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**NEUTRAL COLLABORATIVE PROCESS MENTAL HEALTH FACILITATOR  
PARTICIPATION AGREEMENT**

**PARTY A** and his collaborative lawyer, **LAWYER A**, and **PARTY B** and her collaborative lawyer, **LAWYER B**, and Deborah S. Lyons, Ph.D., a Collaborative Process Mental Health Facilitator (the facilitator), enter into this Neutral Collaborative Process Mental Health Facilitator Participation Agreement (the Agreement). **PARTY A** and **PARTY B** (the parties) have agreed to use the principles of the Collaborative Law process to settle the issues of their family law matter. The parties have agreed to engage the facilitator as a neutral Collaborative Process Mental Health Facilitator to assist in the collaborative matter. The facilitator, the collaborative lawyers and any other professional engaged in the process are collectively referred to herein as the “collaborative team.”

**1. Engagement of Neutral Collaborative Process Mental Health Facilitator**

The facilitator agrees that she will act as a neutral facilitator and will not align with either of the parties or any lawyer in this Collaborative Divorce matter. Any work product, as defined in Section 8, prepared by the facilitator and provided to one party and his/her lawyer, shall be provided to the other party and his/her lawyer.

Working as a collaborative team member, the facilitator’s objective is to assist with communication between the parties and, if necessary, between the parties and any other collaborative team member. The purpose of the engagement of the facilitator may include assisting the parties in accomplishing any of the following goals at any time during the collaborative process:

- Maximize outcomes in this collaborative law matter to best meet their interests
- Improve their negotiation and problem-solving skills
- Increase effective communication among family members
- Enhance the Collaborative Divorce team’s effectiveness
- Help the parties to manage the emotional issues that often accompany the divorce process
- Assess the parties’ respective parenting strengths and the parenting relationship between each of them and the children
- Develop a workable parenting plan that meets the children’s developmental needs
- Consider the benefits of an ongoing relationship with a mental health professional as a parenting coordinator after the family law matter concludes
- *Additional responsibilities as appropriate to this matter:* \_\_\_\_\_

The facilitator is committed to adherence to the Protocols of Practice adopted by the Collaborative Divorce Texas, Inc., which specifically embrace compliance with and are subordinate to the rules of professional conduct governing the facilitator’s specific discipline. Although the Neutral Collaborative Process Mental Health Facilitator may be licensed to provide therapy services, she will not provide therapy to any party during or after the Collaborative Divorce process.

**2. Disclosures**

Any past, present or discussed future relationship(s) between the parties, the lawyers, the other professionals who have signed a participation agreement in this matter, and the facilitator that may represent a conflict of interest shall be disclosed in the space provided below, if known, and, if

subsequently discovered, shall be disclosed to the collaborative team immediately upon discovery. For example, if the facilitator has been involved as a therapist or consultant or in any other professional or personal relationship with any member of the collaborative team or either of the parties, the nature of such relationship should be disclosed.

*Check all that apply to this matter:*

- None known
- The facilitator has served as a team member on other collaborative matters with the following members of the collaborative team: \_\_\_\_\_
- The facilitator has performed services in other non-collaborative professional matters with the following members of the collaborative team: \_\_\_\_\_
- The facilitator has participated in professional organizations with the following members of the collaborative team: \_\_\_\_\_
- The facilitator has performed professional services for the following party(ies) or member(s) of the collaborative team: \_\_\_\_\_
- The facilitator has or has had a personal, social or financial relationship with the following party(ies) or member(s) of the collaborative team, which has been explained to the parties: \_\_\_\_\_
- Additional disclosures:* \_\_\_\_\_

### **3. Fees**

The parties agree to pay Deborah S. Lyons, Ph.D., a base retainer of \$ \_\_\_\_\_, which will be held in a non-interest bearing bank account.

Dr. Lyons' hourly rate is \$ \_\_\_\_\_. The parties will be charged at this rate for all services provided including all meetings, telephone conferences, telephone calls, document review and/or preparation, and the written recording of meeting minutes. All email communications (between Dr. Lyons and any member of the team and/or clients) will be billed at the rate of \$ \_\_\_\_\_ per hour.

The parties will also be charged her hourly rate of \$ \_\_\_\_\_ for the time allotted to any scheduled appointments that are canceled by clients or their attorneys, for any reason, with less than 24 hours advance notice. Notice must be provided directly to Dr. Lyons. This charge shall not exceed the fee for three scheduled hours of service.

Additional retainers will be required each time the remaining balance in your account reaches \$500.00. The parties may be asked to replenish the retainer several times during the collaborative process. Depleted accounts must be replenished before any other services are provided. Non-payment of professional fees will be grounds for withdrawal by the Neutral MHP.

Upon conclusion of the process any unused retainer funds will be refunded to the parties in equal distribution unless otherwise noted. Any outstanding debt at that time shall be paid from community funds or paid equally by both parties within 14 days of notification.

### **4. Cooperation Regarding Providing Information**

Each party agrees to provide promptly to the facilitator all necessary and reasonable information requested by the facilitator. Each party agrees to sign all authorizations requested by the facilitator, as deemed necessary by the facilitator to perform this engagement, after review by his/her respective collaborative lawyer.

