

Collaborative Practice Lawyer's Participation Agreement

(If Children are included, include 5)

BETWEEN:

Spouse 1

AND

Spouse 2

(“the Parties”)

AND THEIR LAWYERS:

Bev Churchill, KC

AND

Lawyer 2

(the “Lawyers”)

The Parties and the Lawyers have chosen to enter into this Agreement to use the principles of the Collaborative Process to settle the issues arising from their separation.

1. Purpose

The primary goal of the Collaborative Process is to settle the outstanding issues in a non-adversarial manner. The Parties aim to avoid the negative economic, social and emotional consequences of litigation to themselves and their family. The Parties have retained Collaborative lawyers to assist them in reaching this goal.

2. Commencement of Collaborative Process

The Collaborative Process begins with the first of the following:

- a. Signing of the Coach's Participation Agreement, or
- b. Signing of the Lawyer's Participation Agreement.

3. End of the Collaborative Process

The Collaborative Process ends when the first of the following events occurs:

- a. **Final Separation Agreement:** the Parties sign (before witnesses) a final separation agreement;
- b. **Termination of Process by Lawyer or Client:** a party or lawyer terminates the Collaborative Process by delivery of a Notice of Termination in the form of **Schedule A** to this Agreement (the “Notice of Termination”) (see paragraphs 13 and 16);
- c. **Withdrawal of Lawyer:** a Lawyer delivers a Notice of Lawyer Withdrawal in the form of **Schedule C** (the “Notice of Withdrawal”), or a Party delivers a Notice to Retain a New Lawyer in the form of **Schedule B** (the “Notice to Retain”), to this Agreement, and the lawyer is not replaced within 30 days (see paragraphs 14 and 15); or
- d. **Commencing Contested Court Proceedings:** a party commences a contested court proceeding except in accordance with paragraph 11 of this Agreement.

4. Communication

The Parties intend to communicate effectively with each other to efficiently and economically settle the issues arising from their separation. Written and verbal communications will be respectful and constructive.

It is agreed that communication during settlement meetings will be focused on the economic and parenting issues 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 lawyer about, and may discuss with each other, the litigation alternatives and possible outcomes in court, neither Party nor the Lawyers will use the threat to withdraw from the process or to go to court as a means of achieving a desired outcome or forcing a settlement.

5. Children’s Issues

In resolving issues about sharing the enjoyment of and responsibility for any children, the Parties understand the obligation imposed on them pursuant to section 37 of the *Family Law Act* and agree to make every effort to reach amicable solutions that consider only the children’s best interests. The Parties agree to act quickly to resolve differences related to the children to promote a caring, loving and involved relationship between the children and both parents. The Parties acknowledge that inappropriate communications regarding their separation can be harmful to their children. They agree that settlement issues will not be discussed in the presence of their children, or that communication with the children

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

6. 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 them and seek to have them corrected.

7. Disclosure of Information/Negotiation in Good Faith

The Parties and the Lawyers agree to deal with each other in good faith. The Parties agree that during the Collaborative Process they shall fully disclose all assets, liabilities, and income information. They shall promptly provide all necessary and reasonable financial and other information and documents requested of them and promptly update information that has materially changed at any time during the process. No formal discovery procedures will be used unless specifically agreed to in advance by 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 all these measures with the specific understanding that both Parties make full and fair disclosure of all assets, income, debts and other information. The Parties acknowledge that participation in the Collaborative Process, and the settlement reached, is 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.

8. Cautions and Limitations

In choosing the Collaborative 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. While the Lawyers will strive to help the Parties to reach a cooperative solution, success will ultimately depend on the Parties' commitment to making the process work. The Parties understand that they are still 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.

9. Experts and Consultants

When an expert is needed, the Parties will use only neutral experts. This includes, but is not limited to, business valuers, appraisers, and any other experts (the "Expert"). The

Parties will agree in advance of retaining the Expert as to how the costs of the Expert will be paid. The Expert report shall be covered by the confidentiality clause of the Participation Agreement and shall **not** be used in any subsequent litigation (unless the Parties and the Expert agree otherwise, which agreement needs to be in writing). This includes all Expert reports that were commenced during the Collaborative Process, including those reports commenced during the Collaborative Process and completed after the Collaborative Process ends.

