

Collaborative Law Participation Agreement

We, [Pat Smith] and [Chris Jones], wish to resolve the issues relating to our divorce through a Collaborative Process, without the intervention of a court or other tribunal.

1. Beginning and Concluding the Collaborative Process

We agree that the Collaborative Process under this Collaborative Law Participation Agreement begins when we have both signed this Agreement and that it ends (1) upon our reaching a signed agreement of the issues relating to our divorce and obtaining a judgment of divorce, or (2) upon termination of the Collaborative Process, as described below.

2. Termination/Suspension of the Collaborative Process.

a. Termination. We agree that participation in the Collaborative Process is voluntary and that each of us has the unilateral right to terminate the Process, with or without cause, at any time. Termination of the Collaborative Process occurs (1) when either of us gives written notice to the other that the Process is ended, (2) when either of us begins a judicial or other adjudicative proceeding related to our separation or divorce other than jointly presenting an agreement to the court, or (3) when a Party discharges a Collaborative lawyer or a Collaborative lawyer withdraws from further representation of a Party. We agree that we may request a court or other tribunal to approve our written agreement, and that such a request, if made jointly, does not conclude the Collaborative Process.

b. Suspension. Notwithstanding the previous provision, we agree that the Collaborative Process continues if, within 30 days after a discharge or withdrawal of a Collaborative lawyer, (i) the unrepresented Party engages a successor Collaborative lawyer, (ii) we consent in writing to continue the Process and amend this Agreement to identify the successor Collaborative lawyer, and (iii) the successor Collaborative lawyer confirms in writing his or her representation of a Party in the Collaborative Process.

3. Goals and Values

We believe that it is in our best interests [and in the best interests of our minor Children] to avoid litigation and to try to reach an agreement through the Collaborative Law Process, which relies on honesty, mutual respect, cooperation, professionalism, fairness, and constructive problem-solving, and is focused on our future well-being [and that of our children]. Our goal is to reach an agreement that meets our needs and interests as amicably, inexpensively, expeditiously, and privately as possible. We shall make every reasonable effort to settle our case without court intervention, and we understand that our lawyers shall represent us solely for purposes of negotiation.

[Smith – Jones] Collaborative Law Participation Agreement

____ [PS]
____ [CJ]

4. Collaborative Process

a. Full Disclosure. We shall give full, prompt, and honest disclosure of all information and documents that are material to our case, whether requested or not, and exchange financial statements in a timely manner. We shall promptly update all such information that materially changes during the Collaborative Process. For purposes of this Agreement, information and documents are “material” if they are reasonably required to make an informed decision with respect to the resolution of this matter. We understand that the question of what is reasonably required may be context-specific, and therefore, we agree to discuss with each other and our counsel at the outset of the Collaborative Process – and during the process as needed – the scope of what is reasonably required in this matter for each of us to make an informed decision.

b. Respectful Communications. We shall communicate with each other respectfully and constructively in the Collaborative Process.

c. Meetings of Clients and Professionals. We understand that the Collaborative Process involves our direct participation in the negotiations and discussions, and may also involve separate meetings or conference calls, without us, of the lawyers and other professionals that comprise our professional team in this Process.

d. Good-Faith Negotiation. We shall negotiate in good faith, taking reasoned positions on the points on which we disagree, and using our best efforts to create proposals that meet our fundamental needs [and those of our Children]. We understand that the Process may involve vigorous negotiation. We also recognize that compromise may be needed in order to reach a settlement of all issues. Although we may discuss the likely outcome of a litigated result, none of us shall use the threat of litigation as a way of forcing settlement.

e. Participation with Integrity. We are committed to participating with honesty and integrity in this Process. Neither of us shall take advantage of any miscalculations or inadvertent mistakes of others, but shall acknowledge and correct them promptly.

f. [Communications with Our Children]. We agree to refrain from discussing with our children the issues under discussion in this Process, except such information as they need to have about parenting arrangements, which we shall communicate jointly or in a coordinated, mutually agreeable manner.]