## **5. Requests to Testify and/or Consult in Future Litigation Matters**

The parties and the facilitator agree that if the collaborative matter terminates and the case is litigated, the facilitator **may not** be called as a witness by either party in any future litigation between the parties, unless the parties and the facilitator agree otherwise in writing. The parties and the facilitator further agree that, if the collaborative matter terminates and the case is litigated, the facilitator **may not** be further consulted as a consulting expert or allied professional, unless the parties and the facilitator agree otherwise in writing. If there is a conflict between the Collaborative Divorce Participation Agreement signed by the parties and the collaborative lawyers and this Agreement, this Agreement shall control with respect to the terms of this Section 5.

## **6. Future Professional Services**

The parties and the facilitator further agree that after completion of the collaborative matter, the parties may engage the services of the facilitator jointly, with informed consent provided by the facilitator. (Engagement of the facilitator to provide future professional services to the parties requires careful consideration of the Protocols of Practice for Mental Health Professionals Involved in Collaborative Family Law pertaining to Multiple Relationships and Continued Involvement with the Family after the Collaborative Process Ends.) If the collaborative matter is terminated and the case is litigated, the facilitator shall provide no further professional services to either party, except when engaged by both parties to facilitate agreements made in the collaborative matter which survive the termination or unless the parties reinstitute a collaborative process.

## **7. Confidentiality**

The parties, the collaborative lawyers, and the facilitator agree to maintain the confidentiality of any communications among each other relating to the subject matter of the dispute and made in the collaborative matter, whether before or after the institution of formal judicial proceedings. This confidentiality does not prohibit sharing of information by and between the collaborative lawyers, any lawyers consulted for an opinion in the collaborative process, any other allied professional who has signed a participation agreement in this matter, the facilitator, and the parties, in accordance with Section 9 below regardless of a client's request to the contrary. As in other professional relationships, this provision does not prohibit disclosure by the collaborative lawyers and the facilitator of case information for educational purposes without disclosing the identities of the parties, nor does it prohibit participation by a party in educational forums or media interviews to discuss the collaborative law process. This confidentiality paragraph does not apply to reports of abuse or neglect required by law, formal discovery, sworn documents prepared in this matter, a fully executed collaborative law settlement agreement or evidence of fraud.

All meetings, communications, whether oral or written, and discussions involving the facilitator in the collaborative process are compromise negotiations under Rule 408, Texas Rules of Evidence.

The responsibilities regarding confidentiality of the collaborative process are delineated in Addendum A to this Participation Agreement, the "Confidentiality Agreement."

## **8. Work Product of the Facilitator**

The parties, the collaborative lawyers and the facilitator agree that all notes, work papers, summaries, written or oral opinions, written or oral reports of the facilitator (collectively referred to as work product), if any, shall be confidential and shall not be released to any person or entity outside of the collaborative

process without the express written permission of both parties or court order. However, such work product shall not be admissible into evidence in any legal matter between the parties, including any hearing or trial, unless the parties and the facilitator agree in writing otherwise.

If the Process concludes, including by termination, a Collaborative Team member, other than a collaborative lawyer, will not be permitted to communicate verbally or in writing with any person who was not a participant in the Process, including any successor lawyer, other than to simultaneously transmit to the successor lawyers any records created by a third party which were provided to the Collaborative Team member by the Clients or their respective collaborative lawyers, and any records which were previously distributed by the Collaborative Team member to the Clients and/or their respective lawyers. During the Process, a Collaborative Team member, other than a collaborative lawyer, will not be permitted to communicate verbally or in writing with a Joint Advisor or with an Individual Advisor, unless the other Collaborative Team members and the Clients authorize the release of information to the advisor.

## **9. Open Communication**

The facilitator may communicate among the team members including, but not limited to, communicating with each party individually or together, a party with his or her collaborative lawyer present, each collaborative lawyer individually or together with the other collaborative lawyer, any lawyers consulted for an opinion during the collaborative law process, and any other allied professionals retained by the parties who have signed a participation agreement in this matter.

The parties hereby release the facilitator and the collaborative lawyers to share any information, opinions and/or communications regarding this matter with any of the participants, specifically with each other, individually or collectively; with any lawyers consulted for an opinion during the collaborative law process; with other allied professionals who have signed a participation agreement in this matter; and/or with the parties, together or individually. The parties understand and agree that the facilitator, at his/her discretion, may reveal to one party what has been communicated by the other. However, attorney-client privileged communication that a party specifically instructs his/her collaborative lawyer not to reveal will not be revealed.

## **10. Informal Communications**

The parties understand and agree that there are times that the collaborative team or any number of them, including the facilitator, may communicate informally, which means that they may communicate verbally without reporting such communications to the parties or by email or other written means without copying the parties; however, if either party is copied, both will be copied. The facilitator, lawyers and parties understand that although an email or other written communication may be considered informal and not forwarded to the parties during the process, those written communications are part of the file and may be forwarded to the client and/or to the client's successor counsel when transitioning the file.

