

**COLLABORATIVE LAW**  
**PARTICIPATION AGREEMENT**  
**WITH CHILDREN**

**PURPOSE**

\_\_\_\_\_, Husband, and \_\_\_\_\_, Wife, (“the Clients”), have chosen to use the collaborative law process to resolve their family differences. \_\_\_\_\_ is represented by \_\_\_\_\_, ESQUIRE and \_\_\_\_\_ is represented by \_\_\_\_\_, ESQUIRE. The “Collaborative Team” consists of the collaborative lawyers together with any additional collaborative professionals who sign participation agreements. We adopt this conflict resolution process, which relies on honesty, cooperation, and professionalism geared toward the future well-being of the restructured family. Our goal is to eliminate the negative economic, social and emotional consequences of litigation. We commit to the collaborative law process to resolve differences with the goal of achieving a resolution that is acceptable to the clients under the circumstances.

**COMMITMENTS**

We commit to a collaborative problem-solving process which is based on:

1. Identification of the goals and interests of each client;
2. The Clients’ empowerment to make decisions;
3. Full disclosure of relevant information; and
4. The collaborative lawyers’ assistance to their respective clients in identifying issues, analyzing relevant information, developing options, and understanding consequences.

**OTHER COLLABORATIVE PROFESSIONALS, EXPERTS AND ADVISORS**

Unless otherwise agreed in writing, if other collaborative professionals, experts or advisors (hereinafter sometimes referred to as “nonparty participant professionals”) are needed, they will be engaged jointly as neutrals. The Clients may engage other nonparty participant professionals for purposes of communication facilitation, financial and tax advice, valuation, cash flow analysis, resolution of parenting issues, if applicable, and assistance with any other issue(s) that require(s) specialized or expert advice and/or recommendations. The Clients will agree in advance how other nonparty participant professionals will be paid. Unless the Clients, collaborative lawyers, and other nonparty participant professionals agree otherwise in writing, the other nonparty participant professionals engaged will be disqualified from participating or testifying in the matter or a substantially related matter after the collaborative process terminated and the work product of nonparty participants is inadmissible in the matter or a substantially related matter. This disqualification does not apply to individuals engaged by the Clients to assist them in other matters independent of the collaborative law process, such as preparation of tax returns and estate planning. Nothing contained herein precludes a collaborative lawyer from

consulting with other nonparty participant professionals as necessary to better understand the factual and legal issues presented in the case.

Nonparty participant professional may communicate with Clients, the lawyers, other nonparty participant professionals engaged in the collaborative law process, and any lawyer consulted for a second opinion during the collaborative law process.

Once a neutral nonparty participant professional has been engaged to serve as a member of the Collaborative Team and has signed a Participation Agreement, neither client may unilaterally terminate his or her services. A request to remove or replace such a nonparty participant professional will be an agenda item for discussion by the entire Collaborative Team. Insistence upon terminating such services may be grounds for the termination of the collaborative law process. The Clients may agree to the termination of the services of such a nonparty participant professionals and the replacement with another nonparty participant professionals to serve on the Collaborative Team. This provision does not prohibit either client from unilaterally substituting a new collaborative lawyer as his or her lawyer.

## **COMMUNICATION**

**Constructive and Respectful Communication.** We agree to effectively and honestly communicate with each other. All written and verbal communications will be respectful and constructive. Joint meetings will focus on those issues necessary to the constructive resolution of the matter. We agree not to engage in unnecessary discussions of past events.

**Settlement Discussions.** The Clients agree to discuss settlement with each other only in the joint meetings, unless they agree otherwise. A request to discontinue any such discussion outside of a joint meeting will be immediately honored. Settlement issues will not be discussed at unannounced times in any manner. The lawyers plan agendas for settlement meetings and draft or review documents, but no agreements will be made by the lawyers on behalf of the Clients.

**Electronic and Written Communication.** The Clients authorize the use of unencrypted email, facsimile, or any other electronic communications to relay information and deliver documents in the collaborative law process. Joint communications of agendas, minutes, drafts of documents and agreements may be sent simultaneously to the Clients and the Collaborative Team.

