13. Agreements.

Temporary agreements may be reached during the Process and a final agreement may be reached concluding the Process. If a temporary agreement so provides, it may be presented to a court simply to place it on the court record or to enforce it by starting or resuming a proceeding before a court. If a Client is seeking to enforce a temporary agreement by starting or resuming a proceeding before a court then, pursuant to the PCLA, that action terminates the Process and the Client must retain a new attorney for that purpose and shall not use their collaborative attorney; and, unless there is an emergency affecting the health, safety or welfare of the Client or a family member, the Client shall wait thirty (30) days after termination before filing any document with a court to start or resume a proceeding to enforce the temporary agreement. If the parties agree, then a final agreement may be filed with the court and such filing is part of the Process as stated in the PCLA. Whether a final agreement is filed or not, a final agreement may be submitted to a court for enforcement, and it is fully enforceable as provided by Pennsylvania law regarding enforcement of such agreements. In that event, the Client seeking to enforce the final agreement shall not use their collaborative attorney.

### 14. Acknowledgment and Pledge.

With full knowledge of the benefits and costs of the Process, the Clients freely and voluntarily choose to limit the scope of their respective attorney's representation to this Process and, as long as the Process has not been terminated, each Client waives certain legal rights available to them to resolve their legal matter were they to use the litigation process. Those rights include, among other things: (1) the right to formal discovery; (2) the right to have each item of marital property valued and to have the court resolve any disputes with respect to valuation; (3) the right to have a court divide the marital property in a manner that the court determines to be equitable under Pennsylvania law; (4) the right to have a court order spousal support, alimony *pendente lite*, alimony, payment of attorneys fees and/or costs; and (5) the right to have a court determine their rights regarding child custody and child support.

We, the Clients, have read this agreement, understand all the terms and conditions, and pledge to comply with and promote the spirit and written word of this document.

BY THE PARTIES:

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Husband

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Wife

Collaborative Attorney for Husband:

Collaborative Attorney for Wife:

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Nonparty Participants:

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