

## PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 2010 (the "Effective Date") is between the undersigned Certified Public Accountant or CPA firm (hereinafter "CPA Participant") and the Austin CPA Chapter, Texas Society of Certified Public Accountants, a Texas non-profit corporation (hereinafter the "Chapter"). (Individually at times referred to as "Party" and collectively as the "Parties.")

### RECITALS

**WHEREAS**, the Chapter is the sponsor of a program to assist CPAs who become ill, disabled, or die, and as a result are unable to attend to the affairs of their CPA practices;

**WHEREAS**, CPA Participant desires to participate in this program under the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, and intending to be legally bound, the Parties hereto agree as follows:

#### **Section 1. Definitions.**

Capitalized terms used herein and not otherwise defined herein shall have the following meanings;

- (a) "Crisis Assistance Committee" shall mean a committee appointed by the President of the Chapter that will respond in the event the services under the Program are needed by a CPA Participant;
- (b) "Emergency" shall mean an event that keeps the CPA away from his practice for any extended time period such that without the aid or assistance of another CPA the practice would suffer;
- (c) "Long-Term Disability" shall mean a disability, such as an illness, injury, or hospital confinement, suffered by CPA Participant that is expected to last or lasts for a period of more than ninety (90) days;
- (d) "Program" shall mean a program administered by the Chapter to assist CPA Participants in a time of need as defined in this Agreement; and
- (e) "Short-Term Disability" shall mean a disability, such as an illness, injury, or hospital confinement, suffered by CPA Participant that is expected to last or lasts for a period up to ninety (90) days.

#### **Section 2. Term and Termination.**

This Agreement shall begin on the date first indicated above and shall end December 31 of each year. Furthermore, this Agreement shall automatically renew on a year to year basis unless either

Party provides sixty (60) days written notice on the other of intent not to renew. This Agreement may be terminated at any time by either Party with thirty (30) days written notice.

### **Section 3. Program Purpose.**

The purpose of the Program defined herein is to provide to CPA Participant a team of CPAs composed of volunteers that are members of the Chapter to respond to an Emergency suffered by a CPA Participant so that the CPA Participant's practice does not overly suffer. It is acknowledged by the Parties hereto that if a CPA owner is taken out of a practice for a period of time that the practice will suffer as a result of this loss. This Program is intended to minimize the loss of business and staff during a limited amount time. This program is not intended to be a long term solution (beyond 90 days) for the CPA Participant.

### **Section 4. Program Description.**

When an unfortunate event creates an Emergency for the CPA Participant, a representative of the CPA Participant is to contact the Chapter office to activate the service. The Chapter will have a staff person designated to contact the Crisis Assistance Committee Chair. The Committee shall be composed of practicing CPAs who generally have the skills collectively to assist in managing the practice of the CPA Participant during his or her absence. The responsibilities of this Committee are to put together a team of CPAs that will do the following:

- (a) Evaluate the CPA Participant's situation and practice to determine whether the issues presented are within the scope of the program and, if so, what is needed to keep the practice going during the disability of the CPA;
- (b) Notify orally and in writing the CPA Participant and the CPA Participant's primary contact as to whether it is appropriate for the Crisis Assistance Committee initiate the program;
- (c) Meet with CPA Participant's primary contact to determine whether it is likely that the disability is a Short-Term Disability or a Long-Term Disability;
- (d) Meet with CPA Participant's staff to determine what their needs are to keep the practice operating; and
- (e) Advise the individual(s) identified by the CPA Participant to keep the practice operating.

### **Section 5. Responsibility of CPA Participant.**

In order for the Program to operate as it is intended, it is paramount that the CPA Participant meets certain enumerated responsibilities as follows:

- (a) Use engagement agreements that include a provision allowing for the use of third-parties;
- (b) Maintain a listing of clients the location of which is known by the primary contact.;
- (c) Maintain professional liability coverage underwritten by a company licensed in Texas that is at least rated "A" by A.M. Best with the following minimum coverage limits –
  - a. Deductible not to exceed \$ 1,000.00;
  - b. Per occurrence minimum coverage of \$1,000,000.00; and
  - c. Aggregate minimum coverage of \$2,000,000.00.
- (d) Provide to the Chapter as requested in a format prescribed by the Chapter updated information on key aspects of the practice.