**Transparent Communication.** If a client sends any written communication to the other client's collaborative lawyer, the client will copy his or her own lawyer with the communication. A written communication sent by a collaborative lawyer to the other client will be copied to the client's collaborative lawyer. A collaborative lawyer shall forward promptly to the other lawyer all client-to-client communications received.

**Written Team Communication.** In order to facilitate the process, there are times that the Collaborative Team may engage in written internal communications intended only for the Collaborative Team. A written communication designated as a "team communication" will not be communicated to the Clients.

**Communications Regarding Children.** The Clients acknowledge that inappropriate communications can be harmful to their child[ren]. Communication with the minor child[ren] regarding the case will occur only as agreed by the Clients.

Our goal is to reach an agreement that promotes the best interests of the child[ren]. No client will unilaterally seek a custody evaluation while the matter is in the collaborative law process. No member of the Collaborative Team will interview the minor child[ren] unless both Clients agree, and the child[ren]'s therapist and neutral child specialist, if any, approves.

### **FULL DISCLOSURE**

Each party shall make timely, full, candid, and informal financial disclosure, including all information reasonably related to any issue in the matter upon request of the other party and within a reasonable time. The parties shall, at a minimum, comply with the mandatory disclosure requirements pursuant to Rule 12.285(d) and (e), Florida Family Law Rules of Procedure.

We shall maintain a high standard of integrity and shall not take advantage of each other or of known mistakes, errors of fact or law, miscalculations or other inconsistencies, but shall identify and correct them.

Each attorney shall have the duty and obligation to withdraw his or her representation immediately upon learning that their client has knowingly withheld or misplaced information having a material bearing on the case or otherwise acted so as to undermine or take unfair advantage of the Collaborative Process.

### **CONFIDENTIALITY**

Unless the parties agree otherwise in writing, all collaborative process communications shall be confidential. A collaborative participant shall not disclose a collaborative process communication to a person other than another collaborative participant. A violation of this section during the collaborative process may be sanctioned as agreed to by the parties or a party may terminate the collaborative process. A violation of this section once the collaborative process has terminated may be sanctioned as provided below.

A collaborative party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding collaborative process communications.

Notwithstanding the above, there shall be no confidentiality or privilege attached to a signed written agreement reached during a collaborative process, unless the parties agree otherwise in writing, or for any collaborative communication:

1. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;
2. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;
3. Offered to report, prove, or disprove professional malpractice or misconduct occurring during the collaborative process, solely for the purpose of the professional malpractice, misconduct or ethics proceeding; or
4. Offered for the limited purpose of establishing or refuting enforceability of an agreement reached during the collaborative process.

A collaborative process communication disclosed under any provision of above remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted herein.

Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in a collaborative process.

A party that discloses or makes a representation about a privileged collaborative communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

**Sanctions.** Once the collaborative process has terminated, if a collaborative participant that knowingly and willfully disclose a collaborative communication in violation of the above confidentiality provisions, such person shall be subject to the following:

- (a) Equitable relief.
- (b) Compensatory damages.
- (c) Attorney's fees and costs incurred during the collaborative process
- (d) Reasonable attorney's fees and costs incurred by the application for remedies under this section.

Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

Any collaborative participant shall not be subject to a civil action under this section for lawful compliance with the provisions of §119.07, Florida Statute the public records exception.

### **OTHER LEGAL OPINIONS**

Neither client shall consult a litigation lawyer about this matter so long as the collaborative law process continues, except for the limited purpose of obtaining a private opinion as to the potential outcome of the case in an adversarial proceeding. If at any time in the past twelve months or during the collaborative law process a client privately secures an opinion about this matter from another lawyer, including a litigation lawyer, the client agrees to disclose the identity of such lawyer to the Collaborative Team. If the opinion was sought prior to the signing of this Participation Agreement, then the client represents that the identity has been disclosed to the Collaborative Team before this Participation Agreement was signed. If the opinion is sought during the collaborative law process, the client agrees to disclose the identity before the client's initial consultation with the lawyer and promptly inform the Collaborative Team of the occurrence of each consultation the client has with such lawyer.

