

# **COLLABORATIVE DIVORCE PARTICIPATION AGREEMENT**

We, \_\_\_\_\_ and \_\_\_\_\_, presently married, have chosen to use the principles of Collaborative Practice to settle all of the issues arising from the dissolution of our marriage.

This document describes the goals and principles of Collaborative Practice. It will be signed by all members of our Collaborative Team, which initially includes each of us and our attorneys. We understand that our Collaborative Team may be expanded to include a divorce coach or coaches, a child specialist, a financial specialist, and other professionals who we agree to add to our Collaborative Team. Each professional member of our Collaborative Team will be a graduate of a Collaborative Practice training program. If Collaborative Team Members are added, each will sign a copy of this Agreement.

## **I. GOALS**

We acknowledge that the essence of Collaborative Practice is the shared commitment by all Collaborative Team Members to achieve effective resolution without litigation. The Collaborative Process is not intended to advance or promote any particular type of result, but to allow the parties to come to the agreement that works best for them and their child(ren) at this stage of their lives, and with recognition of how agreements reached now can affect their future choices.

Our goal is to minimize the negative consequences often associated with divorce and to resolve our issues in an atmosphere of honesty, cooperation, integrity, and professionalism.

For these reasons, we agree to use the Collaborative Process.

## **II. NO COURT INTERVENTION**

All of our Collaborative Team Members commit to working cooperatively to settle our case without court intervention.

\_\_\_\_ (If case has been filed) A court action has been filed. We agree to dismiss the case in order to give us time to complete this dispute resolution process.

\_\_\_\_ No court action between us has been filed. Until we reach and sign a final agreement on all issues, neither of us will file any court action.

### **III. CAUTIONS**

We understand there is no guarantee that the Collaborative Process will be successful in resolving our issues, but we commit to giving it our best efforts.

We understand that the process cannot eliminate the disharmony, distrust, and differences that may have existed in the past, but we commit to applying our best efforts to create an atmosphere of harmony, trust, and cooperation as we move forward.

We understand that we will assert our respective interests and that our respective practitioners will help each of us to do so. We commit to doing so in the spirit of collaboration.

We understand that we are foregoing the use of formal court procedures available under the adversarial system.

We understand that each of us has an attorney who has a professional duty to diligently represent only his or her client. No attorney-client relationship is created between one client's Collaborative Attorney and the other client by entering into this Agreement or by the Collaborative Attorney's signature below. At the same time, the attorneys we have chosen share a commitment to the process described in this document.

### **IV. NEGOTIATION IN GOOD FAITH**

We understand that the Collaborative Process, even with full and honest disclosure, will involve vigorous good faith negotiation. We commit to try to focus on the issue or issues at hand, to not disparage or belittle, and to keep an open mind to new ideas. We recognize that listening is an important part of negotiation.

Because we have different needs, we can expect that we may have disagreements. We understand that our attorneys will encourage us to use our best efforts to create options that meet our fundamental needs. We understand that reaching a settlement is likely to require compromises from each of us and that proposing compromise is not a sign of weakness.

In our meetings, we might discuss the parameters of Michigan domestic relation law, and we will strive to reach creative settlements unique to our family that may not necessarily follow these parameters. However, neither we nor our attorneys will threaten litigation as a way of forcing settlement.

### **V. DISCLOSURE OF INFORMATION**

We agree to promptly make a complete, full, and honest disclosure of all necessary and pertinent information requested. We will not use formal discovery procedures (depositions, written questions answered under oath, subpoenas), unless we specifically agree to them in advance.

We acknowledge that by using informal disclosure, we are giving up certain rights for the duration of the Collaborative Process. We give up these measures with the specific understanding that both of us will make full and fair disclosure of all assets, income, debts and other relevant information, and that if requested, we will verify these with sworn statements.

We acknowledge that our participation in the Collaboration Process, and the settlement we hope to reach, are based upon the assumption that both of us will act in good faith and will provide complete and accurate information to the best of our ability. There is a duty to correct any errors, misinformation, or omissions in the Collaborative Process.

## **VI. PARTICIPATION WITH INTEGRITY**

We will maintain a high standard of integrity. We will not take advantage of each other. We will not mislead, or allow recognized misunderstandings to continue. Instead, we will identify and correct any miscalculations or inadvertent mistakes of others.

We agree, as do our Collaborative Team Members, to treat all participants with respect and dignity. We will try to be understanding of each other's perspectives, even when we disagree.

We agree to be respectful of the time and investment of each Collaborative Team Member. We will do our best to make time for the meetings necessary to keep the Collaborative Process moving, to be prepared for each meeting by having done the homework we agreed to do between meetings, to be on time for all meetings, and to provide timely notice if it is not possible to attend a scheduled meeting or provide requested information necessary for a meeting to be productive.

## **VII. PRESERVATION OF *STATUS QUO***

We agree that we shall continue to maintain the financial status quo arrangements and continue to handle finances in the same manner as has been customary for this family for the past six months, including continuing the management of depositing of paychecks, use of assets, spending and payment of bills.