Neither party will bring on an application to compel production of any Expert report commenced in the Collaborative Process.

10. Divorce Coaches, Child Specialists, and Financial Planners

When appropriate and as needed, the Parties will use the services of one or more of the following professionals: Divorce Coaches, Child Specialists, and Financial Neutral (collectively referred to as “the Collaborative Professional”). When a Collaborative Professional is engaged, the Parties agree that the Collaborative Professionals and the Lawyers may engage in discussions necessary for resolution of the case including discussion of information provided by the Parties, except for information a party has specifically requested not to be disclosed in such discussions. In the event that the Collaborative Process comes to an end, the Confidentiality provisions as set out in Paragraph 19 of this Agreement apply to the Collaborative Professionals.

11. No Court Intervention

While the Parties are in the Collaborative Process, no Notice of Family Claim will be filed or served, nor will any other motion or document be prepared or filed which would initiate court intervention against the other spouse, except as follows:

BY AGREEMENT IN WRITING, the Parties and Lawyers may commence legal proceedings, in the following circumstances:

- a. To apply for an uncontested divorce;
- b. To apply to have certain terms of the settlement included in a Consent Order;
- c. To file the Separation Agreement with the court for purposes of enforcement; or
- d. For any other reason;

PROVIDED THAT the Lawyers will never commence for, or represent, his or her client in any contested legal claim or application against the other spouse NOTWITHSTANDING AGREEMENT OF THE PARTIES AND/OR LAWYERS.

12. Disqualification by Court Intervention

The Parties understand that their Collaborative Lawyers' representation is limited to providing services within the Collaborative Process. 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 or firm, will be disqualified from representing him or her in a **contested court proceeding** against the other spouse.

13. Termination of the Collaborative Process – by Party

If a Party wants to terminate the Collaborative Process, the Collaborative Process is terminated upon the Party delivering a Notice of Termination to the other Party and to the Lawyers in the form of **Schedule A** to this Agreement

14. Notice of Intention to Retain a New Collaborative Lawyer – by Party

A Party may replace his or her Lawyer in the Collaborative Process with another Collaborative lawyer, subject to the following terms:

- a. The Party will deliver a Notice to Retain to the other Party and the Lawyers in the form of **Schedule B** to this Agreement;
- b. Unless otherwise agreed in writing, the new lawyer must sign a new Collaborative Practice Lawyer's Participation Agreement within 30 days of delivery of the Notice to Retain;
- c. If a new Lawyer's Participation Agreement is not signed within 30 days of delivery of the Notice to Retain, then the Collaborative Process is terminated as of the 31st day after the delivery date of the Notice to Retain.

15. Notice of Withdrawal – by Lawyer

If either lawyer withdraws from the case, the lawyer will file a Notice of Withdrawal (**Schedule C**) and deliver it to the Parties and the other 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 with a new lawyer and will give prompt written notice of this intention to the other Party and the Lawyers.

The new lawyer will sign a new Collaborative Practice Lawyer's Participation Agreement within 30 days of delivery of the Notice of Withdrawal. Unless agreed otherwise, if a new Agreement is not signed within 30 days of delivery of the Notice of Withdrawal, then the other party shall be entitled to proceed as if the Collaborative Process ended as of the 31st day after the date of delivery of the Notice of Withdrawal.

16. Termination of Collaborative Process – by Lawyer

A Collaborative Lawyer must terminate the Collaborative Process in the event he or she learns that his or her client has withheld or misrepresented material 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 Collaborative Process is terminated upon the Lawyer delivering a Notice of Termination to the Parties and to the other Lawyer in the form of **Schedule A** to this Agreement

If a Notice of Termination of the Collaborative Process has been delivered by one of the Lawyers, the Collaborative Process may not continue under any circumstances

17. Delivery of Notices and Effective Date

The Notice of Termination, the Notice to Retain, and the Notice of Withdrawal will be delivered to the Parties and the Lawyers by emailing it to the email addresses included on the signature page of this Agreement or if no email addresses are included, by mailing it to the Parties and the Lawyers. Each Notice is effective on the date that it was received by the other Party and the Lawyers.

