

## COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT

Sheree's client, \_\_\_\_\_ with the assent and support of attorney Sheree L. Hoffman, and \_\_\_\_\_'s Client, \_\_\_\_\_ with the assent and support of attorney \_\_\_\_\_, choose to use Collaborative Law to settle their separation and divorce issues. The primary goal of Collaborative Law is to settle concerns in a non-adversarial way, by agreement, without contested litigation. The parties retained Collaborative attorneys to assist them in reaching this goal. Whenever the pronoun "we" is used in this agreement, it signifies both parties agree and will actively participate to achieve the desired result, with the assent and support of both attorneys.

1. **PURPOSE AND GOALS:** We acknowledge that the essence of "Collaborative Law" is the shared belief that, in most family law matters, it is in the parties and their families' best interests to avoid litigation. Collaborative Law does not rely on a Court-imposed resolution, but instead on honesty, cooperation, and integrity, and is geared toward the future well-being of the parties and their children. Our goal is to minimize, if not eliminate, negative economic, social and emotional consequences of contested litigation. We commit ourselves to the Collaborative Law process and agree as follows:

- a. **No Court Intervention:** We commit ourselves to working diligently to settle our case without court intervention, and without using threats to go to court.
- b. **Full Disclosure:** We agree to give full, honest and open disclosure of all relevant information, whether requested or not. We agree to promptly provide all necessary and reasonable information requested. No formal discovery procedure will be used unless we specifically agree to it in advance.
  - i. **Documents:** **A List of Documents** proposed to be shared among parties and counsel is attached to this Agreement as **Attachment A**. Any and all correspondence and information shared between a neutral expert retained by the parties and one party/attorney shall be shared with the other counsel and client.
  - ii. **Good Faith.** We acknowledge that by using informal discovery, we give up certain investigative procedures and methods that would be available to us in litigation. We give up these measures with the specific agreement that both of us will act in good faith. Further, we will each make full, fair, accurate and complete disclosure of all financial information necessary for a fair settlement, to the best of our ability.
  - iii. **Sworn Statement.** We understand that we may be required to sign a sworn statement that we have made full and fair disclosure of all relevant financial information.
- c. **Communication:** We agree to engage in informal discussions and 4-way conferences – with both parties and both attorneys - to settle all issues.
  - i. **Tone of Communications.** We agree that our written and verbal communications will be respectful and constructive; we will avoid making accusations or threats. Neither of us will attempt to threaten or harass the other.
  - ii. **Interruptions.** We will avoid interrupting each other or the attorneys during settlement discussions.
  - iii. **Acknowledgment Different Perspectives.** We will make every effort to understand and acknowledge the other party's point of view, even if we do not agree with it.
  - iv. **No Pressure Outside Collaborative Process.** We agree to not pressure each other to discuss settlement outside the Collaborative setting, unless we both agree to engage in such discussion. We will not attempt to discuss settlement at unannounced times by phone calls or appearances at the other party's home.
- c. **Directions to Consultants.** We agree to direct all Collaborative consultants and experts retained jointly by us to work cooperatively to resolve issues without resort to litigation or any other external decision-making process except as agreed upon.

2. **SCOPE OF AGREEMENT:** At present, we agree that the issues to be determined are: parenting including scheduling and shared responsibilities; division of marital property including assets and debts; financial support; and other issues related to our separation. We may, at any time, by subsequent mutual agreement agree to expand or narrow the scope of this Collaborative Law process.

3. **CONSEQUENCES OF COURT INTERVENTION:**

- a. **Withdrawal of Attorneys:** We understand that our attorneys' representation is limited to the Collaborative Law process and that neither of our attorneys can ever represent us in court in a **contested** proceeding against the other party. If a contested court filing is

unavoidable, we understand that BOTH attorneys will withdraw and will be disqualified from representing either of us.

