Collaborative Mediation Participation Agreement

This agreement is entered into between \_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_ (the Parties), Stephen Sulmeyer and Jude Sterling (the Mediators), and \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_ (the Lawyers), as well as any other undersigned Collaborative Professionals. Together the Parties, Lawyers, Mediators, and other Collaborative Professionals are referred to as the Participants. The Parties have chosen to enter into this Agreement to use Collaborative Mediation principles to settle the issues arising from the dissolution of their relationship.

I. Purpose

The primary goal of this process is to settle the outstanding issues in a non-adversarial manner. 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 a Mediator (or two co-mediators) and Collaborative Lawyers to assist them in reaching this goal.

**II. Mediation Process**

The primary role of the Mediator is to work with the parties to assist them in coming to agreement on the various issues involved in their case. He or she works with the parties to facilitate dialogue, assist the parties in identifying issues between them, reduce obstacles to communication, maximize the exploration of alternatives, and clarify points of agreement.

The Mediator will be impartial as to each party and neutral as to the results of the mediation. He or she has an obligation to work on behalf of each party equally. He or she is not serving as an attorney or advocate for either party, will not offer legal advice or provide legal counsel, or decide disputed issues for the parties.

The primary role of the Lawyers is to advise the parties and prepare any needed legal documents. The Lawyers are not impartial but rather each Lawyer works specifically for one Party. The Lawyers will, however, work as part of the Collaborative Team to assist the Parties in coming to agreements. The Parties may meet with the Mediator without the Lawyers present, or with one or both Lawyers present, as the parties may agree. If one party is going to have his/her Lawyer present, the other party shall be notified in advance so that he/she can decide whether to have his/her Lawyer present as well.

Other Collaborative Professionals may be jointly hired by the parties by agreement to assist with financial analysis, asset appraisal, child issues, or other matters requiring specialized expertise, so that the parties can ensure they are fully informed.

It is expected that the Parties collaborative lawyers will play a role in the mediation process. Whether the lawyers simply review any agreement at the end of the process, or attend all of the mediation sessions, it is important to remember that in mediation it is the mediator or mediators who drive the process, and not the lawyers. The lawyers job is to advise and counsel the Parties, provide legal information and guidance, and offer support.

**III. Issues**

At the beginning of the Collaborative Mediation process, the Parties and the Mediator will agree to the issues to be discussed. These may include negotiation of property rights, parenting arrangements of minor children, financial arrangements for child support or spousal maintenance, family decisions regarding care of the children, and payment of the expenses of the Collaborative Mediation process.

**IV. Full Disclosure**

The Collaborative Mediation process requires cooperation and trust among all of the individuals involved. Each Party agrees to fully and honestly disclose all property and debts and all documents such as financial statements, income tax records, and all other relevant information and writings requested by the other Party that may be relevant to the Mediation discussions. If such requested information is not disclosed, the requesting Party may choose to not mediate or the mediator may choose to not mediate.

**V. Memorandum of Understanding**

Should the parties reach agreement on all or some of the issues, the Mediator will prepare a Memorandum of Understanding with respect to those issues for consideration by the parties and their respective Lawyers. The Lawyers shall then prepare the final legal documents based on the Memorandum of Understanding, and any issues raised by such drafting, or by either Party after consulting with her or his attorney, shall come back to Mediation for resolution.

VI. Communication

The Parties intend to effectively communicate with each other to efficiently and economically settle the dissolution of their 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 other 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.

The Mediator(s), Lawyers, and other Participants may discuss issues directly with, or circulate written communication to, either Party, and this type of direct communication is authorized and not considered a violation of the ethical codes of the Participants.

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 the process or to go to court as a means of achieving a desired outcome or forcing a settlement.

The Parties further agree that, in order to maintain the integrity of the Collaborative Mediation container, neither will consult with litigating attorneys during the course of the Collaborative Mediation. Any such communication will result in the termination of the Collaborative Mediation.

The Mediator(s) may consult at their discretion with your respective consulting attorneys, with the co-mediator if any, and/or any other mediation-related professionals (e.g., a divorce coach, forensic accountant, parenting consultant) whom you have already hired or are about to hire.