The client should give any lawyer offering an opinion on an issue(s) all information necessary to give informed advice, including reports of consultants whose services have been engaged in the collaborative law process. The Clients agree the work product and opinion of such privately engaged lawyer are attorney-client privileged and are not required to be disclosed in the collaborative law process.

The Clients agree a lawyer privately engaged to offer an opinion, and any other lawyer associated in the practice of law with that lawyer, are not disqualified from testifying as a fact or expert witness pertaining to attorneys' fees and are not prohibited from representing the consulting client in an adversarial proceeding between the Clients.

If both Clients jointly seek a second opinion from a lawyer then the opinion is to be disclosed to the Collaborative Team, and the lawyer is to be considered a neutral expert and is disqualified from testifying as a fact or expert witness in an adversarial proceeding between them and is prohibited from representing either of them in an adversarial proceeding between the Clients.

The Clients agree the work product, opinions, mental impressions, and the facts upon which they are based, of a consulted lawyer are not discoverable and are inadmissible in an adversarial proceeding regarding the case or in any other adversarial proceeding between the Clients, unless the Clients, the collaborative lawyers and consulted lawyer agree otherwise in writing.

### **AGREEMENTS**

The Clients may agree to the entry of temporary orders. Upon request of either client or as required by local rules, the Code of Conduct set out in Exhibit "A" attached hereto shall be filed with the court as mutual injunctions. Further, whether entered as injunctions or not, the Clients agree to abide by the terms of Exhibit "A" until it is modified by court order or written agreement. The Code of Conduct and a fully executed Collaborative Law Settlement Agreement are contracts between the Clients and may be the basis for a claim against the client violating their terms in the event of termination of this process. In the event enforcement is sought, the collaborative lawyers shall withdraw.

Any partial or final written agreement, which is signed by both Clients and their respective collaborative lawyers, may be filed with the court as a collaborative law settlement agreement and may be submitted to the court for ratification and enforcement. The Clients and the collaborative lawyers shall cooperate in preparing the documents necessary to effectuate the Clients' agreement. A collaborative lawyer may require the preparation and execution of all closing documents necessary to complete the case before entry of judgment. Either or both collaborative lawyers shall be permitted to appear in court to have agreed judgment(s) entered.

### **LEGAL PROCESS**

**Suspension of Court Intervention.** The Clients and the collaborative lawyers agree that court intervention shall be suspended while the Clients are using the collaborative law process. Seeking court intervention for a judicially-imposed decision regarding an issue in the case automatically terminates the process.

No motion or document will be prepared or filed which would initiate court intervention, other than a [joint] Petition [for Divorce/to Modify Prior Order/other matter] [and an Answer]. If necessary, service of citation will be accepted by the Clients' respective lawyers. No hearing shall be set thereafter, other than to enter agreed orders and judgments.

A party may not initiate a proceeding or seek the intervention of a court in a pending proceeding until the collaborative process terminates, except by agreement of the parties to seek the entry of an order or judgment to ratify an agreement of the parties.

Each party must be represented by a Collaborative attorney. A collaborative attorney may be discharged by a party or may withdraw from further representation of a party by notifying the client and the Collaborative attorney representing the other party, and receiving permission to withdraw from the court, if a proceeding is pending.

If a Collaborative Attorney is discharged by a party or otherwise withdraws from further representation, the Collaborative Process is stayed and will terminate 30 days from the date of the discharge or withdrawal unless:

- (a) the unrepresented party engages a successor collaborative attorney; and
- (b) the successor collaborative attorney files an appropriate notice of representation of a party with the court to the proceeding, if a proceeding is pending.

