

SAMPLE PARTICIPATION AGREEMENT FOR THE COLLABORATIVE PROCESS

I. Introduction

The essence of Collaborative Process is the belief that it is in the best interests of the Parties to resolve their differences without resort to litigation.

We seek to adopt a conflict resolution process that does not rely on a court imposed resolution. The process does rely, however, on an atmosphere of honesty, cooperation, integrity, civility and professionalism geared toward our future well-being. One of our major goals in adopting the Collaborative Process is to maximize the settlement options for all of our benefit and to minimize the negative economic, social and emotional consequences of protracted litigation. We commit ourselves to the Collaborative Process and agree to seek a way to resolve our differences justly and equitably.

II. Collaborative Team

The interdisciplinary collaborative approach will be accomplished by the use of a Collaborative Team, which consists of Collaborative Coaches, Collaborative Attorneys, and Financial Specialists whose roles are as follows:

Collaborative Coaches

- help clients clarify their concerns;
- help clients manage their emotions; and
- help clients develop and reinforce effective communication skills;

Collaborative Law Attorneys

- assist clients in gathering and analyzing information;
- help clients examine needs and interests to develop settlement options and packages;
- help clients evaluate consequences and limitations of possible solutions;
- help clients weigh settlement options in relation to their values and interests;
- set the framework for negotiation;

Financial Consultant

- gathers financial data;
- provides valuation services;
- develops different financial scenarios for clients to evaluate; and
- provides financial guidance, planning, support and budgeting throughout the collaborative process, with follow up as needed.

III. Responsibilities of Participants

We understand that our responsibilities as participants in the Collaborative Process are as follows:

- To work towards settling the disputes without court intervention or threat of court intervention. Although we will be informed by our attorneys and consultants about the litigation process and the result it may attain, neither we nor our attorneys should use threats of going to court as a way of forcing settlement;
- To give complete, full, honest and open disclosure of all information, whether requested or not;
- To engage in vigorous good faith negotiations, presenting reasoned proposals in all disputes, and where our proposals differ, to use our best efforts to create options that meet our fundamental needs, compromising as necessary to reach settlement of all issues.

All attorneys, accountants, coaches, appraisers and other consultants will likewise be directed to work in a cooperative effort to resolve issues without resort to litigation or any other external decision making process, except as agreed upon.

IV. Limitations of Collaborative Process

In electing the Collaborative Process, we understand there is no guaranty of success.

We further understand we cannot eliminate concerns about any disharmony, distrust and differing perspectives which have led to the current conflict. While we all are intent on striving to reach a cooperative and open solution, success will ultimately depend upon our own commitment to making the process work.

V. Participation with Integrity

We recognize that in the Collaborative Process clients are expected to assert their respective interests, and our respective attorneys will help each of us do so. Cooperation does not mean that a client must put the interests of another party ahead of his or her own self interest. We also acknowledge that open and cooperative agreement-making ensures the greatest likelihood of maximizing the possible outcome for each of us.

As participants in the Collaborative Process, we are concerned about protecting the privacy, respect and dignity of all involved, including clients, attorneys and consultants.

Each of us shall uphold a high standard of integrity, and specifically, shall not take advantage of inconsistencies and others' miscalculations, but shall disclose them and seek to have them corrected.

VI. Experts and Consultants

In selecting outside help, we shall retain shared experts and consultants unless otherwise agreed. Selection of a shared expert or consultant shall not obligate us to accept the report or opinion of that expert. Each party, or group of parties, may retain additional experts as desired to develop or evaluate information relevant to reaching agreement. However, any such expert shall be directed to follow the spirit and direction of this Agreement. The retention of additional experts shall be disclosed in advance.

VII. Confidentiality and Waivers

We agree to sign confidentiality waivers with the Collaborative Team so that the team professionals will be able to speak freely with each other for the purpose of facilitating the Collaborative approach. We understand that the confidentiality privilege still exists with respect to anyone outside the Collaborative Team, but that the confidentiality privilege may be waived in the following circumstances: (1) if there is reason to believe that one of us is in danger of hurting herself or himself; (2) if one of us expresses an intention to hurt someone else; (3) if there is reasonable suspicion that a child, elder or dependent adult is being abused; or (4) if one of us expresses an intent to commit irreparable economic damage to joint property or property of any party or the estate.

