

## Collaborative Law Participation Agreement Page 1

Collaborative Divorce Professionals, Inc. (Revised November 21, 2008)

### COLLABORATIVE LAW PARTICIPATION AGREEMENT

#### PURPOSE

\_\_\_\_\_ and \_\_\_\_\_ (hereinafter referred to as “the parties”) have chosen to use the principles of Collaborative Law to settle the issues arising from the dissolution of their marriage. The primary goal of Collaborative Law is to settle in a non-adversarial manner the issues arising from the parties' separation and dissolution of their marriage. The parties have retained lawyers who agree to use the principles of Collaborative Law to assist them in reaching this goal.

The parties also agree that their lawyers have explained to them the following additional types of optional dispute resolution processes that are available to them for the restructuring of their family and marital relationships: *pro se* party-to-party negotiation; mediation, early neutral evaluation; arbitration (for non-child related issues); non-collaborative negotiations through separate attorneys; and, adversarial litigation through the court system.

#### COMMUNICATION

The parties and their lawyers intend to effectively communicate with each other to efficiently and economically settle the dissolution of their marriage. Written and verbal communications will be respectful and constructive and will not make accusations or claims not based in fact.

It is agreed that communications during settlement meetings will be focused on the economic and parenting issues (if applicable) in the dissolution and the constructive resolution of those issues. The parties and their lawyers understand that the costs for settlement meetings are substantial and require everyone's cooperation to make the

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best possible use of available resources. To achieve this goal, the parties agree not to engage in unnecessary discussions of past events.

To maintain an objective and constructive settlement process, the parties agree to discuss settlement of their dissolution issues only in the settlement conference setting. Discussions outside of the conference setting must be agreed to by the parties and their lawyers. Settlement issues will not be discussed in the presence of the parties' children, or at unannounced times by telephone calls or appearances at the other party's residence.

The parties acknowledge that inappropriate communications regarding their dissolution can be harmful to their children. Communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement.

By mutual agreement, the parties may together seek the advice of a neutral child specialist. (See section on "Experts" below.) The parties specifically agree that their children will not be included in any discussion regarding the dissolution except as described in this Agreement.

The parties agree that all statements made during any settlement meeting are intended to be taken as being in furtherance of settlement, and therefore, not admissible as evidence in court. Further, neither party shall call either attorney as a witness should either or both parties resort to litigation.

### **EXPERTS**

When appropriate and needed, the parties will use neutral experts for purposes of valuation, cash flow analysis, parenting issues and any other issue which requires expert advice and/or recommendations. The parties will agree in advance as to how the costs of the third-party expert will be paid. If the parties resort to litigation, neither party may call any neutral expert who has participated in the Collaborative Law process as a witness in court, and the expert's report may not be submitted to the court.

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### **INFORMATION**

The parties and their lawyers agree to deal with each other in good faith to promptly provide all necessary and reasonable information requested. No formal discovery procedures (e.g. depositions, interrogatories, document requests, requests for admissions) will be used during the Collaborative Law process.

The parties acknowledge that by using informal discovery, they are giving up certain investigative procedures and methods that would be available to them in the litigation process. They give up these measures with the specific understanding that both parties shall make a full and fair disclosure of all assets, income, debts and other information necessary for a fair settlement. Participation in the Collaborative Law process, and the settlement reached, is based upon the assumption that both parties have acted in good faith and have provided complete and accurate information to the best of their ability. The parties agree to sign a sworn statement making full and fair disclosure of their income, assets and debts.

### **ENFORCEABILITY OF AGREEMENTS**

In the event that either party requires a temporary agreement for any purpose, the agreement will be put in writing and signed by the parties and their lawyers. If either party withdraws from the Collaborative Law process, thereafter the written agreement may be submitted to a court or to any taxing authority, if necessary.