We agree that commencing immediately, neither party will borrow against, cancel, transfer, dispose of, or change the beneficiaries of any pension, retirement plan, or insurance policy or permit any existing coverage to lapse, including life, health, automobile, homeowners, renters or disability held for the benefit of either party without the prior written consent of the other party.

We agree that commencing immediately, neither party will 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 or an order of the court.

We agree that commencing immediately, neither party will sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal, belonging to or acquired by either party, without the prior written consent of the other party, except in the usual course of business or investing, payment of Collaborative Team Member fees and costs, or for the reasonable necessities of life.

We agree that neither party will incur any further debts that would burden the credit of the other, including but not limited to, further borrowing against any credit line secured by the marital residence, or unreasonably using credit cards or cash advances against credit or bank cards or will incur any liabilities for which the other may be responsible, other than in the ordinary course of business or for the necessities of life or the continuation of the Collaborative Process without the prior written consent of the other.

We agree that if either of us has taken any of the above actions within the past six months, we will immediately disclose that fact to the other party and the team.

### **VIII. CHILD-RELATED ISSUES**

We recognize that our courteous, cooperative, and predictable behavior toward each other is our child(ren)'s best insurance of a healthy future. Our goal is to promote a caring, loving, and involved relationship between our child(ren) and each of us. We will insulate our child(ren) from our disputes, and we will not discuss the details of our divorce with them. We acknowledge that inappropriate communication regarding our dissolution is harmful to our child(ren).

As part of the Collaborative Process, we will create a parenting plan that will address the following issues:

- Allocating parenting responsibilities
- Parenting time
- Decision making
- Communication
- Support
- Problem solving

In doing this, we will make every effort to reach solutions that promote the best interests of our child(ren) and are respectful of our individual strengths, abilities and limitations. We will work with our Collaborative Team Members to quickly mediate and resolve any issues. We understand our Collaborative Team includes divorce coaches and may include a child specialist to help us focus on our child(ren)'s needs. If necessary, the child specialist can speak with the child(ren) to help us understand each child's concerns and guide us toward an appropriate parenting plan. As part of this process, we may reach agreements on how to discuss the parenting plan and other issues with our child(ren).

We understand that parents sometimes seek a custody evaluation from a mental health professional. Unless we both agree in writing, we will not engage such an evaluator.

## **IX. PARENTING RESOURCES**

We understand that there are many places for us to obtain information about co-parenting during and after divorce, including from our divorce coaches, the *Smile Program*, [uptoparents.org](http://uptoparents.org), [ourfamilywizard.com](http://ourfamilywizard.com), and many books. We agree to explore resources as recommended by our Collaborative Team Members.

## **X. PROFESSIONAL FEES AND COSTS**

We agree that our attorneys and other Collaborative Team Members are entitled to be paid for their services, according to the terms set out in separate fee agreements signed with each Collaborative Team Member. We understand that an outstanding balance due to any Collaborative Team Member may adversely affect one party's access to advice and counsel as compared to the other party, and thus agree we will maintain current payment of all Collaborative Team Members' fees. We will decide from which accounts the Collaborative Team Members will be paid. We also understand that:

- Collaborative Team Members are independent of one another and have no financial connections, fee-sharing, or referral fee arrangements with one another; and
- No Collaborative Team Member can continue to provide services without payment.

## **XI. EXPERTS AND CONSULTANTS**

If non-team member experts and/or consultants are needed, we will retain them jointly as neutrals, unless we and our attorneys agree otherwise in writing. This Collaborative Participation Agreement alone will not prohibit use of these non-team member experts or consultants or their work product if the Collaborative Process is terminated.

## **XII. CONFIDENTIALITY**

We understand that our Collaborative Team Members will treat as confidential all information provided during the Collaborative Process to anyone outside the team, consistent with their professional ethical obligations (such as reporting suspected child abuse). There will often be times when our Collaborative Team Members must and will communicate with each other for the team to work effectively, including unencrypted E-mail, facsimile, and other electronic methods of communication as necessary. We authorize our Collaborative Team Members to communicate freely with each other during and after this Collaborative Process.

Each of us will decide with our own attorney and coach how to share information with the Collaborative Team. We understand that if we instruct an attorney or coach to withhold from

the Collaborative Team information that he or she believes is required to be disclosed, the attorney or other Collaborative Team Member may be required to withdraw from the process.

If the Collaborative Process is terminated and we begin litigation or another process for dispute resolution we specifically agree that neither of us will call as a witness either attorney, coach or any other Collaborative Team Member. We consider all Collaborative Team Member communications throughout the Collaborative Process to be ongoing compromise and settlement negotiations and thus privileged, confidential, and inadmissible in court. This rule does not apply to any written sworn statements as to financial status or this Collaborative Participation Agreement.