- b. Disqualification of Consultants and Experts. In the event that the Collaborative Law process ends, we agree that any consultants and/or experts hired jointly during the Collaborative process will be disqualified as witnesses and their reports, notes and work product will be inadmissible as evidence unless we specifically agree otherwise in writing.
- c. Cooling-Off Period: If one of us decides to withdraw from the Collaborative Law process, prompt written notice will be given to the other party through his or her lawyer, and there will be a 30 day waiting period (unless there is an emergency) before any court hearing, to permit the other party to retain a litigation lawyer and make an orderly transition. All temporary agreements will remain in full force and effect during this period. This provision is intended to avoid surprise and prejudice to the rights of either party. It is therefore agreed that either of us may bring this provision to the attention of the Court in requesting a postponement of a hearing, and the other party will acknowledge this provision.

4. **OTHER TERMINATION OF ATTORNEY SERVICES:** Either of us is free to discharge his or her attorney, for any reason, and to retain the services of another attorney, without causing an automatic termination of the Collaborative Law process. If an attorney is unable, for any reason, to continue representation in this matter, the affected party is free to obtain the services of substitute counsel. The new attorney will be given the opportunity to decide whether s/he is willing and able to participate in the Collaborative process as defined in this Agreement.

5. **FINALIZING OUR AGREEMENT:** Unless otherwise agreed, prior to reaching final agreement on all issues, no Summons and Complaint (documents that initiate a contested court action) will be served or filed, nor will any other Motion or document be prepared or filed to initiate court intervention.

a. Form of Written Settlement Agreement: When we have reached a final agreement through the Collaborative Law process, our agreement will be reduced to writing in a document designated as a Collaborative Marital Dissolution Agreement and a Collaborative Permanent Parenting Plan, in the form of either:

i. Separation Agreement, which may be enforced in the event of breach by an action for specific performance and/or sanctions and damages (although we commit to attempt to further use of Collaborative processes to resolve the dispute prior to initiating court action except in emergency); or an

ii. Uncontested Lawsuit (Tennessee grounds of irreconcilable differences) (without any implication that the Plaintiff is the injured party or the Defendant a party at fault).

(1) Venue for a "friendly lawsuit" shall be \_\_\_\_\_ County. By signing this Agreement we expressly, knowingly and voluntarily waive any objections to venue. In the event either of us withdraws from the Collaborative process and initiates contested litigation, venue shall be \_\_\_\_\_ County, unless otherwise agreed in writing by both parties.

(2) Form of Document: If we formalize our agreement by initiating a friendly lawsuit, we will confirm our agreement by Consent Judgment, signed by us and our attorneys. The Consent Judgment may incorporate by reference all or some of the terms of our Collaborative Family Law Agreements.

(3) We understand and agree that in some cases it may be necessary to obtain a court order to achieve a desired result (for example, to divide pension or retirement benefits by QDRO – Qualified Domestic Relations Order, secure medical insurance benefits, and/or to obtain an absolute divorce).

iii. Enforcement of Temporary and/or Final Orders: In the event we agree on a temporary agreement for any purpose, the agreement will be written and signed by both of us. If

either of us withdraws from the Collaborative process, the written agreement may be presented to the court as a basis for an Order, which the court may make retroactive to the date of the written agreement. Once a final agreement is signed, if either of us refuses to honor it, the final agreement may be presented to the court for enforcement.

(1) **Collaborative Attorneys Will Not Participate:** Except possibly to verify the signature of a party, neither of our attorneys will appear in an adversarial procedure in court to enforce, modify, challenge or vacate an agreement reached during the Collaborative process.

(a) **Exceptions:** We understand that our attorneys may remain available to assist us in any further Collaborative Law process needed to resolve problems arising under agreements reached in this Collaborative process. Our attorneys may make court appearances to enter Consent Judgments and uncontested Orders on our behalf.

