

# COLLABORATIVE PARTICIPATION AGREEMENT

\* and \* (“Partners” or “\*s”), and their lawyers, \_\_\_\_\_ and \_\_\_\_\_, (“Lawyers”), as well as other professionals whom the Partners may hire to assist them, enter into this Agreement to use a collaborative law process to settle issues arising from dissolution of their relationship. The Partners, Lawyers, and other professional collaborative team members as may join the case are referred to as “the Participants”.

## I. Purpose

The primary goal of a collaborative law process is to settle the outstanding issues in a non-adversarial manner. Lees aim to minimize, if not eliminate, negative economic, social, and emotional consequences of protracted litigation to themselves and their family. The Partners have retained collaborative Lawyers to assist them in reaching this goal.

## II. Communication

Lees intend to effectively communicate with each other to efficiently and economically dissolve their relationship. All Participants shall be respectful and constructive in all written and oral communications. All Participants agree not to make accusations or claims not based in fact. It is agreed that communication during settlement meetings will be focused on the economic and parenting issues in the dissolution and the constructive resolution of those issues.

Lees are encouraged to discuss and explore the interests they have in achieving an agreed settlement. Each is encouraged to speak freely and express his or her needs, desires, and options without criticism or judgment by the other. The Partners give express consent that the Lawyers may discuss issues directly with, or circulate written communication to, either Party, and agree that such direct communication is preferred and not considered a violation of the ethical conduct of the Lawyers. Although the Partners 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 Participants agree to focus, to the extent possible, all communications and negotiations on the future, not past grievances. **If past grievances and the emotions those injuries engender should be discussed, the Partners agree to do so in meeting with their divorce coach(es), and not to utilize four-, five-, or six-way meetings for this purpose.** The Participants agree, to the extent possible, to use language that respects and preserves the dignity of all other Participants.

## III. Children's Issues

In resolving issues about sharing the enjoyment of and responsibility for their children, Lees agree to make every effort to reach amicable solutions that promote the children’s best

interests. Lees agree to act quickly to mediate and resolve differences related to their children to promote a caring, loving, and involved relationship between their children and both parents. The Partners and Lawyers agree that a child specialist is needed. That Child Specialist shall meet individually with the Partners' children, meet individually and jointly with the parents, report to the Partners' attorneys the Child Specialist's insights about the Partners' children, and attend all negotiations regarding the children or parenting plan.

The Partners acknowledge that inappropriate communications regarding dissolution of their relationship can be harmful to their children. The Partners shall not discuss settlement issues in the presence of their children. The Partners shall communicate with their children regarding dissolution and settlement issues only by mutual agreement, if such communication is appropriate.

#### **IV. Participation with Integrity**

Each Participant shall behave with integrity, and shall not take advantage of inconsistencies, miscalculations, wrong assumptions, or omissions that may occur during the collaborative process. Each shall immediately disclose any such errors and seek to have them corrected. The Participants shall uphold the "Rules of Good Faith in the Collaborative Process" which are attached to this agreement.

#### **V. Negotiation in Good Faith**

The Partners and 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 employed.

Lees acknowledge that by using informal discovery, they are giving up certain rights, for the duration of the collaborative law 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 Partners shall make full and fair disclosure of all assets, income, debts, and other relevant information. The Partners acknowledge that participation in the collaborative law process, and the settlement reached, is based upon the assumption that both Partners have acted in good faith and have provided complete and accurate information to the best of their ability. The Partners agree to provide sworn statements making full and fair disclosure of their income, assets and debts, and other pertinent information, if requested.

#### **VI. Cautions and Limitations**

In electing the collaborative law process, Lees 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 which have led to the current conflict. While intent on striving to reach a cooperative solution, success will ultimately depend on all Participants' commitment to making the process work. The Partners understand that they are still expected to assert their respective interests and their respective lawyers will help each of them do so. Lees further understand that while the Lawyers share a commitment to the process described in this

**Participation Agreement - \* Collaboration**

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.

