

**COLLABORATIVE PRACTICE  
PARTICIPATION AGREEMENT**

**Sally**

(Sally)

and

**David**

(David)

**1. Choosing Collaborative Practice**

We choose Collaborative Practice to resolve the issues arising from our separation. In doing so, we agree to be respectful in our negotiations and to work together to achieve a mutually acceptable out of court settlement. We realize that we are responsible for the decisions we make. We understand that the process of separation takes place on legal, financial and emotional levels. We recognize that achieving our goals may require the assistance of professionals other than our lawyers.

**2. Guidelines for Participation in the Collaborative Process**

- a) We will deal with each other in good faith.
- b) Written and verbal communication will be respectful and constructive.
- c) We agree to follow the problem-solving steps set out in Schedule A to resolve our concerns.
- d) Sally and David will express her and his interests, needs, goals and proposals and seek to understand those of the other.
- e) We agree to make every effort to reach solutions that promote our children's best interests as well as a loving and involved relationship between the children and each of us.
- f) Sally and David will develop an array of options for settlement and use their best efforts to negotiate a mutually acceptable settlement.

- g) We will not use the threat to withdraw from the Collaborative process or to go to court as a means of achieving a desired outcome or forcing a settlement.
- h) We will not take advantage of mistakes made by another, but will disclose them and seek to have them corrected. We will immediately correct mistakes and advise of changes to information previously given.

**3. Collaborative Lawyers**

- a) The Lawyers' representation is limited to providing services within the Collaborative process. Neither lawyer may represent either party in a contested court proceeding between them related to issues arising from their separation, including a review, variation or separation arising after a future reconciliation.
- b) 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.

**4. Collaborative Professionals**

- a) We have retained the services of a neutral Family Professional, -----, pursuant to Schedule "C" attached.
- b) When needed, Sally and David may engage a Collaborative Family Professional and/or a Collaborative Financial Professional. Upon retaining a Financial Professional, Schedule B will be signed. Upon retaining a Family Professional, Schedule C will be signed.
- c) Neither spouse may unilaterally terminate the services of a neutral Family Professional or a neutral Financial Professional, without first bringing the intention to do so to the attention of his or her lawyer who will convene a meeting with the other CP professionals to explore the impact of termination on the CP process and canvas options to address the concerns..

**5. Other Professionals**

When needed, Sally and David may engage other professionals, such as counsellors, business valuers, accountants, tax experts, mediators, etc, normally by joint retainer. .

**6. Disclosure of Information**

Sally and David agree that during the collaborative process they will make timely, full, candid, and informal disclosure of information related to the collaborative matter(s) without formal discovery. They further agree that they will promptly update information that has materially changed.

**7. Lawyer Disqualification**

Sally and David agree that their collaborative lawyers, and any lawyer in a law firm with which a collaborative lawyer is associated, shall be disqualified from representing either Sally or David in a court or other contested proceeding related to the issues for resolution under this collaborative process.

**8. Collaborative Communications**

Sally and David agree that in any court or other contested proceeding in they will not request, subpoena or summons a collaborative lawyer, a Family Professional, A Financial Professional, or a professional jointly retained under paragraph 5 of this agreement to make disclosure or testify as a witness regarding a communication made during the collaborative process.

**9. Team Communications**

Sally and David consent to the exchange of information between their collaborative lawyers, the Family Professional and/or the Financial Professional in order to coordinate efforts on their behalf.

**10. Confidentiality**

(a) All communication exchanged within the Collaborative Practice will be confidential and without prejudice. If subsequent litigation or arbitration occurs,

Sally and David agree

- i) that neither will introduce as evidence information disclosed or prepared during the collaborative process, except documents otherwise compellable by law including any sworn statements as to financial status made by us;
- ii) that neither will subpoena or discover either lawyer, Family Professional Financial Professional or other jointly retained professionals to court or arbitration, to testify with regard to matters disclosed during the collaborative process, or; require the production at any court or arbitration proceedings of any notes, records, or documents in the possession of any named professional; and
- iii) the verbal agreements, concessions or statements of any kind whatsoever which may be made during the collaborative process are confidential and without prejudice.

#### 11. **Withdrawal of Party or Lawyer from Collaborative Process**

- a) If either Sally or David decides to withdraw from the Collaborative process, he or she will provide written notice of the intention to withdraw and wait thirty days before starting any court proceeding, to permit both of them to retain new lawyers and make an orderly transition. Either Sally or David may bring this provision to the attention of the court to request a postponement of a hearing. Both Sally and David will provide a copy of this Agreement to their new lawyer.
- b) If either Sally or David ends their professional relationship with his or her lawyer, but wishes to continue with the Collaborative process, he or she will provide written notice of this intention. The new lawyer will sign a new Participation Agreement within 30 days of the party giving notice. If a new Agreement is not signed within 30 days, the other person will be entitled to proceed as if the collaborative process was terminated as of the date written notice was given.

