

# COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT

Clients: \_\_\_\_\_

## 1. Choosing Collaborative Process.

We choose the collaborative process to resolve the issues arising from our marriage. In doing so, we agree to be respectful in our negotiations and to work together to privately achieve a mutually beneficial resolution. We realize that we are responsible for the decisions we make. We understand that ending our marriage takes place on legal, financial and emotional levels. We recognize that achieving our goals may require the assistance of professionals other than our attorneys.

By choosing the collaborative process, we commit ourselves to resolving this matter without adversarial court involvement. We do not waive the right to seek the assistance of the court, but for so long as this Agreement is in effect we agree to devote all of our efforts to reach a negotiated settlement in an efficient, cooperative manner according to the terms of this Agreement.

## 2. Guidelines for Participation.

- a. We will work with each other in good faith with a sincere intention to be fair, open, and honest, regardless of the outcome of the interaction.
- b. Written and verbal communication will be respectful and constructive.
- c. We will express what is important to us and why, and seek to understand what's important to the other.
- d. We will acknowledge and attempt to understand the other's point of view, even if we do not agree with it.
- e. We will develop an array of options for settlement and use our best efforts to negotiate a mutually beneficial agreement.
- e. 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.
- g. We will not take advantage of any mistakes, misunderstandings, inconsistencies or miscalculations of each other or any other participant, and shall disclose them and seek to have them corrected.
- h. We will agree in advance as to how the costs of this process will be paid, including attorney fees and the fees of any professionals engaged as part of this collaborative process, and make funds available for this purpose.

## 3. Collaborative Attorneys.

- a. We have each chosen an attorney to represent us in the collaborative process. We understand that we are hiring our collaborative attorneys to assist us in settlement negotiations, and that our collaborative attorney's representation is limited to the collaborative process.
- b. I have signed a retainer agreement with my collaborative attorney limiting my attorney's representation and that of his/her firm to non-litigation matters, except to file the final court documents that reflect our collaborative settlement agreement.
- c. We understand that while the attorneys share a commitment to the collaborative process and the well-being of our family, each attorney has a professional duty to represent their own client diligently and is not the attorney for the other.

4. **Exchange of Information/Communication.**
  - a. We agree to exchange and provide to the attorneys, on an ongoing basis, all information which may affect any choices or decisions either of us may make in this process.
  - b. We will decide together how to collect and exchange all information and documentation regarding our family, including our respective incomes, assets, and debts.
  - c. We acknowledge that each of us has the right to request any additional information that we feel like we need at any time in order to be fully informed.
  - c. When other professionals are engaged, we consent to the exchange of information between our collaborative attorneys and other professionals. We understand that it will be necessary for our collaborative attorneys and the other professionals to communicate in order to coordinate efforts on our behalf and we consent to that communication.
  
5. **Withdrawal of Party or Attorney from the Collaborative Process.**
  - a. We may decide to engage in a different process together or separately. If either of us at anytime decides to engage in a different process without the agreement of the other, we will provide timely notice to the other and to our own attorney. Our collaborative attorneys may help us transition to another process.
  - b. If either of us ends our professional relationship with our collaborative attorney, but wishes to continue with the collaborative process, we will provided written notice of this intention. The new collaborative attorney will sign a new Participation Agreement within 30 days of the date of the 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 notice was given.
  
6. **Termination of the Collaborative Process - Abuse of the Process.**
  - a. We agree that our collaborative attorney(s) must terminate the collaborative process if his/her client has withheld or misrepresented important information and continues to do so.
  - b. We agree that our collaborative attorney(s) may withdraw from the collaborative process and may recommend termination of the process if either of us persistently refuses to honor agreements, delays without reason, or otherwise acts contrary to the principles of the collaborative process.
  
7. **Admissibility.** All communication and information exchanged within the collaborative process is confidential. If subsequent litigation occurs, we agree that:
  - a. We will not introduce as evidence in court any written or oral information or documents prepared or disclosed during the collaborative process, including e-mails, voice mails, letters, progress notes, session notes, meeting minutes, budgets and projections, and proposals for settlement, unless we both consent in writing or the documents are otherwise discoverable. (Under legal rules discoverable material is considered to be reasonably calculated to lead to admissible evidence in court.)
  - b. We will not introduce as evidence in court nor require the production of any reports, opinions or notes of any professional prepared in the collaborative process, unless we both consent in writing.
  - c. We will not compel either attorney or any other professional retained in the collaborative process to attend court to testify or attend for examination under oath in connection with this matter; nor will we will subpoena the production at any court proceedings of any notes, records, or documents in the attorney's possession or in the possession of any other professional retained in the collaborative process.
  - d. We agree that any temporary or partial agreement may be introduced into evidence in court as a basis for a temporary order only if we agree in writing.

8. **Responsibilities Pending Settlement.** During the collaborative process, unless agreed otherwise in writing, we will:
- a. Maintain assets and property, except for those transactions necessary in the normal course of business (i.e. paying bills and living expenses)
  - b. Maintain all existing insurance policies without change in coverage or beneficiary designations.
  - c. Maintain all existing health and dental insurance coverage.
  - d. Refrain from incurring any debts for which the other may be held responsible.
  - e. Honor the other's privacy, including belongings and living space.
  - f. Maintain the ordinary schedule and routine of the children, including where the children reside and where they attend school or childcare. Any changes to the schedule or routine will only be made with joint agreement.
9. **Cautions About the Process.** We understand that there are advantages as well as disadvantages to the collaborative process. I have taken into consideration the following cautions before agreeing to participate in the collaborative process:
- a. Collaborative negotiation and the ability to reach agreement depends on our good faith participation and the skill of our team.
  - b. We must be able to participate in face-to-face meetings, communicate our needs and concerns honestly and openly, listen to the advice of our counsel, and consider the needs of our partner or spouse.
  - e. By agreeing not to go to court, we cannot use formal discovery procedures and therefore must trust in each other's good faith about exchanging relevant documents and information.
  - f. 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 honesty with regard to those assets.
  - g. By agreeing not to go to court, there are no temporary court orders. Temporary arrangements are made by agreement, including agreements about parenting, and making funds available for paying bills and living expenses.
  - h. I may reach a point where I feel that there is no choice but to settle because of the investment we have made in the process.
  - c. Each of us has the unilateral right to terminate the process at anytime and force the other into litigation.
  - d. There will be some costs if the process breaks down and we are referred to new attorneys to complete the negotiations or to litigate the matter. We may be required to reproduce documentation or provide additional documentation. Since experts are disqualified and their work product is disqualified, unless we mutually agree otherwise, there may be the cost of duplicating expert services.
  - i. It does not feel good to fail at something where one has invested time, energy, hope of resolution and resources. If one of us blames the other for the failure to reach resolution, that anger can carry over into the next process.
10. **Instructions to Attorneys.** By signing this Agreement, we instruct our attorney to:
- a. Help us honor the promises made in this Agreement.
  - b. Refrain from acting in a manner inconsistent with the promises made in this Agreement, and
  - c. Promote both the spirit and written word of this Agreement.
11. **Acknowledgement of Commitment to the Collaborative Process.** We have read this Agreement in its entirety, understand its contents and agree to its terms.

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Date

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Client

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Client