### **ATTORNEY FEES, EXPERT FEES**

The parties acknowledge and agree that each party must have funds available for payment of attorney fees, expert fees, and related necessary expenses. The parties agree to make funds available for this purpose during the Collaborative Law Participation process.

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### **LEGAL PROCESS**

**Court Proceedings:** Unless otherwise agreed, or in the case of an emergency, prior to reaching final agreement on all issues, no Summons and Complaint will be served or filed, nor will any other motion or document be prepared or filed which would initiate court intervention unless otherwise agreed. When the parties have reached a final agreement, the parties will file jointly for a dissolution of marriage. Alternatively, by agreement of the parties, one party may file for an uncontested divorce. Neither party nor that party's lawyer will use the court during the Collaborative Law process unless it is mutually agreed, or in the case of an emergency.

**Withdrawal from Collaborative Law Process:** If a party decides to withdraw from the Collaborative Law process, prompt written notice will be given to the other party through his or her lawyer. Upon withdrawal from the Collaborative Law process, there will be a thirty (30) day waiting period (unless there is an emergency) before any court hearing, to permit the other party to retain another lawyer and make an orderly transition. All temporary agreements will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other party. It is therefore mutually agreed that either party may bring this provision to the attention of the court in requesting a postponement of a hearing.

The parties understand and agree that, if either party withdraws from the Collaborative Law process and the case proceeds to litigation, any attorney who has represented any party in this Collaborative Law process, including any other attorney in the same firm, shall withdraw and shall not represent the party in the litigation process.

### **OTHER RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

The parties understand that, without filing a court action, neither party is restrained by court order from any act. However, the parties agree to the following, until further written agreement by the parties:

- Neither party will harass, annoy, interfere with, harass by telephone, assault, or cause bodily harm to the other party.

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- Neither party will sell, damage, destroy, remove, encumber, dispose of, lessen the value of, or in some manner hide any asset belonging to either or both of the parties.
- Neither party will change beneficiaries on any life insurance policies, fail to pay the premiums thereon, cancel or cash in said policies, or permit said policies to lapse, or otherwise change the status of said policies.
- Neither party will withdraw, spend, encumber, or dispose of funds deposited in financial institutions, including but not limited to bank accounts (except checking accounts), savings accounts, money markets, credit unions, pension plans, or certificates of deposit.
- Neither party will change beneficiaries on any insurance policies, including but not limited to health, homeowners and automobile insurance policies, fail to pay the premiums thereon, cancel or cash in said policies, or permit said policies to lapse or otherwise change the status of said policies.
- Neither party will contract upon the other's credit in some manner, or incur any debt to which the other may be obligated.
- Neither party will relocate the parties' minor children from the county in which they now reside or to a location that would interfere with school attendance in their present school district.
- Neither party will conceal the whereabouts of their minor children during the pendency of the Collaborative Law process.

### **ACKNOWLEDGMENT OF RIGHTS**

The parties have chosen the Collaborative Law process to reduce emotional and financial costs, and to generate a final agreement that addresses their concerns. They agree to work in good faith to achieve these goals. The parties acknowledge that, by dissolving their marriage by agreement, they will be waiving the following rights that would otherwise be available to them through the litigation process:

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- The right to formal discovery, including but not limited to discovery of assets and liabilities.
- The right to have each and every item of marital property valued and to have the court resolve any disputes between them with respect to valuation.
- The right to have a court divide the marital property in a manner that the court determines to be equitable under Ohio law.

By signing below, both parties and their lawyers acknowledge that they have read this Agreement and agree to abide by its terms. Further, by signing below, the parties acknowledge that the attorneys have discussed with them all options available to them in the termination of their marriage, including, but not limited to, the collaborative process, litigation, mediation, and arbitration.

