

ADOPTED BY THE BOARD OF DIRECTORS
GLOBAL COLLABORATIVE LAW COUNCIL
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PARTICIPATION AGREEMENT

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Collaborative Law Institute of Texas, Inc.

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PARTICIPATION AGREEMENT

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THIS AGREEMENT (“Agreement”) is made by and between

1 _____ 2 _____
3 _____ 4 _____

(each, a “Party” and collectively, the “Parties”),
and their respective Lawyers (“Lawyers”)

1 _____ 2 _____
3 _____ 4 _____

1.0 PREMISES

1.1 A dispute (“Dispute”) has arisen between the Parties concerning _____

_____.

1.2 The Parties wish to resolve the Dispute and any other claims or potential claims which any Party has or may have against any other Party through the collaborative process without resort to litigation, and the Parties have entered into this Agreement for that purpose.

1.3 The Parties have engaged their respective Lawyers as collaborative counsel to assist their clients in identifying issues, goals and interests, analyzing relevant information, developing options and understanding the consequences, and reaching the goal of the collaborative process which is an agreed resolution of the Dispute.

1.4 The Lawyers agree to adhere to the Protocols of Practice for Collaborative Lawyers adopted by the Global Collaborative Law Council (“GCLC”) and any laws or rules of court governing the collaborative process in the jurisdiction of the dispute. The GCLC protocols should be interpreted in a manner consistent with such laws and/or rules.

2.0 ESSENTIAL ELEMENTS OF THE COLLABORATIVE PROCESS

The Parties and Lawyers understand and agree that the essential elements of the collaborative process are:

- a. Identification of the goals and interests of the Parties;
- b. Full and complete disclosure of relevant information;
- c. Efficient communications;
- d. The Parties’ empowerment to make decisions on a level playing field;
- e. Confidentiality, and
- f. Good faith negotiations.

3.0 COMMUNICATIONS

3.1 The Parties understand the process will involve vigorous good faith negotiation in face-to-face settlement conferences during which the Parties will be represented solely by their respective Lawyers. The settlement conferences will be conducted with the Parties and their Lawyers present, and with any other person the Parties agree may be present. The settlement conferences will be focused on giving consideration to all Parties’ interests, and to developing options for the constructive resolution of the Dispute. To maintain an objective and constructive process, the Parties agree to discuss resolution of issues with each other only in the settlement conferences, unless they agree otherwise. Any Party may request termination of a settlement conference at any time and such a request shall be immediately honored.

3.2 The Lawyers will confer to plan agendas for settlement conferences and to draft or review documents, but no agreements will be made by the Lawyers on behalf of the Parties.

3.3 The Parties agree they shall not take advantage of known mistakes, errors of fact or law, miscalculations, or other inconsistencies. Once a participant discovers a mistake, error of fact or law, miscalculations, or other inconsistencies, such participant shall identify it and provide an opportunity to correct it.

3.4 The Parties may agree to discuss the likely outcome of a litigated result; however, neither the Parties nor their Lawyers shall threaten to resort to litigation or any other adversarial proceeding.

4.0 UNDERSTANDINGS

4.1 The Parties understand that the Lawyers are independent from each other, and each Lawyer represents only their respective client in the collaborative process. The Parties further understand that each Lawyer is an advocate only for their respective client. No legal duty, by contract or otherwise, is owed to a Party by another Party's Lawyer. No lawyer-client relationship exists between one Party's Lawyer and any other Party by virtue of this Agreement or the collaborative process.

4.2 The Parties acknowledge there is no guarantee they will be successful in resolving the Dispute in the collaborative process.

4.3 The Parties are expected to express their own interests, and give consideration to the other Parties' interests. The Lawyers will assist their respective clients in doing so.

4.4 The process, even with full and honest disclosure, may involve intense good-faith negotiations. Best efforts will be used to create options that meet the interests of all Parties. The Parties recognize that compromise may be needed to reach resolution of all matters in dispute.

