

# **COLLABORATIVE LAW PARTICIPATION AGREEMENT**

## **PURPOSE**

[PARTY1] and [PARTY2] (the “parties”) have chosen to use Collaborative Law to resolve their family differences. [PARTY1] has retained [LAWYER1] and [PARTY2] has retained [LAWYER 2] as collaborative lawyers. The parties and their lawyers, acknowledge that the essence of collaborative law is the shared belief that it is in the best interests of parties and their families to commit themselves to avoiding litigation.

We adopt this conflict resolution process, which relies on honesty, cooperation, integrity 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 the parties differences justly and equitably.

## **COMMITMENTS**

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

1. Identification of the values, goals, and interests of each party;
2. The parties’ empowerment to make decisions;
3. The collaborative lawyers assisting their respective clients to identify issues, analyze relevant information, develop options, and understand their consequences; and
4. The lawyers’ commitment to adherence to the Protocols of Practice for Collaborative Family Lawyers promulgated by The Collaborative Law Institute of Texas, Inc.

## **COMMUNICATIONS**

We agree to effectively and honestly communicate with each other. All written and verbal communications between us will be respectful and constructive. Settlement meetings will be focused on those issues necessary to the constructive resolution of the matter. The parties agree not to engage in unnecessary discussions of past events.

To maintain an objective and constructive process, the parties agree to discuss settlement of issues with each other only in the settlement conference setting, unless they agree otherwise. Settlement issues will not be discussed at unannounced times by telephone calls or appearances at the other party’s residence or place of employment. The lawyers will meet together to plan agendas for settlement meetings and to draft or review documents, but no agreements will be made by the lawyers on behalf of the parties.

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. However, a party may choose not to make known an error which disadvantages only that party.

**Include the next two paragraphs if a minor child is involved:**

The parties acknowledge that inappropriate communications regarding their dispute can be harmful to their child[ren]. Communication with the minor child[ren] regarding disputed issues will occur only as agreed by the parties and their lawyers.

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

**ALLIED PROFESSIONALS, EXPERTS AND ADVISORS**

If allied professionals, experts or advisors (hereinafter referred to as “consultants”) are needed, we will retain them jointly. We may engage consultants for purposes of valuation, cash flow analysis, tax issues, [parenting issues,] and any other issue that requires expert advice and/or recommendations. The parties will agree in advance how consultant’s fees will be paid. The consultants engaged are disqualified from testifying as witnesses, expert or otherwise, regarding this matter, and their writings are inadmissible in any judicial proceeding in this matter. This disqualification does not apply to individuals engaged by the parties to assist them in other matters independent of the collaborative law process, such as preparation of tax returns and estate planning.

Consultants may communicate with the parties, their lawyers, and any lawyers consulted for a second opinion during the collaborative law process.

**INFORMATION**

We agree to make such full and candid exchange of information as is necessary to make a proper evaluation of the case, including, but not limited to full disclosure of the nature, extent, value of – and all developments affecting – the parties’ [income,] assets, and liabilities[,and all relevant matters concerning the parties’ child[ren].] Any material change in information previously provided must be promptly updated. The parties authorize their respective lawyers to fully disclose all information which in the lawyer’s judgment must be provided to other participants in order to fulfill this commitment.

No formal discovery procedures will be used unless specifically agreed to in advance. However, the parties may be required to sign a sworn statement making full and fair disclosure of their [income,] assets and debts (a sworn inventory and appraisalment).

**CONFIDENTIALITY**

The parties agree to maintain the confidentiality of any oral or written communications relating to the subject matter of the dispute made by the parties or their lawyers or other participants in the collaborative law procedure, whether before or after the institution of formal

judicial proceedings. The collaborative law process is a form of settlement conference involving compromise negotiations. All communications, whether oral or written, and conduct of any party, lawyer, or consultant in the collaborative process constitute compromise negotiations under Rule 408, Texas Rules of Evidence, and are, therefore, inadmissible. The parties agree that any oral communication or written material used in or made a part of the collaborative law procedure will only be admissible or discoverable if it is admissible or discoverable independent of the procedure. This paragraph does not apply to reports of abuse or neglect required by law, or to any sworn documents prepared in this matter, or to a fully executed collaborative law settlement agreement.

A party and/or his or her collaborative lawyer is free to disclose all information to either party's successor lawyer or to a lawyer hired to render a second opinion for that party.