#### 12. **Mandatory Termination of the Collaborative Process**

A lawyer must withdraw from the Collaborative process if his or her client has withheld

or misrepresented important information and continues to do so; refuses to honour agreements; delays without reason; or otherwise acts contrary to the principles of the collaborative process.

### **13. Responsibilities Pending Settlement**

During the Collaborative process, unless agreed otherwise in writing, Sally and David will:

- a) maintain assets and property;
- b) maintain all existing insurance coverage without change in coverage or beneficiary designations;
- c) maintain all existing health and dental benefit coverage; and
- d) refrain from incurring any debts for which the other may be held responsible.

### **14. Enforceability of Agreements**

In the event that we require a temporary agreement during the Collaborative Law Process, the agreement will be put in writing and signed by both of us and our lawyers. If either of us withdraws from the Collaborative Law Process, the written agreement is enforceable and may be presented to the court or an arbitrator as a basis for an order or award, which the court may make retroactive to the date of the written agreement. Only written agreements signed by both of us and witnessed shall be enforceable in a court or arbitration proceeding. Verbal agreements, concessions or statements of any kind which may be made during the collaborative process are unenforceable, confidential and without prejudice.

### **15. Chestnut Collaborative Professionals**

- a) Victoria Smith and ----- are independent professionals who share office space at 1 Chestnut Hills Crescent. Their practices are separate entities.

- b) Victoria Smith and ----- have taken steps to ensure that no privileged information will be shared with the other lawyer or Family or Financial Professional, or their office staff without our consent. We agree to clearly advise our lawyers if we expect certain information to be treated as privileged information.
- c) We understand that the lawyers and Collaborative Professionals will share confidential information relating to our family, in order to help us reach resolution.
- d) There are no financial benefits gained by Victoria Smith by suggesting ----- as the Family/Financial Professional.
- e) We agree that these arrangements are satisfactory.

16. **Privacy Policy**

- a) Sally and David consent to allow the lawyers and collaborative professionals to collect, use, disclose and retain personal information in order to provide services to them and to administer client time and billing data bases.
- b) Sally and David may withdraw their consent to the collection, use, disclosure and retention of their personal information as described above by giving the lawyers and Collaborative professionals reasonable written notice. Their withdrawal of consent still allows the lawyers and collaborative professionals to use and disclose their personal information to collect or enforce payment of amounts owing as a result of their prior or continuing use of the Collaborative law firm or Collaborative professionals.

17. **Acknowledgement of Commitment to Collaborative Process**

Sally and David acknowledge each has read this Agreement in its entirety, understand its content and agree to its terms.



## SCHEDULE A

**COLLABORATIVE NEGOTIATION STEPS FOR EFFECTIVE PROBLEM-SOLVING****Step 1 BUILD THE FOUNDATION**

- Introduction and overview of the collaborative process
- Decide problems to be solved
- Consider the need for other professionals, such as family, child and/or financial specialists

**Step 2 GATHER AND EXCHANGE INFORMATION**

- Identify what financial information is needed and exchange it
- Agree upon and initiate any joint valuations
- Lawyers to explain legal principles

**Step 3 IDENTIFY INTERESTS**

- Prioritize goals, needs and interests – immediate and long-term – regarding issues and process

**Step 4 IDENTIFY CHOICES**

- Explore widest range of possible solutions
- Consider everything, rule out nothing

**Step 5 EVALUATE CONSEQUENCES OF EACH CHOICE**

- How would each option affect each person and the children?
- Consider immediate, intermediate, long-term impacts

**Step 6 COME TO A DECISION AND IMPLEMENT DECISION**

- Generate settlement proposals that satisfy interests of both
- What do you see as the best solution for both?
- Prepare Separation Agreement incorporating joint decisions

## SCHEDULE B

### **Financial Professional Agreement**

#### **1. Role of Financial Professional:**

The Financial Professional will assist clients and their legal representatives in reaching a financial settlement that reflects the needs of the clients and their family. In this role the Financial Professional has no authority or decision-making power but can help to ensure that financial outcomes meet client expectations by providing critical financial information. The Financial Professional can help the clients gather and understand financial information and examine options developed during the Collaborative process. More specifically, the Financial Professional can:

- Help clients gather relevant financial information
- Help the clients identify needs
- Help clients understand the financial information and various options developed
- Develop realistic budgets that reflect accurate future needs
- Provide long-term cash-flow analysis

Illustrate potential long-term consequences of various settlement options.

