

## COLLABORATIVE PRACTICE PARTICIPATION AGREEMENT

**Party1**

and

**Party2**

### **1. Choosing the Collaborative Process**

- 1.1 We choose the collaborative process to resolve the issues arising from our separation. In doing so, we agree to be respectful in our negotiations and to work together to achieve a mutually acceptable out of court settlement. We realize that we are responsible for the decisions we make. We understand that the process of separation takes place on legal, financial and emotional levels. We recognize that achieving our goals may require the assistance of professionals other than our lawyers.

### **2. Guidelines for Participation in the Collaborative Process**

- 2.1 We agree to:

- (a) deal with each other in good faith
- (b) be respectful, constructive and timely in our written and verbal communication
- (c) follow the problem-solving steps in Schedule A to resolve our concerns
- (d) express our interests, needs, goals and proposals and seek to understand those of the other, and
- (e) develop an array of options for settlement and use our best efforts to negotiate a mutually acceptable settlement.

- 2.2 We will not:

- (a) use the threat to withdraw from the collaborative process or to go to court as a means of achieving a desired outcome or forcing a settlement, or

- (b) take advantage of mathematical or factual errors and will instead identify them and seek to have them corrected.

2.3 Our children's best interests will be our priority. We agree that

- (a) we will not discuss settlement issues with our children;
- (b) we will minimize our children's exposure to conflict between us;
- (c) we will not communicate through our children; and
- (d) we will respect our children's right to have a loving and involved relationship with both parents.

### **3. Collaborative Lawyers**

3.1 **Lawyer 1** is the lawyer for **Party 1**. **Lawyer 2** is the lawyer for **Party 2**.

3.2 Our lawyers and lawyers in their firms cannot represent us, in court or at arbitration, now or in the future, in a proceeding related to this collaborative matter, including a review or variation, with the exception of an uncontested divorce and / or to obtain an order on consent of both parties.

3.3 While the lawyers share a commitment to the Collaborative process and the well-being of the family, each lawyer has a professional duty to represent his or her own client diligently and is not the lawyer of the other party.

### **4. Jointly Retained Professionals**

4.1 We may engage:

- (a) a collaborative family professional
- (b) a collaborative financial professional,
- (c) other professionals such as actuaries, business valuers, tax experts, mediators, and experts regarding children's special needs

(all referred to as "jointly retained professionals").

4.2 Any issue with the services offered by a jointly retained collaborative professional will be discussed and reviewed within the context of the collaborative team.

- 4.3 We agree that our lawyers and jointly retained professionals may share information to co-ordinate efforts on our behalf.
- 4.4 On engaging other Collaborative professionals
- (a) Schedule “B” will be signed with any Financial Professional
  - (b) Schedule “C” will be signed with any Family Professional.
  - (c) Joint retainers will be signed with any jointly retained *collaborative* professionals which retainers shall include a term stipulating that such professionals shall be bound by the terms of this Participation Agreement, unless otherwise specified in writing.
- 4.5 We agree to the use the assistance of a Collaborative intern or unpaid professional recently trained in the Collaborative process. A Collaborative assistant is bound by all the confidentiality provisions as any other Non-Party Participant. A Collaborative assistant’s responsibilities may include taking minutes during meetings and phone calls, helping to coordinate the Client’s and Collaborative Team’s schedules, and making copies and doing other administrative tasks during the meetings. (Optional)
- 5. Sharing of Information**
- 5.1 We agree to share all information that may affect any choices or decisions that either of us has to make in this process.
- 5.2 We will make timely, full, candid and informal disclosure of information related to the issues we are negotiating.
- 5.3 We will promptly update information that has materially changed.
- 5.4 We will decide together how to collect and share all information and documentation regarding income, assets and debts. The form of this information exchange may be by:
- (a) net family property statements
  - (b) net worth statements
  - (c) asset and debt summaries

- (d) monthly budget summaries
- (e) sworn financial statements, or
- (f) other agreed upon formats.

## **6. Confidentiality**

6.1 All oral and written communication and information exchanged within the collaborative process is confidential and without prejudice. The only exceptions are:

- (a) Sworn financial statements, original financial documents and Statements of Family Law Value prepared by a pension plan administrator or by a jointly retained actuary.
- (b) Any expert report or appraisal that we and the expert specifically agree in writing will not be confidential and without prejudice.
- (c) If either of us seeks to set aside a domestic contract negotiated using the collaborative process, either party may choose to waive solicitor and client privilege.
- (d) Either of us, or other professionals in this process, may provide information that they are obligated by law to report to the Children's Aid Society that a child may be in need of protection.