### **AGREEMENTS**

The parties may agree to the entry of temporary orders as in other family law matters. Upon request of either party, the Code of Conduct set out on Exhibit "A" attached hereto shall be filed with the court as mutual temporary injunctions. Further, whether entered as temporary injunctions or not, the parties agree to abide by the terms of Exhibit "A" and understand that this agreement shall remain enforceable as a contract between the parties and may be the basis for a claim against the party violating its terms.

Any written agreement, whether partial or final, which is signed by both parties and their collaborative lawyers, may be filed with the court as a collaborative law settlement agreement in accordance with Texas Family Code § 6.603 and/or § 153.0072 and/or Rule 11, Texas Rules of Civil Procedure. Such an agreement is retroactive to the date of the written agreement and may be made the basis of a court order. The collaborative lawyers shall cooperate in preparing the documents necessary to effectuate the parties' agreement. Either or both collaborative lawyers shall be permitted to appear in court to have agreed judgment(s) entered.

In such event, the collaborative lawyers shall withdraw as lawyers of record and, if required, shall consent to the substitution of trial counsel.

### **LEGAL PROCESS**

**Suspension of Court Intervention.** The parties and the lawyers agree that court intervention shall be suspended while the parties are using collaborative law procedures.

**Court Proceedings.** The lawyers' representation is limited to the collaborative law process. Once the process is terminated, neither lawyer can participate in the pending matter in any manner nor can the lawyer subsequently represent either party in a proceeding against the other.

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 parties' respective lawyers. No hearing shall be set thereafter, other than to enter agreed orders and judgments.

**Termination by Party.** A party who has decided to terminate the collaborative law process shall notify his or her lawyer in writing. That party's lawyer shall then give prompt written notice to the other party through his or her lawyer and to the court. Upon notice of termination of the process to the other lawyer there will be a 30-day waiting period (unless there is an emergency) before any court hearing to permit each party to retain another lawyer and make an orderly transition. All written agreements shall remain effective until modified by agreement or court order. Either party may bring this provision to the attention of the Court in requesting a postponement of a hearing.

If a party chooses to terminate the collaborative process by seeking court involvement, both lawyers shall withdraw from the representation. Neither collaborative lawyer (or any lawyer associated in the practice of law with him/her ) may serve as litigation counsel in this case or in any other matters between the parties thereafter. Each lawyer will cooperate in transferring the file to new counsel.

**Termination by Lawyer.** If a party refuses to disclose the existence of information which in the lawyer's judgment must be provided to other participants, or proposes to take an action that would compromise the integrity of the process, the collaborative law process must be terminated. If a party refuses to do so, their respective lawyer is authorized to terminate the process.

**Withdrawal of Lawyer.** Either collaborative lawyer may withdraw unilaterally from the collaborative law process by giving three days written notice to his or her client and the other collaborative lawyer. Notice of withdrawal of a collaborative lawyer does not necessarily terminate the collaborative law process; however, in order for the process to continue, the party whose lawyer has withdrawn must retain a new collaborative lawyer who will agree in writing to be bound by this Participation Agreement. If the party whose lawyer has withdrawn chooses to represent himself or herself, the collaborative law process terminates and the other lawyer must withdraw.

BOX: The following optional section may be used in divorce matters:

### **REPRESENTATION AS TO PROPERTY**

It is understood and agreed that the final documents reflecting the parties' financial settlement shall include the following, or similar, provisions:

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

**Property and Liabilities Mistakenly Omitted.** Any property which is not listed or described and which is later determined to be the separate property of a party shall be and remain the separate property of that party. Any mistakenly omitted property which is not listed or described and is later determined to be the community property of the parties,

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 parties shall be subject to future allocation by the court.

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

BOX: The following paragraph is optional

### **COLLABORATIVE MEDIATION**

To avoid termination or to further facilitate the collaborate law process, the parties agree to mediate in good faith with [NAME OF MEDIATOR], a mediator who has received training in the collaborative law process [on or before \_\_\_\_\_, 20\_\_\_\_, or before such other date as the parties may hereafter agree].

OR

The parties may agree to mediation prior to termination of the process or court intervention.