## **11. Meetings without Collaborative Lawyers**

It is contemplated that the facilitator may meet with the parties without the collaborative lawyers present. The facilitator shall promptly update the lawyers on any such meetings, and shall communicate any preliminary understandings reached in those meetings to the collaborative lawyers. The facilitator may communicate such preliminary understandings in writing to the lawyers with a copy to the parties (email suffices) or verbally, but shall not draft any agreements. The facilitator will be paid for the time it takes to prepare such correspondence and engage in such communications. The parties will not be asked

to memorialize such understandings. The parties will not sign any binding agreement without both lawyers' review.

**12. Conflicts with Mental Health Facilitator's Engagement Letter**

If there is a conflict between this Neutral Collaborative Process Mental Health Facilitator Agreement and any engagement letter or contract signed between the parties and the facilitator, this Agreement supersedes such letter agreement or contract with respect to the matter about which there is a conflict.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
Deborah S. Lyons, Ph.D.  
Neutral Collaborative Process Mental Health Facilitator

\_\_\_\_\_  
**PARTY A**

\_\_\_\_\_  
**PARTY B**

\_\_\_\_\_  
**LAWYER A**  
Lawyer for **PARTY A**

\_\_\_\_\_  
**LAWYER B**  
Lawyer for **PARTY B**

## ***ADDENDUM A***

### ***CONFIDENTIALITY AGREEMENT***

This Confidentiality Agreement (“Agreement”) is between **PARY A** and **PARTY B** (“the Clients”) regarding Deborah S. Lyons, Ph.D., the mental health professional (the “Neutral MHP”).

For good and valuable consideration, the Clients agree as follows:

1. The Clients have expressed an interest in proceeding in the collaborative process. Prior to signing the participation agreement and formally entering into the collaborative process, the Clients will meet separately and/or together with the Neutral MHP to begin confidential discussions about their divorce[ and the welfare of their child[ren]]. The Neutral MHP may also assist the lawyers and Clients with analysis of whether they are appropriate candidates for the collaborative process.
2. The Neutral MHP shall serve as a neutral mental health professional with respect to any presently pending litigation or any litigation or collaborative law matter that may later be initiated involving one or both of the Clients.
3. The Clients desire to discuss various matters and issues with the Neutral MHP regarding themselves[, their child[ren],] and their marriage, and in order to promote the forthright exchange of information, the Clients have agreed that all written and verbal communications with the Neutral MHP will remain confidential.
4. All information conveyed to the Neutral MHP by the Clients and/or their lawyers will NOT be subject to disclosure and shall NOT be released by the Neutral MHP in response to any form of discovery procedure whether the Neutral MHP recommends proceeding in the collaborative process or not. If the Clients do proceed with the collaborative process, the Neutral MHP’s work will also be protected from admissibility by the terms of the participation agreement which will be signed by the Clients.
5. Neither client will directly or indirectly initiate any procedure seeking the Neutral MHP’s testimony and/or notes or information provided to the Neutral MHP. The Neutral MHP shall not be compelled to divulge any notes, records, reports or other information received by the Neutral MHP, nor shall the Neutral MHP be compelled to testify in any adversary proceeding or judicial forum.
6. The Clients shall maintain the confidentiality of the meetings between themselves and the Neutral MHP and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding: a) views expressed or suggestions made by

the other client in those meetings with respect to a possible settlement of the dispute; b) admission made by the other client in the course of those meetings; c) suggestions or views expressed by the Neutral MHP; or d) the fact that the other client had or had not indicated a willingness to follow a suggestion made by the Neutral MHP.

7. The discussions with the Neutral MHP and all information conveyed to the Neutral MHP are considered to be part of settlement negotiations and, therefore, are not admissible in any proceeding involving one or both of the Clients.
8. Any client who violates this agreement shall pay all reasonable fees and expenses of the Neutral MHP and the other client, including reasonable attorneys' fees, incurred in opposing efforts to compel testimony or production of records from the Neutral MHP.
9. The Neutral MHP is authorized to communicate about the Clients directly with the lawyers representing the Clients and the lawyers with the Neutral MHP, provided the Neutral MHP communicates the same information simultaneously to the lawyers for both Clients and to any client representing himself or herself. In the event the Clients sign a collaborative law process participation agreement, and the Neutral MHP continues in that role, the provisions of the participation agreement pertaining to process communications shall govern. All such communications are confidential and shall not be subject to disclosure, including in any legal proceedings between the Clients.
10. The terms of this Agreement shall be enforceable as a Rule 11 agreement to be filed in any pending proceedings as well as any proceedings that may later be initiated involving one or both of the Clients, and also as a contract between the clients.

AGREED:

\_\_\_\_\_  
PARTY A

\_\_\_\_\_  
LAWYER FOR PARTY A

\_\_\_\_\_  
PARTY B

\_\_\_\_\_  
LAWYER FOR PARTY B

\_\_\_\_\_  
Deborah S. Lyons, Ph.D.  
Neutral Mental Health Professional

\_\_\_\_\_  
Date signed