6.2 Subject to paragraph 6.1, we will not:

- (a) use as evidence in court or arbitration any written or oral information or documents prepared or disclosed during the collaborative process including e-mails, voice mails, letters, progress notes, draft agreements, support calculations, schedules of the value of a business or income analysis prepared by an expert, net family property statements and worksheets, meeting notes, budgets, projections for settlement, or the reports, opinions or notes of any professional retained in the collaborative process, or,

- (b) compel either lawyer or any other professional retained in the collaborative process to attend court or arbitration to testify or attend for examination under oath.

## **7. Beginning and Concluding the Collaborative Process**

- 7.1 The collaborative process begins when we sign this agreement and it ends:
  - (a) upon the resolution of the matters addressed in the collaboration as evidenced by a written agreement that has been signed by both of us and witnessed, or
  - (b) upon termination of the collaborative process as described below.

## **8. Withdrawal by a Party**

- 8.1 If either of us decides to withdraw from the collaborative process, we will provide written notice of the intention to withdraw to all professionals retained by us.
- 8.2 A party withdrawing from the collaborative process will wait thirty days before starting a court proceeding in order to permit both of us to retain new lawyers and make an orderly transition. We may bring this provision to the attention of the court to request a postponement of a hearing. We will provide a copy of this Agreement to our new lawyers.
- 8.3 The requirement to wait thirty days before starting a court proceeding does not apply if there is an urgent matter that requires the court's intervention.

## **9. Change in Collaborative Lawyer by a Party**

- 9.1 If either of us terminates the services of our lawyer, but wishes to continue with the collaborative process, we will provide written notice of this intention to all the collaborative professionals.
- 9.2 Within 30 days of giving such notice, the new lawyer will sign a new Participation Agreement or will sign an Acknowledgement, which states that the new lawyer has reviewed the Participation Agreement signed by the parties and confirms that he or she will represent the party in the collaborative process on the terms contained in the signed Participation Agreement.

- 9.3 If the new lawyer does not sign a new Participation Agreement or an Acknowledgement within 30 days, the other party will be entitled to proceed as if the collaborative process terminated as of the date when written notice was given.

## **10. Transfer of Collaborative File to Other Counsel**

- 10.1 If a client instructs their collaborative lawyer to transfer the client's file to another lawyer, nothing in this Participation Agreement restricts the lawyer's obligation to transfer to the new lawyer all file contents and information which the lawyer is legally obligated to provide to the client and which will include documents prepared or obtained during the collaborative process.<sup>1</sup>
- 10.2 Documents which the collaborative lawyer may be obligated to transfer from his or her file to a new lawyer include, but are not limited to: e-mails between collaborative professionals or other third parties<sup>2</sup>, transcripts of voicemails, letters, progress notes, draft agreements, support calculations, schedules of the value of a business or income analysis prepared by an expert, net family property statements and worksheets, budgets, projections for settlement, or the reports, opinions or notes of any professional retained in the collaborative process that are in that lawyer's file.<sup>3</sup>

## **11. Mandatory Termination By Lawyer**

- 11.1 A lawyer must withdraw from the collaborative process if his or her client has withheld or misrepresented important information and continues to do so, refuses to honour this or other agreements, delays without reason, or otherwise acts contrary to the principles of the collaborative process referred to in this agreement.
- 11.2 A lawyer withdrawing under this section will only advise the other collaborative professionals that he or she is withdrawing from the collaborative process.

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<sup>1</sup> See note 1 at end of PA re Law Society provisions re ownership of file documents.

<sup>2</sup> See Note 2 at end of PA re lawyer's obligations to transfer information to new counsel.

<sup>3</sup> See Note 3 at end of PA re on-going obligation of confidentiality per PA and evidence rules on transfer of file.

## **12. Responsibilities Pending Settlement**

- 12.1 During the collaborative process, unless agreed otherwise in writing, we agree to:
- (a) maintain assets and property,
  - (b) maintain all existing insurance coverage and beneficiary designations until dealt with in the collaborative process,
  - (c) maintain all existing health and dental benefit coverage,
  - (d) refrain from incurring any debts for which the other may be held responsible,
  - (e) maintain all beneficiary designations for pensions and RRSPs, and
  - (f) maintain the joint tenancy on any property.

## **13. Enforceability of Agreements**

- 13.1 We may enter into temporary, partial or final agreements during the collaborative process.
- 13.2 Temporary, partial or final agreements must be in writing, dated, signed by both of us and witnessed. If either of us withdraws from the collaborative process or the process terminates, a temporary, partial or final written agreement is enforceable and may be presented to the court as a basis for a court order.
- 13.3 Only written agreements signed by both of us and witnessed will be enforceable in court.
- 13.4 Verbal agreements and concessions or statements of any kind made during the collaborative process are without prejudice, confidential and unenforceable against the other party.

