

NEXT COALITION PARTICIPATION AGREEMENT

Originally Published: May 18, 2020
Updated: September 8, 2021

Welcome to <https://nextcoalition.co/>. This Participation Agreement (“Agreement”) addresses the disclosure of intellectual property for participation in the NEXT: Digital Twin Challenge (the “Program”). It is a binding legal agreement between you and the host coalition consisting of:

Black & Veatch Corporation;
DPR Construction, A General Partnership;
The Haskell Company;
HITT Contracting Inc.;
McCarthy Building Companies, Inc;
Shawmut Design and Construction;
Swinerton Incorporated; and
Truebeck Construction.

and other companies which may join from time to time (the host coalition and the constituent members thereof herein after referred to as “Host”, “we”, “our”, or “us”), regarding your use of our website (<https://nextcoalition.co/> and <https://airtable.com/>) and the functions, facilities, and services related thereto (collectively the “Site”). For clarification of doubts, the term “you” means visitors of any publicly available portion of the Site and participants who have completed the application for the Program (“Participants”). Please read this Agreement carefully before accessing the Site and submitting an application.

You are deemed to have assented to this Agreement when you complete registration for the website and check the box “I accept the terms and conditions”. By applying for the Program or otherwise accessing or using the Site, you acknowledge that you have read, understand, and agree to be legally bound by this Agreement.

If you do not agree to be bound by this Agreement, you may not access the Site. Please note that Host does not provide warranties for the Site. BY ENTERING INTO THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS OF THIS AGREEMENT AND HAVE TAKEN TIME TO CONSIDER THE CONSEQUENCES OF THIS IMPORTANT DECISION.

IN CONSIDERATION of the covenants set forth in this Agreement, Participant and Host mutually agree as follows:

ARTICLE 1 - PARTICIPATION

- 1.1 Host has established a website platform (“Platform”) which will be open to the public for submission of applications to the Program. The sole purpose of the Platform is to connect parties who will then evaluate one another for mutual fit. Participant acknowledges that Host does not own or endorse any of the companies participating on the Platform or otherwise taking part in the Program and similarly disclaims any ownership in, claim of accuracy of, or lack of infringement of the rights of others arising from any of their solutions or other information submitted to the Program or available on the Platform.
- 1.2 Participant hereby grants Host the right to display Participant’s company name(s), logo(s), contact phone, email, website and any other identifying details along with Participant’s proposed solution(s), presentation materials and other solution-related content on the Platform and otherwise use any such information (“Participant Information”) for any purpose related to or arising out of the Program or the promotion thereof.
- 1.3 Participant acknowledges and agrees to allow Host to disclose internally and to third-parties all or any portion of the Participant Information and Participant waives any and all claims arising from errors, omissions, incorrect details or any other anomaly that may appear as part of the Participant Information on the Platform or otherwise. Upon Participant’s written notice, Host will take reasonable measures to correct any inaccuracies in the Participant Information appearing on the Platform.
- 1.4 Participant acknowledges and agrees that any compromise to the fair and proper conduct of the Program may result in the disqualification of a proposed solution, termination of the Program, or other remedial action, at the sole discretion of the Host.
- 1.5 Participant acknowledges that multiple participants may submit proposed solutions that contain concepts or technologies similar to Participant’s proposed solution and that Host, its constituent companies and their subsidiaries and business partners may already be pursuing technologies that are related or similar to those that Participant discloses in its proposed solution. Participant acknowledges and agrees that Host’s action with respect to another proposed solution, even if similar to Participant’s, shall not create in Host any liability to Participant or others. Further, Host is not and shall not be restricted in any way from pursuing, developing, or commercializing, in any way that Host sees fit, independent of Participant and at Host’s sole discretion, any technology that is created independent of Participant’s proposed solution. For the avoidance of doubt, Participant acknowledges that Host is not obligated to take any action whatsoever with regard to Participant’s proposed solution.
- 1.6 Participant may use the Platform during the period commencing on May 18, 2020 and continuing through December 31, 2020 (“Hosting Period”). Host may extend the Hosting Period in its sole discretion. Upon expiration of the Hosting Period, this Agreement shall terminate.

ARTICLE 2 – PARTY’S RESPONSIBILITIES

2.1 Host’s Responsibilities

Host shall, subject to the terms and conditions of this Agreement:

- 2.1.1 Use reasonable efforts to make the Platform available to all Participants during the Program for the purposes set forth herein;
- 2.1.2 Host, in the Host’s sole discretion, shall use reasonable efforts to maintain the Platform during the Program, but Participant acknowledges and agrees that Host shall be under no obligation for any failure to maintain the Platform or any malfunction, error, omission or other problem with the Platform, including without limitation the inability of the Platform to properly function; and
- 2.1.3 Comply with all applicable laws, statutes, regulations, and codes.