18. Mandatory Waiting Period

Except in the case of an emergency, neither party may set a court date or hearing date, within 30 days of delivery of:

- a. a Notice of Termination;
- b. a Notice to Retain where a lawyer has not signed a new Collaborative Practice Lawyer's Participation Agreement within 30 days of delivery of the Notice to Retain;
or
- c. a Notice of Withdrawal where a lawyer has not signed a new Collaborative Practice Lawyer's Participation Agreement within 30 days of delivery of the Notice of Withdrawal.

This 30 day waiting period is to allow the Parties to obtain new lawyers. The intent of this provision is to avoid surprise and prejudice to the rights of the other Party. It is therefore mutually agreed that either Party may bring this provision to the attention of the Court to request a postponement of a hearing.

19. Confidentiality

- I. Except as set out in subparagraphs (I) and (III) below, all communications exchanged or documents generated during the Collaborative Process will be confidential and without prejudice. If subsequent litigation, arbitration or other process for dispute resolution occurs ("Any Proceeding"), the Parties agree that:

- a. neither Party will introduce as evidence in Any Proceeding, information disclosed during the Collaborative Process for the purpose of reaching a settlement;
 - b. neither Party will introduce as evidence in Any Proceeding the verbal agreements, concessions or statements of any kind whatsoever which may have been made during the Collaborative Process;
 - c. neither Party will introduce as evidence in Any Proceeding information disclosed during the Collaborative Process with respect to either Party's behavior or legal position with respect to settlement;
 - d. neither Party will ask or subpoena either lawyer or any of the Collaborative Professionals to Any Proceeding to testify in Any Proceeding, nor bring on an application to discover either lawyer or any of the Collaborative Professionals, with regard to matters disclosed during the Collaborative Process or anything relating to the Collaborative Process.
 - e. neither Party will require the production at Any Proceeding of any notes, records, or documents in the lawyer's possession or in the possession of one of the Collaborative Professionals;
 - f. the Collaborative Lawyers may provide copies of the documents listed in subparagraph (II) to the Party's new lawyer, but must not provide the new lawyer with copies of any other communications or documents generated within the Collaborative Process (commencing with the signing of the Lawyer's Collaborative Participation Agreement or the signing of the Coaching Collaborative Participation Agreement, whichever is signed first);
- II. The following documents and information are not confidential, even though they may be generated or exchanged within the Collaborative Process. In the event of Any Proceeding, these documents may be provided to a Party's new lawyer for use in such proceeding:
- a. Institutional or third party documents that either Party would be required to disclose to the other Party in litigation pursuant to any applicable legislation or court rules such as bank statements, income tax returns etc.;
 - b. Sworn financial statements made by the Parties during the Collaborative Process;
 - c. Interim or final agreements signed by the Parties and witnessed in the Collaborative Process, unless the agreement specifically provides that it shall remain confidential; and
 - d. The Collaborative Practice Participation Agreement;

- III. In the event that a Party or Collaborative Professional is obligated by law to report to the Ministry of Children and Family Development information arising out of the Collaborative Process which gives the Party or Collaborative Professional reasonable grounds to believe that a child is or may be in need of protection, the Party or Collaborative Professional must report the information which they are legally bound to report in relation to the child protection concern, but the confidentiality provisions above shall continue to apply to all other information or communications generated in or arising out of the Collaborative Process (such as settlement positions etc.).

20. Rights and Obligations Pending Settlement

While the Parties are in the Collaborative Process neither party will unilaterally

- a. dispose of assets;
- b. change a beneficiary designation in a will, life insurance policy, pension, RRSP or other investment;
- c. alter any other provisions in insurance policies, pensions or other investments, or health plans (medical, dental or extended health);
- d. move the residence of the children;
- e. sever any joint tenancy on property held with the other party; or
- f. incur additional debts for which the other party may be responsible.

21. Enforceability of Agreements

Any written and witnessed agreement made during the Collaborative Process is enforceable during and after the end of the Collaborative Process. Verbal agreements, concessions or statements of any kind which may be made during the Collaborative Process are unenforceable, confidential and without prejudice.

22. Suspension of Limitation Period

The Parties acknowledge that:

- a. The *Family Law Act* requires that a party must start a proceeding for an order to divide family property, debt or a pension, or for an order for spousal support, no later than 2 years after a divorce order (or an order declaring the marriage to be a nullity) is granted or 2 years after the date of separation (for Parties living in a marriage-like relationship).

