

PARTICIPATION AGREEMENT

(“Agreement”)

The Parties to this Agreement are:

1. **[Party A’s Full Name]** of **[Party A’s Address]** (“**Party A’s First Name**”)
2. **[Party A’s Solicitor]** of **[Address]** (“**Party A’s Solicitor’s Name**”)
3. **[Party B’s Full Name]** of **[Party B’s Address]** (“**Party B’s First Name**”)
4. **[Party B’s Solicitor]** of **[Address]** (“**Party B’s Solicitor’s Name**”)
5. **[Professional 1’s full name]** of **[Address]** (“**Professional 1’s Name**”)
6. **[Professional 2’s full name]** of **[Address]** (“**Professional 2’s Name**”)
7. The Child/ren of **[Party A]** and **[Party B]** and is/are **[Child’s Full Name]**, a **[boy/girl]** born on **[DOB]** (“**Child’s name**” / “**The Children**”).

Our Intentions

1. **[Party A’s Solicitor]** and **[Party B’s Solicitor]** are lawyers trained in Collaborative Practice. **[Professional 1]** and **[Professional 2]** are _____ and _____ respectively, and are also trained in Collaborative Practice.
2. **[Party A’s Solicitor]** and **[Party B’s Solicitor]** are independent of each other and each will represent and advise only their own client.
3. We will not go to Court to resolve **[Party A]**’s and **[Party B]**’s difference(s).
4. We will try to think creatively and constructively to find a fair solution to all

issues without any Court intervention (although we will ask the Hong Kong Court jointly to formalise the agreed arrangements if this is appropriate).

5. Our priority is always **[The Child/ren]**'s well-being, and after that the well-being of **[Party A]** and **[Party B]**.

Discussion in Good Faith

6. Because of this Agreement, we will work together collaboratively as follows ("**Collaborative Process**").

1. make every effort to find joint solutions, through cooperation and compromise, that:
 - (a) promote **[The Child/ren]**'s best interests;
 - (b) affirm **[Party A]**'s and **[Party B]**'s roles as parents; and
 - (c) as far as possible, satisfy **[Party A]** and **[Party B]** as well as **[The Child/ren]**;
2. be courteous and co-operative;
3. be truthful, open and honest, giving all information that may be relevant to the discussions;
4. where appropriate, jointly instruct other professionals (e.g. family consultant, financial neutral, child specialist/parenting coordinator, mediator), retained under this Agreement and include an instruction to work in a co-operative way to:-

(a) promote and support the well-being of **[Party A]** and **[Party B]** and **[The Children]**; and

(b) help resolve **[Party A]**'s and **[Party B]**'s differences(s); and

5. record and sign any joint solution to be put forward to the Court by way of a Consent Summons to be made into a Court Order;

7. Under this Agreement, **[Party A]** and **[Party B]** will:-

7.1 try not to discuss past events which do not help resolve the issues that need to be resolved;

7.2 avoid any inflammatory language, accusations and threats that do not help solve the difference(s);

7.3 not denigrate or criticise the other parent in front of **[The Child/ren]**;

7.4 not involve **[The Child/ren]** in **[Party A]**'s and **[Party B]**'s difference(s);

7.5 promote and support a caring, loving and involved relationship between **[The Child/ren]** and the other parent; and

7.6 disclose and supply to anyone in the Collaborative Process promptly (or within agreed times), without prompting, all relevant information and documents, old or new, and as soon as possible, until the Consent Summons is approved by the Court.

8. **[Party A's Solicitor]**, **[Party B's Solicitor]**, **[Professional 1]** and **[Professional 2]**, will help **[Party A]** and **[Party B]** to identify the information, documents, interest and goals that will help resolve any difference(s) and to

share them with each other.

Confidentiality

9. Except financial or factual disclosure during the Collaborative Process, all discussions either spoken or recorded in any form, are on a “privileged” and “without prejudice” basis, that is:-

9.1 [Party A] and [Party B] agree not to refer to any information from the Collaborative Process, and such information will not be given to any Court, friends, colleagues, family, or anyone else, unless permitted by paragraphs 10, 11, 12, 13, or 19 (insofar as it refers to the withdrawal/ termination of the process only) of this Agreement; and

9.2 such information cannot be used as evidence in any Court proceedings.

