

1 **COLLABORATIVE PROCESS AGREEMENT**

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3 The participants, % [name of spouse #1] and @ [name of spouse #2], otherwise sometimes
4 referred to as “Party” or “the Parties” having read, understood and agreed to abide by the
5 Principles and Understandings set forth at Exhibit A, do hereby agree that this matter shall be
6 deemed a Collaborative Process. The following Collaborative Process provisions shall constitute
7 our Collaborative Process contract:
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9 **PROFESSIONAL ASSISTANCE IN OUR COLLABORATIVE PROCESS**

10 1. Collaborative Professionals: We understand that a Collaborative team of professionals will
11 be created to assist us and will be comprised of two Collaborative attorneys, one representing
12 each of us, [one coach for both of us], [one coach for each of us], [a neutral financial
13 professional] [and] [a child specialist]. Each of these professionals is referred to herein as a
14 “Collaborative Professional”. Other Collaborative Professionals may be added as needed.

15 1.1. For so long as this Agreement is in effect, we agree to devote – and instruct our
16 Collaborative Professionals to devote – all of our efforts toward achieving a negotiated
17 settlement in an efficient and cooperative manner pursuant to the terms of this
18 Agreement.
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20 1.2. Each of our Collaborative Professionals is bound by this Agreement as evidenced by
21 their signatures on this Agreement.
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23 1.3. Each Collaborative Professional is forever disqualified from assisting either of us in any
24 Contested Action (*as defined in Exh. B.3*) involving both of us.

25 1.3.1. This disqualification is non-modifiable and shall survive the term of this
26 Agreement.

27 1.3.2. *For example, neither the parties nor the coaches may later agree among*
28 *themselves that the coaches may assist them in a litigation context.*

1 1.4. Each Collaborative Professional must be paid separately for his or her services in this
2 Collaborative Process according to the terms set out in separate fee agreements we each
3 will sign with each professional.

4 2. Collaborative Attorneys: % has retained *(name) Attorney at Law, to advise and counsel
5 [her/him]* and @ has retained, *(name) Attorney at Law, to advise and counsel [her/him]*
6 during the course of this proceeding for dissolution of marriage. We understand and agree
7 that:
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9 2.1. Each party is represented and advised solely and exclusively by his/her own
10 Collaborative attorney.

11 2.2. Each of us understands and acknowledges that each Collaborative attorney only owes a
12 legal duty to the party he or she represents and not to the other person.

13 2.3. Neither party's Collaborative attorney is or will be attorney of record for that party.

14 2.4. Per paragraph 1.3, above, each Collaborative attorney, and any attorney "in association
15 with" (*as defined in Exh. B 2*), that attorney, is forever disqualified from appearing as
16 attorney of record for or representing either of us in any Contested Action (*as defined in*
17 *Exh. B 3*) involving both of us.

18 2.4.1. Accordingly, for the duration of this Collaborative Process, neither of us will
19 cause or permit either of our Collaborative attorneys to file any request for
20 intervention by the Court or any other third-party decision-maker, including, for
21 example, a "Request to Enter Default" or a "Request for Order".
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23 2.4.2. This disqualification is non-modifiable and shall survive the term of this
24 Agreement.
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26 2.4.3. *For example, neither the parties nor the Collaborative attorneys may later agree*
27 *among themselves that the Collaborative attorneys may represent either of us in a*
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1 *litigation context.*

2 3. Other Professionals (“Neutral Consultants” and “Private Consultants”):

3 3.1. “Neutral Consultants”: Engaging additional neutral experts and consultants (“Neutral
4 Consultants”) to i) assist us to achieve full settlement of our case or ii) help resolve
5 particular topics is consistent with the principles of the Collaborative Process so long as
6 such persons are not requested or permitted to make decisions for us. *See Exhibit B 6 for*
7 *examples of consultants.*

8 3.1.1. We are expected to retain Neutral Consultants jointly.

9 3.1.2. Each of our Neutral Consultants is bound by this Stipulation and Order as
10 evidenced by their signatures on this Agreement.

11 3.2. “Private Consultants”: Neither of us is precluded from consulting privately with our own
12 expert, consultant or additional legal counsel (“Private Consultant”) provided that the
13 person wishing to consult advises all of our Collaborative Professionals, in advance, of
14 our intent to do so and the purpose for such consultation. Consulting with a Private
15 Consultant without advising the Collaborative Professionals is a violation of this
16 Agreement.
17 Agreement.

18 **OUR CHILDREN**

19 4. In addressing questions about sharing the enjoyment of and responsibility for our children,
20 we will act quickly to resolve all differences through our discussions together or with our
21 Collaborative Professionals in a manner that will promote a caring, loving and involved
22 relationship between the children and each parent.
23 relationship between the children and each parent.

24 5. During the Collaborative Process, we shall take no action beyond mediation (.e.g. custody
25 evaluations and custody hearings), nor shall any time limits or procedural requirements
26 described under any Local Court rule apply.
27 described under any Local Court rule apply.
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1 PROTECTING OUR LEGAL RIGHTS

2 6. We specifically agree and understand that litigation is not permitted for so long as we are
3 participating in our Collaborative Process. This means that no court filings such as a Request
4 for Order (“RFO”) are available to us. This also means that if we have not yet filed for
5 divorce, we are not covered by the court’s protection. We therefore agree that we will accord
6 one another the protections of the Family Code with respect to our legal rights as follows:
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8 *Discovery (Gathering Information)*

9 6.1. Each of us shall voluntarily provide the other with any written authorizations requested
10 which may be required to obtain information or documentation.

11 6.2. All requests for information and documents shall be made informally and complied with
12 promptly by the person to whom the request is made.
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14 *Automatic Temporary Restraining Orders*

15 6.3. We understand that once one of us has filed a petition for dissolution of marriage and the
16 other person has received a copy of that filed petition, we are both bound by the
17 automatic temporary restraining orders on the face of the summons [“ATROs”]. *See*
18 *Exhibit B 4*. We agree to be bound by those ATROs regardless of whether or not a
19 petition has been filed.
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21 *Retroactive Protection of Legal Rights (Requests for Orders)*

22 6.4. We understand that the filing of an RFO sets the date upon which a court’s ability to
23 make orders begins. Because we have agreed that neither of us will file RFOs, the
24 failure to file an RFO could adversely affect our legal rights. We therefore agree that all
25 RFOs that could have been filed are deemed to have been filed as of the second to sign
26 this agreement. *Example: We have agreed that neither spouse should be prejudiced by*
27 *his/her willingness to participate in the Collaborative Process. Therefore, if either of us*
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1 *might have been legally required to pay child or spousal support to the other had the*
2 *spouse needing support sought the court’s assistance, this section gives the court, in the*
3 *event that the Collaborative Process terminates, the authority to order the support, if*
4 *appropriate, from the date we entered into this stipulation, rather than requiring that an*
5 *RFO for child or spousal support had to have been filed on this date to preserve this*
6 *retroactive jurisdiction.*
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8 CONFIDENTIALITY

9 7. Statements and Reports: All communications, oral or written (as defined in California
10 Evidence Code Section 250 (*See Exh. B 8*), between or by any party, Collaborative
11 Professional or Neutral Consultant, shall be deemed – whether or not expressly identified and
12 entitled “For Settlement Purposes Only in the Collaborative Process” – privileged,
13 confidential, not subject to discovery, and inadmissible for any purpose in any Contested
14 Action between us. This limitation does not apply to:

15 7.1. Statements and information contained in the Preliminary and/or Final Disclosure

16 Declarations;

17 7.2. Statements by either party which indicate an intent to:

18 7.2.1. endanger the health or safety of the other party or the parties’ children,

19 7.2.2. commit irreparable economic damage to the property of the other party; and

20 7.2.3. conceal or change the residence of a child.

21 7.3. Written interim or temporary agreements that are signed by us both.

22 GATHERING INFORMATION: DISCLOSURE AND DISCOVERY

23 8. We are both entitled to all available relevant information in order to make informed choices
24 and therefore agree to:

25 8.1. voluntarily provide full, honest and open disclosure and the updating of all relevant
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1 information whether requested or not;

2 8.2. engage in informal discussions and conferences in order to reach resolution.

3 TESTIMONY AND EVIDENCE

4 9. Testimony and Evidence: **Unless we agree otherwise in writing**:

5 9.1. No Neutral Consultant or member of the Collaborative Team shall be called as either an
6 expert or a percipient witness with respect to any matters relating to our Collaborative
7 Process nor shall testimony from any such person be admissible in any Contested Action
8 between us.

9 9.2. All notes, work papers, summaries and reports prepared by the Neutral Consultants or
10 Collaborative Professionals shall be inadmissible as evidence in any Contested Action
11 between us but may be furnished to successor counsel and available for non-evidentiary
12 use.

13 9.3. The privileges and protections created in this section are:

14 9.3.1. non-modifiable;

15 9.3.2. shall continue and remain in full force and effect after the term of this Stipulation;
16 and

17 9.3.3. may not be waived without the express written consent of all parties and
18 Collaborative Professionals.

19 10. Subpoenas: Neither of us shall subpoena the files or records of any of our Collaborative
20 Professionals or any Neutral Consultant, or otherwise seek to obtain testimony from any of
21 them in any Contested Action between us in which testimony can be compelled to be given.

22 11. Fees: Any party who takes an action or proceeds contrary to this section shall be liable for (i)
23 all fees and costs incurred by the professional involved to respond (including attorneys' fees
24 if representation is required) and (ii) compensation to the professional at his or her usual
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1 billing rate for all time actually spent by the professional in response or opposition to such
2 action.

3 TERMINATION AND WITHDRAWAL

4 12. Effect of Termination: The termination of the Collaborative Process (“Termination”)
5 automatically:

6 12.1. Disqualifies all Collaborative Professionals and Neutral Consultants from
7 representing or otherwise assisting either of us further in a Contested Action between us
8 that requires a third- party decision-maker (such as litigation and binding arbitration).
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10 12.2. Terminates the effect of this Agreement except for those terms specifically
11 designated herein as surviving the termination of the status of this matter as a
12 Collaborative Process.
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14 13. Authority to Terminate: We understand that by signing this Agreement we do not waive our
15 rights to seek the assistance of the Superior Court and/or any other third-party decision-
16 maker, understanding that such conduct terminates the Collaborative Process. We therefore
17 acknowledge that either of us has the right to terminate the process at any time.

18 14. Automatic Termination: The Collaborative Process is terminated automatically:

19 14.1. As of the date of either party’s initiating litigation (*example: files a Request for*
20 *Order with the court*) or gives notice to the other party and the Collaborative
21 Professionals of an intent to litigate; or
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23 14.2. On the date either of us serves a Termination Election (Exhibit C) on all
24 participants in the Collaborative Process (the parties and the Collaborative
25 Professionals).

26 15. Withdrawal: Any Collaborative Professional, including our attorneys, may withdraw from
27 this case (“Withdrawal”) unilaterally by giving written notification to both parties and the
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1 Collaborative Professionals.

2 15.1. Such notification of withdrawal shall not constitute a Termination Election.

3 15.2. The party whose Collaborative Professional withdraws may continue in this
4 Collaborative Process by retaining a new Collaborative Professional who signs this
5 Agreement.

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7 15.3. We understand that in the event any Collaborative Professional believes his or her
8 client is acting in bad faith, or is otherwise misusing or taking advantage of the
9 Collaborative Process, the Professional must withdraw and in no case shall the
10 Professional continue to assist the party under such circumstances, except to transfer the
11 file as set forth below in section 16.

12 16. Transfer of File:

13 16.1. Upon Termination and client request, both attorneys will cooperate to facilitate
14 the transfer of the client's matter to successor counsel.

15 16.2. Upon Withdrawal and client request, the withdrawing attorney will cooperate to
16 facilitate the transfer of the client's matter to successor counsel.

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18 17. Default: Neither party may file a Request to Enter Default in this proceeding absent advance
19 written notice to the other party and the Collaborative Professionals at least 20 days before
20 the anticipated filing. Such filing terminates the Collaborative Process per paragraph 14,
21 above.