We recognize that the collaborative meeting sessions are private and confidential. We agree that all communications in connection with the collaborative process shall be treated for purposes of future litigation as if this were a mediated settlement process, and therefore all communications are by agreement to be confidential pursuant to California Evidence Code §§ 1115-1128 applying to mediation. We further understand and agree that the collaborative negotiations sessions are settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence, and that anything said, done or occurring in the course of the collaborative process, including any private meetings or discussions between any party or counsel before or after the joint collaborative session discussions or during settlement negotiations are inadmissible in any litigation or arbitration of their dispute, as provided by applicable law and pursuant to our express agreement as indicated by our signatures below.

VIII. Abuse of the Collaborative Process

We understand that collaborative counsel will withdraw from a case as soon as possible if he or she learns that his or her client(s) has withheld or misrepresented information or otherwise acted so as to undermine or take unfair advantage of the Collaborative Process.

IX. Disqualification by Court Intervention

Prior to reaching final agreement on all issues, no writ, complaint, petition, or statement of claim will be filed or served, nor will any other motion or document be prepared or filed which would initiate court intervention, except as jointly agreed upon in advance by all the parties.

We understand that the attorneys' representation is limited to providing services within the Collaborative Process. Thus, while each attorney is an advisor to his or her client and serves as the client's representative and negotiator, we mutually acknowledge that these attorneys, and anyone in these attorneys' offices, will be disqualified from representing the client in any contested court proceeding against the other party.

In the event the Collaborative Process terminates, all team members and consultants will be disqualified as witnesses and their work product will be inadmissible as evidence in the case.

X. Withdrawal of Attorney or Coach

If any attorney or other member of the Collaborative Team deems it appropriate to withdraw from the case for any reason, he or she agrees to do so immediately by serving a written notice to the clients and other Collaborative Team members. The withdrawal of a collaborative attorney or coach may be done without terminating the status of the case as a Collaborative Matter.

The client losing his or her attorney may continue in the Collaborative Process by retaining a new attorney who will agree in writing to be bound by this Participation Agreement.

XII. Election to Terminate the Collaborative Process

If any party decides that the Collaborative Process is no longer appropriate, and elects to terminate the status of the case as a Collaborative Matter, that party agrees to do so immediately with written notice of his/her Termination Election served on the other parties and their attorney(s).

The termination of the Collaborative Process will also occur automatically in the event one party deems it necessary to proceed to court in an emergency to protect property and/or himself or herself.

XIII. Selection of New Attorney; Additional Retainer

Once the status of the case as a Collaborative Matter is terminated, each attorney agrees to aid his or her client(s) in the selection of a new attorney, returning to his or her client(s) any unexpended attorney fee retainer.

We understand that in retaining new attorneys in the event of the termination of the status of the case as a Collaborative Matter, each of us will likely incur an additional retainer for the new attorney.

XIV. Acknowledgment

The Parties, Attorneys, Coaches and Financial Specialists acknowledge that they have read this agreement, understand its terms and conditions, and agree to abide by them. The Parties have chosen the Collaborative 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: _____

Client A

Client B

Collaborative Attorney for Client A

Collaborative Attorney for Client B

Collaborative Coach for Client A

Collaborative Coach for Client B

Financial Specialist/Planner/Consultant

Financial Specialist/Planner/Consultant

Authorization and Consent

We hereby authorize each member of the Collaborative Team to communicate by any means, including email, with all other members of the team and any Case Facilitator(s) during the Collaborative Process. We understand that communication and cooperation among professional team members is an integral part of the Collaborative Process, and that the express goal of such communication is to assist us in understanding and resolving all issues surrounding settlement. We understand that team members may seek consultation with the Case Facilitation Committee in order to address any issues which may arise with respect to the parties to the case, professionals on the team, or the Collaborative Process itself. We also understand that safeguards will be used in e-mail communication to protect our privacy.

Dated: _____

Dated: _____

Client A

Client B

Collaborative Attorney for Client A

Collaborative Attorney for Client B

Collaborative Coach for Client A

Collaborative Coach for Client B

Financial Specialist/Planner/Consultant

Financial Specialist/Planner/Consultant