6. **EXPERTS:** When appropriate and needed, we will use neutral experts. We will agree in advance on which expert to retain and how to share the expense. Unless otherwise agreed in writing, we will retain experts jointly. Information shared with and reports and notes generated by experts will be considered confidential and inadmissible in court, unless otherwise specifically agreed. We each release and give permission for experts hired jointly in the Collaborative Law process to discuss the case with each of our attorneys.

7. **MAINTAINING STATUS QUO:** We agree that, during the Collaborative Law process, we will not transfer, encumber, conceal or dispose of any property, real or personal, whether marital, partly marital, or separate, except for the necessities of life, for necessary for generation of income, or by written agreement. We will not incur any debt or liabilities for which the other party may be held responsible, other than in the ordinary course of business or for the necessities of life. Unless otherwise agreed, all current insurance coverage will be maintained and continued without change in coverage or beneficiary designation during the Collaborative Law process; and neither of us will borrow against, cancel, transfer, dispose of or change the beneficiaries of any insurance or other coverage including life, health, automobile, and/or disability held for the benefit of either of us.

8. **CONFLICT RESOLUTION:** We recognize that even when parties and attorneys are fully committed to the Collaborative Law process, occasionally an issue or issues elude agreement. If such an issue or issues arise, we agree to submit the matter to confidential Mediation. We will mutually agree on the mediator, with preference given to a certified mediator who is experienced in family law mediation. If we cannot agree on a mediator, we agree that our lawyers will select the mediator. We agree to equally share responsibility for payment of the mediator's fee, unless otherwise mutually agreed.

9. **CAUTIONARY ACKNOWLEDGMENT AND COMMITMENTS:**

a. **Independent Representation:** We acknowledge that our attorneys each represents only one party in our Collaborative process, and understand that while our attorneys share a commitment to the process described in this document, each has an ethical duty to represent their own client diligently & zealously, and is not the attorney for both parties.

b. **Earnest Negotiation:** We understand that we will each earnestly assert our respective interests and that our attorneys will help each of us do so.

c. **Compromise as Option:** When our needs and interests differ, we will attempt to use our best efforts to create proposals that meet the fundamental needs of both parties, and if necessary to consider compromising in order to settle all issues.

d. **No Forensic Experts.** We agree that neither of us will contract with detectives or forensic experts without the knowledge of the other party during this Collaborative Law process.

e. **No Guaranty of Success.** We understand there is no guarantee that the process will be successful in resolving our case, and that the Collaborative process is not a panacea that

will eliminate all disharmony or irreconcilable differences.

10. **ABUSE OF THE COLLABORATIVE PROCESS:** We will maintain a high standard of integrity and will not take advantage of each other or of the miscalculations or inadvertent mistakes of others, but shall identify and correct them. We understand that our Collaborative Law attorney will withdraw from a case as soon as possible upon learning that his/her client has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Law process. Examples of such violations of the process are: failing to disclose the existence of income or assets or planning to flee the jurisdiction of the court. We each give our attorney permission to withdraw under these conditions, or upon withdrawal of a party from the Collaborative Law process, in **Attachment B**.
11. **DISINCENTIVES TO WITHDRAW FROM COLLABORATION:** We understand that withdrawing from the Collaborative Law process with the intent of depriving the other party of their chosen counsel is a violation of the duty to act in good faith, and we pledge not to take such action. We realize that the Collaborative Law process requires a considerable investment of time, financial resources and effort. The possibility of having to give up our attorneys, attorneys' work product, and the work product of all experts used in this process is intended to serve as a disincentive to withdraw from the Collaborative process.
12. **ADDITIONAL PROVISIONS REGARDING ADMISSIBILITY:**
- a. **Confidentiality - Inadmissible Documents and Statements.** All documents created in the Collaborative Law process are assumed to be for settlement purposes only, even if they are not labeled as such, and shall be inadmissible for any purpose in any subsequent proceeding except as otherwise agreed by us. All documents generated by attorneys, parties, and experts hired jointly during the Collaborative Law process, and all statements made during settlement negotiation discussion or discussion with attorneys and experts in the Collaborative Law process shall be inadmissible for any purpose in any subsequent proceeding except as otherwise agreed by us. No communications or statements made with respect to such documents shall be deemed a waiver of any privilege.
  - b. **Exceptions:**
    - i. **Bad Faith Conduct.** In the event any party or any attorney has used the Collaborative Law process in bad faith, for the purpose of delay, or has engaged in concealment or misrepresentation in a way that materially and adversely affects the rights of the other party, such behavior may be made known to a court if a party withdraws from the Collaborative Law process.
    - iii. **Endangerment.** Statements by either of us indicating an intent to harm another person or to commit irreparable harm to property, are not privileged. The Collaborative Law process may not be used to shield any party's intent to commit a crime.