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

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

\_\_\_\_\_  
Wife

\_\_\_\_\_  
Husband

\_\_\_\_\_  
Attorney for Wife  
Attorney Registration No.  
[Address]  
Phone:  
Fax:  
Email:

\_\_\_\_\_  
Attorney for Husband  
Attorney Registration No.  
[Address]  
Phone:  
Fax:  
Email:

**ADDENDUM TO COLLABORATIVE PROCESS AGREEMENT:  
ACKNOWLEDGMENT OF INFORMED CONSENT**

The persons designated as Wife and Husband below have individually and collectively decided to enter into a collaborative process agreement. In doing so, Wife and Husband have individually and collectively determined that it is in their best interest to avoid litigation and to utilize a collaborative process as their alternative dispute resolution process of choice.

Both Wife and Husband acknowledge that, prior to entering into a collaborative process agreement, she/he has individually received, from her or his own counsel of choice, information concerning the possible risks and possible benefits of litigation and each alternative dispute resolution process available. Each party hereby acknowledges the following summary to be consistent with her or his understanding of the options available and some of the possible risks and benefits associated with each option:

   H **I. LITIGATION**  
   W

A. Possible benefits may include:

1. The court can issue temporary orders restraining, among other things, the wrongful dissipation of assets, generally on an immediate basis.
2. The court can issue other temporary orders, regarding matters such as parenting rights and support obligations, although such orders may take weeks or months.
3. The court can enforce the discovery of necessary information and may impose sanctions for failure to comply with the discovery process.
4. If any issues are not ultimately settled, the court will hear evidence at a trial, apply whatever mandates are prescribed by the law, and then make a decision disposing of all remaining disputes.

B. Possible risks may include:

1. Adversarial process, in a non-private forum, and position-based bargaining increase relational costs (i.e., increase likelihood of long-term impairment of the parties' ability to directly communicate and interact with each other in a dignified, effective manner).
2. Increased conflict between the parties increases the negative impact upon their children.
3. The parties cede control in favor of the court making decisions for them, which decisions are necessarily made from a more limited, non-customized set of options, after consideration of only the information that is admissible under technical rules of evidence, and often neither party emerges as a clear winner.
4. The time consumed by, and resulting legal fees involved in, pursuing formal discovery proceedings, temporary order contests, trial and possible appellate court proceedings can take a substantial toll, emotionally and financially, upon both parties.

   H **II. ARBITRATION**  
   W

A. Possible benefits may include:

1. Unlike litigation, a third party lawyer is selected and hired to act as a private judge, so that the case can be heard in a private forum and on a time scheduled determined by the parties.
2. The scope of an arbitrator's powers and role is determined by the parties' agreement to utilize arbitration. An arbitrated decision may be binding on the parties.

B. Possible risks may include:

1. Parenting disputes and child support amounts cannot be absolutely determined by an arbitrator, meaning that court intervention will still be required on these issues if they are not settled by agreement.
2. Arbitration utilizes the adversarial process, like litigation, and therefore many of the same risks of litigation (increased relational costs, ceding control over decision-making, etc.) still apply.

   H **III. MEDIATION**  
   W

A. Possible benefits may include:

1. A third party neutral facilitates resolution by direct, face-to-face negotiations between the parties.
2. Parties retain control over decision making so that each party's needs and interests, along with a wider variety of options, are generally given consideration, not just the evidence and the laws as in adversarial processes such as litigation or arbitration.
3. As opposed to litigation or arbitration, it is a process that can more effectively address the interpersonal issues that can obstruct resolution.

B. Possible risks may include:

1. The neutral mediator cannot individually counsel either party or do much to level unequal bargaining positions between parties.
2. The neutral mediator is limited in his/her ability to facilitate the discovery of necessary information in the face of one party's obstructive behavior.
3. Since the parties' lawyers generally do not participate directly in the negotiations, the lawyers remain unaligned with the process, resulting in a greater risk that the mediated agreement may be scuttled when each party receives her or his lawyer's critique.