10. Any person who signs this Agreement shall keep confidential all information and/or documents provided during the course of this Collaborative Process, save that the Professionals involved in the Collaborative Process may have a legal duty to report certain matters to the relevant authorities if such information discloses an actual or potential injury or threat to human life, or safety, or if a crime has occurred. Where it is [Party A] or [Party B] who has the good reason and evidence of a fact which they believe ought to be reported to the relevant authorities in relation to an actual or potential injury or threat to human life, or safety, or if a crime has occurred, [Party A] or [Party B] must discuss this matter with their respective legal adviser, being [Party A’s Solicitor] or [Party B’s Solicitor], and/or [Professional 1] and [Professional 2].

11. The existence and terms of the settlement agreement reached within the Collaborative Process, once signed by both [Party A] and [Party B], shall become an open document, and may be referred to in any relevant Court proceedings.

12. All the discussions in the Collaborative Process are also “subject to contract”, meaning that all agreements must be in writing and signed by **[Party A]** and **[Party B]**. Any proposal of financial arrangements submitted as part of the Collaborative Process shall be subject to paragraph 9 of this Agreement.
13. **[Party A]** and **[Party B]** agree that anonymised details of the case may be used by the professionals involved in the Collaborative Process, as members of the Hong Kong Collaborative Practice Group, for research, education, training or in any relevant publication (or any combination of these).
14. Anyone who signed this Agreement agree that they shall not at any time, before, during or after the Collaborative Process, call the other, **[Party A’s Solicitor]**, **[Party B’s Solicitor]**, **[Professional 1]** and **[Professional 2]**, any other professionals, or anyone else engaged (for a fee or not) in the Collaborative Process as a witness, subpoena them, demand any of them to disclose any of the documents and/or information produced in the Collaborative Process, or to demand the production of any records, notes, discs or any form of information of any of the said Parties in any legal proceedings.
15. If **[Party A]** or **[Party B]** has previously retained any litigation lawyer(s), **[Party A]** or **[Party B]** shall disclose this information to **[Party A’s Solicitor]** and **[Party B’s Solicitor]** respectively at the beginning of the Collaborative Process. **[Party A]** or **[Party B]** shall not consult any other lawyers regarding their difference(s) during the Collaborative Process but, if they wish to do so then, they shall first disclose their wish to do so to **[Party A’s Solicitor]** and **[Party B’s Solicitor]** respectively.
16. The Parties, namely **[Party A]** and **[Party B]**, agree that each of them shall not subpoena the other Party or any of the professionals involved in the Collaborative Process. Should any of the said Parties default in this regard, that defaulting Party will reimburse the other Party, and any other professionals

involved in the Collaborative Process, for all legal fees and expenses any of them incur in defending any subpoena and/or any application for disclosure and production of information and documents issued by either of the Parties in relation to the Collaborative Process.

Discussing the Financial Settlement

17. Unless **[Party A]** and **[Party B]** agree in writing, whenever **[Party A]** and **[Party B]** discuss issues involved in the Collaborative Process outside of the meetings with **[Party A's Solicitor]** and **[Party B's Solicitor]**, they will inform **[Party A's Solicitor]**, **[Party B's Solicitor]** and **[the Financial or other Neutrals, where relevant]** of such discussions.

Legal and Other Costs [to be deleted as appropriate]

18. (i) **[Party A]** and **[Party B]** agree to set aside a sum of HK\$_____, as a common fund with which to settle fees for any neutral professionals instructed in the Collaborative Process. This common fund will be provided by **[Party A/Party B]**. Such fund will be replenished within 7 days whenever the balance falls to **[HK\$xxx]** or less.

And/Or

- (ii) **[Party A]** and **[Party B]** agree to set aside a sum of HK\$_____, as a common fund with which to settle fees for their respective legal representatives. This common fund will be provided by **[Party A/Party B]**. Such fund will be replenished within 7 days whenever the balance falls to **[HK\$XXX]** or less. The Parties [anticipate that there may be, for whatever reason, an unequal contribution to the common fund and/or an unequal drawdown from the common fund and *accept that there will be no need to reconcile/equalise the funds contributed to/withdrawn in the final settlement*] **OR** [*agree that the unequal contribution/drawdown (as the case may be) will be taken into consideration in the final settlement by a process*

of reconciliation in a percentage to be agreed] OR [agree that the unequal contribution/drawdown (as the case may be) will be taken into consideration in the final settlement in order to give due recognition thereof].

And/Or

- (iii) Unless **[Party A]** and **[Party B]** agree in writing otherwise in these discussions in the Collaborative Process, **[Party A]** and **[Party B]** will each pay their own representative's costs in accordance with the terms of business they have received.

