

COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT

AMONG: _____, Participant - Husband/Father

-and-

_____, Attorney for Husband/Father

-and-

_____, Participant - Wife/Mother

-and-

_____, Attorney for Wife/Mother

1.0. GOALS

1.1. We, the Participants, believe that it is in our best interests and the best interests of our minor children to reach an agreement through the collaborative process rather than by going to Court.

1.2. We agree to use the Collaborative Practice process to resolve differences. Collaborative Practice is based on:

- honesty (full and complete disclosure of all assets, debts and income);
- satisfying the interests of both Participants;
- cooperation;
- integrity;
- professionalism;
- dignity; and
- respect.

1.3. Collaborative Practice focuses on our **future** well being and the future well being of our children. To achieve this goal, we agree not to engage in unnecessary discussions of past events.

1.4. Collaborative Practice does **not** rely on Court-imposed solutions.

1.5. Our goals are:

- to resolve our differences in the best interests of our child(ren);
- to eliminate the negative economic, social and emotional consequences of litigation; and
- to find solutions that are acceptable to both of us.

2.0. WE WILL NOT GO TO COURT

2.1. **Out-of-Court.** We commit ourselves to settling this case without going to Court.

2.2. **Joint Meetings.** We agree to engage in informal discussions and conferences to settle all issues. All communication during joint meetings will focus on the property, financial and parenting issues in the dissolution and the constructive resolution of those issues.

We are free to discuss issues in the dissolution with each other outside of the joint meetings if we both agree and are comfortable doing so. We will not “spring” discussions on the other in unannounced telephone calls or in surprise visits to the other’s residence. We are also free to insist that any discussions be reserved for the joint meetings where both attorneys are present.

We understand and acknowledge that the costs for joint meetings are substantial and require everyone’s cooperation to make the best possible use of available resources. Thus, we commit to being fully prepared for each meeting.

2.3. **Legal Documents.** We will sign a Joint Petition to commence a dissolution of marriage proceeding unless the proceeding has already been commenced by service of a Summons and Petition. Neither of us or our attorneys will file the Joint Petition with the Court, nor will we permit any motion or document to be served or filed which would initiate court intervention during the Collaborative Practice process pending final agreement. If a Summons and Petition have been filed with the Court, a Request for Deferral will be filed by our attorneys. After we reach a final

agreement, one of the attorneys will prepare necessary legal documents for review and signature by our attorneys and us, which will then be filed with the Court to finalize our divorce.

3.0. WE WILL NEGOTIATE IN GOOD FAITH

3.1. **Good Faith Negotiation.** We understand that this process will involve good faith negotiation.

3.2. **Legal Issues.** The process is designed to resolve the following legal issues:

- Parenting time;
- Financial support of our children, including unreimbursed medical and dental expenses of our minor children, and child care costs, if any;
- Insurance (medical, dental, life);
- Spousal maintenance;
- Division of property and debts;
- Nonmarital property;
- Attorney's fees and costs; and
- Other issues we may agree to address.

3.3. **Disclosure.** We agree to give full and complete disclosure of all information relevant to the issues that a couple must decide as defined by Paragraph 3.2 above, whether requested or not. Any request for disclosure of information will be made informally. We will provide this information promptly.

We acknowledge that by using informal discovery we will not use formal investigative procedures and methods that would be available to us in the litigation process. We agree to use these informal measures with the specific understanding that in return we each can rely on the other making full and fair disclosure of all assets, income, debts and other information necessary for a fair settlement. We each may require the other to sign a sworn statement fully disclosing all assets, income, debts and other information. Participation in the Collaborative Practice process, and the settlement reached, is based upon the assumption that we have acted in good faith and have provided

complete and accurate information to the best of our ability.

3.4. **Interest Based Negotiations.** We agree to negotiate based on interests and not positions.

3.5. **Balanced Approach.** We will be expected to take a balanced approach to resolving all differences. Where our interests differ, we will each use our best efforts to create proposals that are acceptable to both of us.

3.6. **Use of the Law.** None of us will use threats of litigation as a way of forcing settlement. We may however discuss the likely outcome of going to Court and the law.

3.7. **Negotiate with Integrity.** We will maintain a high standard of integrity and specifically shall not take advantage of any miscalculations or mistakes of others, but shall immediately identify and correct them.