4.5 The Parties acknowledge this is a voluntary agreement. The Parties understand that by agreeing to the collaborative process, they are voluntarily giving up certain rights, including the right to conduct formal discovery, and the right to participate in adversarial proceedings unless otherwise agreed or the collaborative process is terminated.

4.6 A Collaborative Lawyer may not serve as a lawyer in any adversarial proceedings among any of the Parties regarding the subject matter of the Dispute, and this prohibition may not be modified. A Lawyer associated in the practice of law with the Collaborative Lawyer may not serve as a lawyer in any adversarial proceedings regarding the subject matter of the Dispute among any of the Parties, unless the Parties agree otherwise in writing.

4.7 In the event that in-house counsel serves as a collaborative lawyer for his/her employer and the process terminates prior to resolution of the Dispute, no other lawyer employed by such Party may represent the Party in any adversarial proceeding among the Parties regarding the subject matter of the Dispute. A lawyer with the employer other than the collaborative lawyer should arrange transfer of documents and information to the litigation attorney retained by the employer, and the lawyer arranging the transfer may monitor or participate in such proceeding according to the employer's normal business

practices regarding matters which are referred to the litigation attorney. No lawyer employed by the collaborative lawyer's employer shall sit at the counsel table in any adversarial proceeding among the parties regarding the subject matter of the Dispute.

5.0 FULL DISCLOSURE OF INFORMATION AND DOCUMENTS

5.1 The Parties will make a full and candid exchange of all information, documents and tangible things in their control ("Information") on which they rely and which are consistent with and support their position on any matter in dispute, and all Information in their control which is inconsistent with their position and/or supports the position of any other Party.

5.2 Any material change in Information must be promptly updated.

5.3 The Parties authorize their respective Lawyers to fully disclose all Information, which in the Lawyer's judgment must be provided to other participants in order to fulfill the full disclosure commitment; provided that such authorization does not constitute a waiver of the attorney-client privilege.

5.4 The Parties agree to give complete and timely responses to all requests for documents and other Information relevant to the resolution of the Dispute. Unless otherwise agreed in writing, during the collaborative process the Parties will not engage in formal discovery as in an adversarial proceeding. Affidavits may be utilized to confirm specific matters, such as the unavailability of certain Information, or the existence or non-existence of documents or tangible things.

5.5 The Parties agree not to conduct surveillance of another Party's activities, including the use of an investigator, detective or other individual paid for or engaged by a Party or third party, or the use of electronic listening or tracking devices during the collaborative process.

6.0 CONFIDENTIALITY

6.1 The Parties agree to maintain the confidentiality of oral and/or written communications relating to the Dispute made by the Parties or their Lawyers or other participants in the collaborative process, whether the communication was made before or after the institution of formal adversarial proceedings.

6.2 All communications, whether oral or written, and the conduct of any Party, Lawyer, or retained expert in the collaborative process constitute compromise and settlement negotiations under the rules of the authority having jurisdiction over the subject matter of the Dispute and the Parties. Unless the Parties otherwise agree in writing, these communications and any written materials, tangible items, and other Information used in or

made a part of the collaborative process, are only discoverable and admissible in any adversarial proceeding regarding this Dispute, or in any other proceeding among the Parties to this Agreement, if they would otherwise be admissible or discoverable independent of the collaborative process. This exclusion does not apply to the admissibility of a fully executed Collaborative Settlement Agreement.

6.3 A Party and that Party's Lawyer may disclose all Information to a lawyer engaged to render an outside legal opinion for the Party in the collaborative process, or to that Party's successor collaborative lawyer. In the event the collaborative process is terminated, a Party may disclose all Information to that Party's litigation lawyer.

7.0 LEGAL PROCESS

7.1 The Parties and the Lawyers agree that, as to the Dispute, Court intervention shall be suspended while the Parties are participating in the collaborative process pursuant to this Agreement. Unilaterally seeking Court intervention for any adversarial hearing regarding any portion of the Dispute automatically terminates the collaborative process.