#### **2. Obligation to Provide Relevant Information:**

The clients agree to provide the Financial Professional with relevant financial information and understand that the Financial Professional will rely on this information, along with agreed upon assumptions, to develop her/his analysis. The clients agree that the Financial Professional will not be held accountable for any errors or omissions in his/her work product resulting from the client's failure to provide accurate, reliable and complete financial information.

#### **3. Independent Legal Advice:**

The Financial Professional provides supporting financial information and evaluations to be utilized by both the clients and their respective lawyers. The Financial Professional does not provide legal advice.

**4. Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Financial Professional and other Collaborative team professionals. Clients must provide written consent for the release of any information to anyone who is not a Collaborative team professional.

**5. No Court Appearance:**

Should either client decide to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Financial Professional will remain confidential and may not be used in any court proceedings between the clients. The clients agree that they will not require the Financial Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation between the clients. If either client subpoenas the Financial Professional and/or any of the records, notes or documentation produced by the Financial Professional during the Collaborative process, then the client who has issued the subpoena shall be deemed to have agreed to pay all the costs required for the Financial Professional to quash the said subpoena.

**6. Withdrawal From the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable, he or she agrees to immediately inform the other client, the Financial Professional and all Collaborative team members in writing, about the decision to end the Collaborative process.

If either client wishes to end the engagement with the Financial Professional, in order to retain the services of a new Financial Professional or to proceed without the services of a Financial Professional, the client agrees to immediately inform the other client and all Collaborative team members in writing.

The Financial Professional reserves the right to withdraw from the case for any reason. The Financial Professional has an obligation to withdraw from the case if either client is not acting in good faith. Should the Financial Professional decide to withdraw, he/she agrees to inform the clients and all Collaborative team members in writing. If the Collaborative process has not been terminated, the withdrawing Financial Professional will make every effort to provide suitable referrals to other Financial Professionals to facilitate the engagement of a new financial Professional.

In the event of a decision to withdraw by any person, all incurred fees are due and payable.

Neither client may unilaterally terminate the services of a neutral financial professional.

**7. No Product Sales and No Future Dealings:**

The Financial Professional’s responsibility in this role terminates once the settlement has been reached or the Collaborative process has been terminated. The Financial Professional may not work with either client post-settlement excepting as noted in this paragraph. The Financial Professional shall not take assets under administration or sell any financial products. The Financial Professional may assist either or both clients in the implementation of their settlement agreement and in a post-settlement evaluation if agreed upon as part of the Collaborative proceedings. It is critical that the Financial Professional maintain his/her neutrality even after negotiations have been concluded.

We have read the above agreement in its entirety, understand the content and agree to the terms.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Financial Professional

\_\_\_\_\_  
Date

**SCHEDULE C**

**FAMILY PROFESSIONAL SERVICE AGREEMENT**

***This is an agreement made between:***

and:

“The Clients”

and:

“The Family Professional”

**1. The Role of the Family Professional**

The Family Professional works with the clients to:

- Identify and prioritize the concerns of each client.
- Facilitate effective communication between the clients.
- Develop effective co-parenting skills.
- Develop a Parenting Plan as required. (In this event, the parents will be asked to sign a Closed Mediation Service Agreement that will outline the mediation process. This additional service agreement will be shared with the collaborative lawyers and the parents will continue to operate under the collaborative law agreement while in the mediation process.)

The Family Professional works with the clients and other collaborative team members to:

- Enhance communication and reduce misunderstandings.

- Facilitate the collaborative process and everyone's best efforts towards resolution.

## **2. Confidentiality**

The services provided are confidential and the clients must provide written consent for the release of any information to any party who is not a Collaborative Team Professional.

Where individual meetings are held with the clients, the Family Professional will have the right to disclose the content of the individual sessions to the other client unless specifically agreed between the client and the Family Professional.

When other Collaborative Team Professionals are engaged, both clients consent to the exchange of information between the Family Professional and other Collaborative Team Professionals. The clients will be asked to sign an initial Consent to Exchange Information form that identifies the Collaborative Professionals involved and the methods by which this communication can take place.

Should either client elect to move from the collaborative process into a court process, all materials, including all content (both written and oral) of sessions, will remain confidential and may not be used in any court proceedings.

The clients agree that they will not require the Family Professional, by subpoena or otherwise, to testify as a witness and/or to produce her records or notes in any subsequent litigation.

If either client subpoenas the Family Professional's records or notes in any legal or administrative proceeding, then the client, who has issued the subpoena, shall be deemed to have agreed to pay all the costs required for the Family Professional to quash the said subpoena.

### **3. Independent Legal Advice**

The clients are responsible for obtaining legal advice from their collaborative lawyers. The clients agree that any communications by the Family Professional, either verbally or in writing, are not to be construed as legal advice.

