





BIRT FAMILY LAW
RESTORATIVE DIVORCE®

COLLABORATIVE PARTICIPATION AGREEMENT

Collaborative Divorce is a team-based, attorney-supported process that focuses on resolution rather than litigation. The following sample agreement helps clients understand the structure and commitments involved.

Provided for informational purposes only. Not legal advice

 www.birtlaw.com
 Wheaton, IL



COLLABORATIVE PROCESS PARTICIPATION AGREEMENT

By this Agreement dated _____, we, _____ and _____, the parties hereto, affirm our intention to resolve our family law or domestic relations matters, specifically, _____ [e.g., dissolution of marriage] (herein, the “Matter”) using the Collaborative Process described herein as well as in the Illinois Collaborative Process Act (750 ILCS 90/1 *et seq.*) (herein, the “Act”) and any applicable court rules (herein, the “Collaborative Process” or “Process”) rather than using other dispute resolution processes described to us by our Collaborative Process lawyers.

We acknowledge that before beginning the Collaborative Process our Collaborative Process lawyers informed us of the advantages/benefits and disadvantages/risks of participating in the Collaborative Process and have further informed us about reasonably available alternatives to the Process, including mediation, arbitration, the litigation model of dispute resolution, or other dispute resolution processes. We freely and voluntarily consent and commit ourselves to the Collaborative Process as described in this Agreement.

BASIC GOALS

Accordingly, in the belief that the Collaborative Process is in each of our best interests as a means for resolving the Matter, we affirm as our basic goals:

- To reach settlement in the most amicable way possible and to settle our issues in a private and non-adversarial manner that avoids the negative economic, social, and emotional consequences of protracted and acrimonious litigation.
- To resolve our issues without litigation and without seeking a court-imposed resolution, relying instead on an atmosphere of honesty, transparency, cooperation, integrity, and professionalism geared toward the present and future wellbeing of our family, while considering all reasonable options to maximize opportunities for settlement.

ARTICLE 1

BEGINNING & CONCLUDING THE PROCESS

1.1 Beginning: We agree that our participation in the Collaborative Process begins when we both sign this Collaborative Process Participation Agreement.

1.2 Concluding: We agree that the Collaborative Process will conclude upon (a) resolution of the Matter as evidenced by a record signed by both of us; (b) resolution of a part of the Matter, evidenced by a record signed by both of us, in which we agree that the remaining parts of the Matter will not be resolved in the Process; or (c) termination of the Process.

1.3 Terminating: We agree that the Collaborative Process will terminate when either of us: (a) gives written notice to the other that the Process is ended; (b) begins a court proceeding

related to the Matter without the agreement of the other; (c) in a pending proceeding related to the Matter, initiates a pleading, motion, order to show cause, or request for a conference with the court, or requests that the proceeding be put on the court's active calendar, or takes similar action requiring notice to be sent to the parties; (d) except as otherwise provided in Section 1.4, discharges their Collaborative Process lawyer. We further agree that, except as otherwise provided in Section 1.4, the Process will also terminate when a Collaborative Process lawyer withdraws from further representation of a party or when the Process no longer meets the Act's definition of a Collaborative Process matter. We acknowledge that either of us may terminate a Collaborative Process with or without cause. A Collaborative Process does not conclude if, with the consent of the parties, a party requests a court to approve a resolution of a Collaborative Process matter, or any part thereof, as evidenced by a signed record.

1.4 Successor Collaborative Process Lawyers: We agree that the Collaborative Process will continue if, not later than 30 days after the date the Collaborative Process lawyer gives notice to all other parties of that lawyer's discharge or withdrawal, (a) the unrepresented party engages a successor Collaborative Process lawyer for representation in the Process; (b) we agree in writing to continue the Process, reaffirm and amend this Agreement to identify the successor Collaborative Process lawyer; and (c) the successor Collaborative Process lawyer confirms in writing his or her representation of the unrepresented party in the Process.

1.5 Cooling-Off Period: We agree to give each other no less than 14 days' written notice of intent before taking any of the actions described in subsections (a), (b), and (c) of Section 1.3 that would cause the Collaborative Process to terminate, in order to provide a "cooling-off" period for us to reassess the decision to terminate. During this cooling-off period we agree to give serious consideration, in discussions with the Collaborative Team, to attempt resolution of the Matter through mediation. Either of us may forego the procedures set forth in this Section and proceed directly to court for relief if mediation has already failed to resolve our issues, or if, because of emergency circumstances, delay up to 14 days would be harmful to our children or prejudicial to the party seeking relief.