7.2 The Lawyers' representation of the Parties is limited to the collaborative process. Once the process is terminated, the Lawyers cannot participate in any manner in an adversarial proceeding as to any portion of the Dispute, nor can a Lawyer subsequently represent any Party in an adversarial proceeding involving any other Party when the proceeding involves the subject matter of this Dispute.

7.3 Upon termination of the collaborative process, or upon the withdrawal of a Lawyer, the Lawyers shall not be joined as a party or called as a witness in any adversarial proceeding among any of the Parties regarding any portion of the Dispute. Any Party or Lawyer violating this provision shall pay all fees and expenses, including reasonable attorneys' fees, incurred by a Lawyer opposing such effort.

7.4 No documents will be prepared or filed which would initiate Court intervention, except if necessary to preserve causes of action, defenses, or to obtain some extraordinary relief. In such situations, service of citation or other processes, and any pleadings will be accepted by the Parties' respective Lawyers. The Parties and Lawyers will endeavor to reach agreement to eliminate the necessity for any such filings. No hearing shall be set, other than to submit agreed orders to the Court.

8.0 RETAINED EXPERTS

8.1 The Parties will jointly engage retained experts as unbiased neutrals if needed, unless the Parties agree in writing to separately engage neutral retained experts.

8.2 The Parties may engage retained experts, including lawyers, for any issue which requires expert advice and/or recommendations. The Parties will agree in advance how retained experts' fees will be paid.

8.3 Retained experts must sign and agree to abide by the terms and conditions of a Retained Expert Participation Agreement.

8.4 A retained expert who is an attorney, and any attorney associated in the practice of law with such attorney, shall not serve as the litigation attorney for any party in any adversarial proceeding arising from the subject matter of the Dispute.

8.5 Retained experts shall not serve as fact or expert witnesses, and their work product, opinions, mental impressions, and the factual basis of them are not discoverable or admissible in any adversarial proceeding regarding the Dispute, or in any other proceeding among the Parties.

8.6 Retained experts may communicate with the Parties, their Lawyers, and any other retained experts. Retained experts may participate, and their work product, opinions, mental impressions, and the factual basis of them may be utilized in any confidential ADR process which is a part of the collaborative process governed by this Agreement.

8.7 The Lawyers shall instruct retained experts to report openly to all Parties the following: (1) all communications the expert has had with any other person regarding the matter for which the expert has been engaged; (2) the expert's work product, opinions, mental impressions; and (3) the factual basis for them.

9.0 CONSULTING-ONLY EXPERT

9.1 A Party may privately retain a consulting-only expert. A consulting-only expert is an expert who: (1) has no firsthand knowledge about the Dispute; (2) has no factual knowledge about the Dispute except for knowledge that was acquired through the consultation; and (3) whose work product, opinions, or mental impressions have not been reviewed by retained experts.

9.2 A consulting-only expert's identity shall be disclosed to all Parties.

9.3 Communications between the consulting-only expert and the Party engaging that expert, and the expert's work product, opinions, mental impressions, and the factual basis for them shall remain confidential.

9.4 A consulting-only expert may review the reports of any retained expert; however, should a retained expert review the work product of a consulting-only expert, the consulting-only expert becomes a retained expert whose work product and opinions must be

disclosed to all Parties. The engaging Party's Lawyer shall so advise the consulting-only expert.

9.5 By Addendum to this Agreement the Parties should agree whether or not a consulting-only expert is disqualified from testifying as a fact or expert witness in any adversarial proceeding arising from the Dispute.

9.6 A consulting-only expert who is a lawyer, and any lawyer associated in the practice of law with such lawyer, shall not serve as the litigation lawyer for the engaging party in any adversarial proceeding arising from the subject matter of the Dispute.

9.7 The Lawyers shall instruct consulting-only experts that (1) the Parties are engaged in a collaborative process; and (2) the role of the consulting-only expert is to assist the Party in identifying issues, analyzing relevant information, developing options, and assisting in reaching the goal of the collaborative process which is an agreed resolution of the Dispute.