VII. Children's Issues

In resolving issues about sharing the enjoyment of and responsibility for any children, the Parties agree to make every effort to reach amicable solutions that promote the children's best interests.

The Parties agree to act quickly to mediate and 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 dissolution of their relationship 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 to make changes to the residence of the children by first obtaining the written agreement of the other Party.

VIII. Participation with Integrity

Each Participant shall uphold a high standard of integrity, and shall not take advantage of inconsistencies, miscalculations of another, wrong assumptions or omissions that may take place during the Collaborative Mediation process and shall immediately disclose them and seek to have them corrected. The Participants shall uphold the Rules of Good Faith, attached to this agreement.

IX. Negotiation in Good Faith

The Parties and their lawyers agree to deal with each other in good faith and to promptly provide all necessary and reasonable information requested. No formal discovery procedures (information gathering) such as depositions, subpoenas or interrogatories 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 Mediation 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 make full and fair disclosure of all assets, income, debts and other information. The Parties acknowledge that participation in the Collaborative Mediation 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.

X. Cautions and Limitations

In electing the Collaborative Mediation process, the Parties understand that there is no guarantee that the process will be successful in resolving their case. They understand that the process may not eliminate concerns or differences that have led to the current conflict. While intent on striving to reach a cooperative solution, success will ultimately depend on our commitment to making the process work. The Parties understand that they are still expected to assert their respective interests and their respective lawyers will help each of them do so.

The Parties further understand that while the 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 diligently, and is not the lawyer for the other party.

XI. Team Professionals and Experts

When appropriate and needed, the Parties will use Collaborative professional team members and/or experts (e.g., real property and/or business appraisers, etc) who are jointly hired and who will work for both parties. In the event the Collaborative Mediation process terminates, all Collaborative professional team members will be disqualified as witnesses, mediators and advocates, and their work product will not be disclosed to anyone other than the Participants to this Agreement and will not be admissible as evidence unless the parties agree otherwise in writing. For experts, the Parties understand that the experts report shall be covered by the confidentiality clause.

**XII. Professional Fees and Costs**

The parties agree that all professionals employed through the Collaborative Mediation process (Mediator, Lawyers, Financial Specialists, Child Specialists, etc.) are entitled to be paid for their services. Both parties agree to make funds available for this purpose.

XIII. No Court Intervention

Unless otherwise agreed, prior to reaching final agreement on all issues, or before termination of the Collaborative Mediation process, no motion or other court intervention shall be filed other than that which is required to be filed by applicable court rules. Any such unauthorized court filing will result in the immediate termination of the Collaborative Mediation.

XIV. Disqualification by Court Intervention

The Parties understand that their Collaborative Lawyers' representation is limited to providing services within the Collaborative Mediation process. Thus, while each Lawyer is the advisor of his or her client and may serve as the client's representative and negotiator, the Parties mutually acknowledge that both Lawyers will be disqualified from representing them in a contested court proceeding against the other Party.

XV. Withdrawal of Mediator or Lawyer

If the Mediator or either Lawyer withdraws from the case for any reason, the Mediator or Lawyer agrees to do so promptly by a written notice. This may be done without terminating the status of the case as a Collaborative Mediation case. The parties may continue in the Collaborative Mediation process by retaining a new Mediator or Lawyer who will agree in writing to be bound by these guidelines and principles.

However, a Lawyer must withdraw from the Collaborative Mediation process in the event she or he learns that their client has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Mediation process. The Mediator or Lawyer withdrawing will advise the other Participants that he or she is withdrawing, and that the Collaborative Mediation process must end.

XVI. Election to Terminate Collaborative Mediation Process

If a Party decides to terminate the Collaborative Mediation process, prompt written notice will be given to the other Party through his or her Lawyer, as well as all other Participants. Upon termination of the Collaborative Mediation process, 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 lawyers and make an orderly transition. All signed 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. 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.

If at any time a Party, Lawyer, or both, communicate a desire to terminate the Collaborative Mediation process, the Parties, and Lawyers if needed, agree to attend one more session with the Mediator for the purpose of addressing this matter prior to formal termination of the process.

