

# Collaborative Process Participation Agreement

We, \_\_\_\_\_ and \_\_\_\_\_, choose to work within the Collaborative Process to resolve all questions related to the dissolution of our marriage. We have selected \_\_\_\_\_ and \_\_\_\_\_ as our Collaborative lawyers. The Washington Uniform Collaborative Law Act (ch 7.77 RCW)\* (“UCLA”) applies to this process.

## 1. Principles

These principles form the foundation of our Collaborative Process:

- Acting with honesty, transparency, and candor;
- Demonstrating cooperation, respect, and dignity;
- Focusing on the future well-being of ourselves and our children, if any;
- Exploring the tangible and intangible assets of our relationship; and
- Committing to resolve matters ourselves.

We each voluntarily choose the Collaborative Process and commit to the responsibilities that these principles entail and to devoting our efforts toward reaching a mutually acceptable agreement.

## 2. Communications

We commit to communicate with each other honestly, respectfully, and constructively. We commit to express our own needs, interests, goals, and priorities, and to carefully consider the needs, interests, goals, and priorities of the other.

We instruct our Collaborative professionals to communicate and conduct themselves in a manner that advances reaching a consensual resolution. We understand that is different from their roles in litigation. We authorize both lawyers to communicate directly with both of us.

## 3. Good Faith Negotiation and Disclosure of Information

We understand that the Collaborative Process requires good faith negotiation. Each of us will be expected to take a thoughtful and constructive approach on all unresolved questions in the interest of reaching agreements. We understand that where our proposed solutions may differ, we will be encouraged to consider modifying our proposals to reach agreement.

We understand that good information is essential for decision-making and for our Collaborative professionals to be able to assist us. Whether or not specifically requested, we agree to

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\* <http://app.leg.wa.gov/rcw/default.aspx?cite=7.77>

promptly provide all documents and information that could reasonably inform our decisions, including full disclosure of all assets, income, expectancies, debts, and expenses, and any other relevant information. We will promptly update such information as needed to ensure its continued accuracy. We agree that neither of us may knowingly withhold nor misrepresent information material to the Collaborative Process. We understand that the process will likely be delayed if information is not promptly provided. The weight we give information will be decided by each of us.

We will not take advantage of inconsistencies, misunderstandings, miscalculations, omissions, or inaccurate assertions of fact, law, or expert opinion. Instead, we shall disclose and have them corrected at the earliest opportunity and hereby irrevocably instruct our lawyers and other Collaborative professionals to do the same.

Because both of us will be relying on the information we provide, our lawyers have informed us that the final agreements will include sworn statements that each of us has fully and fairly disclosed all material information.

#### **4. Integrity**

We understand that our success will depend on many factors, including our own choices, decisions, and willingness to commit to working in the process.

We agree to uphold a high standard of integrity and abide by the attached Rules of Good Faith for the Collaborative Process which are part of this agreement. We instruct our lawyers and other Collaborative professionals to likewise abide by a high standard of integrity and the attached Rules of Good Faith for the Collaborative Process. Neither of us nor our lawyers may withhold or misrepresent material information or act in a way that takes unfair advantage of the other.

We agree to follow all agreements reached in the Collaborative Process, including informal agreements. If we have concerns about an agreement or believe an agreement needs to be revisited, we will promptly raise that concern with our lawyer.

#### **5. Professional Team Members**

Except for the lawyers, all Collaborative professional team members will be jointly hired and work for both of us. We understand that all professional team members are independent and not agents for each other.

We understand that the Collaborative professional team members will confer as needed to work effectively and in coordination. We understand that each professional will bill for these conferences.

We understand that hourly rates and fees of each professional will be different. We understand that no professional can continue to provide services without payment. We each agree to keep payment of all professional fees current. Any disagreements about ultimate responsibility for payment of fees will be resolved when other financial issues are resolved.

## **6. Private Consultants**

Neither of us is limited from using the services of a private consultant, so long as we:

- (a) Advise the Collaborative professional team of our intent to hire a private consultant and the purpose for the consultation;
- (b) Instruct the consultant to follow the spirit and direction of the Collaborative Process as embodied in this Participation Agreement; and
- (c) Instruct the consultant to act cooperatively with the Collaborative professional team and, if possible, render opinions in the presence of the professional team member appropriate to the subject matter in question.

## **7. No Contested Proceedings during the Collaborative Process**

The Collaborative Process begins when we sign this Participation Agreement and ends when we reach resolution in a signed writing, unless earlier terminated. After we reach resolution, our Collaborative professionals may assist us to implement the agreements we reached in the Collaborative Process, so long as implementation does not include any contested proceeding.