### **ATTORNEY'S FEES AND EXPENSES**

The parties understand that the lawyers and consultants are entitled to be paid for their services. The parties agree to make funds available from their community or separate estates, as needed, to pay these fees. The parties understand that, if necessary, one party may be asked to pay all fees (including fees of the other party's lawyer) from community property managed solely by him or her (e.g., his or her salary) or from separate funds. The parties agree that, to the extent possible, all attorneys' fees and expenses (including consultants' fees) incurred by both parties shall be paid in full prior to entry of a final judgment.

### **UNDERSTANDINGS**

The parties understand that each collaborative lawyer is independent from the other and each represents his or her client only in the collaborative law process. The parties further understand that each collaborative lawyer is an advocate for his or her client only. No legal duty, by contract or otherwise, is owed to a party by the other party's collaborative lawyer. No attorney-client relationship exists between one party's collaborative lawyer and the other party by virtue of this Participation Agreement or the collaborative process.

The parties acknowledge the following: There is no guarantee that the process will be successful in resolving the matter. The process cannot eliminate concerns about the differences that have led to the current conflict. The parties are expected to assert their own interests and their respective collaborative lawyers will help each of them to do so. The process, even with full and honest disclosure, can involve intense good-faith negotiation, but best efforts will be

used to create proposals that meet the interests of both parties. 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 agreement may be modified by written agreement signed by all participants. However, the prohibition against either lawyer representing their client in contested matters against the other party may not be modified. Both parties and their respective collaborative lawyers hereby pledge to comply with and to promote the spirit and letter of this agreement. Both parties and their collaborative lawyers acknowledge that they have read this agreement, understand its terms and conditions, and agree to abide by them.

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

\_\_\_\_\_  
[PARTY1]  
Street Address  
City, State, Zip code

\_\_\_\_\_  
[PARTY2]  
Street Address  
City, State, Zip code

\_\_\_\_\_  
[LAWYER1]  
Attorney for [PARTY1]  
SBN #  
Street Address  
City, State, Zip code  
Office Phone  
Fax Number

\_\_\_\_\_  
[LAWYER2]  
Attorney for [PARTY2]  
SBN #  
Street Address  
City, State, Zip Code  
Office Phone  
Fax Number

## EXHIBIT "A"

### CODE OF CONDUCT

the parties agree that neither party will:

1. Communicate with the other party 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 parties.
4. Falsify any writing or record relating to the property of either party.
5. Damage or destroy the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
6. Tamper with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, thereby causing monetary loss to the other party.
7. Sell, transfer, assign, mortgage, encumber, or in any other manner alienate any of the property of either party, whether personalty or realty, and whether separate or community, except as specifically agreed to in writing.
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 party 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 party, whether individually or jointly with others, unless the parties 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 party, 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 parties' 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 party.
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 party 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 party from the use and enjoyment of his or her respective residence.
19. Enter or remain on the premises of the residence or automobile of the other party without the other's consent.
20. Open or divert mail addressed to the other party, except as specifically agreed to in writing.
21. Sign or endorse the other party'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 parties or the other party without the personal signature of the other party.
22. Take any action to terminate or limit credit or charge cards in the name of the parties or the other party, 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 parties.
24. Pay more than the outstanding 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 party 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 party, except as specifically agreed to by the parties.
27. Discontinue or reduce the withholding for federal income taxes on either party's wages or salary, except as specifically agreed to in writing.
28. Destroy, dispose of, or alter any financial records of the parties, 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 party's activities, including the use of an investigator, detective or other individual paid for or engaged by a party or third party, or use of electronic listening or tracking devices until this collaborative law process is terminated.
31. Engage the services of stand-by litigation counsel so long as the collaborative law process continues.
32. Exercise any stock options and warrants except as specifically authorized in advance by written agreement of the parties.
33. Exercise any general or limited power of attorney, whether or not recorded, granted by one party to the other.



34. Pay any indebtedness owed by the parties or either of them prior to the date the indebtedness is due, unless agreed to specifically in writing by the parties.
35. Create or contribute to, or reduce the value or withdraw from or terminate, any trust of any kind or nature except as specifically authorized in advance by written agreement of the parties.
36. Make any gift of any kind or nature, other than usual and customary gifts to family members of either party 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 parties.
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 party's choice of filing status, unless agreed to in advance in writing by the parties.
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 attorney of record for the other party 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.

Either party 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 lawyer's fees and consultant 's 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 party's usual investment activities, business and occupation, subject to all such activities being fully disclosed and accounted for to the other party.