If a client chooses to terminate the collaborative law process by seeking court intervention for a judicially-imposed decision, both collaborative lawyers shall withdraw. Neither collaborative lawyer (including any lawyer associated in the practice of law with the collaborative lawyer) may serve as a litigation lawyer on behalf of a client in this case or in any other matters between the Clients thereafter (other than a suit to enforce payment of the lawyer's fees). Each collaborative lawyer will cooperate in transferring the file.

**Termination by Collaborative Lawyer.** The collaborative law process must be terminated if a client engages in any of the following behaviors and persists in doing so after counseling by the client's collaborative lawyer:

1. refuses to disclose information, including the existence of documents, which in the collaborative lawyer's judgment must be provided to the other client or the Collaborative Team;
2. answers dishonestly any inquiry made by a client or member of the Collaborative Team;
3. takes an action that results in compromising the integrity of the process; or
4. fails or refuses to take an action which failure or refusal compromises the integrity of the process.

Under any of these circumstances, if the offending client refuses to terminate the collaborative law process, each client acknowledges that his/her respective collaborative lawyer has a duty to terminate the collaborative law process on behalf of the client, and by signing this agreement, each client authorizes his/her collaborative lawyer to terminate the collaborative law process by written notice to the Collaborative Team.

**Withdrawal of Lawyer.** If the collaborative law process is terminated, both collaborative lawyers shall immediately withdraw. If there is no termination of the collaborative law process, either collaborative lawyer may withdraw unilaterally by giving three days' written notice to his or her client and the other collaborative lawyer, unless substituted by a successor collaborative lawyer in which case no such notice is required. Notice of withdrawal of a collaborative lawyer does not necessarily terminate the collaborative law process; however, in order for the collaborative law process to continue, the client whose collaborative lawyer has withdrawn must engage a new collaborative lawyer who will agree in writing to be bound by this Participation Agreement. If the client whose collaborative lawyer has withdrawn chooses to

represent himself or herself, the collaborative law process terminates and the other collaborative lawyer must withdraw.

### **REPRESENTATION AS TO PROPERTY**

The final documents reflecting the Clients' financial settlement may include the following, or similar provisions, if either client requests the inclusion thereof:

**Representations and Disclosures.** The Clients represent to each other that the property listed represents all of the property in which either of them may have an interest.

**Separate Property.** Any property which is not listed or described and which is later determined to be the separate property of a client shall be and remain the separate property of that client.

**Property and Liabilities Mistakenly Omitted.** Any mistakenly omitted property which is not listed or described and is later determined to be the community property of the Clients, shall be subject to future division by the court. Any mistakenly omitted liabilities which are later determined to have been the joint liabilities of the Clients shall be subject to future allocation by the court.

**Property and Liabilities Intentionally Omitted.** Any community assets later determined to have been intentionally and fraudulently undisclosed by a client are set aside 100% to the other client. Any liabilities determined to have been intentionally and fraudulently undisclosed by a client are allocated 100% to the client who incurred the liability.

### **MEDIATION**

Prior to termination of the collaborative law process, the Clients agree to give serious consideration to participation in mediation with a mediator who has received training in the collaborative law process.

### **PROFESSIONAL FEES**

The Clients understand that the Collaborative Team members are entitled to be paid for their services. The Clients agree to make funds available from their community or separate estates, as needed, to pay these fees. The Clients understand that, if necessary, one client may be asked to pay all fees (including fees of the other client's lawyer) from community property managed solely by him or her (e.g., his or her salary) or from separate funds. The Clients agree that, to the extent possible, all fees and expenses incurred by both clients shall be paid in full prior to entry of a final judgment. Nonpayment of fees is cause for withdrawal by a Collaborative Team member, but not for a termination of the collaborative law process.

### **UNDERSTANDINGS**

The Clients understand that each collaborative lawyer is independent from the other and each represents and is an advocate for his or her client only in the collaborative law process. No

attorney-client relationship is created between one client's collaborative lawyer and the other client by entering into this Participation Agreement or the collaborative law process. No legal duty, by contract or otherwise, is owed to a client by the other client's collaborative lawyer.

