

COLLABORATIVE PARTICIPATION AGREEMENT

Parties to the Agreement

The Clients	
The Lawyers	

Participation Agreement

On _____ (the clients) agreed to deal with the issues arising from their separation collaboratively:

- They intend to resolve these issues by focusing on all their needs (their own and the needs of their children), rather than focusing upon just their own claims, needs and legal rights
- They will pursue this resolution primarily by meetings and adopt the ground rules listed below
- They appoint the collaborative professionals detailed below to assist them and authorise those professionals to conduct their case as the principles of the collaborative process dictate according to their judgment of what will best promote the outcomes they (Michelle and Tim) seek
- Unless they have ended this collaborative process, they will not pursue any judicial or quasi judicial process (apart from that managed by consent to confirm agreements reached).

XX:	XX:
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Collaborative lawyers, _____ signed this agreement on _____ by which they:

- Confirm their assessment that the collaborative process offers the best way forward for each of their clients to resolve their issues
- Undertake the responsibility of the collaborative process and will assist Michelle and Tim collaboratively and in line with their joint/ separate aspirations.
- Commit to not commencing or continuing any contested legal process
- Agree the joint commitment set out below and commit to promoting effective dialogue
- Commit to withdrawing from the process if they learn that their client has breached their commitments of good faith and integrity unless the client puts the matter right immediately and refrains for the future, and to notifying the other lawyer of that withdrawal.

XX:	XX:
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Additional Parties to the Agreement

Financial Neutral	
Family Consultant	
Counsel	

Participation Agreement continued

Financial Neutral, _____, signed this agreement on _____ by which:

- S/he commits to acting, without favour towards either client, to help them:
 - Identify the resources they have
 - Assemble the information that they need to:
 - Assess their financial needs and priorities
 - Identify their options for the best meeting of those needs
 - Identify the ramifications of their different options; and
 - reach appropriate agreements.
- S/he will not act for either client after an agreement has been reached unless after considering their alternatives, they each identify this as the best course available.

Financial Neutral:

Family Consultant, _____, signed this agreement on _____ by which:

- S/he commits to working with Michelle and Tim as a family consultant which is a short-term and practical intervention, focused upon assisting the issues-based dialogue referred to above.
- S/he will work (without favour towards either of them), to help them:
 - Manage the challenges of their separation
 - Best prepare for the collaborative meetings
 - Move their relationship forwards towards the sort of effective relationship that they will each need for their future
- S/he will assist them as parents in supporting their children through family transition.
- S/he agrees that on completion of the collaborative process the family consultant's involvement will cease and s/he will not continue in a longer term therapeutic role.

Family Consultant:

Collaborative counsel, _____, signed this agreement on _____ by which:

- S/he commits to working with Michelle and Tim and their collaborative lawyers to assist with their discussions as to the options available to Michelle and Tim from both legal and practical perspectives
- S/he will give any legal advice and carry out any practical tasks without favour to either of them
- S/he will not act for either client after the end of the collaborative process.

Counsel:

Joint Commitment

So as to ensure that the issues can be addressed in the best way possible, we all make the following commitment:

<i>We will work with</i>	<i>We will avoid</i>
a focus on the future, fairness and the interests of any child involved as being our goals and our guides	bad faith, dwelling on the past; or attaching solely to our own interests
good faith and integrity, seeking through transparency to ensure a future relationship that can be built on trust	denigrating the other person or putting at risk the future relationship
a commitment to truth, being open and honest in the information we provide, volunteering relevant information even if it appears to be contrary to our interests to do so	being unbalanced or less than honest in the way information is presented
respect and kindness, using first names (rather than “he” or “she”)	Criticism and sarcasm
patience and a desire to learn the other person’s perspectives and concerns	interruptions (because we will get a chance to contribute and be heard in our turn)
a focus on the underlying things that are important to us	taking positions, making threats or issuing ultimatums
a creative and constructive approach	becoming fixed on one point to the exclusion of the whole
commitment and energy to be properly prepared and to meet deadlines and to help the process reach its conclusion	failing to express our point of view, failing to speak up if things are not working or having the professionals take over resolving the issues. trying to progress the substantive discussions outside the meetings, unless agreed by all involved and all are then immediately brought up to date
the intention that all our needs for information, guidance and advice will be met through this process, rather than obtaining such support secretly from third party professionals who are not conversant with all our discussions	relying on any such support without disclosing it to those involved in the collaborative process
making “I” statements (eg “it makes me [] when you []”	speaking for the other person