ARTICLE 2 **HOW IT WORKS**

2.1 No Court: We understand that the Collaborative Process does not seek or rely on court-imposed solutions. We commit ourselves to settling all matters out of court (except as provided in Section 7.3) with the assistance of our Collaborative Process lawyers and other Collaborative Process professionals comprising the Collaborative Team; see Section 3.2.

2.2 Meetings: We agree to engage in informal group meetings and discussions among the Collaborative Team to reach an out-of-court settlement of all issues relating to the Matter.

- a.** We understand that communications during our meetings and discussions will focus on negotiation and settlement of all such issues, including those impacting our property, finances, children, and our respective futures.

- b. We understand that the costs of meetings are substantial and require the cooperation of all participants to make the best possible use of available resources. Thus, we commit to being fully prepared for each meeting.
- c. Our commitment to group meetings does not preclude one of us from meeting separately with our own Collaborative Process lawyer or other members of the Collaborative Team. Likewise, we are free to discuss any issue with each other outside of the group meetings if we both agree and are comfortable doing so. Either of us may insist that a discussion item be reserved for Collaborative Team meetings when Collaborative Team members are present.

2.3 Good Faith Negotiations: We agree to maintain a high standard of integrity and to participate in good faith throughout the Process. We agree not to take advantage of each other if miscalculations or inadvertent mistakes occur, and instead we agree to identify and correct such miscalculation or inadvertent mistakes. In our Collaborative Team meetings we may discuss the parameters of Illinois law and the possible outcome of a litigated result. We agree, however, that neither of us will threaten litigation as a way of forcing settlement or gaining an advantage.

2.4 Interest-Based and Balanced Negotiations: We agree to negotiate based on needs and interests and not based on positions. We acknowledge that a “position” is something a person has decided upon, whereas “needs and interests” are what cause the person to decide. Interests are the desires and concerns that motivate people. We understand that Collaborative Process lawyers and other members of the Collaborative Team will help us identify and articulate our individual and family needs and interests. We understand that we will be expected to take a balanced approach to resolving all differences. Where our interests differ, we each agree to use our best efforts to propose solutions acceptable to both of us and to work for the best outcome for all involved, including our children (if applicable).

2.5 Full Disclosure: We acknowledge that the Collaborative Process is based on transparency. Voluntary, informal disclosure of information related to a matter is a defining characteristic of the Collaborative Process. We therefore agree that during the Collaborative Process we each will make timely, full, candid, and informal disclosure of all material information related to the Matter, whether requested or not, without formal discovery. We will also promptly update information that has materially changed after a previous disclosure. For the purposes of this Agreement, information is “material” if it is reasonably required to make an informed decision with respect to resolution of the Matter or any part thereof.

2.6 No Formal Discovery: We acknowledge that during this Process we will not use formal investigative procedures and methods that are available in litigation commonly known as “discovery,” such as subpoenas, interrogatories, requests for production of documents, depositions, and the like. Instead, we agree to use and rely on each other’s voluntary commitment to make full disclosure as described in Section 2.5. We believe that we can rely on each other to make full disclosure of all material information and agree to act in good faith to provide the other with all such information to the best of our ability. We understand that failure to act in good faith and to make full disclosure may result in termination of the Collaborative Process.

2.7 Children (if applicable): In resolving issues about sharing the enjoyment of and responsibility for our children, we agree to make every effort, with the full support of the Collaborative Team, to reach prompt and amicable solutions that promote our children's best interests.

2.8 Preservation of Status Quo: We agree that during the Collaborative Process, neither of us will unilaterally (a) transfer, encumber, conceal, or otherwise dispose of any property or incur any liabilities except in the usual course of business, for the necessities of life, or for payment of fees and costs of the Collaborative Team and other participating professionals; (b) relocate the children; or (c) change any provisions of a trust or will or execute a new trust or will; (d) change the beneficiaries of any accounts; or (e) otherwise change the *status quo* without first consulting each other and the Collaborative Team and obtaining the written consent of the other. If either of us proposes to change the *status quo*, we agree to allow for reasonable opportunity to discuss the proposed change and reach agreement on the issue.

2.9 Court Approval of Agreements: We understand that under the Act, no agreement reached between us during the Collaborative Process will be enforceable by a court unless the agreement is in writing, signed by us both, and approved by the court. As provided in Section 1.3, we may request a court to approve such an agreement without concluding the Collaborative Process.

ARTICLE 3

THE COLLABORATIVE PROFESSIONALS

3.1 Collaborative Process Lawyers: We acknowledge, and our Collaborative Process lawyers have confirmed, that they are independent of each other. Each Collaborative Process lawyer represents only one of us in this Collaborative Process and neither represents the other. We understand that although both Collaborative Process lawyers share a commitment to the Collaborative Practice model of dispute resolution and to the Collaborative Process as described in the Act, each has professional duties to and a confidential relationship with his or her own client.