2.2 Participant’s Responsibilities

Participant shall at such times as may be required by Host for the successful operation of the Program:

- 2.2.1 Provide Host with all information necessary to respond to inquiries or otherwise for the performance of the Program;
- 2.2.2 Perform adequate investigation to assure that the Participant Information supplied to Host for the Program does not infringe the intellectual property rights of any third-party;
- 2.2.3 Appoint an individual who shall be authorized to act on behalf of Participant and with whom Host may consult at all reasonable times should questions or issues arise related to the Participant Information; and
- 2.2.4 Comply with all applicable laws, statutes, regulations, and codes.

ARTICLE 3 - WARRANTY

The parties agree that the Platform’s failure to perform as designed or otherwise shall not be considered a failure of the essential purpose of the remedies contained herein. The entire risk of loss or other damage arising from the Platform’s quality and performance is with Participant.

Participant acknowledges and agrees that the Platform licensed under this Agreement is for Participant’s internal business purposes only and as such is licensed "AS IS" with all faults. Host shall not be obligated to provide any support of any kind to Participant, including without limiting the foregoing, any services or support related to failure or malfunction of the Platform, use of the Platform, contacting other participants or telephone consultation. **HOST MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF SUITABILITY,**

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO THE PLATFORM; RESULTS OBTAINED FROM USE OF THE PLATFORM; OR THE ACCURACY OF THE DATA ACCESSED BY USE OF THE PLATFORM. HOST SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, GENERAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL, OR ANY OTHER LOSS, EXPENSE, COST OR DEFICIENCY ARISING OUT OF OR RESULTING FROM PARTICIPANT'S USE OF THE PLATFORM, CONFIDENTIAL INFORMATION OR PROPRIETARY INFORMATION, OR OTHERWISE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

Participant represents and warrants that all information submitted as part of a proposed solution is true and complete to the best of Participant's knowledge, and that the proposed solution:

(a) is Participant's own original work, or is used by permission with full and proper credit given within Participant's proposed solution;

(b) does not contain confidential information or trade secrets (Participant's or anyone else's);

(c) does not violate or infringe upon the patent rights, industrial design rights, copyrights, trademarks, rights of privacy, publicity or other intellectual property or other rights of any person or entity;

(d) does not contain malicious code, such as viruses, timebombs, cancelbots, worms, Trojan horses or other potentially harmful programs or other material or information;

(e) does not and will not violate any applicable law, statute, ordinance, rule or regulation; and

(f) does not trigger any reporting or royalty obligation to any third party.

The warranties, obligations, liabilities and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. To the fullest extent allowed by law, releases from, and limitations of liability shall apply notwithstanding the breach of contract, tort including negligence, strict liability or other theory of legal liability of the party released or whose liability is limited.

THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT.

ARTICLE 4 - INDEMNIFICATION

4.1 Reliance on Participant Information

Host and the other participants in the Program shall have no liability for Participant Information that contains defects, errors, omissions or other inaccuracy, misstatement, misrepresentations or false claims.

4.2 Participant Information Indemnity

Participant agrees to release, defend, indemnify, and hold Host, any entity related to Host harmless from and against any and all liability and claims, including attorneys' fees and court costs, that may in any manner arise either directly or indirectly from any (i) infringement by Participant of third-party intellectual property rights, (ii) misappropriation, theft or other inappropriate use by others of Participant Information, (iii) defects, errors, omissions or other inaccuracy, misstatement, misrepresentations or false claims in the Participant Information, or (iv) dealings between Participant and any third-party.

4.3 General Indemnity

Participant shall release, defend, indemnify and hold Host and all other participants harmless from any and all liability and claims, losses, damages, complaints, or expenses including attorney's fees and court costs connected with, resulting from or in any way arising out of the submission to Host of Participant Information, any use by Host or others of Participant Information or otherwise arising out of participation in the Program.

ARTICLE 5 - TERMINATION AND SUSPENSION

5.1 Suspension or Termination for Convenience

Either party has the right to suspend or terminate for convenience further performance under this Agreement upon twenty-four (24) hours' notice. Notwithstanding the foregoing Participant's obligations under Articles 2, 4 and 9 shall survive any such suspension or termination.

ARTICLE 6 - INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Ideas

The Host does not make any claim to ownership of any Participants' proposed solutions or any intellectual property that may be contained as part of any solution. Participants are not granting the Host any rights to any patents or pending patent applications related to the technology described in their proposed solutions. By submitting a proposed solution, Participant grants the Host certain limited rights as set forth in these terms.

Participant grants the Host the right to review their proposed solutions and the right to post a reasonable amount of information describing proposed solutions, including any descriptions included in the online submission and any photo or video submitted.