## Section 6. Confidential Information.

- (a) "Confidential Information" means all information, data, and materials owned by CPA Participant or CPA Participant's CPA practice, pertaining to it, its assets, its operations, or its trade secrets, regardless of the form (oral, written, computer tapes, disks, etc.) in which the information is provided by CPA Participant or CPA Participant's authorized representative to member of the Crisis Assistance Committee under this Agreement. "Confidential Information" does not include any information or material that (i) is generally known to practicing CPAs; (ii) is or becomes generally available to the public other than as a result of a disclosure by member of the Crisis Assistance Committee in violation of this Agreement; (iii) is or becomes available on a non-confidential basis from a source other than the CPA Participant or his or her authorized representative, as long as the other source is not bound by a confidentiality agreement or otherwise prohibited from transmitting the information about CPA Participant or his or her practice by a contractual, legal, or fiduciary obligation; or (iv) is demonstrably within the Chapter's or its Crisis Assistance Committee's possession before it is furnished by the CPA Participant or his or her authorized representative.
- (b) The Chapter agrees that the Confidential Information is proprietary to CPA Participant or his or her practice; will be used only in connection with the Program; will be disclosed only to those individuals who need to know the information; and otherwise will be kept confidential except with CPA Participant or his or her authorized representative's specific prior written consent. However, the Chapter or representatives of the Crisis Assistance Committee may disclose Confidential Information if required by law or pursuant to a regulatory or judicial order; in that event, the Chapter agrees to (i) provide CPA Participant with written notice of the requirement as soon as practicable in advance of disclosure (and CPA Participant may at his own expense oppose the requirement or seek a protective order) and (ii) use best efforts to obtain confidential treatment of all such Confidential Information. The Chapter shall advise all of its Crisis Assistance Committee representatives who are in receipt of any Confidential Information of their obligations under this Agreement, and its representatives must be informed of the confidential nature of the information, data and material and agree to be bound by this Agreement. Any breach of this Agreement by a representative is a violation by that person as well as by the Chapter.
- (c) Upon CPA Participant's request, the Chapter and the Crisis Assistance Committee representative shall (i) promptly deliver to CPA Participant all of CPA Participant's Confidential Information, without retaining copies, and (ii) promptly destroy analyses, studies and other documents prepared by or on behalf of the Chapter or the Crisis Assistance Committee based on such Confidential Information, without retaining copies, and deliver a certificate signed by the Chapter's Executive Director or a chapter officer supervising the destruction confirming that the destruction has been completed.

## Section 7. Compensation.

The services provided under this Program are voluntarily provided by members of the Chapter. It is not the intention that there will be any compensation paid to the Chapter (other than a participation or administration fee that may be assessed by the Chapter) or the volunteers that provided the services described under this Agreement. However, **the level of service is intended to be limited and advisory in nature.** In the event a member of the Chapter is asked by the CPA Participant to

perform services on an ongoing basis in an effort to sustain the CPA Participant's practice that may include management of the practice or providing services to clients, then that member providing those services shall be entitled to reasonable compensation for his or her time or staff time, as well as reimbursement of out-of-pocket expenses.

#### **Section 8. Hold Harmless and Indemnification.**

CPA Participant agrees to hold harmless the Chapter and any non-compensated Chapter members that provide services under this Agreement from any and all costs incurred, including reasonable attorneys' fees and costs of litigation. Furthermore, CPA Participant agrees to indemnify the Chapter or any non-compensated Chapter members that incurs such costs. In the event of litigation, the indemnified person has a right to seek advanced costs and to select their own legal counsel.

#### **Section 9. General Provisions.**

(a) Assignment; Successors and Assigns, etc. This Agreement is non-assignable without the prior written permission of the non-assigning Party, and it shall inure to the benefit of and be binding upon the executors, administrators and heirs of the CPA Participant.

(b) Survival of Certain Provisions. Upon termination, this Agreement shall terminate, provided that certain provisions of this Agreement shall survive any termination or expiration of this Agreement if so provided herein or if necessary or desirable to fully accomplish the purposes of such provision. Without limiting the foregoing, Sections 6 and 8 expressly survive any termination or expiration of this Agreement.

(c) Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effective (i) at the time of personal delivery, if delivery is in person; (ii) one (1) business day after deposit with an express overnight courier; or (iii) three (3) business days after deposit in the United States mail by certified mail (return receipt requested), in each case when addressed to, in the case of the CPA Participant, the last address the CPA Participant has filed in writing with the Chapter or, in the case of the Chapter, at its office address indicated below:

Austin Chapter, Texas Society of CPAs  
Attn: Crisis Assistance Committee  
3305 Northland Drive Ste 406  
Austin, TX 78731

(d) Amendment. This Agreement may be amended by the Chapter by written notice sent to CPA Participant. Any such amendment shall become effective forty-five (45) days after written notice of the amendment or change to the Program.

(e) Governing Law; Venue. This Agreement shall be construed under and be governed in all respects by the laws of the State of Texas, without giving effect to the conflict of laws principles of such State. Venue for any legal action under this Agreement shall be in Travis County, Texas.

(f) Use of Pronouns. In this Agreement the use of pronouns are intended to refer to both the masculine and feminine. Furthermore, if the CPA Participant is a limited liability entity, the use of pronouns herein are intended to refer to that entity.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by the CPA Participant, and, if a limited liability entity, by its duly authorized officer, and by the Chapter, as of the Effective Date.

Austin CPA Chapter, Texas Society of CPAs

CPA Participant: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_