4.0. CHILDREN'S ISSUES

4.1. We agree to act quickly to resolve differences related to our children;

4.2. We agree to promote a caring, loving and involved relationship between our children and each parent;

4.3. We agree to work for the best interests of the family as a whole;

4.4 We agree not to involve our children in our differences;

4.5. We acknowledge that inappropriate communications regarding our dissolution can be harmful to our children. Communication with our children regarding the dissolution will occur only if it is appropriate and done by mutual agreement or with the advice of a child specialist. We specifically agree that our children will not be included in any discussion regarding this process except as described in this Agreement; and

4.6. We each agree not to remove our minor children from the State of Minnesota without the prior written consent of the other parent during this process.

5.0. USE OF OTHER COLLABORATIVE PROFESSIONALS

5.1. We understand that we may engage a financial professional, coach(es), child specialist and/or mediator, who have been trained in Collaborative Practice to assist us in this process and work with our attorneys as a team.

5.2. A financial professional can assist the Participants with budgets, cash flow, and property division.

5.3. A coach can assist the Participants in managing emotions, improving communication, developing co-parenting skills, and creating a parenting plan.

5.4. A child specialist can meet with the children to understand their needs, provide a voice for the children, give feedback to the Participants about their children's needs, and work with the Participants on a developmentally responsive parenting plan.

5.5. A mediator has specialized skills in dispute resolution that may be helpful to Participants in reaching an agreement.

5.6. When other Collaborative Professionals are retained the Participants will sign a Participation Agreement with that Professional which will be attached to this Participation Agreement.

6.0. EXPERTS

6.1. We agree to use neutral experts for any issue that requires expert advice and/or recommendation. This does not prevent either Participant from using an expert to educate them on

any issues in this matter, provided such use is disclosed to all Participants and professionals.

6.2. We will retain any neutral expert jointly unless we agree otherwise in writing.

6.3. We agree to direct all experts to assist us in resolving our differences without litigation.

6.4. Any report, recommendation, or documents generated by, or any oral communication from, the neutral expert shall be shared with each of us and our respective attorneys and unless otherwise agreed in section 13.2 below, covered by the confidentiality clause of this Agreement.

7.0. FEES AND COSTS

7.1. We agree that our Collaborative Practice professionals are entitled to be paid for their services. We agree that each of us will pay our respective attorneys, and be jointly responsible for the fees of any other collaborative professionals, unless other agreements are reached.

7.2. We will agree in advance as to the source of payment for the retainer or other fees of any expert or Collaborative Professional.

8.0. ENFORCEABILITY OF AGREEMENTS

8.1. **Temporary Agreements.** If either of us requires a temporary agreement for any purpose, the agreement will be put in writing and signed by us and our attorneys. Any written temporary agreement is considered to be made pursuant to a commenced dissolution proceeding and therefore, can be submitted to the Court as a basis for an Order and enforced, if necessary.

8.2. **Permanent Agreement.** Any final, permanent agreement we sign shall be submitted to the Court as the basis for entry of a Judgment and Decree of Dissolution.

8.3. **In Case of Withdrawal.** If either of us or either attorney withdraws from the Collaborative Practice process, any written temporary agreement may be presented to the Court as a basis for an Order pursuant to a dissolution proceeding, which the Court may make retroactive to the

date of the written agreement. Similarly, in the event of a withdrawal from the Collaborative Practice process, any final agreement may be presented to the Court as a basis for entry of a Judgment and Decree of Dissolution.

9.0. TERMINATION OF PROCESS PRIOR TO SETTLEMENT

9.1. **Termination.** Participants may unilaterally terminate the Collaborative Practice process at any time for any reason or for no reason at all. If one of us decides to terminate the process, s/he shall provide prompt written notice to his or her attorney, who in turn will notify the other attorney in writing. The Collaborative Practice Process terminates when the attorney representing the non-terminating Participant receives written notice of termination.

9.2. **Waiting Period.** Upon termination from the process, there will be a 30-day waiting period, absent an emergency, before the scheduling of any court hearing, to permit us to retain new attorneys and to make an orderly transition.

