

## **COLLABORATIVE LAW PARTICIPATION AGREEMENT**

### **I. Purpose**

\_\_\_\_\_, and attorney \_\_\_\_\_, Esq. and \_\_\_\_\_, and attorney \_\_\_\_\_, Esq., and [if needed] [facilitator/financial specialist/child specialist] \_\_\_\_\_, [credentials,] and [if needed] [facilitator/financial specialist/child specialist] \_\_\_\_\_, [credentials,] have chosen to use the principles of Collaborative Law to resolve family law matters directly, without the threat of litigation or intervention by the Courts. The essence of Collaborative Law is the shared belief that it is in the best interests of the clients and their family to resolve their differences with minimal conflict. The process relies on honesty, cooperation, integrity and professionalism.

### **II. Communication During the Process**

A. Communication by all participants, whether written or verbal, shall be respectful and constructive, focused on resolving parenting and financial issues.

B. Clients shall discuss settlement of their issues only in a collaborative conference setting unless agreed to in advance by clients and collaborative professionals.

C. Clients authorize their attorneys and other collaborative professionals to share information, opinions or communications regarding this matter with each other, including email. However, privileged communication that a client specifically instructs his or her collaborative professional not to reveal shall be kept confidential.

### **III. Children's Issues**

Clients shall make every effort to reach amicable solutions that promote the children's best interests. They shall not make negative comments about the other parent. Communication with children regarding separation and parenting issues shall occur only upon advance agreement.

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

All participants shall uphold a high standard of integrity, and specifically shall not take advantage of mistakes, errors of fact or law, miscalculations or inconsistencies, but shall disclose them and have them corrected. Integrity includes keeping commitments and agreements made during the collaborative process.

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

A. All participants shall deal with each other in good faith and shall promptly provide all relevant and reasonable information. Clients shall provide sworn statements of net worth and supporting documentation making full and fair disclosure of their income, assets and debts.

B. By using an informal exchange of information and signed authorization forms, clients set aside certain procedures for the duration of the collaborative process including, but not limited to formal discovery proceedings, restraining orders and formal court hearings.

C. Clients may seek an opinion from an attorney or other professional outside this process; the client doing so shall disclose to the participants that an outside opinion has been sought.

## **VI. Professional Collaborative Team**

At minimum, the professional collaborative team consists of two attorneys, one for each client. Most often, it also includes one or two collaborative specialists – in the role of facilitator, financial specialist and/or child specialist.

A. Formation of the Team – Collaborative professionals, often with input from clients, select any additional professionals appropriate for the case. The professionals decide whether and for how long non-attorney collaborative professionals are needed on the case, though in most instances they are utilized for the duration.

B. Professional Roles – Each role provides expertise related to their title: attorneys (legal issues), financial specialists (money matters) and child specialists (parenting and family relationships). Facilitators help guide the process, including attending to communication, interpersonal dynamics, perspectives, emotions and conflict. In some cases, roles are combined.

C. Other Professionals – Other professionals, such as an appraiser of real estate, a business or pension, may be added as needed.

## **VII. Collaborative Professional Protocols**

A. Disqualification by Court Intervention – All collaborative professionals are prohibited from representing or assisting in representation of either client in adversarial proceedings against the other, now or in the future. Attorneys may submit uncontested documents to complete the divorce and perform other tasks as agreed in the process, such as dividing pensions, transferring real estate and preparation of wills.

B. Limitation to the Collaborative Process – The professionals' roles continue as defined in the collaborative process, even after the completion of the process, and the non-attorney professionals may only assist the clients in implementing the terms agreed in the process.

C. Withdrawal of a Professional from the Collaborative Process – If a collaborative professional withdraws from the collaborative case for any reason except those set out in paragraph VIII herein, they shall do so promptly by a written notice to all. This may be done without terminating the collaborative case. A client whose attorney has withdrawn may elect to continue in the collaborative process with a new collaborative attorney and shall give prompt written notice of this intention to all. In the case of any other collaborative professional withdrawing, the remaining team members will confer on the selection of a new collaborative professional to fulfill that role.

D. Collaborative Professional Fees and Costs –All collaborative professionals on the team are entitled to be paid for their services, and one of the tasks in a collaborative law matter is to ensure timely payment to all professionals. Clients shall make funds available for this purpose.

## **VIII. Termination of the Collaborative Process**

A. Termination by a Client – If a client decides to terminate the collaborative process, prompt written notice shall be given to the other client and the team through his or her attorney. There will be a 30-day period before any court hearing unless there is an emergency. All temporary written agreements remain in full force and effect during this period. The intent of this provision is to permit the other client to retain another attorney, to make an orderly transition and to avoid surprise and prejudice to the rights of the other client. Either client may bring this provision to the attention of the court in requesting a postponement of a hearing.