6.2 Use of Information

By submitting a proposed solution, Participant consents to the use, by Host, its constituent companies and their affiliates, subsidiaries, parents, and licensees, of Participant's and its employees' name, likeness, and image, in connection with the Program, in any media or format now known or hereafter invented, in any and all locations worldwide, without any payment to or further approval from participant. Participant further agrees that this consent is perpetual and cannot be revoked. For uses beyond the consent that Participant grants above, Participant agrees that the use of Participant's personal data will be governed by the Host constituent companies' privacy policies.

Participant agrees that nothing in this Agreement grants Participant a right or license to use of the name of the Host or any of the Host constituent companies or any of their trademarks or service marks. Participant grants to Host the right to include Participant's company name (if the proposed solution is from a company) as an entrant on the Platform and in materials related to Host's promotion of the Program. Other than these uses, Participant is not granting Host any rights to Participant's trademarks.

6.2 Use of Proposed Solution

Nothing in this Program requires Participant to negotiate or do business with Host or any of the Host constituent companies. Participant is free to discuss proposed solutions and the ideas or technologies that they contain with the Host constituent companies individually, with other parties, and Participant is free to contract with any third parties as long as Participant has not yet signed an exclusive agreement with one of the Host constituent companies regarding your proposed solution. For the purpose of clarity, Participant acknowledges that the intent of the Program is to encourage people to suggest their solutions and innovations to Host. But participating in this Program does not create an obligation on either Participant's part or Host's part to enter into any further business relationship or to sign any commercial agreement.

ARTICLE 7 – CONFIDENTIAL INFORMATION

Since Host does not wish to receive or hold any submitted materials "in confidence," it is agreed that no confidential relationship or obligation of secrecy is established between any Participant and Host with respect to the materials submitted as part of any proposed solution. If Participant's proposed solution is selected for further evaluation by one of the Host constituent companies, such entity may offer to sign a confidentiality agreement as part of further discussions about Participant's proposed solution and the technology it describes.

ARTICLE 8 - GENERAL PROVISIONS

8.1 Force Majeure

Host shall not be liable for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control.

8.2 Representations and Remedies

Host makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth in this Agreement. The Parties' rights, liabilities, responsibilities and remedies with respect to the Program shall be exclusively those expressly set forth in this Agreement and are in lieu of any others available at law or otherwise.

8.3 Damages

Having considered the risks and potential liabilities that may arise out of the Program, the benefits of the Program and in specific consideration of the promises contained in this Agreement and other valuable consideration receipt of which is acknowledged, Participant and Host allocate and limit such liabilities in accordance with this provision. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law:

- 8.3.1 In no event shall Host or any of Host's related companies be liable to Participant for any loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect, punitive, or exemplary damages in any way arising from or related to the performance of this Agreement.
- 8.3.2 The total cumulative liability of Host and any of Host's related companies to Participant for all claims, losses, damages, and expenses in any way arising from or related to the performance of this Agreement on an aggregate and cumulative basis shall not be greater than \$100.00. Participant's sole remedy in the event of any breach of this Agreement shall be the right to terminate participation in the Program.
- 8.3.3 Participant releases, indemnifies, and agrees to defend and hold Host and any of Host's related companies harmless from any liability arising from Participant's use, operation or other work with the Platform or other participation in the Program or at any of Host's facilities, notwithstanding the negligent act or omission of Host or any of Host's officers, directors, employees, representatives, contractors, subcontractors or consultants.

8.4 Assignment

This Agreement shall not be assignable by Participant without the prior written consent of the Host, except that it may be assigned without such consent to a person, firm, or corporation acquiring all or substantially all of the business assets of Participant, or to a related entity, an affiliate or wholly owned subsidiary of Participant, but such assignment shall not relieve Participant of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the

assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

8.5 Subcontracts

Host may subcontract any portion of the Program in its sole discretion to a subcontractor. Notwithstanding the above, Host may have all or portions of the Program performed by its related and affiliated entities or their employees without Participant's consent.

8.6 Notices

All legal notices pertaining to this Agreement shall be in writing and shall be sufficient when sent by email to:

contact@nextcoalition.co

8.7 Entire Agreement

Subject to modification pursuant to Article 9, this Agreement constitutes the entire agreement between the Parties and supersedes any previous oral or written representations, understandings, proposals, or communications between the Parties.

8.8 Interpretation

8.8.1 In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement, including its enforcement, such controversy, claim or dispute shall be governed by and interpreted in accordance with the laws of the State of Missouri, excluding provisions which would apply the laws of another jurisdiction; provided however, it is not the intent of the Parties to render any provision of this Agreement void or unenforceable by the selection of the governing law. Any provision of this Agreement that would be void or unenforceable under the foregoing governing law, except for reasons of the expiration of any statutory or other time period, shall instead be governed by the law of a jurisdiction that would maintain the intent of the Parties that each provision of this Agreement shall be enforceable according to its terms.