OR

- (iv) Unless **[Party A]** and **[Party B]** agree in writing otherwise in these discussions in the Collaborative Process, **[Party A]** and **[Party B]** will each pay:-

18.1 their own representative's costs in accordance with the terms of business they have received; and

18.2 half the costs of other professionals instructed under paragraph 6.4 of this Agreement.

18.3 If despite the above, **[Party A]** or **[Party B]** does not have the money to pay these costs, the other will, if reasonably possible, provide the money, subject to repayment later or other agreement between the Parties.

Withdrawal from the Process

19. The Agreement can be ended by agreement of **[Party A]** and **[Party B]**, or if **[Party A]** or **[Party B]** withdraws from these discussions under this Agreement at any time. However, the procedures are:

- 19.1 [Party A] must first discuss with [Party A's Solicitor], and [Party B] must first discuss with [Party B's Solicitor].
- 19.2 Any withdrawal must be in writing by [Party A] to [Party A's Solicitor] or [Party B] to [Party B's Solicitor]. When [Party A's Solicitor] or [Party B's Solicitor] receives such written notice, they must inform the other Party's Solicitor in writing respectively as soon as possible.
- 19.3 Despite any such discussions and the receipt of the written notice of withdrawal by [Party A's Solicitor] or [Party B's Solicitor], there must be a cooling-off period of 21 calendar days from (but excluding) the day of the receipt of the written notice of withdrawal between the Parties' Solicitors, where [Party A's Solicitor] and [Party B's Solicitor] will try to rescue the discussions under this Agreement, and neither [Party A] nor [Party B] may start Court proceedings within these said 21 days of that cooling period.
- 19.4 There will be no written notice of withdrawal required to withdraw from the Collaborative Process and no cooling-off period if the good reasons and evidence in paragraph 10 of the Agreement above exist, or if an emergency application needs to be made.
20. If any Court in Hong Kong or elsewhere is involved in the family break-up except to process the divorce or to make a Consent Order:-
- 20.1 Clauses 9 to 16 of this Agreement will still continue to apply; re: Confidentiality;
- 20.2 [Party A]'s and [Party B]'s instructions to [Party A's Solicitor] and [Party B's Solicitor] respectively will immediately lapse;
- 20.3 [Party A] and [Party B] will promptly place themselves on the Court

record, unless they instruct new lawyers to do so;

20.4 **[Party A's Solicitor]** and **[Party B's Solicitor]** will, on request:-

- (a) give their respective former clients the completed document needed to put that client on the Court record, which that client will file at Court immediately;
- (b) help their respective former clients and any new advisers that they appoint (whether or not they are instructed to act under a collaborative agreement) by providing copies of the papers that represent the financial disclosure in the case, which will be treated as open; and
- (c) for the avoidance of doubt, any expert's report will not form part of the disclosure, which is open unless there is agreement in writing to the contrary reached at the time the report was commissioned or subsequently at the end of the Collaborative Process, between the Parties or their representatives; and
- (d) and **[Party A's Solicitor]** and **[Party B's Solicitor]** will be entitled to charge for work related to paragraph 21.4(a) and (b) above; but

20.5 neither **[Party A's Solicitor]** nor **[Party B's Solicitor]**, nor other members of their Firms may be involved (as lawyers or witnesses) in any Court proceeding between **[Party A]** and **[Party B]**;

20.6 neither **[Party A]** nor **[Party B]** nor anyone on their behalf will:-

- (a) use in evidence **[Party A's Solicitor]**'s or **[Party B's Solicitor]**'s notes, or the notes of any other professional involved in the Collaborative Process, except to the extent that they record

relevant financial and factual disclosure, in accordance with paragraph 9 of the Agreement;

(b) call [**Party A's Solicitor**] or [**Party B's Solicitor**] to give evidence in any Court anywhere;

(c) refer a Judge to the discussions conducted under this Agreement.

21. [**Party A's Solicitor**], [**Party B's Solicitor**], [**Professional 1**] and [**Professional 2**] will withdraw from this Agreement if:-

21.1 their rules of professional conduct require it; or

21.2 they learn that their client has acted (or is about to act) in breach of this Agreement, but the professionals in the Collaborative Process may agree to continue if their client puts the matter right or refrains from the act.

Agreements

22. Any agreement reached in the Collaborative Process will only become binding when [**Party A**] and/or [**Party B**] have signed the Consent Summons.

Applicable Law

23. The laws of Hong Kong Special Administrative Region govern this Agreement.

Signed by [**Party A**]

Signed by [**Party B**]

Signed by [**Party A's Solicitor**]

Signed by [**Party B's Solicitor**]

Signed by [**Professional 1**]

Signed by [**Professional 2**]

Dated: 2021