**ACKNOWLEDGMENT / PLEDGE:** We acknowledge that we have read this Agreement, understand the terms and conditions, and agree to abide by them. We will work together diligently, in good faith and in honesty, out of respect for each other. We pledge to comply with the spirit and written word of this Collaborative Family Law Participation Agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Client A Name

\_\_\_\_\_  
Client B Name

\_\_\_\_\_  
Attorney Sheree L. Hoffman

\_\_\_\_\_  
Attorney \_\_\_\_\_

## **ATTACHMENT A: DOCUMENTS TO BE PRODUCED AND SHARED**

1. **Written Agreements.** If parties have entered into any written agreement concerning support, property, or other matters, please furnish us a copy of the agreement. If there are any prenuptial agreements, please be sure to give us copies.
2. **Court Orders** Please furnish us with a copy of any Court Orders relevant to your situation (divorce decree, etc.).
3. **Current Income.** If spousal support and/or child support is going to be an issue in this process, we must have the following:
  - A current wage statement from your employer, reflecting earnings and deductions for the last three months;
  - A budget from each of you indicating current expenses for yourself;
  - If not indicated on your current wage statement, document the existence and cost of any medical insurance covering you and your spouse.
  -
5. **Retirement Account and Pension Information** (account numbers, bank names, account holders, current amounts).
6. **Tax Returns.** Please furnish counsel with copies of your state and federal personal and business income tax returns for the last five years, including all schedules, W-2 forms, & 1099's.
7. **Stocks, Bonds, Mutual Funds Info** (identify all stocks, bonds, mutual funds, ownership and amounts).
8. **Bank Account Info** (bank names, account numbers, joint or separate, current balance amount).
9. **Credit Card Info** (account numbers, joint or separate, bank name, current balance amount).
10. **Debts and Liens** (equity lines, mortgages, other debts, whether secured or unsecured, including who the debt is owed to, total amount of the debt and current balance).
11. **Medical, Disability and Life Insurance** Furnish us with the company name, address, policy or group number, and subscriber number for all health, medical, disability and life insurance.
12. **Property: Real Estate** – Legal Description(s) and Appraisal(s) and inventory of personal property
13. **Net Worth Statements** if either party has been required to file any financial or net worth statements in the last 5 years.
14. **Bank Box** if either party has a safety deposit box, please indicate the location and list of contents.
15. **Marital History** - It is helpful to have a written marital history, in as much or as little detail as you wish, with the important details of your marriage, including your own perception of the reasons for the break-up. This document will NOT be shared with your spouse without your specific consent, and will not be admissible in any court proceeding.

**ATTACHMENT B: LEAVE TO WITHDRAW**

We, \_\_\_\_\_ and \_\_\_\_\_ acknowledge that we have retained the counsel named below to represent each of us individually in a Tennessee Collaborative Family-Law procedure, a copy of which precedes this Attachment. We have entered into a separate fee agreement with our lawyers.

At our request, each lawyer will be working Collaboratively with the other party's lawyer. This means that each of our lawyers will use their best efforts to try to negotiate a settlement of the case that is satisfactory to us in an efficient, cooperative manner instead of using the court to settle our differences.