8.8.2 Headings and titles of Articles, Sections, paragraphs, and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement.

8.8.3 Releases, waivers and limitations expressed in this Agreement concerning liability and remedies shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contract or warranty, or other basis of liability of the Party released or whose liability is limited or against whom remedies have been limited, and shall extend to the officers, directors, partners, employees, licensors, agents, subcontractors, vendors and related entities of such Party.

- 8.8.4 In the event any portion or all of this Agreement is held to be void or unenforceable, the Parties shall amend the Agreement to reflect the original intent of the Parties as set forth in this Agreement.
- 8.8.5 The prevailing Party, in whole or in part, shall be entitled to reimbursement for all costs and reasonable attorneys' fees in any legal action brought against the other Party based on a breach of this Agreement.
- 8.8.6 The provisions of this Agreement are intended for the sole benefit of Participant and Host, and subcontractors, vendors and others to the extent expressly provided in this Agreement. The Parties agree there are no third-party beneficiaries to this Agreement other than those subcontractors, vendors and others expressly contemplated, and then only to the extent contemplated, by the terms of this Agreement.
- 8.8.9 Failure by either party to exercise any right or remedy under this Agreement does not signify waiver of such right or remedy.
- 8.8.10 Information, technical data, software, services, assistance, equipment or materials, including without limitation the information submitted by other participants (collectively "Data") made accessible by Host on the Platform in connection with this Agreement shall at all times be subject to the export control laws of the United States of America ("USA"). Each Party agrees that no Data, or any product thereof, shall be exported or re-exported directly or indirectly without the written permission of Host. If such information is exported or re-exported in violation of the laws and regulations of the USA, the Party in violation of such laws and regulations agrees to assume the sole responsibility and expense for obtaining the necessary licenses and authorizations to export or re-export such Data, or any product thereof, and to obtain the benefit of any such license or authorization for and on the behalf of the other Party. This Export Control provision will survive any expiration or termination of this Agreement.

8.9 Disputes

- 8.9.1 In the event of any controversy, claim or dispute between the Parties arising out of or relating to this Agreement, including its enforcement, such controversy, claim or dispute, including disputes regarded as such by only one of the Parties, the Parties shall negotiate in good faith to resolve such dispute, including third-party mediation, if the Parties so agree.
- 8.9.2 If no settlement is achieved, either Party may submit the dispute for arbitration administered by the American Arbitration Association ("AAA") in accordance with its Construction Arbitration Rules. Each Party irrevocably submits to the exclusive jurisdiction of the AAA. All arbitration proceedings shall be held in Kansas City, Missouri, and governed by Missouri law.
- 8.9.3 The arbitration tribunal shall consist of a total of three arbitrators. Each Party shall select one arbitrator, and the two Party-appointed arbitrators shall appoint a

third arbitrator, who shall chair the tribunal. The arbitrators shall be fluent in English.

8.9.4 The tribunal's award shall be final and binding upon the Parties, and such award shall not be subject to modification or appeal, except as allowed by the AAA rules. In no event shall the tribunal award punitive damages.

8.9.5 The Parties agree to complete compliance with the terms of the tribunal's award without delay. Interest at the rate of one percent per month on any award, or portion thereof, that has not been paid, shall begin to run on the 45th day following the date of the tribunal's award. If a Party fails to comply with the tribunal's award, then judgment on the award may be entered in any court having jurisdiction. The Parties agree that any fees and costs, including interest on the tribunal's award, incurred by the prevailing Party in such enforcement action shall be awarded by the enforcing court.

8.10 Survival of Terms.

The terms and conditions of this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favor they operate.

ARTICLE 9 - MODIFICATION OF AGREEMENT AND/OR SITE

The most current version of this Agreement will be dated and posted on the Site. Host reserves the right, in its sole discretion, to modify or change this Agreement at any time. Any changes will be effective as of the "Last Updated" date at the top of the revised Terms. We may provide you with advance notice of a major change prior to your access of any portion of the Site. For example, we may (i) require that you reaccept the updated version of this Agreement, (ii) send you an electronic notification advising of the update to this Agreement, (iii) include a notice on the Site advising of the update to this Agreement, and/or (iv) advise you of the updated Agreement during a phone call. Examples of significant changes include significant changes to Site functionality that cause provisions to be modified, added, or removed. We do not ordinarily provide advance notice of a minor change. For clarity, a minor change would include adding a new company to the host coalition. This Agreement comprises an agreement between you and Host, and you must review this Agreement on a regular basis to understand any changes because your use of the Site will be governed by the then-current Agreement. Your continued access of the Site constitutes your acceptance of such changes. If you do not agree to any of the changes, you must stop accessing the Site. Host reserves the right, in its sole discretion, to modify, restrict or terminate all or part of the Site without notice.