

COLLABORATIVE LAW PARTICIPATION AGREEMENT

BETWEEN:

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AND:

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(the “Parties”)

AND THEIR LAWYERS:

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AND:

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(the “Lawyers”)

The Parties have chosen to enter into this agreement to use the principles of the Collaborative Law Process to settle the issues arising from the dissolution of their relationship.

1. Purpose

The primary goal of the Collaborative Law Process is to settle the outstanding issues in a non-adversarial manner. The Parties aim to minimize, if not eliminate, the negative economic, social, and emotional consequences of protracted litigation on themselves and their family. The Parties have retained Collaborative Lawyers to assist them in reaching this goal.

2. Communication

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

It is agreed that communication during settlement meetings will focus on the economic and parenting issues arising from the dissolution of the relationship and the constructive resolution of those issues.

The Parties are encouraged to discuss and explore the interests they have in achieving a mutually agreeable settlement, and each is encouraged to speak freely and express his or her needs, desires, and options without criticism or judgment by the other. Although the Parties should be informed by their Lawyers about, and may discuss with each other, the litigation alternatives and the outcomes they might attain, neither Party nor their Lawyers will use threats to withdraw from the process or to go to Court as a means of achieving a desired outcome or forcing a settlement.

3. Children’s Issues

In resolving issues about sharing the enjoyment of and responsibility for any children, the Parties agree to make every effort to reach amicable solutions that promote the children's best interests.

The Parties agree to act quickly to mediate and resolve differences related to the children to promote a caring, loving, and involved relationship between the children and both parents.

The Parties acknowledge that inappropriate communications regarding the dissolution of their relationship can be harmful to their children. They agree that settlement issues will not be discussed in the presence of their children, or that communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement, or on the advice of a child specialist.

The Parties agree not to make any changes to the residence of the children without first obtaining the written agreement of the other Party.

4. Participation with Integrity

Each participant will uphold a high standard of integrity, and will not take advantage of inconsistencies or miscalculations of the other, but will disclose them and seek to have them corrected.

5. Negotiation in Good Faith

The Parties and their Lawyers agree to deal with each other in good faith and to provide promptly all necessary and reasonable information requested. No formal discovery procedures will be used unless specifically agreed to in advance by the Parties.

The Parties acknowledge that by using informal discovery, they are giving up certain rights for the duration of the Collaborative Law Process, including the right to formal discovery, formal Court hearings, restraining orders, and other procedures provided by the adversarial legal system. They give up these measures with the specific understanding that both Parties make full and fair disclosure of all assets, income, debts, and other information. The Parties acknowledge that participation in the Collaborative Law Process, and the settlement reached, is based upon the assumption that both Parties have acted in good faith and have provided complete and accurate information to the best of their ability. The Parties agree to provide sworn statements making full and fair disclosure of their income, assets and debts, if requested.

6. Cautions and Limitations

In electing the Collaborative Law Process, the Parties understand that there is no guarantee that the process will be successful in resolving their case. They understand that the process cannot eliminate concerns about any disharmony, distrust, or irreconcilable differences which have led to the current conflict. While intent on striving to reach a cooperative solution, success will ultimately depend on their commitment to making the process work. The Parties understand that they are still expected to assert their respective needs and interests and that their respective Lawyers will help each of them do so.

The Parties further understand that while the Collaborative Lawyers share a commitment to the process described in this document, each of them has a professional duty to represent his or her own client, and is not the lawyer for the other party.

7. Experts and Consultants

When appropriate and as needed, the Parties will use neutral experts (“Collaborative Neutral Expert”). The Parties will agree in advance of retaining the Collaborative Neutral Expert as to how the costs of the third party expert will be paid, and as to whether or not the expert report will be covered by the confidentiality clause.

8. Divorce Coaches, Child Specialist, and Financial Specialists

When appropriate, and as needed, the Parties will use the services of one or more of the following professionals: divorce coach, child specialist, or financial specialist (collectively referred to as the “Collaborative Professional”). When a Collaborative Professional is engaged, the parties agree that the Collaborative Professional and the Lawyers may engage in whatever discussions are necessary for resolution of the case. In the event that the Collaborative Law Process comes to an end, the confidentiality provisions as set out in paragraph 14 of this agreement apply to the Collaborative Professional.

9. No Court Intervention

Unless otherwise agreed, prior to reaching final agreement on all issues no Notice of Family Claim will be filed or served, nor will any other application or document be prepared or filed which would initiate Court intervention.

10. Disqualification by Court Intervention

The Parties understand that their Collaborative Lawyers’ representation is limited to providing services within the Collaborative Law Process. Thus, while each Lawyer is the advisor of his or her client and serves as the client’s representative and negotiator, the Parties mutually acknowledge that both Lawyers, and anyone in each Lawyer’s office, will be disqualified from representing them in a contested Court proceeding against the other Party.