3.2 Collaborative Team: We understand that Collaborative Practice is an interdisciplinary model of dispute resolution, involving not only lawyers trained in the Collaborative Process, but also collaboratively trained mental health professionals and financial specialists. These professionals are collectively known as the "Collaborative Team." We understand that we, in consultation with our Collaborative Process lawyers, decide which professionals to include in our Collaborative Team. Each Collaborative Team member is required to sign this Agreement, and in signing it agrees to be bound by its terms. Below is a general description of the role of each Collaborative Team professional:

- a. Collaborative Process Lawyer:** A Collaborative Process lawyer represents a party in the Collaborative Process and helps carry out the Collaborative Process. The Collaborative Process lawyer works within the Collaborative Process to educate, advise, counsel, and otherwise assist a client in working effectively with the other participants, including members of the Collaborative Team. A Collaborative

Process lawyer will also draft agreements and go to court to request court approval of agreements.

- b. **Financial Specialist:** A financial specialist serving as a neutral participant assists parties with budgets, cash flow, property division, tax issues, valuations, understanding financial instruments, and other financial matters.
- c. **Coach:** A coach assists parties in preparing for joint meetings, managing emotions, improving communication, developing co-parenting skills, and managing tasks.
- d. **Child Specialist:** A child specialist can meet with the children to understand their needs, provide a voice for the child(ren), give feedback to parents about their children's needs, and work with parents to create a parenting plan.
- e. **Mediator:** A mediator has specialized skills in dispute resolution that can be helpful to the parties in discussing and reaching a settlement.

3.3 Neutral Roles: We acknowledge and understand that any Collaborative Team member serving in a neutral role is expected to adhere to that role, and therefore we will not ask any neutral professional to engage in any relationship with either or both of us that would compromise that professional's neutrality. Except as otherwise provided in Section 3.4, we acknowledge that for a neutral member of the Collaborative Team to work with either or both of us, or with our children, outside of the Collaborative Process would be inconsistent with a neutral role.

3.4 Professional Services Outside the Collaborative Process: After the Process concludes, no member of the Collaborative Team may provide any service to or for either or both of us that is either (i) related to the Matter or (ii) adverse to either of us, except for a subsequent Collaborative Process matter or as otherwise permitted herein. More particularly, the members of the Collaborative Team shall adhere to the following:

- a. **Financial Specialists:** A financial specialist may not have any other business or professional relationship with a party during the Process or after the Process concludes, and will not sell or recommend the purchase of financial products or other services to a client. A financial specialist may, however, assist a party or the parties after the Process concludes in completing tasks specifically assigned to the financial specialist by the parties' settlement agreement or in other matters with the written consent of the parties and the professional.
- b. **Child Specialists and Coaches:** A child specialist or coach may assist the parties after the Process concludes, but (i) such assistance may not include functioning as a therapist for a child or a party or parties; and (ii) a child specialist or a neutral coach may assist the child or a party or the parties after the Process concludes only with the written consent of the parties and the professional. A mental health professional who has served as a therapist for a child or a party or parties may not serve in the role of child specialist or coach in the Process.

- c. **Collaborative Process Lawyers:** After the Process concludes, a Collaborative Process lawyer may assist the client in completing tasks specifically assigned to the lawyer by the parties' settlement agreement or provide services unrelated to the Matter.
- d. **All Collaborative Team Members:** After the Process concludes, a member of the Collaborative Team (i) may consult with a client about reinstating or resuming the Process or other dispute resolution options that may be available, and (ii) may provide a client with referrals.

ARTICLE 4 **EXPERTS & CONSULTANTS**

4.1 If experts or consultants are needed, we will ordinarily retain them jointly as neutrals. Examples of experts retained for the Process include real estate appraisers, business evaluators, and professional financial advisors.

4.2 While neither of us and neither Collaborative Process lawyer is precluded from consulting privately with separate experts or consultants, we will direct each such expert or consultant retained for the Process to follow the spirit and direction of this Agreement, and, when appropriate, to collaborate with each other, meet and confer, and, if possible, render joint statements on the issues in question. We further agree not to retain separate experts or consultants for the Process without advising our respective Collaborative Process lawyer of our intent to do so.

4.3 We understand that any expert or consultant retained for the Process will be advised of the provisions of this Agreement and will be required to sign and deliver to each Collaborative Process lawyer a copy of this Agreement acknowledging that he or she has read this Agreement and agrees to be bound by it.