B. Termination by the Collaborative Team – Should a collaborative professional have concerns about the viability of the process, the concern shall be discussed with the team and the team will mutually determine whether to terminate the process. Such concerns include impasse, bad faith, inappropriate behavior or a persistent failure to abide by this Participation Agreement or the Ground Rules of the Process. Should a client withhold or misrepresent relevant information and continues to do so, or has otherwise acted so as to undermine or take unfair advantage of the collaborative process, the team will discuss the matter and, if the matter cannot be resolved, the process shall be terminated.

## **IX. Confidentiality**

Except as set forth below, all communication exchanged within the collaborative process shall be confidential and without prejudice. If subsequent litigation occurs between the clients:

A. Neither client shall be permitted to introduce as evidence in court information disclosed or documents prepared (including notes, minutes, records, etc.) during the collaborative process, except any sworn statements of net worth and supporting financial documentation or signed agreements;

B. Neither client shall be permitted to introduce as evidence in court information with respect to either client's behavior or legal position or any communication in the process; and

C. Neither client shall be permitted to request, subpoena or bring an application for discovery of any document or request testimony in any court proceeding from a collaborative professional with regard to any disclosure made during the collaborative process, including information pertaining to mental health of the clients and parental care of the children.

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

During the collaborative process, except in the usual course of business consistent with their past practice or for payment of usual and customary household expenses, or upon mutual agreement:

A. Neither client shall sell, transfer, or in any way dispose of any property, individually or jointly held by them;

B. Neither client shall incur debts after the signing of this agreement, including but not limited to further borrowing against any credit lines, using credit cards or cash advances against credit cards; and

C. The health, automobile, life, property and other insurance shall be maintained in its present form and there shall be no changes to beneficiaries of insurance policies or pensions.

This agreement shall remain in full force and effect during these negotiations, unless terminated, modified or amended by written agreement of the clients or upon order of a court.

## **XI. Enforceability of Agreements**

A temporary agreement signed by the clients during the collaborative process survives the termination of the process and may be presented to the court as a basis for an order. Once a final agreement is signed, it is legally enforceable. The language attached as **Schedule A** shall be incorporated into the parties' final written agreement.

## **XII. Remote Meetings**

Should the Collaborative meetings occur remotely via video conferencing, telephone or other electronic means, all shall abide the following:

A. There shall be no audio or video record of a meeting.

B. If a remote connection is interrupted, all will wait until it is restored. If it is not possible to restore an adequate connection, the meeting shall end and be rescheduled.

C. Only those who have signed this Participation Agreement shall participate or be able to hear any communication during a remote meeting.

D. All will use their best efforts to not be interrupted during a remote meeting, including turning off or muting notifications from electronic devices. If there is an interruption, all will wait until the interruption is resolved.

## **XV. Pledge**

**WE HEREBY PLEDGE TO COMPLY WITH AND PROMOTE THE SPIRIT  
AND WRITTEN WORD OF THIS PARTICIPATION AGREEMENT**

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Client #1

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Client #2

\_\_\_\_\_  
Attorney #1

\_\_\_\_\_  
Attorney #2

\_\_\_\_\_  
Neutral Professional

\_\_\_\_\_  
Neutral Professional

STATE OF NEW YORK)  
COUNTY OF MONROE)

On \_\_\_\_\_, 2023 before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Client #1's Attorney  
NOTARY PUBLIC  
\_\_\_\_\_  
COUNTY NEW YORK  
COMMISSION EXPIRES

STATE OF NEW YORK)  
COUNTY OF MONROE)

On \_\_\_\_\_, 2023 before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Client #2's Attorney  
NOTARY PUBLIC  
\_\_\_\_\_  
COUNTY NEW YORK  
COMMISSION EXPIRES

**Schedule A:**

**Agreement Language**

Notwithstanding the foregoing, however, the provisions of this Agreement were reached using the collaborative process. All communication exchanged within the collaborative process shall remain confidential and without prejudice. If litigation occurs between the parties:

A. Neither party shall be permitted to introduce as evidence in court information disclosed or documents prepared (including notes, minutes, records, etc.) during the collaborative process, except any sworn statements of net worth and supporting financial documentation;

B. Neither party shall be permitted to introduce as evidence in court information with respect to either party's behavior or legal position or any communication in the process; and

C. Neither party shall be permitted to request, subpoena or bring an application for discovery of any document or request testimony in any court proceeding from an attorney or allied professional with regard to disclosure made during the collaborative process.