\_\_\_\_H **IV. EARLY NEUTRAL EVALUATION**

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A. Possible benefits may include:

1. Parties retain an experienced family lawyer to act as a neutral educator, consultant and evaluator to assist them in exploring the range of options and creative solutions that might be available for their consideration.
2. Neutral Evaluator guides the parties through a checklist of subjects that should be discussed and included within a separation agreement and shared parenting plan. Neutral Evaluator may use mediation techniques and skills to facilitate problem solving discussions between parties, and, in the event of an impasse, the Neutral Evaluator is authorized by the parties to give them a non-binding advisory opinion on a solution that the Evaluator believes would be reasonable and appropriate considering the particular circumstances of the parties.
3. Neutral Evaluator does not render any individual, personal legal advice to either party, and does not draft any dissolution pleadings or other documents for the parties. At end of this process, parties are referred to collaborative lawyers for personal advice and drafting of any necessary documents. However, in most cases, the total time and expense involved in completing the dissolution of marriage process can be reduced significantly by starting with early neutral evaluation.

B. Possible risks may include:

1. This option may not be appropriate or effective in cases where parties are in high conflict, or one party has a significant personality disorder.

\_\_\_\_H **V. NEGOTIATION WITHOUT A COLLABORATIVE PROCESS AGREEMENT**

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A. Possible benefits may include:

1. Parties may choose to use interest-based or position-based bargaining, and negotiations can take place either in four-way meetings or between the lawyers.
2. Unlike a collaborative process, the lawyers are not retained for a limited purpose and each party can keep her or his same counsel to litigate unresolved issues.

B. Possible risks may include:

1. Unlike mediation or a collaborative process, protocols and processes are not as clearly defined, decreasing the likelihood of resolution and increasing the likelihood that a party will resort to litigation.
2. The possibility that the lawyers may at some point be adversaries in litigation can negatively impact the level of trust that may be necessary to resolve issues (especially in an interest-based negotiation) because, like in litigation, the attorneys are still simultaneously pursuing settlement and preparing for trial.

\_\_\_\_H **VI. NEGOTIATION WITH A COLLABORATIVE PROCESS AGREEMENT**

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A. Possible benefits may include:

1. Interest-based negotiations are utilized, similar to mediation, promoting the parties' long-term ability to effectively communicate and minimizing the negative impact upon children from the conflict.
2. All information is shared fully in a private forum, on request of either party, and all negotiations take place directly, face-to-face in "four-way" meetings in which an environment of trust is promoted by the knowledge that the other spouse's attorney will not some day be an adversary.
3. Each of the lawyers is retained for only the limited purpose of helping her or his client reach a reasonable, acceptable settlement on all issues, without litigation or threatening to litigate. This allows the lawyers to focus on creative solutions rather than preparation for trial.
4. In the event the collaborative process fails, it is still likely that the parties will have accomplished much of the discovery work efficiently, the parties will have their case information organized, and settlement options will have been explored.

B. Possible risks may include:

1. Like mediation, early neutral evaluation and negotiation without a collaborative agreement, each side has the unilateral right to terminate the process at any time and force the other party into litigation.
2. Unlike mediation, early neutral evaluation or principled negotiation, if the collaborative process fails, neither lawyer can continue to represent her or his client and each client must retain new counsel for litigation, and it is possible that not all of the work done in the collaborative process will be of use in resolving the litigated case.
3. Each party may reach a point where she or he feels that there is no choice but to settle because of the investment she or he has already made in the process.

Wife and Husband have each placed her or his initials on the spaces above and have signed her or his name below to affirmatively indicate that she or he has carefully read this Acknowledgment of Informed Consent, that she or he has previously discussed the benefits and risks of each of the above options with her or his individual counsel before today, that the benefits and risks of each option listed above are consistent with her or his understanding, and that she or he has freely and voluntarily decided to enter into a collaborative process.

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WIFE

\_\_\_\_\_  
Date

\_\_\_\_\_  
HUSBAND

\_\_\_\_\_  
Date