### **XIII. OUR RIGHTS AND OBLIGATIONS PENDING SETTLEMENT**

Although we have agreed to work outside the judicial system, we agree that:

- Neither of us will change the residence of our child(ren) without the written agreement of the other parent.
- We may continue to use our income and assets to meet our ongoing costs of living, but we will not otherwise hide, damage, dispose, or encumber any assets unless we mutually agree and we will not unreasonably or unnecessarily increase the debt.
- We will not harass each other.
- We will not disparage, or allow others to disparage, each other to our child(ren).
- We will keep all of our current insurance coverage in effect. We will not change any coverage or any beneficiary designation. We will disclose any changes that may have been made within the last six months.
- We will not hire private investigators or otherwise place each other under surveillance or investigation.

We understand that if either of us violates any of these provisions, it may undermine the Collaborative Process, make it more difficult to reach our mutual stated goals, and may lead to termination of the process.

### **XIV. TERMINATION OF THE COLLABORATIVE PROCESS AFTER SETTLEMENT**

When we reach and sign a final agreement on all issues, we will then submit to the jurisdiction of the family division of the circuit court of the county in which we principally reside. We will ask the court for a dissolution of our marriage. We will file jointly if the court rules permit; otherwise, we will agree upon which of us will file. Our final agreement will be incorporated into our Judgment of Divorce. The attorneys who have been a part of the Collaborative Process may prepare the documents necessary to give effect to our agreements. Outside counsel may be used to draft Domestic Relations Orders. Entry of the Judgment of Divorce terminates the Collaborative Process, but the commitments contained herein remain in

effect. Neither party may re-engage the services of a team member, except with notice to the other party.

If the parties cannot agree on entry of a Judgment of Divorce, consistent with their signed final agreement, the parties shall proceed to represent themselves or retain separate litigation counsel. The attorney Collaborative Team Members shall take all necessary ethical steps to terminate their representation.

#### **XV. TERMINATION OF THE COLLABORATIVE PROCESS WITHOUT SETTLEMENT**

Either of us may terminate the Collaborative Process for any reason with notice to his or her attorney and the other party. We both commit, however, not to do so lightly, out of mere frustration or impatience, or to threaten to terminate the Collaborative Process to gain a perceived advantage in negotiations.

We understand that each of us has an affirmative duty to provide information and to act fairly in this process. Our attorneys and all other Collaborative Team Members have an affirmative duty to recommend termination of the Collaborative Process and withdraw from the case if (after reasonable investigations and/or discussion) they believe we have acted in violation of our duties by:

- withholding or misrepresenting financial information;
- secretly disposing of property;
- unreasonably or unnecessarily increasing debt;
- acting in a manner that undermines the Collaborative Process or taking unfair advantage of the Collaborative Process;
- abusing our child(ren)
- planning to flee the jurisdiction of the court with our child(ren);
- filing a court action prior to the completion of the collaboration, unless we otherwise agree.

#### **XVI. NOTICE REQUIREMENTS IN CASE OF WITHDRAWAL BY PARTY OR ATTORNEY**

If a party or attorney withdraws from the Collaborative Process, the person withdrawing will immediately give written notice to all other Collaborative Team Members. The party whose Collaborative Team Member withdraws may continue in the Collaborative Process if they retain a new Collaborative Team Member who agrees to the terms of the Collaborative Process and signs the Collaborative Participation Agreement.

Unless circumstances require emergency court relief, both parties agree that they will not file a court action or take any court action in a pending case until at least 30 days after notice was given to allow the other party a reasonable opportunity to retain new counsel. We agree that

this 30-day provision may be brought to the attention of a court in order to request a postponement of a hearing. All temporary agreements will remain in effect during this transition period.

**XVII. DISQUALIFICATION BY COURT INTERVENTION**

We understand that both attorneys, including their respective firms, will be disqualified from ever representing either of us against the other in any adversarial or contested court proceeding.

We also understand that all Collaborative Team Members that are or were a part of this Collaborative Team will be disqualified as witnesses and their work product will be inadmissible as evidence in any court proceeding unless we agree otherwise in writing.

**XVIII. POST-JUDGMENT ISSUES**

Should post-Judgment disputes arise or either of us refuses to honor our final agreement, we will consider resolving the issues between us by returning to the Collaborative Process. If that is not successful, or if either of us is unwilling to participate in the Collaborative Process at the time of the post-Judgment dispute, only our final agreement, as well as our Judgment, may be presented to a court for enforcement.

Non-party members of the Collaborative Team cannot participate in post-Judgment litigation, as counsel, witnesses, or otherwise.

**XIX. PLEDGE**

All of us who sign this agreement, including those who sign it in counterparts, pledge to comply with and to promote the spirit and written word of this document.

**Participants:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Spouse 1

Date: \_\_\_\_\_

\_\_\_\_\_  
Spouse 2



**Collaborative Team Members:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Collaborative Counsel for Spouse 1

Date: \_\_\_\_\_

\_\_\_\_\_  
Collaborative Counsel for Spouse 2

Date: \_\_\_\_\_

\_\_\_\_\_  
Divorce Coach

Date: \_\_\_\_\_

\_\_\_\_\_  
Financial Neutral

Date: \_\_\_\_\_

\_\_\_\_\_  
Child Specialist