During the Collaborative Process, neither of us shall take any court action, except to give effect to a signed agreement reached in the Collaborative Process. A request to any court or tribunal (including arbitration) to decide any dispute immediately and automatically terminates the Collaborative Process.

## **8. Professional Disqualification from Contested Matters**

Each of us has hired Collaborative professionals for a limited purpose, which is solely to provide services within the Collaborative Process. Our lawyers, lawyers working or associated with our lawyers' firms, and all other Collaborative professional team members are disqualified and may not assist us in any contested family law court or arbitration proceeding, except for the limited circumstances allowed by the UCLA.

## **9. Maintaining Integrity of the Collaborative Process**

Our lawyers and other Collaborative professionals are hereby instructed to withdraw from the Collaborative Process if either of us:

- (a) Intentionally misrepresents, withholds, or fails to disclose information that could be material to our decision-making in the Collaborative Process, whether or not that information was requested.
- (b) Takes unfair advantage of inconsistencies, misunderstandings, miscalculations, omissions, or inaccurate assertions of fact, law, or expert opinion.
- (c) In any situation when withdrawal is mandatory under this Participation Agreement or the IACP Minimum Ethical Standards.

A professional who withdraws may terminate the Collaborative Process if appropriate to maintain the integrity of the Collaborative Process.

We recognize that under the UCLA, the Collaborative Process concludes once an agreement has been signed. However, we agree to continue to be bound by all terms of this Participation Agreement after conclusion until the steps needed to implement our agreements reached in the Collaborative Process have been completed, such as submitting agreed orders with the court.

## **10. Temporary Agreements to Prevent Surprise**

Unless agreed in writing (which may include email) we agree that we will not:

- (a) Give away, sell, or transfer any major asset;
- (b) Make any major changes to our financial situations or conditions;
- (c) Incur expenses or spending above normal historical levels;
- (d) Change any insurance coverage or beneficiary designation;
- (e) Incur new debt apart from normal historical patterns; and
- (f) Change any utilities, accounts, lines of credit, or credit cards.

These temporary agreements will survive the termination of the Collaborative Process unless revoked in writing or by court order.

## **12. Termination of the Collaborative Process**

Our participation in the Collaborative Process is voluntary and we each have the right to terminate the process at any time with or without cause. "Termination" means the process is ended prior to reaching resolution in a signed writing. Termination occurs as described in the UCLA, including:

- (a) Either of us, or a Collaborative professional team member, gives notice that the process has terminated.

- (b) Either of us participates in or files a court proceeding without agreement.
- (c) Either of us asks for relief in a proceeding that is not mutually agreed.
- (d) Either of our lawyers is discharged or resigns from further representation. However, in that event, the Collaborative Process continues if within thirty (30) days, a successor Collaborative lawyer is selected, and all Collaborative professional team members then consent in writing to continue the process.
- (e) A Collaborative professional other than a lawyer is discharged or resigns, unless all continuing Collaborative professional team members agree to proceed without an acceptable successor professional.

If one of us terminates the Collaborative Process, we agree to attend one more joint session within thirty days of giving notice, unless waived by agreement or failure to schedule the joint session within the thirty-day period.

Termination of the Collaborative Process disqualifies all Collaborative professionals (including lawyers) from providing any further services other than transitioning the matter to successor professionals.

### **13. Waiting Period If Collaborative Process Terminates**

Absent a bona fide emergency as determined by a court, there will be a thirty-day waiting period prior to any court action if the Collaborative Process terminates. "Court action" includes making requests for court intervention and starting discovery. The purpose for the waiting period is to allow each of us to make an orderly transition to a different process. We may bring this provision to the attention of the court to request a postponement of a hearing or proceeding.

If the Collaborative Process terminates, the provisions of Section 10, "Temporary Agreements to Prevent Surprise," remain in effect unless changed by agreement or court order.

### **14. Confidentiality and Privilege**

We agree to treat all Collaborative communications and work product generated by Collaborative professional team members as confidential.

We understand that the UCLA provides an evidentiary privilege that provides legal protections to Collaborative communications. The communications, opinions, and work product of professionals, experts, and consultants in the Collaborative Process are intended to be Collaborative law communications subject to privilege. We will not offer as evidence in a legal proceeding any information created for use in the Collaborative Process except for signed agreements and other documents not subject to privilege.

We understand that mental health professionals and lawyers have mandatory reporting requirements. Confidentiality does not apply to communications by a mental health professional or a lawyer that are required or authorized to be made by law, such as reporting abuse, or actual or threatened criminal activity.