The Clients acknowledge the following: There is no guarantee that the collaborative law process will be successful in resolving the matter. The collaborative law process cannot eliminate concerns about the differences that have led to the current conflict. The Clients are expected to assert their own interests and their respective collaborative lawyers will help each of them to do so. The collaborative law process, can involve intense good-faith negotiation, but best efforts will be used to create options that meet the interests of both clients. Compromise may be needed to reach a settlement of all issues. Although the likely outcome of a litigated result may be discussed, the threat of litigation will not be used.

The parties understand that by agreeing to this process, they are giving up certain rights, including the right to conduct formal discovery (other than sworn inventories and appraisements), the right to participate in adversarial court hearings, and other procedures provided by the adversarial legal system, unless the process is terminated. The terms of this Participation Agreement may be modified, in a manner consistent with Texas law, only by written agreement signed by the Clients and the collaborative lawyers. However, the prohibition against either collaborative lawyer or any lawyer associated with that collaborative lawyer representing their client in contested matters against the other client is irrevocable and may not be modified.

Both clients and their respective collaborative lawyers hereby agree to comply with the spirit and letter of this Participation Agreement. Both clients and their collaborative lawyers acknowledge that they have read this Participation Agreement, understand its terms and conditions, and agree to abide by them.

Signed on \_\_\_\_\_.

\_\_\_\_\_  
Husband -  
Street Address  
City, State, Zip code  
Email

\_\_\_\_\_  
Wife -  
Street Address  
City, State, Zip code  
Email

\_\_\_\_\_  
, ESQUIRE  
Collaborative Lawyer for \_\_\_\_\_  
Bar #  
address:  
City/State:  
Office#:  
Fax#:  
E-mail:

\_\_\_\_\_  
, ESQUIRE  
Collaborative Lawyer for \_\_\_\_\_  
Bar #  
Address:  
City/State:  
Office#:  
Fax#:  
E-mail:

**EXHIBIT "A"**  
**CODE OF CONDUCT**

Either client may:

1. Make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, entertainment, education and medical care.
2. Make expenditures and incur indebtedness for reasonable lawyers' fees and consultants' fees and expenses in connection with this matter.
3. Make withdrawals from accounts in financial institutions only for the purposes authorized by this agreement.
4. Engage in acts, make expenditures, incur indebtedness, make investments, and acquire, sell and transfer assets, as is reasonable and necessary to the conduct of either client's usual investment activities, business and occupation, subject to all such activities being fully disclosed and accounted for to the other client.

The Clients agree not to:

1. Communicate with the other client in an offensive manner.
2. Place telephone calls without a legitimate purpose of communication.
3. Destroy, remove, conceal, encumber, transfer, or otherwise harm or reduce the value of the property of one or both of the clients.
4. Falsify any writing or record relating to the property of either client.
5. Damage or destroy the tangible property of one or both of the clients, including any document that represents or embodies anything of value.
6. Tamper with the tangible property of one or both of the clients, including any document that represents or embodies anything of value, thereby causing monetary loss to the other client.
7. Sell, transfer, assign, mortgage, encumber, or in any other manner alienate any of the property of either client, whether personalty or realty, and whether separate or community, except as specifically agreed to in writing or as specified in this agreement.
8. Incur any indebtedness, including but not limited to borrowing against any credit line or unreasonably using credit cards or cash advances against credit or bank cards, except as specifically agreed to in writing, or as specified in this agreement.
9. Make withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
10. Spend any sum of cash in the possession or subject to the control of either client for any purpose, except as specifically agreed to in writing, or as specified in this agreement.
11. Withdraw or borrow in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically agreed to in writing.
12. Enter any safe-deposit box in the name of or subject to the control of either client, whether individually or jointly with others, unless the Clients accompany each other and

jointly enter the box for the sole purpose of inventorying or dividing its contents by mutual agreement.