5. Preservation of the Status Quo

a. Retirement Plans and Insurance. We agree that commencing immediately, neither of us shall borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan or insurance policy or permit any existing insurance

coverage to lapse, including life, health, automobile and/or disability held for the benefit of either of us without the prior written consent of the other Party.

b. Wills and Trusts. We agree that commencing immediately, neither of us shall change any provisions of any existing trust or will, or execute a new trust or will, without the prior written consent of the other Party.

c. Assets. We agree that commencing immediately, neither of us shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any assets belonging to or acquired or earned by either Party (from employment or any other source), without the prior written consent of the other Party, except (i) in the usual course of business or investing, (ii) payment of reasonable attorney's fees and costs, or (iii) for routine living expenses.

d. Liabilities. We agree that neither of us shall incur any further debts that would burden the credit of the other, including but not limited to (i) further borrowing against any credit line secured by the marital residence, (ii) unreasonably using credit cards or cash advances against credit or bank cards, or (iii) incurring any liabilities for which the other may be responsible, other than in the ordinary course of business or for routine living expenses, without the prior written consent of the other.

6. Role of Attorneys

a. Independent Counsel. We acknowledge that (i) each of our attorneys is independent from the other and represents only one of us in the Collaborative Law Process; (ii) while the attorneys share a commitment to the Process described in this Agreement, each of the lawyers has an attorney-client relationship with, and a professional duty to diligently represent, solely his or her own client and not the other Party; and (iii) each of us shall rely on the advice of our own lawyer and not the other Party's lawyer.

b. Attorney-Client Communications. Our respective lawyers may have confidential and privileged communications with us, and such communications are not inconsistent with the Collaborative Process.

c. Attorneys' Fees. We agree that our attorneys are entitled to be paid for their services, and an initial task in a Collaborative matter is to ensure payment to each of them. We agree to make funds available for this purpose.

7. Lawyer Disqualification and Withdrawal

a. Disqualification. We agree that a Collaborative lawyer who represents either of us in 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 (other than for purposes of presenting an agreement) or other contested proceeding related to our divorce (such as an arbitration). We agree that we shall not hire

for any court proceeding (other than presenting an agreement) a Collaborative lawyer who has represented either of us in this Collaborative Process, or any law firm in which one of our lawyers in this Process is associated.

b. Withdrawal. Either of our attorneys may withdraw unilaterally from the Collaborative Law Process by giving fifteen (15) days written notice to his or her client and the other attorney. Notice of withdrawal of an attorney does not terminate the Collaborative Law Process; to continue the Process, the Party whose attorney withdraws shall seek to retain a new attorney who shall agree in writing to be bound by this Agreement. Each of us understands that her/his Collaborative Law attorney shall withdraw from our case as soon as possible upon learning that his or her client has violated this Agreement or acted so as to undermine or take unfair advantage of the Collaborative Law Process. Such abuse of the Process includes, without limitation, the withholding or misrepresentation of financial or other material information. We understand that, if a lawyer withdraws from representing one of us, s/he shall do so in a manner that is consistent with her/his ethical duties as an attorney – namely, to avoid prejudicing the client's interests.

c. Successor Counsel. Upon termination of the Collaborative Process or withdrawal of either counsel, the withdrawing attorney shall promptly facilitate the transfer of the client's file and any information needed for continued representation of the client to successor counsel.

d. Exigent Circumstances. Notwithstanding this Collaborative lawyer disqualification provision, we agree that a Collaborative lawyer in this Process, or a lawyer in a law firm with which the Collaborative lawyer is associated, may seek or defend an emergency order to protect the health, safety, welfare or interest of one of us, if a successor lawyer is not immediately available to represent that person. However, once that person 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.

8. Coach, Experts, and Consultants

a. Coach. We understand that a neutral coach is often jointly hired by the participants in a Collaborative case to assist in the management of communications and to provide participants and counsel with input and support. If we hire a coach in this case, we shall retain him/her jointly and ensure her/his payment. We agree that the coach (1) may meet with us individually, jointly, and/or with our counsel, (2) shall not be required to testify if the Collaborative Process fails and our case proceeds in court, and (3) would be disqualified from participation in any such court proceedings. We agree that hiring any such coach shall be done in a written agreement in which the coach confirms her/his acceptance of the applicable terms of this Agreement.

b. Experts/Consultants. If experts or consultants are needed to assist in the negotiation of disputed issues (such as the value of an asset, tax questions, or parenting issues), we shall retain them jointly, ensure their payment, and share their work product. We agree to direct all such experts and consultants retained by us to work in a cooperative effort to resolve issues. We agree that any such experts or consultants shall not be required to testify if the Collaborative Process fails and our case proceeds in court, and that they would be disqualified from participation in any such court proceedings. We agree that hiring any such expert or consultant shall be done in a written agreement in which the expert or consultant confirms her/his acceptance of the applicable terms of this Agreement.

9. Other Legal Opinions

a. Consultation for Limited Purpose. During the Collaborative Law Process, either of us may consult another attorney (a “Consulting Attorney”) who is not participating in the Collaborative Process.

b. Disclosure of Consultations. If either of us wishes to obtain the opinion of a Consulting Attorney during the Collaborative Law Process, we shall disclose the identity of any such lawyer before our consultation with the lawyer.

c. Confidentiality and Privilege. Either of us may provide a Consulting Attorney the information necessary for her/him to give us informed advice, including reports of consultants whose services have been engaged in the Collaborative Law Process, but such information shall be subject to the same confidentiality as provided for in this Agreement. We agree that the substance of our communications with a Consulting Attorney is entitled to attorney-client privilege and is not required to be disclosed in the Collaborative Law Process.

d. Disqualification. We agree that any Consulting Attorney shall be disqualified from representing either of us in litigation regarding this matter.

10. Confidentiality

a. Nondisclosure. Neither we nor our lawyers shall disclose any communications, whether oral or written, made by either of us, our attorneys, coaches, or any experts in connection with the Collaborative Law Process (“Confidential Communications”), except where disclosure is required by law or court rule or agreed to in writing by the participants in this process.

b. Inadmissibility. If subsequent litigation occurs, we agree that (a) neither of us shall offer as evidence any Confidential Communications; (b) neither of us shall offer as evidence the testimony of any professional who participated in the Collaborative Process, nor shall we subpoena any such professional to testify in connection with this matter; and (c) neither of us shall subpoena the production at any court proceedings of

any notes, records, documents, or other work product in the possession of each other or our professionals. We further agree that all Confidential Communications are without prejudice, and shall be treated as a compromise negotiation for the purposes of the rules of evidence and other relevant provisions of state and federal law. We each agree that if either of us seeks to compel testimony of a professional or the disclosure of the professional's files in violation of this Agreement, that person shall indemnify the professional for all consequential costs, including hourly compensation for the professional's time spent to oppose the violation of this provision, or, if ordered to testify, hourly compensation for the professional's time and expenses.

c. Independently Obtained Information. Although Confidential Communications shall be inadmissible in the event of litigation, information which is independently obtained by either of us outside the Collaborative Law Process shall not be rendered inadmissible by the communication of that information in the Collaborative Law Process.

d. Exceptions.

i. The confidentiality provided for in this Agreement also shall not apply to (a) information concerning child abuse or neglect, elder abuse or neglect, the risk of serious harm to an individual, or the planned commission of a crime; (b) evidence relating to the liability of the attorneys or other professionals in the Collaborative Law Process in a subsequent suit against them or disciplinary proceedings against them; (c) information that all parties to the Collaborative Law Process agree in writing, after the conclusion of the case, may be disclosed; and (d) information about payment and payment arrangements for the Collaborative Law engagement.

ii. Notwithstanding the confidentiality provided for in this Agreement, we agree that this Agreement may be presented to any court of competent jurisdiction for purposes of enforcement.

iii. We may disclose information about our negotiations to our respective family members, financial advisors or counselors, provided however that all such individuals shall be informed by the person providing them with the information that it is confidential and governed by the terms of this Agreement.

e. Research and Training. We agree that information about our case may be used for research, education, or training (or any combination of these), but only if information that might identify us has been removed.