XVII. Confidentiality

All communication used within the Collaborative Mediation process will be confidential except as otherwise provided in this Agreement. If the Collaborative Mediation process terminates neither Party will:

A. Introduce as evidence in Court information used during the Collaborative Mediation process for the purpose of reaching a settlement. This does not include documents existing prior to the Collaborative Mediation process or sworn statements signed under penalty of perjury;

B. Ask or seek to compel any Participant to this agreement to testify in any court proceedings regarding matters disclosed during the Collaborative Mediation process or covered by this agreement; and

C. Disclose to anyone not a Party to this Agreement information used during the Collaborative Mediation process for the purpose of reaching a settlement, except for the documents existing prior to the Collaborative Mediation process that would otherwise be discoverable but for this agreement. This provision is to maintain confidentiality for the Participants.

XVIII. Rights and Obligations Pending Settlement

Unless agreed otherwise in writing:

A. The use or transfer of any assets or income shall be done only by agreement in writing, except for the necessities of life and with prompt notice to all Participants;

B. Each Party will treat the other Party and their minor children with respect;

C. All available insurance coverage must be maintained and continued without change in coverage or beneficiary designation; and

D. Any changes to utilities, accounts of any kind, or credit card accounts will be made only by written agreement.

XIX. Enforceability of Agreements

In the event that the Parties require a temporary agreement during the Collaborative Mediation process, the agreement will be put in writing and signed by the Parties, the Mediator, and the Lawyers. By mutual agreement, such a temporary agreement may be made the subject of a court order. If a temporary agreement has not been put into the form of a court order, and if the Collaborative Mediation process terminates, the written agreement is enforceable and may be presented to the court as a basis for an order, which the Court may 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 Court in any subsequent action. An unsigned agreement would not be enforceable outside the Collaborative Mediation process absent agreement of the Parties.

XX. Acknowledgment

All Participants acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them. The Parties have chosen the Collaborative Mediation process to reduce emotional and financial costs, and to generate a final agreement that addresses their concerns. They agree to work in good faith to achieve these goals.

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Husband | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Wifes Lawyer | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Husbands Lawyer | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Mediator | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Mediator | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Child Specialist, if any | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |

**Rules of Good Faith**

***Please place your initials at the bottom of this page indicating you agree and understand****. We encourage questions about these rules.*

1. We agree to proceed in Good Faith. Good faith means to abide by the rules of common courtesy, keep an open mind, be willing to explore options without holding a fixed position, and share all pertinent information.

2. At all times, in meetings and in-between meetings, we will endeavor to treat each other and our minor children with respect.

3. We will honor the others privacy, including belongings and living space;

4. We agree to convert complaints into neutral requests to the best of our abilities, and to refrain from blaming and negative assumptions based on the past behavior of our partner.

5. We agree to work productively in the here and now keeping everyones future well-being in mind.

6. We agree to share our most important priorities, goals, and concerns, so that they can be considered and addressed. We agree to take the priorities, goals, and concerns of our partner into account.

7. In communications outside of joint sessions, we agree to communicate respectfully, and to honor any requests to defer a discussion to a later time.

8. We agree not to threaten to withdraw from the Collaborative Law Process or to go to court as a means of achieving a desired outcome or forcing a settlement

9. We agree not to take advantage of inconsistencies, miscalculations, wrong assumptions or omissions of the other. Instead, we shall disclose them and seek to have them corrected at the earliest opportunity, and shall instruct our lawyers and the other professionals to do the same.

10. We agree to immediately voice to our own Lawyer any concerns or questions about the Collaborative Law Process.

11. We agree to not destroy any documents or data that could be relevant or important to the other.

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**Authorization and Consent Form**

We hereby authorize each member of the Collaborative Mediation Team (the Participants) to communicate by any means, including e-mail, with all other members of the team during the Collaborative Mediation process. We understand that communication and cooperation among professional team members is an integral part of the Collaborative Mediation process, and that the express goal of such communication is to assist us in understanding and resolving all issues surrounding settlement. This authorization and consent will terminate upon termination of the Collaborative Mediation process.

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Wife Husband

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Collaborative Lawyer for Wife Collaborative Lawyer for Husband

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Mediator Mediator

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Financial Specialist, if any Coach, if any

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Coach, if any Child Specialist, if any