Our lawyers have explained the Collaborative process to us, and we understand how it works. Our lawyers have also explained the advantages and disadvantages to us, and have given us a copy of our Tennessee Collaborative Family-Law Agreement. We have read it and we understand it. We have already signed it or will sign it when asked to do so.

Both parties represent: I understand that as part of this Collaborative process, neither my nor my spouse's lawyer will participate in contested litigation regarding our separation and/or divorce. If my case cannot be settled on terms acceptable to me and my spouse, BOTH lawyers will withdraw from the case. My lawyer will no longer represent me in this matter and the other lawyer will no longer represent the other party. If that happens, I understand that my lawyer will refer me to a lawyer who will be able to take my case to court. I also understand that my lawyer will furnish my new lawyer with information from my file (including all paperwork I furnished to my attorney, but not including information and/or reports from experts retained jointly during the Collaborative process, attorney notes, attorney work product) and spend whatever time that is reasonably necessary to help my new lawyer learn about my case.

I understand that my lawyer will withdraw pursuant to the provisions of paragraph #10 of the Tennessee Collaborative Family Law Participation Agreement.

If my lawyer withdraws from the case because we are unable to settle out of Court, I agree to give my consent, and sign any necessary further documents to permit the withdrawal. I further understand that my lawyer, by signing this document, assents to its terms.  
*Agreed to and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.*

\_\_\_\_\_  
Participant's Name

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Participant's Name

\_\_\_\_\_  
Attorney

## ATTACHMENT C: COLLABORATIVE FAMILY-LAW CHECKLIST

This list summarizes the issues we may need to address in this Collaborative Family Law matter.

- 1 Property Division
    - a. Marital home
    - b. Other real estate.
    - c. Household goods and furnishings
    - d. Automobiles and other motor vehicles, including boats.
    - e. Pets and livestock.
    - f. Recreational equipment, art work and collections
    - g. Personal effects, Jewelry, furs, clothing
    - h. Bank accounts
    - i. Retirement benefits, including IRA's
    - j. Stocks and bonds
    - k. Tax refunds
    - l. Business interests
    - m. Distributive award
    - n. Classification disputes (i.e., separate vs. marital property?)
  
  - 2 Debts
    - a. Secured creditors (mortgages, etc.) / Unsecured creditors
    - b. Pre-separation / Post-separation
    - c. Incurred in Collaborative Law process: Payment of attorneys, consultants, experts, etc.
  
  - 3 Tax Matters\*:
    - a. Capital gains
    - b. Filing Joint or single returns
    - c. Entry of Decree of Separate Maintenance
    - d. Allocation of exemptions, deductions, etc.
    - e. Amendment of prior year's returns, tax traps from prior years
    - f. Hold harmless on joint returns, indemnification agreements

*\*We understand that our attorneys are not tax experts, and that they have advised us to seek the advice of tax experts for tax questions.*
  
  - 4 Spousal Maintenance
    - a. Dependency issue
    - b. Amount/frequency, scheduled reduction/increase
    - c. Conditions of termination, modifiable or non-modifiable?
    - d. Reciprocal consideration for another provision?
    - e. Property settlement structured as alimony for tax purposes?
    - f. Tax considerations and method of payment
  
  - 4 Life and Medical Insurance
    - a. Policies to be maintained
    - b. Purpose, Beneficiaries, Restrictions on borrowing
    - c. Payment of premiums and ownership of policies
  
  5. Other:
-

**ATTACHMENT D: LIST OF POTENTIAL EXPERTS AND CONSULTANTS**

1. Same Gender "Divorce Coach" for Husband and Wife
2. Children's Mental Health Assistant
3. Neutral Financial Planner
4. Real Estate Appraiser(s)
5. Personal Property Appraiser
6. Business Valuation Expert:
7. Accountant and/or Tax Consultant
8. Psychologist/Therapist
9. Mediator/Arbitrator
10. Estate Planning Expert
11. Insurance Expert
12. Medical Expert
13. Other Expert or Consultant