### **4. Involvement of Child(ren)**

Should the clients request that the Family Professional meet with the child(ren), they agree that the Family Professional will only provide them with verbal feedback about the child(ren)'s concerns or thoughts. The clients understand and agree that the Family Professional will not provide verbatim comments from the children, nor will she provide a written report.

Although the Family Professional will encourage open communication between the child(ren) and their parents, the clients agree that the Family Professional will not release information to the parents or to anyone, that the child(ren) have asked her to keep confidential, unless she has reason to believe that the child(ren)'s safety is in danger.

### **5. Limits of Confidentiality**

The clients have been made aware that in certain limited circumstances the Family Professional is required by law to disclose client information. These circumstances include reporting suspicions of child abuse to the Children's Aid Society; reporting information that suggests an actual or potential danger to human life or safety to the appropriate authorities; providing information to the courts as directed through subpoena, search warrant, or other legal order.

### **6. Fees**

- 1.) The clients shall pay all of the costs of the Family Professional at a rate of \$\_\_\_\_ per hour. Fees are applied to all time expended in any/all professional activities, including administrative matters associated with the collaborative process and/or arising from the collaborative process. This includes time spent in reviewing documents and correspondence, voice-mail, e-mail, as well as attending to meetings and telephone calls with either client, their counsel, their child(ren) or other professionals involved. This also includes disbursements paid to collateral sources for verbal and/or written reports and agency/hospital reports (if needed). As the work done on the file is logged,

there is a minimum fee of 5 minutes charged for telephone calls and emails. Also included are any unpaid fees charged retroactively from the time that our services are initially requested and the file is opened. Note that insurance companies may not cover fees paid for collaborative family professional services.

- 2.) \_\_\_\_\_ shall pay \_\_\_% and \_\_\_\_\_ shall pay \_\_\_% of the fees. Each client will provide a retainer of \$ \_\_\_\_\_ to the Family Professional. At all times each client shall maintain a retainer of at least \$\_\_\_\_\_ in the account of the Family Professional, who shall advise in advance when a further retainer is required. If the above terms are not satisfied, the Family Professional will postpone all services until the retainer terms are met. Non-payment of fees shall be grounds for the resignation of the Family Professional.
- 3.) The clients will be billed for an appointment in which there is less than 48 (forty-eight) business hours' (i.e., two business days) notice prior to cancellation/no show.
- 4.) The clients will billed at the rate of \$\_\_\_\_\_ for travel time.
- 5.) In the event of a decision to withdraw from the collaborative process, all incurred fees are due and payable within 30 days of the invoice.

## **7. Cancellation Fees**

Your appointment time is set aside exclusively for you. If you are unable to attend your appointment please give as much notice as possible. A fee of \$0.00 will be charged for any session cancelled without a minimum of 48 hours' notice. The clients agree that each will be responsible for payment of the cancellation fee arising from their own cancellation with insufficient notice and/or failure to attend a scheduled appointment.

## **8. Communication by E-mail**

In order to contain costs, you are encouraged to limit the use of e-mail to the Family Professional directly or by way of a copy. In the event that you find it necessary to communicate with the Family Professional by e-mail, please ensure that such e-mails are copied to the other client. Should you request that information be transmitted by email or fax, you will be asked for your written consent to do so.

**9. Withdrawal From the Collaborative Law Process**

If either client decides that the collaborative process is no longer viable and decides to end the collaborative process, he or she agrees to immediately inform the other client, the Family Professional, and all collaborative team members, in writing, about the decision to end the collaborative process.

If either client decides to withdraw from the collaborative process, the clients acknowledge and understand that any agreements reached in mediation are not legally binding without the completion of a separation agreement with legal counsel.

The Family Professional reserves the right to withdraw from the case for any reason. Non-payment of accounts will automatically result in the Family Professional withdrawing from the case. Should the Family Professional decide to withdraw, she agrees to provide written notice of withdrawal to the clients and their lawyers. In this event, the Family Professional will make every effort to provide referrals to other Family Professionals and to facilitate the engagement of a new Family Professional.

Neither client may unilaterally terminate the services of a neutral family professional.

I HAVE READ THE ABOVE AGREEMENT IN ITS ENTIRETY, UNDERSTAND THE CONTENT AND AGREE TO ITS TERMS. THIS AGREEMENT MAY BE EXECUTED BY THE CLIENTS SEPARATELY OR SIGNED BY THE CLIENTS ON SEPARATE DATES. THE SEPARATE AGREEMENTS TOGETHER CONSTITUTE ONE AND THE SAME DOCUMENT.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Family Professional

\_\_\_\_\_  
Date