10.0 OUTSIDE LEGAL OPINIONS

10.1 A Party may privately engage a lawyer, including a litigation lawyer, outside of the collaborative process for the limited purpose of obtaining an opinion on a specific issue or issues. Before beginning consultation with an outside lawyer, the identity of any such lawyer must be disclosed to all Parties. If a Party has engaged a lawyer other than the Party's collaborative Lawyer prior to signing this Agreement, the identity of such lawyer shall be disclosed to all Parties before signing this Agreement.

10.2 Any lawyer engaged outside of the collaborative process for the purpose of giving an opinion on any issue or issues, should be given all information necessary to give informed advice, including reports of retained experts whose services have been engaged in the collaborative process regarding the Dispute.

10.3 The Parties agree the work product, opinions, mental impressions, and the facts upon which they are based of a lawyer engaged outside of the collaborative process for the limited purpose of obtaining an opinion on a specific issue or issues, are not discoverable in any adversarial proceeding regarding the subject matter of the Dispute or in any other adversarial proceeding among the Parties, unless the Parties agree otherwise.

10.4 By Addendum to this Agreement, the Parties should agree whether or not such lawyer, and any lawyer associated in the practice of law with such lawyer, may testify as fact or expert witnesses, or may serve as litigation counsel for the consulting Party in any adversarial proceeding resulting from the Dispute, or in any other adversarial proceeding among any of the Parties regarding the subject matter of the Dispute.

10.5 Should all the Parties jointly seek an opinion from a lawyer outside of the collaborative process, including a litigation lawyer, such lawyer is a retained expert whose work product and opinions must be disclosed to all Parties.

11.0 OTHER ALTERNATIVE DISPUTE RESOLUTION PROCESSES

To avoid termination of the collaborative process or to further facilitate the process, the Parties may agree in writing to mediate in good faith with a mediator who has received training in the collaborative process, or to utilize other alternative dispute resolution procedures with third party neutrals who are trained in the collaborative process.

12.0 WITHDRAWAL FROM THE COLLABORATIVE PROCESS BY A PARTY

12.1 A Party may withdraw from the collaborative process at any time and shall notify that Party's Lawyer in writing. The withdrawing Party's Lawyer shall give prompt written notice to the other Parties through their respective Lawyers.

12.2 If the Dispute involves more than two Parties, the remaining Parties may choose to continue the collaborative process without the withdrawing Party. The withdrawing Party shall not proceed in any adversarial manner until the sooner of completion of the collaborative process or 180 days from the date the withdrawing Party gave notice.

13.0 TERMINATION OF THE COLLABORATIVE PROCESS BY A LAWYER

13.1 If a Party refuses to act in good faith, for example, by refusing to disclose relevant Information which in the Lawyer's judgment must be provided to other participants; by answering dishonestly any inquiry made by a participant in the collaborative process; or by proposing to take an action that would compromise the integrity of the collaborative process, and the Party persists after counseling by the Lawyer, then the collaborative process shall be terminated.

13.2 If the offending Party refuses to terminate the collaborative process, all Parties acknowledge that their respective Lawyers have a duty to terminate the collaborative process on behalf of their clients, and all Parties authorize their Lawyer to terminate the process by written notice to all participants and the Court. The Lawyers shall not reveal whose decision it was to terminate the collaborative process or the reason the process was terminated.

13.3 Upon termination of the process, Lawyers shall withdraw from the representation. The Lawyers may not serve as a litigation lawyer in the Dispute or in any other adversarial proceedings among any of the Parties regarding the same subject matter. If any lawyer associated in the practice of law with the Lawyers intends to serve as a litigation lawyer, the Parties must agree to such representation in writing prior to the termination of the collaborative process.

13.4 All Lawyers will cooperate in returning the clients' original documents, to facilitate transfer of the client's documents and notebooks to litigation lawyers.

14.0 WITHDRAWAL BY A LAWYER

14.1 A Lawyer may withdraw unilaterally from the collaborative process for any reason by giving three days' written notice to the Lawyer's client and the other Lawyers. The withdrawing Lawyer does not have to state a reason for the withdrawal.

14.2 The Party whose Lawyer has withdrawn may retain a new collaborative lawyer, or may continue in the collaborative process without a lawyer but only upon the written agreement of all Parties. A newly engaged collaborative lawyer must sign this Agreement.

15.0 THIRTY DAY MORATORIUM

15.1 Upon notice to all Lawyers of termination of the collaborative process, the Parties will observe a thirty day waiting period, unless there is an emergency, before requesting any court hearing, to permit all Parties to engage other lawyers and make an orderly transition from the collaborative process to litigation or any other adversarial proceeding.

15.2 All written agreements previously entered into by the Parties shall remain effective until modified by agreement or Court order. A Party may bring this provision to the attention of the court in requesting a postponement of a hearing.

16.0 LAWYERS' FEES AND EXPENSES

The Parties understand that the Lawyers and all experts engaged in the collaborative process shall be paid for their services whether or not the collaborative process results in resolution of the Dispute. The Parties agree that all such fees and expenses incurred by the Parties shall be paid in full prior to signing a final Collaborative Settlement Agreement, and/or the submission of an agreed judgment to a Court.

17.0 MISCELLANY

17.1 "Court" as used in this Agreement refers to any adjudicatory body having jurisdiction over the Parties and the Dispute. Lawyers may appear in Court only by written agreement of all Parties or as required by law. Temporary orders may be submitted to a Court upon the written agreement of all Parties.

17.2 "Good faith" as used in this Agreement means truthfulness, an honest commitment not to take advantage of a Party through technicalities of law and an intention to meet the legitimate needs of all Parties to the extent it is feasible to do so.

17.3 The participants shall require that any retained expert, consulting only expert or outside legal opinion attorney disclose any previous consultation and/or representation with any participants in the collaborative process under this Agreement.

17.4 This Agreement shall remain enforceable as a contract between the Parties and may be the basis for a claim against a Party violating its terms. If any provision of this Agreement is held to be invalid or unenforceable for any reason, all remaining provisions shall continue to be valid and enforceable.

17.5 Any written agreement, whether partial or final, which is signed by all Parties and their respective Lawyers, may be filed with the court as a Collaborative Settlement Agreement in accordance with the rules of the Court having jurisdiction over the subject matter of the Dispute and the Parties. Such an agreement is retroactive to the effective date of the written agreement and may be made the basis of a Court order.

17.6 The Lawyers shall cooperate in preparing the documents necessary to effectuate the Parties' agreements made hereunder.

17.7 The Parties and their Lawyers acknowledge that they have read this Agreement and agree to abide by its terms and conditions, to remain faithful to their duties and obligations under this Agreement and pledge to comply with the spirit and letter of this Agreement.

Signed on this _____ day of _____, 20__.

[Party 1]

[Party 2]

Street Address

Street Address

City, State, Zip

City, State, Zip

Telephone

Telephone

Fax Number

Fax Number

E-mail

E-mail

[Party 3]

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

[Lawyer for Party 1]

State Bar Number

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

[Party 4]

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

[Lawyer for Party 2]

State Bar Number

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

[Lawyer for Party 3]

State Bar Number

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

[Lawyer for Party 4]

State Bar Number

Street Address

City, State, Zip

Telephone

Fax Number

E-mail

ADDENDUM TO THE PARTICIPATION AGREEMENT

The purpose of this Addendum is to assist the Parties in making choices regarding how they wish to conduct the collaborative process. The Parties may agree to postpone a decision on any item, or agree to not address any item in this Addendum. The Addendum should be modified to suit the needs of the Parties and the Dispute.

1. The second joint meeting will be held at:

_____ on _____ .m.

Third _____ on _____ .m.

Fourth _____ on _____ .m.

If additional meetings are necessary, the Parties will agree on subsequent meeting times and places during the fourth meeting.