## **14. Preservation of Legal Rights**

- 14.1 This process is without prejudice to any rights either of us has arising from our relationship or its breakdown.
- 14.2 Our agreement to negotiate using the collaborative process is without prejudice to any rights either of us has to receive ongoing or retroactive child or spousal

support. Neither of us will raise a lack of written notice or the failure to commence court proceedings as a defence to any claim for retroactive or ongoing child or spousal support.

14.3 We acknowledge that our lawyers have advised us of the following limitation periods:

- (a) For married spouses, no action for equalization of net family property may be brought after the earliest of two years from our date of divorce or six years from our date of separation;
- (b) No trust claims or claims for unjust enrichment in relation to real property (land) may be brought after ten years from the date of separation;
- (c) No trust claims or claims for unjust enrichment against all other forms of property may be brought after two years from the date of separation;
- (d) No claims for retroactive child support may be brought once a child is no longer in full-time school or otherwise dependent.
- (e) A court may or may not extend these limitation periods.

15. We agree that the date of separation is \_\_\_\_\_ (Optional)

## 16. Limitation Period

If a limitation period is imminent or approaching, one of us may file court documents necessary to commence court proceedings to preserve the limitation period, and, notwithstanding the filing, we agree to continue the collaborative process. The consensual filing of court documents solely to preserve the limitation period or to obtain an uncontested divorce does not violate the Collaborative Practice agreement.

## 17. Acknowledgement of Commitment to Collaborative Process

17.1 We have read this Agreement in its entirety, understand its contents and agree to its terms.

17.2 This agreement may be signed by each of us separately. The separate agreements together constitute one and the same document.

Date:	202	_____
		Party1
Date:	202	_____
		Party 2
Date:	202	_____
		Lawyer 1
		I will represent Party 1 in this Collaborative process
Date:	202	_____
		Lawyer 2
		I will represent Party 2 in this Collaborative process

**Note 1:** The Law Society of Ontario provides materials discussing the ownership of file documents in Appendix 2 to its online Guidelines on File Retention and Destruction, <https://lso.ca/lawyers/practice-supports-and-resources/topics/managing-files/file-retention-and-destruction/appendix-2-file-documents>.

Key extracts of Appendix 2 are summarized below:

The following are some examples of documents in a client file and how a lawyer should deal with these documents:

#### **Client's Documents**

Subject to the right of the lawyer in appropriate circumstances to claim a solicitor's lien, a client is entitled to:

- Documents existing before the lawyer was retained;
- Originals of documents prepared by the lawyer for the client pursuant to the retainer such as a last will and testament, power of attorney, agreement, transfer and charge;
- Personal property of the client such as corporate seals.

#### **Other Documents**

Subject to the right of the lawyer in appropriate circumstances to claim a solicitor's lien, a lawyer in accordance with the law should either return the following documents to the client or give the client reasonable access to these documents:

- Copies of letters received from third parties;

- Copy of letters sent by the lawyer to third parties;
- Pleadings;
- Cases;
- Briefs;
- Memoranda of law;
- Pretrial Memoranda;
- Draft documents prepared by the lawyer for the client; Document books;
- Vouchers and receipts for disbursements made on behalf of the client;
- Experts' reports.
- Discovery and trial transcripts.

### **Lawyer's Documents**

The lawyer is entitled to the following documents:

- Original correspondence from the client including instructions from the client;
- Copies of correspondence sent to the client;
- Working notes, summaries or evidence and submissions to the court;
- Tape recordings of conversations other than with witnesses;
- Inter-office memoranda;
- Time entries or dockets;
- Accounting records and parts thereof that relate to the client matter;
- Notes and other documents prepared for the lawyer's own benefit or protection and at the lawyer's own expense.

### **Lawyer's Duty to Transfer File Upon Discharge or Withdrawal from Representation**

When a lawyer transfers a file upon discharge or withdrawal from representation additional considerations apply. In this regard, subject to the lawyer's right to a lien, the lawyer must deliver to or to the order of the client all papers and property to which the client is entitled and, subject to any applicable trust conditions, must give the client *all information* [emphasis added] that may be required in connection with the case or matter. In addition, the lawyer must cooperate with the successor lawyer or paralegal so as to minimize expense and avoid prejudice to the client. Section 3.7 of the *Rules of Professional Conduct* sets out the lawyer's obligations in this regard.