### **15. Enforceability of Agreements**

Signed agreements reached in the Collaborative Process are intended to be enforceable and therefore may be presented to the court as a basis for an order, which may be retroactive to the date of the agreement. **Unsigned agreements (including those in progress notes) are not intended to be enforceable absent mutual agreement.**

The instructions given to the lawyers and professionals in this Participation Agreement (including the scope and nature of representation), are irrevocable and non-modifiable, and shall survive the conclusion or termination of the Collaborative Process.

### **16. Lawyer's Commitment**

We each understand that each lawyer has a professional duty to represent solely their own client and is not the lawyer for the other.

#### **AGREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

## ACKNOWLEDGEMENTS OF PROFESSIONALS

### Collaborative Lawyers:

By signing below, we affirm to be the Collaborative lawyers for \_\_\_\_\_ and \_\_\_\_\_. Our intent and commitment is to assist our clients as agreed in this Participation Agreement. We commit to abide by the applicable professional protocols of Whatcom Collaborative Professionals and the Minimum Ethical Standards for Collaborative Professionals of the International Academy of Collaborative Professionals (IACP).

\_\_\_\_\_  
Signature of Collaborative Lawyer

\_\_\_\_\_  
Signature of Collaborative Lawyer

### Other Collaborative Professional Team Members:

By signing below, we affirm our commitment and intent to proceed in a manner consistent with the letter and spirit of this Participation Agreement. We commit to abide by the applicable professional protocols of Whatcom Collaborative Professionals and the Minimum Ethical Standards for Collaborative Professionals of the International Academy of Collaborative Professionals (IACP).

\_\_\_\_\_  
Collaborative Divorce Coach

\_\_\_\_\_  
Collaborative Financial Specialist

## Rules of Good Faith for the Collaborative Process

*Please place your initials at the bottom of this page.*

1. We agree to abide by the rules of common courtesy, keep an open mind, be willing to explore options without holding a fixed position, and share all pertinent information.
2. At all times in meetings and between meetings, we will endeavor to treat each other with respect and dignity.
3. We will honor the other's privacy, including belongings and living space.
4. We agree to convert complaints into neutral requests to the best of our abilities, and to refrain from blaming and negative assumptions based on the past behavior of our partner.
5. We agree to work productively in the "here and now," keeping everyone's future well-being in mind.
6. We agree to fully share our most important priorities, goals, and concerns so they can be considered and addressed. We agree to listen to each other carefully to try to understand what each other is saying, and will consider the priorities, goals, and concerns of the other in making decisions.
7. With the support of our professional team, we agree to explore and consider both the tangible assets of our marriage (for example, home equity and retirement accounts), and the intangible assets (for example, our ability to maintain relationships with friends and family and to end our marriage respectfully).
8. In communications outside of joint sessions, we agree to communicate respectfully towards each other and to honor any requests to defer a discussion to a later time.
9. We will not threaten to withdraw from the Collaborative Process or to go to court as a means of achieving a desired outcome or forcing a settlement.
10. We each play a role in creating a safe environment that is conducive to productive discussions and will refrain from making threats or engaging in behavior during and in-between joint sessions that could diminish mutual respect or safety.
11. We agree to immediately voice to our own lawyer any concerns or questions about the Collaborative Process.
12. We agree to not destroy any documents or data that could be relevant or important to the other.

Initial: \_\_\_\_\_

Initial: \_\_\_\_\_



## **AUTHORIZATION AND CONSENT FORM**

1. Professional Team Communications Authorized. We understand that candid communications between professional team members are essential to the success of the Collaborative Process. We therefore authorize and instruct our professional team to engage in such communications via any means, including email. This authorization extends to professionals who are expected to join the professional team. We agree that the professionals shall have discretion whether to keep the contents of such communications confidential from us in order to maintain an effective process. We further agree that the professional team members may confidentially discuss our matter following conclusion or termination of our case for study and learning.
  
2. Transparency within Professional Team. We understand that neutral professional team members cannot keep secrets from the other professional team members and are expected to disclose information to maintain neutrality. Non-neutral team members (such as lawyers) are expected to act transparently and with integrity and are authorized to provide information to other professional team members that they deem beneficial to the process, unless either of us specifically instructs otherwise as to specific information.
  
3. Electronic Communications. Professional team members are authorized to use electronic tools, including email, to communicate and to store and work with information. Email attachments may include digitized documents. We recognize there is a risk that emails may be intercepted or accidentally misdirected, and that computers can be hacked or have vulnerabilities. Unless otherwise specifically requested and agreed, the professional team members are authorized to use such means.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature