

*With “match case” on, “find and replace”:*

“AA” = short form of one party’s name

“BB” = short form of the other party’s name

“XX” = short form of AA’s representative’s name

“YY” = short form of BB’s representative’s name

“MM” = short forms of the children’s names *[please insert “and” before the last one e.g.. “Fred, Mary and Tommy”]*

*Then delete this heading*

## **Participation Agreement to co-operate in settling family disputes**

### **The parties to this agreement**

[AA’s full name] of [address]

[full name of AA’s representative (XX) of [address]

[BB’s full name] of [address]

[full name of BB’s representative (YY) of [address]

### **The children**

*MM*

### **Our intentions**

1. YY and XX are Resolution trained collaborative lawyers and act in accordance with its principles.
2. XX and YY are independent of each other and each will represent and advise only their own client.
3. We will not go to Court to resolve BB’s and AA’s differences
4. We will try to think creatively and constructively to find a fair solution to all issues without court intervention (although we will ask the court to confirm agreed arrangements if this is appropriate).
5. Our priority is MM’s well-being, and after that the well-being of AA and BB.

## **Negotiation in good faith**

6. We will:
  - a) make every effort to find amicable solutions that:
    - I. promote MM's best interests,
    - II. affirm BB's and AA's roles as parents, and
    - III. as far as possible, satisfy AA and BB as well as MM.
  - b) be courteous and co-operative;
  - c) be truthful, open, and honest, giving full and frank disclosure and all information that may be relevant to the discussions;
  - d) jointly instruct all other professionals retained under this agreement, and include an instruction to work in a co-operative way to help resolve problems; (this paragraph will apply, for example, to family consultants, mediators, financial advisors, accountants, and valuers).
  - e) use where appropriate Family Consultants, Mediators and such other persons as may help to promote the well being of BB, AA and MM.
7. AA and BB will:
  - a) try not to discuss past events;
  - b) avoid threats, inflammatory language and accusations that do not help us solve the problems;
  - c) not denigrate or criticise the other parent in front of MM;
  - d) not involve MM in the disputes;
  - e) promote and support a caring, loving, and involved relationship between MM and the other parent;
  - f) supply promptly (or within agreed times) all relevant information and documents;
  - g) disclose without prompting any relevant new information and documents that they receive until the agreement is approved by the Court (in accordance with their duty to the Court).
8. YY and XX will help their respective clients to identify the information and documents that will help resolve any issues.

## **Confidentiality**

9. The negotiations are confidential and legally privileged. No information about them or learnt from them will be given to the court, friends, colleagues, family or anyone else, unless permitted by paragraphs 10, 11, 12, or 18.
10. If the Legal Services Commission funds AA or BB it is entitled to see their file.

11. One of us may have a legal duty to report certain matters to the authorities, and may not be allowed to warn the others. This might arise, for example, if they have reason to believe that a child is suffering (or likely to suffer) significant harm.
12. BB and AA agree that details of the case may be used for research, education or training (or any combination of these), but only if information that might identify the family has been removed.

### **Discussing the financial settlement**

13. whenever AA and BB discuss the issues involved in these negotiations outside the meetings with the lawyers, they will inform XX and YY of the discussions. BB and AA confirm their intention to limit those discussions pending further minuted agreement to relax this principle.

### **Legal and other costs**

14. AA and BB will each pay:
  - a) their own representative's costs in accordance with the terms of business they have received;
  - b) half the costs of other professionals instructed under paragraph 6(e), unless otherwise agreed.
15. But:
  - a) if either BB or AA does not have the necessary money to pay these costs, the other will if reasonably possible provide the money, subject to repayment later (unless the repayment is waived under paragraph b) following:
  - b) it may be agreed during the negotiations that AA and BB will pay some or all of the other's costs.

### **Withdrawal from the process**

16. Either BB or AA can withdraw from the negotiations under this agreement at any time by telling YY or XX.
17. In order to allow a cooling-off period during which XX and YY will try to rescue the negotiations under this agreement, neither AA nor BB may start court proceedings within 21 days of that withdrawal. But this will not apply in an emergency.

18. If a court is involved in the family break-up otherwise than to process the divorce or to make an agreed order:

- a) BB's and AA's instructions to YY and XX respectively will immediately lapse;
- b) AA and BB will promptly place themselves on the court record, unless they instruct new lawyers to do so;
- c) XX and YY will on request:
  - i. give their respective former clients the completed document needed to put that client on the court record which that client will file at court immediately;
  - ii. help their respective former clients and any new advisers that they appoint (whether or not they are instructed to act under a collaborative agreement) by providing 1) copies of the papers that represent the disclosure in the case; and 2) a bundle of privileged documents showing the stage reached in the negotiations/discussions.
  - iii. For the avoidance of doubt, any expert's report will form part of the disclosure unless there is agreement to the contrary reached at the time or subsequently to the end of the collaborative process, between the parties or their representative. And XX and YY will be entitled to charge for so doing; but
- d) Neither YY nor XX, nor other members of their firms may be involved (as lawyers or witnesses) in any court proceedings between BB and AA;
- e) Neither AA nor BB nor anyone on their behalf will:
  - i) use in evidence XX's or YY's notes except to the extent that they record relevant financial and factual disclosure;
  - ii) call YY or XX to give evidence in any court
  - iii) refer a Judge to the negotiations conducted under this agreement if that Judge may impose a final order on any matter that has been the subject of the negotiations; but
- f) any financial and/or factual disclosure made within the process may be used in evidence.

19. XX and/or YY will withdraw from this agreement if:

- a) Their rules of professional conduct require it; or
- b) They learn that their client has acted (or is about to act) in breach of this agreement.

But the representative may agree to continue if their client puts the matter right or refrains from the act.

**Agreements**

20. The agreements reached will only become binding when BB and AA have both signed a document recording the terms.

**Applicable law**

21. The laws of England and Wales govern this agreement.

BB	
AA	
YY	
XX	
Date	2011