9.3. **Previous Agreements.** All temporary agreements will remain in full force and effect during the 30-day period.

9.4. **No Surprise.** The intent of this section is to avoid surprise and prejudice to the rights of the nonwithdrawing Participant.

9.5. **Presentation to Court.** Accordingly, we agree that either of us may bring this provision to the attention of the Court in requesting the continuance of a hearing scheduled by the other or his/her attorney during the 30-day waiting period.

10.0. ABUSE OF THE COLLABORATIVE PRACTICE PROCESS

10.1. We understand that both attorneys will withdraw from this case if either attorney learns that either of us has abused this process. Some examples of abuse of process include:

- planning or threatening to flee the jurisdiction of the Court with our child(ren);
- disposing of property without the consent of the other;
- withholding or misrepresenting relevant information;
- failing to disclose the existence or true nature of assets, income or debts; and
- failing to participate collaboratively in this process.

11.0. WITHDRAWAL OF COLLABORATIVE ATTORNEY

11.1. If either attorney withdraws from the case, the other attorney must also withdraw, unless a withdrawing attorney is replaced by another Collaborative Practice attorney. If one of our attorneys decides to withdraw from the process, s/he will promptly notify their client and the other attorney in writing.

11.2. If the attorney withdrawal results in the termination of the process as set forth in paragraph 11.1 above, the provisions of paragraphs 9.2 to 9.5 above shall apply.

11.3. If an attorney-Participant relationship is terminated, and the Participant wishes to continue in the Collaborative Practice process, the Participant shall provide prompt written notice of this intention. Both Participant and their new lawyer(s) will sign a new Participation Agreement within 30 days of the Participants giving notice. If a new Agreement is not signed within 30 days, the other Participant will be entitled to proceed as if the Collaborative process was terminated as of the date written notice was given.

12.0. DISQUALIFICATION

12.1. **Disqualification in Subsequent Matters.** After the signing of the Participation Agreement neither Collaborative attorney may represent either Participant in any non-collaborative matter where the Participants have adverse interests.

13.0. CONFIDENTIALITY

13.1. **Communications in Court Proceedings.** All communication and information exchanged within the Collaborative process is confidential.

13.2. **Private Communications.** Collaborative Practice is based upon open and honest communications. However, just as in conventional legal practice, there will be private communications which take place between each client and his or her respective attorney and these communications are protected by the Attorney-Client privilege. In Collaborative Practice clients should assume that all information which is relevant to the issues a couple must decide will be disclosed by their attorneys.

If one Participant obtains privileged communications (electronic, voice and/or written communication between a Participant and his or her attorney) he or she must disclose that fact to the other Participant and his or her own attorney. If one Participant copies or forwards privileged communication to a Collaborative professional, that Collaborative professional must disclose receipt of such privileged communication to the attorney involved in the communication.

13.3. **Communications Between Collaborative Professionals.** For Collaborative professionals to work most efficiently and effectively together for the benefit of the clients, the Participants agree that Professionals may communicate among themselves and that those communications may not necessarily be passed along to the Participants.

13.4. **Communications With Persons Outside the Collaborative Process.** All communication and information exchanged within the Collaborative process shall remain private and shall not be exchanged by the Participants or professionals with any other

persons without the written agreement of both Participants. This provision does not prevent either Participant from disclosing such information as may be needed to obtain a second opinion from another attorney.

13.5. **Subsequent Litigation.** If subsequent litigation occurs, the Participants agree that:

13.5.1 Neither will introduce as evidence in court any written or oral information generated or documents prepared during the Collaborative process, including e-mails, voice mails, letters, progress notes, session notes, budgets and projections and proposals for settlement. Only documents such as sworn financial statements and original financial documents may be introduced in court.

13.5.2 Neither will introduce as evidence in court nor require the production of any reports, opinions or notes prepared by any other professional in the Collaborative process, except as follows: professional reports may be used in the event that the Collaborative process terminates, on written consent of both Participants.

13.5.3 Neither will compel or subpoena either lawyer or any other professional retained in the Collaborative process to attend court to testify or attend a deposition to testify under oath about matters discussed in the Collaborative process.

13.5.4 Only the fact that Collaborative process was attempted and final settlement was not reached may be introduced into evidence in court, unless we agree otherwise, in writing.