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23 NOTICE

24 18. Any Notice or document required to be served by the provisions of this Agreement may be
25 personally served, or shall be deemed served five (5) days after the deposit in the United
26 States mail, first class postage prepaid, addressed to all parties and Collaborative
27 Professionals.

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ENFORCEABLE COURT ORDER

19. % and @ agree that this Collaborative Process Agreement may be filed with the Court attached as Exhibit A to the cover sheet entitled Stipulation and Order for the Collaborative Process, which shall provide that the provisions of this Agreement become orders of the Court. In any case, either party may file a copy of this Agreement with the court at any time in their dissolution action, provided that it is signed by both parties and their Collaborative Professionals.

The foregoing is agreed to by:

Dated: _____ % _____

Dated: _____ @ _____

Dated: _____ *
Collaborative Attorney for %

Dated: _____ *
Collaborative Attorney for @

Dated: _____ *
Neutral Coach

Dated: _____ *
Neutral Financial Professional

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**EXHIBIT A: PRINCIPLES AND UNDERSTANDINGS
A STATEMENT OF INTENT**

1. Purpose:

1.1. We believe that it is in our family’s best interests for us to participate in a conflict resolution process that does not rely on a court-imposed resolution and to avoid adversarial legal proceedings, particularly those that involve our children.

1.2. We accordingly commit ourselves to the Collaborative Process as a way to resolve our differences justly and equitably, understanding that Collaborative Process requires honesty, full and open disclosures, cooperation, integrity, and professionalism geared toward our future well-being and that of our children.

1.3. Our goal in adopting Collaborative Process is to minimize, if not eliminate, the negative economic, social, and emotional consequences of the traditional adversarial legal process to us and to our family.

1.4. We agree to commit ourselves to Collaborative Process and agree to seek a way to resolve our differences justly and equitably without court intervention.

2. Integrity/Safety of the Process:

2.1. Each of us, our Collaborative Professionals and our Consultants will respect the dignity of all involved and will uphold a high standard of integrity.

2.2. None of us will take advantage of inconsistencies, misstatements of fact or law, or others’ miscalculations, but will disclose them – as well as our own – and seek to have them corrected at the earliest opportunity.

3. Disclosure and Good Faith Negotiation:

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3.1. We understand that Collaborative Process requires vigorous good faith negotiation.

Each of us will be expected to take a reasoned and constructive approach on all disputed matters in the interests of reaching consensus, and, where such approaches differ, each of us will be encouraged to consider modifying his or her approach in order to reach a resolution of all disputed matters.

3.2. While we understand that our attorneys will inform us about applicable law and about the litigation process, neither we nor any of our Collaborative Professionals will use threats of going to court as a way of forcing settlement.

4. Communication: We understand that:

4.1. Our Collaborative Professionals will confer with one another from time to time by telephone, in person, and via email, in order to ensure full and complete disclosure of material information and an effective process; whether or not to disclose the content of these conversations to the parties is at the discretion of the Collaborative Professionals.

4.2. It is important to clarify with our respective Collaborative Professionals at the start of this process what is a private confidential communication and how it will be handled by that professional.

5. Professional Duties: We are giving all of our Collaborative Professionals permission to conduct themselves in a manner that might differ from the traditional duties of a professional in an adversarial process.

6. Limitations:

6.1. There is no guarantee of success;

6.2. We cannot eliminate concerns about disharmony, distrust, and irreconcilable differences that have led to the current circumstances;

6.3. While we all intend to reach a cooperative and complete resolution of all issues, we

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understand that we may not be able to do so; and

6.4. These good faith undertakings and commitments are not a substitute for attending carefully to our own respective interests, even where those interests may diverge from the other party's interests.

1 **EXHIBIT B: DEFINITIONS AND CODE SECTIONS**

2 1. Family Code section 2013:

- 3 (a) If a written agreement is entered into by the parties, the parties may utilize a
4 collaborative law process to resolve any matter governed by this code over which the
5 court is granted jurisdiction pursuant to Section 2000.
- 6 (b) “Collaborative law process” mean the process in which the parties and any professionals
7 engaged by the parties to assist them agree in writing to use their best efforts and to
8 make a good faith attempt to resolve disputes related to the family law matters as
9 referenced in subdivision (a) on an agreed basis without resorting to adversary judicial
intervention.