Confidentiality and privacy

- 1 All information provided in this process is confidential and private, that is, no signatory to the agreement will disclose them to any third party. There are exceptions set out in schedule 1.

Family story

- 2 The signatories acknowledge that the clients may need to acknowledge, perhaps to friends and family, the changes being addressed and they will work to agree the form that such information should take so as to support the parties' aspirations in this process.

Without prejudice

- 1 An agreement will exist where it is written down and it has been signed by both clients.
- 2 Until that time the contents of the discussions and any proposals made are without prejudice and have evidential privilege. This means that if the process breaks down, the discussions could not be brought in evidence before the court addressing the specific issues that are outstanding (except by order of the court or where the law imposes an over-riding obligation of disclosure). However the discussions may of course be examined if one party is asserting that an agreement was reached.
- 3 The factual data (as opposed to proposals or information about interests), however, may be produced to the court (and see schedule 2 about the arrangements for producing such data).
- 4 A budget of future spending will be available to the court unless it is marked "without prejudice", being a proposal as to how to manage future spending arrangements.

Applicable law

- 5 The jurisdiction for this agreement is England & Wales.

Schedule 1: The circumstances in which documents or information from the collaborative process may have to be disclosed to a third party

- i. Where requested by both clients.
- ii. Where required to protect a person (and particularly any child) from serious or significant harm or in connection with a criminal investigation.
- iii. If an official body has authority to demand such production (for example the trustee in the event of the bankruptcy of either party).
- iv. If the process breaks down then both clients may disclose the information given within this process to the lawyers they subsequently instruct. (And please see sched 2, para 5b below).
- v. If the information must be produced in the ordinary course of practice to a funding body or a regulatory body following a complaint about one of the professionals (such as the FSA, the Legal Ombudsman or Resolution).

Schedule 2: Withdrawal from the process

- i. If the collaborative process ends, that will usually be done by agreement and with the professionals exploring alternative ways forward for both clients.
- ii. However, it may be also be ended summarily by the clients, by either one or both of them giving 7 days' notice to any of the professionals who have signed the agreement. In an emergency where notice is not reasonable, termination may be immediate.
- iii. Circumstances may dictate that a professional is appointed prior to notice being given. However no further progress may be made in the collaborative process without disclosure of such assistance.
- iv. From the end of the process
 - a. Each client's instructions to their respective collaborative lawyers will immediately lapse; and
 - b. The clients will promptly place themselves on the court record, unless they instruct new lawyers to do so.
- v. Each collaborative lawyers will:
 - a. give to their client the documents needed to put that client on the court record which the clients will file at court immediately;
 - b. help the clients and any new advisers that they appoint (whether or not they are instructed to act under a collaborative agreement) by providing (i) copies of the papers that represent the disclosure in the case; and (ii) a bundle of privileged documents showing the stage reached in the negotiations/ discussions.
 - c. be entitled to charge for so doing.
- vi. Neither collaborative lawyer, nor any other member of their respective firms, may be involved (as lawyers) in any contested court proceedings or arbitration between the clients.
- vii. The clients/participants agree that they will not seek to call any of the professionals to give evidence as to the contents of the discussions entered into under this agreement other than whether an agreement exists as set out under the paragraph numbered 3 above.
- viii. Any feedback or concerns should be raised with the relevant professional or their supervisor. Please refer to the relevant terms of business for details.