**Note 2:** All collaborative professionals must bear in mind that collaborative lawyers have professional obligations imposed by the Law Society and any written communication to the team (or indeed any relevant information shared with the team even if not preserved in writing) could be communicated or transferred to a client's new counsel (including litigation counsel) if that client's retainer of the initial collaborative lawyer is terminated.

**Note 3:** The fact that documents and information arising from the collaborative process are transferred to a non-collaborative lawyer does not affect the *admissibility* of those documents or information in any proceeding. The admissibility of evidence arising from the collaborative process would be determined in accordance with the confidentiality section of the Participation Agreement (section 6) as well as the applicable evidence rules pertaining to settlement privilege.

## Schedule "A"

### COLLABORATIVE NEGOTIATION STEPS FOR EFFECTIVE PROBLEM-SOLVING

#### *Step 1 BUILD THE FOUNDATION*

- Introduction and overview of the collaborative process
- Identify our goals, needs, interests and concerns

#### *Step 2 IDENTIFY ISSUES*

- Determine issues to be resolved

#### *Step 3 GATHER INFORMATION*

- Identify what financial and other information we require
- Agree upon and initiate any joint valuations

#### *Step 4 EXPLORE OPTIONS FOR RESOLUTION OF ISSUES*

- Develop a realistic range of possible solutions

#### *Step 5 EVALUATE CONSEQUENCES OF EACH OPTION*

- Consider immediate and long-term implications on us and our children
- How well does the option meet our interests and goals?

#### *Step 6 ARRIVE AT AGREEMENT*

- Generate a settlement proposal that considers and reflects our goals, needs, interests and concerns
- Prepare a Separation Agreement incorporating our decisions

## **Schedule “B”**

### **Sample Financial Professional Agreement**

1. The Financial Professional will assist clients and their legal representatives in reaching a financial settlement that reflects the needs of the clients and their family. In this role the Financial Professional has no authority or decision-making power but can help to ensure that financial outcomes meet client expectations by providing critical financial information. The Financial Professional can help the clients gather and understand financial information and examine options developed during the Collaborative process. More specifically, the Financial Professional can:

- Help clients gather relevant financial information
- Help the clients identify needs
- Help clients understand the financial information and various options developed
- Develop realistic budgets that reflect accurate future needs
- Provide long-term cash-flow analysis
- Illustrate potential long-term consequences of various settlement options

#### **2. Obligation to Provide Relevant Information:**

The clients agree to provide the Financial Professional with relevant financial information and understand that the Financial Professional will rely on this information, along with agreed upon assumptions, to develop her/his analysis. The clients agree that the Financial Professional will not be held accountable for any errors or omissions in his/her work product resulting from the client's failure to provide accurate, reliable and complete financial information.

#### **3. Independent Legal Advice:**

The Financial Professional provides supporting financial information and evaluations to be utilized by both the clients and their respective lawyers. The Financial Professional does not provide legal advice.

#### **4. Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Financial Professional and other Collaborative team professionals. Clients must provide written consent for the release of any information to anyone who is not a Collaborative team professional.

**5. No Court Appearance:**

Should either client decide to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Financial Professional will remain confidential and may not be used in any court proceedings between Party 1 and Party 2. Each client may release, for court or arbitration purposes, sworn financial statements, original financial documents and Statements of Family Law Value prepared by a pension plan administrator or by a jointly retained actuary. The clients agree that they will not require the Financial Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation between Party 1 and Party 2. If either client subpoenas the Financial Professional and/or any of the records, notes or documentation produced by the Financial Professional during the Collaborative process, then the client who has issued the subpoena shall be deemed to have agreed to pay all the costs required for the Financial Professional to quash the said subpoena.

**6. Withdrawal From the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable, he or she agrees to immediately inform the other client, the Financial Professional and all Collaborative team members in writing, about the decision to end the Collaborative process.

If either client wishes to end the engagement with the Financial Professional, in order to retain the services of a new Financial Professional or to proceed without the services of a Financial Professional, the client agrees to immediately inform the other client and all Collaborative team members in writing.

The Financial Professional reserves the right to withdraw from the case for any reason. The Financial Professional has an obligation to withdraw from the case if either client is not acting in good faith. Should the Financial Professional decide to withdraw, he/she agrees to inform the clients and all Collaborative team members in writing. If the Collaborative process has not been terminated, the withdrawing Financial Professional will make every effort to provide suitable referrals to other Financial Professionals to facilitate the engagement of a new financial Professional.

In the event of a decision to withdraw by any person, all incurred fees are due and payable.