10 2. In Association: An attorney shall be deemed “in association” if, at any time during the
11 pendency of this proceeding for Dissolution of Marriage or future family law proceedings
12 between these parties, such attorney is the employer or employee of, or co-employee with,
13 or shares a relationship of independent contractor status with any attorney named in this
Agreement.

14 3. Definition of Contested Actions: A Contested Action is any future contested proceeding
15 between the parties in which they seek the intervention of a third-party decision-maker.
16 Their pending action for Dissolution of Marriage is not to be deemed a “Contested Action”
17 for so long as the parties do not seek such intervention (*i.e., asking a judge for a decision*).
18 Examples of a Contested Action are court proceedings such as a Request for Order and a
19 Request for Entry of Default, and private judging and arbitration proceedings where the
private judge or arbitrator has the authority to make orders.

20 4. Automatic Temporary Restraining Orders: Family Law section 2040 provides that upon the
21 filing and serving of a petition for dissolution of marriage;

- 22 4.1 Each is restrained from removing their minor child(ren) from the state without the
23 prior written consent of the other or order of court;
- 24 4.2 Each is restrained from borrowing against, canceling, transferring, disposing of, or
25 changing the beneficiaries of any insurance or other coverage including life, health,
26 automobile, and disability held for the benefit of the parties of their minor child or
children;
- 27 4.3 Each is restrained from transferring, encumbering, hypothecating, concealing, or in
28 any way disposing of any property, real or personal, whether community, quasi-

1 community, or separate, without the written consent of the other party, or an order of
2 court, except in the usual course of business for the necessities of life;

3 4.4 Each is restrained from creating a non-probate transfer or modifying a non-probate
4 transfer in a manner that affects the disposition of property subject to the transfer,
5 without the written consent of the other party or an order of the court. Before
6 revocation of a non-probate transfer can take effect or a right of survivorship to
7 property can be eliminated, notice of the change must be filed and served on the other
8 party.

9 4.5 Each party will notify the other of any proposed extraordinary expenditures at least
10 five business days prior to incurring these extraordinary expenditures and account to
11 the court for all extraordinary expenditures made after these restraining orders are
12 effective. However, nothing in this order precludes either party from using
13 community property to pay reasonable attorney's fees in order to retain and maintain
14 legal counsel in this action.

15 4.6 Neither party will incur any debts or liabilities for which the other may be held
16 responsible, other than in the ordinary course of business or for the necessities of life.

17 5 Collaborative Professionals: shall mean our Collaborative attorneys, our coaches, our neutral
18 financial professional and our child specialist, to the extent such professionals are part of our
19 Collaborative team.

20 6 Examples of Neutral Consultants are: accountants, financial planners, medical doctors,
21 psychotherapists, personal or real property valuation experts, private investigators, vocational
22 consultants or any other person or firm jointly retained or employed in connection with the
23 Collaborative Process.

24 7 Examples of Neutral Consultants' reports are: appraisals, business valuations, and vocational
25 reports.

26 8 California Evidence Code 250: "Writing" means handwriting, typewriting, printing,
27 photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and
28 every other means of recording upon any tangible thing, any form of communication or
representation, including letters, words, pictures, sounds, or symbols, or combinations
thereof, and any record thereby created, regardless of the manner in which the record has
been stored.

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EXHIBIT C

(Petitioner/Respondent), Self-Represented

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

In re the marriage of:)
_____,)
Petitioner,)
and)
_____,)
Respondent.)
_____)

Case No.:

**NOTICE OF ELECTION TO
TERMINATE THE COLLABORATIVE
PROCESS**

The (Petitioner/Respondent), (Name), Self-Represented, hereby terminates the Collaborative Process per paragraph (14.2) of the Collaborative Agreement, which was made part of the Stipulation and Order for Collaborative Process filed herein (date).

Dated: _____

(name), (Petitioner/Respondent)