The Partners agree that all professionals employed through the collaborative law process are entitled to be paid for their services. The Partners agree to make funds available for this purpose. **If any professional's invoice has not been paid per either party's contract with a professional, the Partners agree that a team meeting shall be called for the sole purpose of resolving the non-payment issue, and that the professionals involved in that meeting shall be paid their usual hourly rate for the time involved in that meeting to resolve non-payment issues.**

## **VII. Experts and Consultants**

When needed, the Partners shall use other collaborative professional team members, or other jointly hired experts. It will usually be appropriate and necessary that the Partners retain a divorce financial specialist. If the Partners have children, it will usually be appropriate and necessary that the Partners retain a child specialist. If the Partners have emotional or communication difficulties, it will usually be appropriate and necessary that the Partners retain a joint divorce coach, or a divorce coach for each party. The Partners shall agree before retaining other collaborative team members with respect to how their costs shall be paid.

In the event the collaborative law process terminates, all collaborative professional team members, or other jointly hired experts, shall be disqualified as witnesses and their work product shall not be disclosed to anyone other than the Participants to this agreement and will not be admissible as evidence unless the Partners agree otherwise in writing. In the event the collaborative law process terminates, written agreements signed by both Partners shall be admissible as evidence in subsequent litigation.

With respect to suspicion of information of or reports of child abuse, elder abuse, or domestic violence, collaborative coaches and child specialist are required by law to report this information. Therefore, each partner shall discuss any such suspicions or information or reports with his or her collaborative attorney before sharing such information with the entire team, so that both collaborative attorneys may deliberate the most appropriate course of action under the circumstances.

## **VIII. No Court Intervention**

Unless otherwise agreed, prior to reaching final agreement on all issues, or before termination of the collaborative law process, no motion or other court intervention shall be filed other than that which is required to be filed by applicable court rules.

## **IX. Disqualification by Court Intervention**

Lees understand that their collaborative Lawyers' representation is limited to providing services within the collaborative law process. Thus, while each Lawyer is the advisor of his or her client and serves as the client's representative and negotiator, the Partners mutually

acknowledge that both Lawyers will be disqualified from representing them in a contested court dissolution proceeding against the other Party.

#### **X. Withdrawal of Lawyer**

If either Lawyer withdraws from the case for any reason, the Lawyer agrees to do so promptly by a written notice to the other party through the other Party's Lawyer. A Lawyer may withdraw without terminating the status of the case as a collaborative law case. The party may continue in the collaborative law process by retaining a new Lawyer who will agree in writing to be bound by these guidelines and principles.

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

#### **XI. Election to Terminate Collaborative Process**

If a Party decides to terminate the collaborative law process, prompt written notice will be given to the other Party through his or her Lawyer. Upon termination of the collaborative law process by a Party or a Lawyer, neither Party shall commence any court proceeding for thirty (30) days (unless there is an emergency), in order to permit the Partners to retain new lawyers and make an orderly transition. All signed temporary agreements shall remain in full force and effect during this thirty day waiting period. The intent of this provision is to avoid surprise and prejudice to the rights of the non-terminating Party. It is therefore mutually agreed that either Party may bring this provision to the attention of the Court to request a postponement of any hearing that might violate this provision.

If at any time a Party, Lawyer, or both, communicates a desire to terminate the collaborative law process, Partners and Lawyers agree to attend one additional four-way session for the purpose of addressing this matter prior to formal termination of the process.

#### **XII. Confidentiality**

All communication used within the collaborative law process shall be confidential except as otherwise provided in this agreement.

The Partners authorize each professional on their Collaborative Team to discuss their matter with other collaborative professionals, provided appropriate steps are taken to conceal the identity of the Partners, for the purpose of training the collaborative professional community generally, and, in particular, for the purpose of training the collaborative professionals directly associated with the Partners' team members.