4.4 We agree to direct all such experts and consultants retained for the Process to assist us in resolving our differences without litigation. Any report, recommendation, or documents prepared by, or any oral communication from, any such expert during the Process will be shared with us and with the Collaborative Team, and will be subject to the provisions on confidentiality and privilege in Sections 6.1 through 6.4.

4.5 We understand that the above provisions of this Article 4 do not apply to professionals who are not retained for the Process. Thus, professionals who were providing services before the Process began, or are retained for purposes outside the Process, are not required to sign this Agreement or be bound by it. Nevertheless, if, as nonparty participants, they are asked to assist us and the Collaborative Team in the Process, their input in the Process will be treated as a privileged Collaborative Process Communication under Section 6.1.

ARTICLE 5
PROFESSIONAL FEES & COSTS

5.1 We agree that members of the Collaborative Team, experts, and other professionals whom we engage for the Process are entitled to be paid for their services on an ongoing basis. We understand that not paying an outstanding balance due any of the professionals may jeopardize our access to advice and information, and we therefore agree to stay current on all accounts and to make funds available for this purpose. We also agree to discuss the issue of professional fees and costs throughout the Process so that we may manage those fees mindfully.

5.2 We understand that Collaborative Team members will have no financial connections between or among each other such as fee-sharing or referral fee arrangements.

5.3 We understand that payment of final professional fees and costs will also be part of the final settlement agreement.

ARTICLE 6
CONFIDENTIALITY AND PRIVILEGE

6.1 We are entering into the Collaborative Process to effectuate a full and final “out-of-court” resolution of all issues between us or that impact our family. To protect the confidentiality of all communications throughout the Process, so that we feel free to voice our concerns and express our “needs and interests,” and so that all other participants in the Process will feel free to express their viewpoints without concern as to the use of those communications in litigation, we agree as follows:

- a.** We agree to treat as privileged communications all communications during the Collaborative Process by, between, or among ourselves, our Collaborative Process lawyers, other Collaborative Team members, experts, and other nonparty participants in the Collaborative Process, including any person who attends a Process meeting (herein, a “Collaborative Process Communication”), subject to the remaining provisions of this Article 6.
- b.** Unless we agree in writing to waive any of the provisions of this Section 6.1 in any court or other proceeding, (i) we will not subpoena or otherwise request the other party, a member of the Collaborative Team, an expert, or other nonparty participant in the Process to make disclosure or to testify as a witness regarding a Collaborative Process Communication, and (ii) we will not and cannot disclose or offer as evidence a Collaborative Process Communication in any court or other proceeding, and no Collaborative Process Communication will be disclosed or be admissible or subject to discovery for any purpose in any such proceeding.
- c.** In the case of a Collaborative Process Communication by or with a Collaborative Team member or other nonparty participant in the Process, our agreement to waive any of the provisions of this Section 6.1 will be effective only if the Team member or nonparty participant also agrees to the waiver in writing.

- d. A Collaborative Process Communication means a statement, whether oral or in a record, or verbal or nonverbal (including emails and other information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form) that (i) is made to conduct, participate in, continue, or reconvene a Collaborative Process; and (ii) occurs after we have signed an agreement such as this Agreement and before the Collaborative Process is concluded.

6.2 We acknowledge that nothing in Section 6.1 is intended to preclude admissibility or discovery of information that is or can be obtained from sources outside the Collaborative Process; and thus, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in the Process.

6.3 We understand and agree that Section 6.1 is subject to the exceptions, limits, and other provisions regarding a Collaborative Process Communication set forth in the Act.

6.4 A Collaborative Process Communication is confidential to the extent we may provide in a written agreement between us or as provided by law. With respect to the participating professionals, however, no Collaborative Team member or other participating professional who signs this Agreement may disclose or disseminate a Collaborative Process Communication, except: (a) by written agreement of the parties and the participating professional who made the communication and signed this Agreement; or (b) in circumstances where there is no privilege under the Act or disclosure is mandated by law or applicable professional ethics.

ARTICLE 7

DISCHARGE AND DISQUALIFICATION OF PROFESSIONALS

7.1 We each agree to discharge our respective Collaborative Process lawyers and law firms if the Collaborative Process fails, terminates, or concludes by only partial resolution. **We understand that striking this provision results in the Matter no longer being a Collaborative Process Matter under the Act.**

7.2 Except as provided in Section 7.3, we agree that a Collaborative Process lawyer who represented one of us in the Process, and any attorney in a law firm with which the Collaborative Process lawyer is associated, will be disqualified from ever representing either of us against the other in a court or other proceeding related to the Matter (including post-judgment matters).