13. Withdraw or borrow in any manner all or any part of the cash surrender value of life insurance policies on the life of either client, except as specifically agreed to in writing.

14. Change or in any manner alter the beneficiary designation on any pension, retirement plan or insurance policy, except as specifically agreed to in writing.

15. Cancel, alter, fail to renew or pay premium, permit to lapse or in any manner affect or reduce the value of the present level of coverage of any life, disability, casualty, automobile, or health insurance policies insuring the Clients' property or persons, except as specifically agreed to in writing.

16. Change any provisions of any existing trust or will or execute a new trust or will without the prior written consent of the other client.

17. Terminate or in any manner affect the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at the residence of the other client or in any manner attempt to withdraw any deposits for service in connection with those services, except as specifically agreed to in writing.

18. Exclude the other client from the use and enjoyment of his or her respective residence.

19. Enter or remain on the premises of the residence of the other client without the other's consent.

20. Open or divert mail addressed to the other client, except as specifically agreed to in writing.

21. Sign or endorse the other client's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempt to negotiate any negotiable instrument payable to the Clients or the other client without the personal signature of the other client.

22. Take any action to terminate or limit credit or charge cards in the name of the Clients or the other client, except as specifically agreed to in writing.

23. Transfer balances between credit cards or open new credit card accounts, except as specifically agreed to in advance in writing by the Clients.

24. Pay more than the [outstanding balance OR \$\_\_\_\_\_ per month OR minimum monthly balance] owed on a credit card or charge account, except as specifically agreed to in writing.

25. Take any action to freeze or put a hold on any account with any financial institution from which the other client has the right to withdraw funds for purposes consistent with the authorizations contained in this agreement.

26. Operate or exercise control over the motor vehicles in the possession of the other client, except as specifically agreed to by the Clients.

27. Discontinue or reduce the withholding for federal income taxes on either client's wages or salary, except as specifically agreed to in writing.

28. Destroy, dispose of, or alter any financial records of the Clients, including but not limited to records from financial institutions (including canceled checks and deposit

slips), all records of credit purchases or cash advances, tax returns, and financial statements.

29. Destroy, dispose of, or alter any relevant e-mail or other electronic data, whether stored on a hard drive or on a diskette or other electronic storage device.

30. Conduct surveillance of the other client's activities, including accessing the other client's emails, computer files and voice mail messages, and including the use of an investigator, detective or other individual paid for or engaged by a client or third party, or use of electronic listening or tracking devices, until this collaborative law process is terminated.

31. Engage the services of a stand-by litigation lawyer so long as the collaborative law process continues, except for the limited purpose of giving a second opinion in accordance with the provisions of this agreement set out in "Other Legal Opinions."

32. Exercise any stock options and warrants except as specifically authorized in advance by written agreement of the Clients.

33. Exercise any general or limited power of attorney, whether or not recorded, granted by one client to the other[optional: , except for directives to physicians, living wills, health care or medical powers of attorney, and HIPAA releases] .

34. Pay any indebtedness owed by the Clients or either of them prior to the date the indebtedness is due, unless agreed to specifically in writing by the Clients.

35. Create or contribute to, or reduce the value of or withdraw from or terminate, any trust of any kind or nature except as specifically authorized in advance by written agreement of the Clients.

36. Make any gift of any kind or nature, other than usual and customary gifts to family members of either client or mutual friends or their child(ren).

37. Create or contribute to any uniform gifts/transfers to minor act accounts or any trust of any kind or nature, except as specifically agreed to in advance in writing by the Clients.

38. File any extension or form with the Internal Revenue Service with regard to federal tax liability for any years of the marriage that limits the other client's choice of filing status, unless agreed to in advance in writing by the Clients.

39. File any federal income tax return or amendment to any federal income tax return for any year of the marriage during the pendency of the matter without first providing a true and correct copy of such proposed return to the lawyer of record for the other client at least 14 days in advance of the proposed tender to the Internal Revenue Service. This shall apply whether or not such filing is proposed to be by electronic methods or hard copy filing.