

# COLLABORATIVE SETTLEMENT PROCESS PARTICIPATION AGREEMENT

BETWEEN:

JOHN DOE  
of 123 King Street,  
in Maple Ridge, British Columbia

AND:

JANE DOE  
of 123 Queen Street,  
in Coquitlam, British Columbia

(the “Parties”)

AND THEIR LAWYERS:

BOB SMITH  
of 123 Main Street,  
in Vancouver, British Columbia

AND:

BRENDA BROWN  
of 456 Main Street,  
in Vancouver, British Columbia

(the “Lawyers”)

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

## **1. Purpose**

The primary goal of the Collaborative Settlement Process is to settle the outstanding issues in a non-adversarial manner. The Parties aim to minimize the negative economic, social, and emotional consequences of protracted litigation on themselves and their family. The Parties have retained lawyers trained in collaborative practice 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 of withdrawing from the process or going 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 and 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 maintain 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 processes of discovery, they are giving up certain rights for the duration of the Collaborative Settlement Process, including the right to formal discovery procedures, formal court hearings, disclosure 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 Settlement

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 Settlement 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 antagonism, mistrust, or irreconcilable differences that 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 Lawyers share a commitment to the process described in this agreement, 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 collaborative experts (“Neutral Expert”). The Parties will agree in advance of retaining the 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. Separation 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: separation coaches, child specialist, or financial specialist (a “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 Settlement 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 or Application to Obtain an Order 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 Lawyers’ representation is limited to providing services within the Collaborative Settlement 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 Settlement Process, prompt written notice will be given to the other Party through his or her Lawyer. Upon termination of the Collaborative Settlement Process by a Party or a Lawyer, there will be a thirty-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 an adjournment of a hearing.

If a Party wishes to withdraw from the Collaborative Settlement Process with their current Lawyer and retain a new lawyer to continue the Collaborative Settlement 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 Settlement Participation Agreement within thirty days of the Party giving notice. If a new agreement is not executed within thirty days, then the other Party will be entitled to proceed as if the Collaborative Settlement Process were terminated as of the date written notice was given.

#### **12. Withdrawal of Lawyer from Collaborative Settlement 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 Settlement Process case. The Party whose lawyer has withdrawn may elect to continue in the Collaborative Settlement 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 Settlement participation agreement within thirty days of the Lawyer first giving notice. If a new agreement is not executed within thirty days, then the other Party will be entitled to proceed as if the Collaborative Settlement Process were terminated as of the date the first written notice was given.

#### **13. Termination of Collaborative Law Process**

A Lawyer must withdraw from the Collaborative Settlement 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 Settlement Process. The Lawyer withdrawing will advise the other Lawyer only that he or she is withdrawing, and that the Collaborative Settlement Process must end.

#### **14. Confidentiality**

All communication exchanged within the Collaborative Settlement 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 Settlement 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 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 Settlement Process with respect to either Parties' behaviour or position with respect to settlement;
- C. neither Party will ask or subpoena either lawyer or any of the Collaborative Professionals or 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 Neutral Experts, with regard to matters disclosed during the Collaborative Settlement Process;
- D. neither Party will require the production at any court proceedings of any notes, records, or documents in either Lawyers' possession or in the possession of a Collaborative Professional or a Neutral Expert;
- E. the verbal agreements, concessions or statements of any kind whatsoever which may be made during the Collaborative Settlement Process are confidential and without prejudice; and,
- F. the Parties agree that these guidelines with respect to confidentiality apply to any subsequent litigation, arbitration, or other process for dispute resolution.

The confidentiality provisions of this agreement do 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 that 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 existing 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 Settlement Process, the agreement will be put in writing and signed by the Parties and their Lawyers. If either Party withdraws from the Collaborative Settlement 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 Settlement 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 Settlement 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: 23 March 2012

Dated: 24 March 2013

*John Doe*

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JOHN DOE

*Jane Doe*

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JANE DOE

*Bob Smith*

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BOB SMITH  
Lawyer for John Doe

*Brenda Brown*

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BRENDA BROWN  
Lawyer for Jane Doe