11. Cautions

a. No Guarantee of Success. We understand that there is no guarantee that the Collaborative Process will be successful in resolving our case. We understand that the Process cannot eliminate the tensions inherent in the divorce process. We understand that

we are each expected to assert our own interests, needs, and goals, and that our respective attorneys will help each of us to do so.

b. Advantages and Disadvantages. We understand that there are advantages as well as disadvantages to the Collaborative Law Process.

i. Among the disadvantages of the Process are that (a) if the Process breaks down and litigation ensues, we will likely incur additional expense because of the need to hire new counsel; (b) by agreeing not to go to court, we cannot use formal discovery procedures and therefore must trust in each other's good faith in exchanging pertinent documents and information; and (c) without the ability to use the authority of the court to prevent the transfer or dissipation of marital assets, we must trust in each other's compliance with this Agreement regarding those assets.

ii. Among the advantages of the Process are that (a) our privacy will be protected; (b) we will be represented by counsel throughout the Process; (c) we will not use the threat of litigation as a way to force settlement; and (d) we will be supported by a coach and other neutral professionals, as needed.

c. Informed Consent. We acknowledge that our respective attorneys have explained to us the process alternatives besides Collaborative Law, such as mediation, arbitration, litigation, and case evaluation.

12. Duration of Obligations

The provisions of this Agreement relating to the confidentiality of communications and disqualification of attorneys, coaches, and experts shall remain in effect even after the termination of this Agreement.

13. Dispute Resolution

Any dispute arising out of or relating to this Agreement shall be resolved in accordance with following procedures.

a. Cooling-Off Period. We agree to give each other no less than 30 days' notice before filing any complaint, motion, or petition in court, in order to provide a "cooling-off" period that will enable us to re-assess whether court involvement is needed. During this "cooling-off period" we shall make a good faith effort to resolve the matter through mediation.

b. Mediation. Before filing any complaint, motion, or petition in court, we shall attempt to resolve the dispute with a mutually agreeable mediator or, failing agreement on the selection of the mediator, with a mediator appointed by the president of the Massachusetts Council on Family Mediation. Either of us may terminate the mediation if no agreement has been reached after *[three]* hours of mediation. We shall each pay 50% of the mediator's fee.

c. Emergency Circumstances. Either of us may forego the procedures set forth in this Section of the Agreement and proceed directly to court for relief if, because of emergency circumstances, delay would unfairly and unreasonably prejudice our children or the Party seeking relief.

14. Execution of Agreement

We each hereby acknowledge that (a) we have read this Agreement and have had the opportunity to discuss it fully with our respective counsel, (b) we understand and have been fully informed about the Collaborative Law Process, and (c) we are signing this Agreement knowingly and voluntarily. We acknowledge that our respective attorneys have inquired as to whether there has been any history of coercion, abuse, or domestic violence in our relationship, and that we have provided our counsel with accurate information in that regard.

15. Severability of Provisions

If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalidity shall not affect the validity of the remainder of the Agreement, and the remaining provisions shall continue in full force and effect.

16. Modification

The rights and obligations created by this Agreement shall not be altered or modified except by an agreement signed by both of us.

17. Strict Performance

The failure of either of us to insist upon the strict performance of any of the provisions of this Agreement shall not (a) be construed as a waiver of such provision(s), which shall continue in full force and effect, or (b) diminish the validity or enforceability of the other terms of this Agreement.

18. Massachusetts Law to Govern

This Agreement shall be construed and governed according to the laws of the Commonwealth of Massachusetts.

19. Captions

All section headings in this Agreement are for the reader's convenience only and shall not be construed or interpreted as part of the Agreement.

20. Construction

This Agreement is the product of the joint efforts of both of our attorneys and therefore any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

21. Copies

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original instrument.

22. Effective Date

This Agreement shall become effective on the date when both of us have signed it.

[Pat Smith]

[Chris Jones]

Date: _____

Date: _____

We, the undersigned counsel, confirm that we will represent our respective clients in the Collaborative Process described in this Agreement.

[Name of Attorney]
Attorney for [Pat Smith]

[Name of Attorney]
Attorney for [Chris Jones]

Date: _____

Date: _____

We, the undersigned coach, experts, and/or consultants confirm that we will provide the Parties with services in a manner consistent with the provisions of this Agreement.

[Name]

Date

[Name]

Date

[Name]

Date

[Smith – Jones] Collaborative Law Participation Agreement

____ [PS]
____ [CJ]