7.3 We each acknowledge and agree that, pursuant to Illinois Supreme Court Rule 294, a Collaborative Process lawyer or a lawyer in the law firm with which the Collaborative attorney is associated who is otherwise disqualified may represent a party in court:

- a. to comply with the procedural rules of the court as necessary to facilitate the Collaborative Process;
- b. to seek approval of an agreement resulting from the Collaborative Process; or

- c. to seek or defend a petition for an emergency order to protect the health, safety, welfare, or interest of a party or person eligible for protection under applicable law.

7.4 With respect to all Collaborative Team members, experts and other professionals who have participated in the Process and signed this Agreement (the “participating professionals”), we agree: (a) to discharge all participating professionals if the Process fails, terminates, or concludes by only partial resolution; (b) not to call any participating professional as a witness or seek to obtain or use their work product in any court proceeding; and (c) except as otherwise permitted in Section 7.3, not to ask or permit any of the participating professionals to assist either of us in any court proceeding related to the Matter or to disclose any Collaborative Process Communication in connection therewith.

ARTICLE 8

WITHDRAWAL OF PROFESSIONALS FOR VIOLATIONS

8.1 We understand that our Collaborative Process Lawyer and other Collaborative Team members are permitted, and may be compelled, to withdraw from the Process if either of us fails to comply with this Agreement. Examples of conduct that violate this Agreement include, but are not limited to: (a) withholding or misrepresenting material information; (b) acting illegally or in bad faith; (c) failing to make full and complete disclosure of our respective income, assets, liabilities, or expenditures; (d) abusing the other party or the parties’ children; (e) secretly planning to leave the jurisdiction with the children; or (f) failing to participate in the spirit of the Collaborative Process.

ARTICLE 9

CAUTIONS

9.1 We understand that there are no guarantees that we will successfully resolve our differences by using the Collaborative Process.

9.2 We understand that the Process cannot eliminate concerns about the disharmony, distrust, and irreconcilable differences that have led to our current conflict or dispute. We understand that the Collaborative Process is not designed to address therapeutic or mental health issues. When these or other non-legal issues arise, we understand that the Collaborative Team members may deem it appropriate to refer either or both of us to experts or other professionals who are not part of the Collaborative Team or have not been retained for the Collaborative Process.

9.3 We understand that until the Collaborative Process concludes, we are each voluntarily agreeing not to exercise our rights to engage in litigation, court hearings, and the formal discovery procedures described in Section 2.6.

9.4 We understand that by electing to forgo formal discovery in favor of voluntary informal disclosure of information related to the Matter, even with a representation or warranty of full and complete disclosure, we may be doing so at our own peril.

9.5 We understand that in the Collaborative Process each of us is expected to assert our own interests and that therefore we should not lapse into a false sense of security in the belief that the other participants in the Process will adequately assert our own interests without our personal participation.

9.6 We understand that there may be statutes of limitations or statutes with timing restrictions applicable to our respective legal rights, claims, and causes of action, and we acknowledge that we have been advised to seek the advice of our Collaborative Process lawyers or other lawyers about those matters. We understand that these circumstances may present a reason for beginning a court proceeding by our agreement even while our Collaborative Process Matter is in progress.

9.7 We understand that the Collaborative Process is voluntary and, despite our best efforts, we may not reach a mutually acceptable settlement. We also understand that either of us may become unwilling or unable to engage in necessary discussions, and that either of us may terminate the Collaborative Process at any time, and with or without cause. In any of those circumstances, the Collaborative Process would end, both Collaborative Process lawyers and their firms, the Collaborative Team and other professionals who participated in the Collaborative Process will be discharged and disqualified, and we would incur additional time and expense in obtaining different professionals and commencing litigation. We understand that we might feel pressure to settle in order to avoid this result and the additional costs.

9.8 We understand that the terms of this Agreement are subject to the Collaborative Process Act and rules of court. If any provision of this Agreement is determined by a court to be invalid, it will be deemed severable from the other parts hereof, and all other provisions of this Agreement will remain in full force and effect with such provision severed, and the provisions of the Act or rule of court will control.

[The remainder of this page is intentionally left blank.]

THE UNDERSIGNED ADDITIONAL PROFESSIONALS AND OTHER PERSONS AGREE TO PARTICIPATE IN THE COLLABORATIVE PROCESS AND BE BOUND BY THE TERMS OF THIS AGREEMENT.

Coach: _____

For: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Financial

Neutral: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Other: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Other: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Coach: _____

For: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Child

Specialist: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Other: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____

Other: _____

Address: _____

Telephone: _____

Email: _____

Date: _____

Signed: _____