13.6. **Mandated Reporting of Child Abuse.** Notwithstanding the above, Collaborative Child Specialists and Coaches are licensed mental health practitioners who must report discovered child abuse to legal authorities, pursuant to Minnesota statutory law.

14.0. CAUTIONS

We understand and acknowledge the following:

14.1. **Commitment.** There is no guarantee we will successfully resolve our

differences by using Collaborative Practice. We understand that our success is primarily dependent upon our commitment to the process.

14.2. **Relational Concerns.** We also understand that this process cannot eliminate concerns about any disharmony, distrust, or differences that have led to our marriage dissolution. Nevertheless addressing these concerns within the Collaborative Process may be important to both Participants. Therefore, we may jointly engage a coach (or each of us may engage our own coach) trained in Collaborative Practice to assist us with these concerns so that they do not impede our progress in reaching agreements during this process.

14.3. **Therapeutic Needs.** This process is not designed to address therapeutic or psychological issues. When these or other non-legal issues arise, Collaborative professionals may refer us to appropriate experts or consultants.

14.4. **Attorney Role.** Although we pledge to be respectful and to negotiate in an interest-based manner, we are each entitled to assert our respective interests, and our attorneys will help us do this in a productive manner. **We understand that each attorney has a professional duty to represent his or her own client diligently and is not the attorney for the other.** This is so even though the attorneys share a commitment to Collaborative Practice.

15.0. RIGHTS AND OBLIGATIONS PENDING SETTLEMENT

If we have signed a Joint Petition for the purpose of commencing a dissolution of marriage proceeding, we agree to be bound by the following notices as if a Summons had been served on each of us:

NOTICE OF TEMPORARY RESTRAINING AND ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

UNDER MINNESOTA LAW, SERVICE OF THIS SUMMONS MAKES THE FOLLOWING REQUIREMENTS APPLY TO BOTH PARTICIPANTS TO THIS ACTION, UNLESS THEY ARE MODIFIED BY THE COURT OR THE PROCEEDING IS DISMISSED:

(1) NEITHER PARTICIPANT WILL DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) TO RETAIN COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING;

(2) NEITHER PARTICIPANT MAY HARASS THE OTHER PARTICIPANT;

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

We understand that the following is part of Minnesota Statutes regarding alternative dispute resolution:

Participants to a marriage dissolution proceeding are encouraged to attempt alternative dispute resolution pursuant to Minnesota law. Alternative dispute resolution includes mediation, arbitration, and other processes as set forth in the district court rules. Rule 111.05 of the General Rules of Practice and 312 of the Family Rules of Practice recognize that participation in Collaborative Practice may satisfy this requirement for using alternative dispute resolution. If you are a victim of domestic abuse or threats of abuse as defined in Minnesota Statutes, chapter 518B, you are not required to try mediation or Collaborative Practice and you will not be penalized by the court in later proceedings.

We also understand we need to comply with the education requirement mandated by Minnesota Statutes as follows:

Notice of parent education program requirements: Under Minnesota Statutes, Section 518.157, in a contested proceeding involving custody or parenting time of a minor child, the Participants must begin participation in a parent education program that meets minimum standards promulgated by the Minnesota supreme court within 30 days after the first filing with the court. Children over the age of six must also participate in a divorce education program within the same time frame.

In some districts, parent education and divorce education for children may be required in uncontested custody or parenting proceedings as well. You may contact the district court administrator for additional information regarding this requirement and the availability of parent education programs.

16.0. ACKNOWLEDGEMENT

16.1. We and our attorneys acknowledge that we have read this Agreement, understand its terms and conditions, and agree to abide by them.

16.2. We understand that by agreeing to this alternative method of resolving our dissolution issues, we are giving up certain rights, including the right to formal discovery, formal court hearings, and other procedures provided by the adversarial legal system.

16.3. We have chosen the Collaborative Practice process to reduce emotional and financial costs, and to generate a final agreement that addresses our concerns. We agree to work in good faith to achieve these goals.

17.0. PLEDGE

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

Dated: _____

Dated: _____

NAME
ADDRESS
ADDRESS

NAME
ADDRESS
ADDRESS

Dated: _____

Dated: _____

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