11. Withdrawal of Party from Collaborative Law Process

If a Party decides to withdraw from the Collaborative Law Process, prompt written notice will be given to the other Party through his or her Lawyer. Upon termination of the Collaborative Law Process by a Party or a Lawyer, there will be a thirty (30) day waiting period (unless there is an emergency) before any Court hearing, to permit the Parties to retain new lawyers and make an orderly transition. All temporary agreements will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other Party. It is therefore mutually agreed that either Party may bring this provision to the attention of the Court to request a postponement of a hearing.

If a Party wishes to withdraw from the Collaborative Law Process with their current Lawyer, but retain a new lawyer to continue with the Collaborative Law Process, the Party will give prompt written notice to the other Party through his or her Lawyer, of their intention to withdraw and obtain a new lawyer. The new lawyer shall execute a new Collaborative Law Participation Agreement within 30 days of the Party giving notice. If a new agreement is not executed within 30 days, then the other Party will be entitled to proceed as if the Collaborative Law Process were terminated as of the date written notice was given.

12. Withdrawal of Lawyer from Collaborative Law Process

If either Lawyer withdraws from the case for any reason except those set out in paragraph 13 herein, they agree to do so promptly by a written notice to the other Party through his or her Lawyer. This may be done without terminating the status of the case as a Collaborative Law case. The Party whose lawyer has withdrawn may elect to continue in the Collaborative Law Process and will give prompt written notice of this intention to the other Party through his or her lawyer. The new lawyer will execute a new Collaborative Law participation agreement within 30 days of the Lawyer first giving notice. If a new agreement is not executed within 30 days, then the other Party will be entitled to proceed as if the Collaborative Law Process were terminated as of the date the first written notice was given.

13. Termination of Collaborative Law Process

A Collaborative Lawyer must withdraw from the Collaborative Law Process in the event they learn that their client has withheld or misrepresented information and continues to withhold and misrepresent such information, or otherwise acted so as to undermine or take unfair advantage of the Collaborative Law Process. The Lawyer withdrawing will advise the other Lawyer that he or she is withdrawing, and that the Collaborative Law Process must end.

14. Confidentiality

All communication exchanged within the Collaborative Law Process will be confidential and without prejudice. If subsequent litigation occurs, the Parties mutually agree that:

- A. neither Party will introduce as evidence in Court information disclosed during the Collaborative Law Process for the purpose of reaching a settlement, except:
 - 1. documents otherwise compellable by law including any sworn statements as to financial status made by the parties, or
 - 2. a report prepared by a Collaborative Neutral Expert which may be used only in the event that the parties jointly agree in writing as set out in paragraph 7;
- B. neither Party will introduce as evidence in Court information disclosed during the Collaborative Law Process with respect to either Parties' behaviour or legal position with respect to settlement;
- C. neither Party will ask or subpoena either lawyer or any of the Collaborative Professionals or Collaborative Neutral Experts to Court to testify in any Court proceedings, nor bring on an application to discover either Lawyer or any of the Collaborative Professionals or Collaborative Neutral Experts, with regard to matters disclosed during the Collaborative Law Process;
- D. neither Party will require the production at any Court proceedings of any notes, records, or documents in the Lawyer's possession or in the possession of one of the Collaborative Professionals or of the Collaborative Neutral Experts;
- E. the verbal agreements, concessions or statements of any kind whatsoever which may be made during the Collaborative Law Process are confidential and without prejudice;

the Parties agree that these guidelines with respect to confidentiality apply to any subsequent litigation, arbitration, or other process for dispute resolution.

The confidentiality clause does not apply in the event that a Party or Collaborative Professional is obliged by law to report to the Director of Child Protection information arising out of the Collaborative Process which gives the party or Collaborative Professional reasonable grounds to believe that a child may be in need of protection.

15. Rights and Obligations Pending Settlement

Although the Parties have agreed to work outside the Court system, the Parties agree that:

- A. neither Party will dispose of any assets except by an agreement in writing;

- B. neither Party may harass the other Party; and
- C. all available insurance coverage must be maintained and continued without change in coverage or beneficiary designation.

16. Enforceability of Agreements

In the event that the Parties require a temporary agreement during the Collaborative Law Process, the agreement will be put in writing and signed by the Parties and their Lawyers. If either Party withdraws from the Collaborative Law Process, the written agreement is enforceable and 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. Similarly, once a final agreement is signed, if a Party should refuse to honour it, the final agreement may be presented to the Court in any subsequent action. Further, only written agreements signed by the Parties and witnessed will be enforceable in a Court of competent jurisdiction. Verbal agreements, concessions or statements of any kind which may be made during the Collaborative Law Process are unenforceable, confidential and without prejudice as outlined in Paragraph 14.

17. Acknowledgment

Both Parties and their Lawyers acknowledge that they have read this agreement, understand its terms and conditions, and agree to abide by them. The Parties have chosen the Collaborative Law Process to reduce emotional and financial costs, and to generate a final agreement that addresses their concerns. They agree to work in good faith to achieve these goals.

Dated:

Dated:

Lawyer for

Lawyer for