2. Meetings will be at least ____ hours, but no meeting will last longer than ____ hours.

3. The Parties and Lawyers shall attend all face to face meetings. After signing a participation or confidentiality agreement, other persons who may attend are:

4. The Parties agree that they will __ will not __ discuss among themselves issues regarding the Dispute outside the face to face meetings.

5. The Parties shall retain all experts jointly ____ separately ____, -or- ____ the Parties will decide if the expert will be retained jointly or individually as the collaborative process progresses.

6. Each Party shall pay _____ % of any fee of any expert, -or- ____ the Parties shall pay all fees and expenses as follows:

7. The Parties agree that a retained expert may ___ may not ___ participate in a subsequent adversarial proceeding among the parties regarding subject matter **not** addressed in this Dispute.

8. The Parties have ___ have not ___ engaged a lawyer to render an outside legal opinion prior to the execution of the Participation Agreement. (List names of Party and any previously engaged lawyer.)

9. The Parties have ___ have no ___ present intention to engage an outside legal opinion attorney. (List names of Party and any proposed attorney.)

10. The Parties agree that any privately engaged outside legal opinion attorney

- a. may ___ may not ___ represent the engaging party in any adversarial proceeding involving any other Party to the Dispute, regarding the subject matter of the Dispute.
- b. may ___ may not ___ testify as an expert or a fact witness in any adversarial proceeding involving any other Party to the Dispute, regarding the subject matter of the Dispute.

11. There are ___ are not ___ any consulting-only experts who have been privately engaged prior to the execution of the Participation Agreement. (List names of Party and any previously engaged consulting-only expert.)

12. There are ___ are not ___ parties who presently intend to engage a consulting-only expert. (List names of Party and of such consulting-only expert.)

13. If a Party engages a consulting-only expert, the expert may ___ may not ___ testify as an expert or a fact witness in any adversarial proceeding regarding the subject matter of the Dispute which involves any other Party to the Dispute.

14. The Parties agree that any consulting-only expert or an outside legal opinion attorney is ___ is not ___ required to have the expert/attorney disclose any previous consultation and/or representation with any participants to the collaborative process.

15. The Parties agree that any consulting-only expert or an outside legal opinion attorney will ___ will not ___ sign an agreement explaining the collaborative process and that person's role in the process.

16. During face to face meetings, the Parties may ___ may not ___ discuss possible outcomes if the Dispute were to be decided in an adversarial proceeding outside of the collaborative process.

17. The Parties will ___ will not ___ participate in formal discovery in the collaborative process. (List any type discovery the Parties have agreed to.)

18. Should the Parties proceed to an adversarial proceeding outside of the collaborative process, any formal discovery, such as affidavits, depositions, or written interrogatories, developed within the collaborative process will ___ will not ___ be admissible, -or- ___ the Parties will decide as the process progresses.

19. The Parties agree that should they reach impasse they may:

(Number in order of preference)

___ select a mediator and mediate the issues.

___ select a single arbitrator and participate in non-binding arbitration.

___ select a panel of three arbitrators and participate in non-binding arbitration.

___ select a single arbitrator and participate in binding arbitration.

___ select a panel of three arbitrators and participate in binding arbitration.

___ file the binding arbitration award or mediated settlement agreement with a court having jurisdiction over the subject matter of the Dispute and the Parties for the purpose of reducing the arbitration award to a judgment.

___ terminate the collaborative process and proceed to litigation.

20. Minutes will be taken at each meeting and _____ will serve as secretary, or _____ the collaborative lawyers shall take turns serving as secretary.

21. Other agreements: _____

By their signatures below the Parties and Lawyers acknowledge that they have read, discussed, and understand this Addendum, and that the decisions they have made as set forth in this Addendum are binding on each Party and Lawyer as of this date. It is understood that this Addendum may be amended at any time during the collaborative process, but only by the written agreement of all participants.

Signed on this ____ day of _____, 20 ____.

[Party 1]

[Party 2]

[Party 3]

[Party 4]

[Lawyer for Party 1]

[Lawyer for Party 2]

[Lawyer for Party 3]

[Lawyer for Party 4]