- b. Under s. 198(5) of the *Family Law Act*, the limitation period set out in subparagraph a. is suspended from the beginning of the Collaborative Process through to the end of the Collaborative Process. When the Collaborative Process ends, the running of the limitation period recommences.

23. Acknowledgement

Both Parties and their Lawyers acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them. The Parties have chosen the Collaborative Process to reduce emotional and financial costs, and to generate a final agreement that addresses the issues arising out of the separation. They agree to work in good faith to achieve these goals.

Dated: _____

Dated: _____

Spouse 1	Spouse 2
Address:	Address:
Email Address:	Email Address:

Lawyer: Bev Churchill, KC	Lawyer:
Address:	Address:
Email Address:	Email Address:

Schedule A

NOTICE OF TERMINATION

IN THE MATTER OF THE

Collaborative Practice Lawyer’s Participation Agreement

BETWEEN:

Spouse 1

AND

Spouse 2

(“the Parties”)

AND THEIR LAWYERS:

Lawyer 1

AND

Lawyer 2

(the “Lawyers”)

I, _____, (***name of Party or Lawyer***) of Vancouver, British Columbia, give notice to:

- a) _____ Spouse 1
- b) _____ Spouse 2
- c) _____ Lawyer 1
- d) _____ Lawyer 2

(include three of these, other than yourself)

that I am terminating the Collaborative Process.

(name of Party or Lawyer)

Date

This **NOTICE OF TERMINATION** must be emailed or mailed to the Parties and the Lawyers to **Collaborative Practice Lawyer’s Participation Agreement**. If this **NOTICE OF TERMINATION** is filed by one of the Lawyers, the Collaborative Process **must** not continue.

Schedule B

NOTICE OF INTENTION TO RETAIN A NEW COLLABORATIVE LAWYER

IN THE MATTER OF THE

Collaborative Practice Lawyer’s Participation Agreement

BETWEEN:

Spouse 1

AND

Spouse 2

(“the Parties”)

AND THEIR LAWYERS:

Lawyer 1

AND

Lawyer 2

(the “Lawyers”)

I, _____, (*name of Party*) of _____, British Columbia, give notice to:

- a) _____ Spouse 1
- b) _____ Spouse 2
- c) _____ Lawyer 1
- d) _____ Lawyer 2

(include three of these, other than yourself)

that I am terminating my Lawyer, namely _____ and replacing him or her with a new collaborative lawyer. I acknowledge that if my new collaborative lawyer has not signed a Collaborative Practice Lawyer’s Participation Agreement within 30 days of delivery of this Notice, then the other Party may proceed as if the Collaborative Process was terminated as of the 31st day after delivery of the Notice.

_____ (*name of Party*)

Date _____

This **NOTICE OF INTENTION** must be emailed or mailed to the Parties and the Lawyers to
Collaborative Practice Lawyer’s Participation Agreement

Schedule C

NOTICE OF LAWYER WITHDRAWAL

IN THE MATTER OF THE

Collaborative Practice Lawyer’s Participation Agreement

BETWEEN:

Spouse 1

AND

Spouse 2

(“the Parties”)

AND THEIR LAWYERS:

Lawyer 1

AND

Lawyer 2

(the “Lawyers”)

I, _____, (***name of LAWYER***) of _____, British Columbia, give notice to:

- a) _____ Spouse 1
- b) _____ Spouse 2
- c) _____ Lawyer 1
- d) _____ Lawyer 2

(include three of these, other than yourself)

that I am withdrawing from the Collaborative Process, but my client _____, reserves the right to hire a new collaborative lawyer, and if he or she elects to do so, the new collaborative lawyer will execute a new Collaborative Practice Lawyer’s Participation Agreement within 30 days of the delivery of this Notice of Withdrawal. If a new lawyer has not executed a new Collaborative Participation Agreement within 30 days of delivery of this Notice, then the other Party will be entitled to proceed as if the Collaborative Process was terminated as of the 31st day after delivery of the notice.

_____ (***name of Lawyer***)

_____ Date

This **NOTICE OF WITHDRAWAL** must be emailed or mailed to the Parties and the Lawyers to
Collaborative Practice Lawyer’s Participation Agreement