**7. No Product Sales and No Future Dealings:**

The Financial Professional's responsibility in this role terminates once the settlement has been reached or the Collaborative process has been terminated. The Financial Professional may not work with either client post-settlement excepting as noted in this paragraph. The Financial Professional shall not take assets under administration or sell any financial products. The Financial Professional may assist either or both clients in the implementation of their settlement agreement and in a post-settlement evaluation if agreed upon as part of the Collaborative proceedings. It is critical that the Financial Professional maintain his/her neutrality even after negotiations have been concluded.

We have read the above agreement in its entirety, understand the content and agree to the terms.

Dated on \_\_\_\_\_, 202

Clients:

Financial Professional:

\_\_\_\_\_  
**[full name of client]**

\_\_\_\_\_  
**[name of Financial Professional]**

\_\_\_\_\_  
**[full name of client]**

**Schedule “C”****Sample  
Collaborative Family Professional Agreement****1. The Role of the Collaborative Family Professional:**

The Collaborative Family Professional can be helpful in assisting family members to move through the separation process in a positive way. Their role may include:

**(a) The Separation Coach**

- helps clients clarify their concerns;
- helps clients manage their emotions;
- helps clients develop effective communication skills and reinforce those skills;
- helps clients develop effective co- parenting skills; and
- helps clients develop a parenting plan.

**(b) The Child Consultant**

- is neutral;
- listens to each child;
- sensitizes parents to the needs of each child in the context of the divorce; and
- provides information to parents to help them in the development of their parenting plan.

**(c) The Facilitator**

- is neutral
- helps members of the Collaborative team to communicate more effectively at and between meetings
- helps manage client emotions to enable the process to be more productive and resolution-focused

Although the work may continue when the legal intervention is completed, Collaborative Family Professionals remain focused on assisting family members with the separation related issues.

**2. Confidentiality:**

When other Collaborative team professionals are engaged, both clients consent to the exchange of information between the Collaborative Family Professionals and other Collaborative team professionals. Clients must provide written consent for the release of any information to anyone who is not a Collaborative team professional.

Should either client elect to move from the Collaborative process into a court process, all materials, including all content (both written and oral) of sessions with the Collaborative Family Professionals, will remain confidential and may not be used in any court proceedings between the clients.

The clients agree that they will not require the Collaborative Family Professional, by subpoena or otherwise, to testify as a witness and/or to produce his/her records or notes in any subsequent litigation.

If either client subpoenas the Collaborative Family Professional's records or notes in any legal or administrative proceeding, then the client, who has issued the subpoena, shall be deemed to have agreed to pay all the costs required for the Collaborative Family Professional to quash the said subpoena

### **3. Confidentiality of Work with Children:**

Should parents request that a neutral Child Consultant meet with the children, they agree that the Child Consultant will only provide them with verbal feedback about the children's concerns or thoughts. The parents further agree that the Child Consultant will not provide verbatim comments from the children, nor will he/she provide a written report.

Although the Child Consultant will encourage open communication between the children and their parents, the parents agree that the Child Consultant will not release information to them or to anyone, that the children have asked her to keep confidential unless she has reason to believe that the children's safety, or any other person's safety, is in danger.

### **4. Limitations to Confidentiality:**

The clients have been made aware that there are certain times when the Collaborative Family Professional may disclose or are required to disclose information. These include reporting suspicions of child abuse to the Children's Aid Society; reporting information that suggests an actual or potential danger to human life or safety to the appropriate authorities; providing information to the courts as directed through subpoena, search warrant, or other legal order; for research or educational purposes on an anonymous basis.

### **5. Withdrawal from the Collaborative Process:**

If either client decides that the Collaborative process is no longer viable and decides to end the Collaborative process, he or she agrees to immediately inform the other client, the Collaborative Family Professional, and all Collaborative team members in writing, about the decision to end the Collaborative process.

The Collaborative Family Professional reserves the right to withdraw from the case for any reason. Should the Collaborative Family Professional decide to withdraw, he/she agrees to provide written notice of withdrawal to the clients and their lawyers.

If the Collaborative process has not been terminated, the withdrawing Collaborative Family Professional will make every effort to provide suitable referrals to other Collaborative Family Professionals to facilitate the engagement of a new Collaborative Family Professional.

**6. Limitations:**

While the Collaborative process is not a guarantee of success and cannot eliminate past disharmony and irreconcilable differences, we believe it offers a positive method of developing a cooperative solution. For couples with children, it helps them move towards a positive co-parenting relationship.

We have read the above schedule in its entirety, understand the content and agree to its terms.

Dated on \_\_\_\_\_, 202

Clients:

Collaborative Family Professional(s):

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[Name of Family Professional]

\_\_\_\_\_  
[full name of client]

\_\_\_\_\_  
[Name of Family Professional]