If the collaborative law process terminates, neither Party shall:

A. Introduce as evidence in court information used or proposals proffered for the purpose of reaching a settlement during the collaborative law process. The Partners

agree that all such information or documents shall be inadmissible pursuant to Evidence Rule 408. This does not include documents that existed before the collaborative process began or sworn statements signed under penalty of perjury or written agreements executed by the Partners in the course of the collaborative law process;

B. Ask or seek to compel any Participant to this agreement to testify in any court proceeding regarding matters disclosed during the collaborative law process or covered by this agreement; or

C. Disclose to anyone not a Party to this agreement information used for the purpose of reaching a settlement during the collaborative law process, except for documents that existed before the collaborative process began and would have been otherwise discoverable but for this agreement. The purpose of this provision is to maintain confidentiality for the Participants.

### **XIII. Rights and Obligations Pending Settlement**

The Partners shall seek to maintain the financial and circumstantial status quo while they settle the terms of their dissolution. Unless agreed otherwise in writing:

A. Neither Party may use or transfer any community or separate asset unless such use or transfer shall be agreed in writing by the Partners, except for the necessities of life, in which circumstance the using or transferring Party shall give prompt notice to all Participants;

B. Each Party will treat the other Party with respect and seek to maintain the dignity of each person involved in the collaborative law process;

C. Neither Party shall cancel or change coverage or alter beneficiary designations with respect to any insurance coverage; or

D. Neither Party shall change any matter with respect to utilities, accounts of any kind, or credit card accounts without the written consent of the other Party.

### **XIV. Enforceability of Agreements**

In the event that Lees require a temporary agreement during the collaborative law process, the agreement will be put in writing and signed by the Partners and the Lawyers. If the collaborative law process terminates, the written agreement shall be enforceable and may be presented to the court as a basis for Temporary 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 that final agreement, the final agreement may be presented to the Court in any subsequent action as a Civil Rule 2A agreement of the Partners. No unsigned agreement shall be enforceable outside the collaborative process, absent agreement of the Partners.

**XV. Signatures**

All Participants acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by it. The Partners have chosen the collaborative law process to reduce emotional and financial costs of dissolution, to generate a final agreement that addresses their concerns, and to have freedom to reach agreement in a time frame and with provisions acceptable to the Partners. They agree to work in good faith to achieve these goals.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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COLLABORATIVE ATTORNEY FOR \*

COLLABORATIVE ATTORNEY FOR \*

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FACILITATOR/COACH

FINANCIAL SPECIALIST

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CHILD SPECIALIST

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## **RULES OF GOOD FAITH IN THE COLLABORATIVE LAW PROCESS**

*Please sign, indicating you agree and understand.  
We encourage questions about these rules.*

1. I agree to proceed in “Good Faith.” Good faith means to:
  - Exercise common courtesy,
  - Keep an open mind,
  - Be willing to explore options without holding a fixed position, and
  - Share all pertinent information.
2. I agree to voice any concerns or questions about the overall process, direction, or any interactions among the Participants.
3. I agree to convert complaints into neutral requests to the best of my ability, and to refrain from blaming and negative assumptions based on the past behaviors of either party.
4. I agree to work productively in the “here and now,” keeping everyone’s future well-being in mind.

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**BACK-CHANNEL COMMUNICATION  
AUTHORIZATION AND CONSENT**

The Partners hereby authorize each member of the Collaborative Team (Professionals and Experts, including but not limited to attorneys, coaches, financial specialist, child specialist, and all other professionals hired by the Partners) to communicate by any means, including e-mail, with all other members of the team during the collaborative law process, without disclosing all such communications to the client. **Such communications shall be called “back-channel” communications or “professional team only” communications.**

We understand that back-channel communication is an integral part of the collaborative law process, and that the express goal of such communication is to assist the collaborative team professionals in understanding and resolving issues related to the clients’ settlement. Back-channel communications are essential to the process and are confidential with respect to all persons outside the collaborative law team. These back-channel communications shall not be disclosed to anyone, including the clients, **except as required by law.**

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COLLABORATIVE ATTORNEY FOR \*

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COLLABORATIVE ATTORNEY FOR \*

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FACILITATOR/COACH

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FINANCIAL SPECIALIST

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CHILD SPECIALIST

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MORTGAGE SPECIALIST

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MEDIATOR

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VOCATIONAL SPECIALIST

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