

## **Restaurant & Hospitality Association Benefit Trust Participation Agreement**

This Agreement is entered into between the Restaurant & Hospitality Benefit Trust and the Participating Employer effective \_\_\_\_\_, 20\_\_.

### **Section 1: Defined Terms**

“Association” means the National Restaurant Association.

“Carrier” means the insurance company that has arranged to provide and/or administer welfare benefits on a fully-insured basis with respect to Participants and Beneficiaries.

“Coverage Classification” means the type of coverage elected by Participants (e.g., single, single plus one, or family).

“Eligible Employees” refers to employees or former employees of Participating Employers who have the right to enroll in coverage under the terms of the Plan.

“Eligible Employees and their Dependents” refers to employees or former employees of Participating Employers, as well as their spouses, children and other dependents as defined under the IRC, who have the right to enroll in coverage under the terms of the Plan.

“Eligible Member” means an employer which is: (a) certified by the Association to be a dues paying member in good standing in the Association, (b) an employer of one or more employees, within the meaning of Section 3(5) and (6) of ERISA, and (c) in a trade, industry or line of business described by one the of SIC Codes listed in Section 6 of this Agreement.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Group Policy” means the group insurance policy issued by the Carrier to the Trust.

“IRC” means the Internal Revenue Code of 1986, as amended.

“NRAS” means the National Restaurant Association Solutions, which is a \_\_\_\_\_.

“Participants and Beneficiaries” are Eligible Employees and their Dependents who are enrolled in the Plan.

“Participating Employer” means an Eligible Member that has elected to participate in the Plan.

“Participation Agreement” means this document which sets forth certain rights and responsibilities of Participating Employers.

“PHI” is health information protected by applicable medical privacy law.

“PII” is information about an individual that is protected by applicable privacy law.

“Plan” means the Restaurant & Hospitality Benefit Plan, an employee welfare benefit plan under ERISA.

“Qualified Beneficiary” means a Participant or Beneficiary who qualifies for continuation coverage under state or federal law.

“Required Contribution” means the payment required of the Participating Employer under this Participation Agreement to secure coverage under the terms and conditions of the Plan.

“Service and Access Fee” means the amount payable by You to NRAS for services provided by NRAS in connection with the establishment and maintenance of the Plan.

“Trust” means the Restaurant & Hospitality Benefit Trust which holds the Group Insurance Policy.

“Trustees” means the individuals who oversee benefits under the Plan. In this document, and other plan documents, the Trustees are sometimes referred to as the Plan Sponsor.

“We,” “Us,” and “Our” means the Trust or its Trustees, as well as any Carrier appointed by the Trust or its Trustees to furnish welfare benefits to Participating Employers.

“You” or “Your” means the Participating Employer that has accepted this Participation Agreement.

“Your SPD” is short for Summary Plan Description and means the document describing Your benefits under the Plan.

## **Section 2: Your Obligations to Disclose Information About Benefits and Services**

Federal employee benefits law, known as the Employee Retirement Income Security Act (ERISA), requires that a plan’s covered benefits and limitations, as well the rights and responsibilities of Participants and Beneficiaries, be explained in Your SPD. By signing this Participation Agreement, You agree to distribute the SPD to Your Participants within 90 days of when they become covered under the Plan, as well as upon the occurrence of certain other events.

*General Requirements for Electronic Distribution of Plan Documents.* Plan documents may be distributed electronically when certain conditions are met. The following requirements apply to all recipients of electronic communications: (a) the information (e.g., PHI, PII) must be safeguarded from improper disclosure; (b) a notice (email is acceptable) informing the Participant of the significance of the document must be issued each time a document is furnished electronically; and (c) the distributor must permit the Participant to ask to receive any document in paper form.

*Participants with Work-Related Computer Access.* In addition to requirements (a), (b) and (c), Participants with work-related computer access must be able to access the electronic documents at any location where he or she is expected to work, and access to electronic information systems must be an integral part of the employee’s job duties.

Participants without Access to Computers as Part of Work-Related Duties. In addition to (a), (b) and (c), these Participants must affirmatively consent to electronic delivery of plan information. Participants must also be provided with information about the types of documents that will be provided electronically; their right to withdraw consent; procedures for withdrawing consent and updating information (e.g., email address; the right to request paper documents; and the types of hardware and software required). Notice must be issued to the Participants alerting them to the fact that an electronic disclosure is being made. As a Participating Employer, You are required to furnish required documents in paper form (US Mail or hand delivery) if a Participant does not consent to the electronic distribution.

Upon Request. You also agree to provide Plan Participants with a copy of the SPD within 30 days of a written request. Participants should read their SPD so they understand the benefits to which they are entitled. You agree to ask Participants to keep their SPD in the same place they keep other important financial information.

Fully-Insured Plan. Because Your welfare benefits are fully insured, Your SPD will “wrap-around” or be attached to a Certificate of Coverage and Schedule of Benefits, as well as any riders and amendments, issued by the Carrier.

Changes to Your SPD. Because laws change frequently, the Carrier will periodically review Your SPD and update it to reflect any changes in the law or Your welfare plan. After the SPD has been furnished, changes may occur to the Plan or information contained in the SPD. Under ERISA, any modification in the Plan’s terms that is “material”—and any change in required SPD content—must be disclosed to Plan Participants.

- When this happens, the Carrier may either issue a new SPD to You or a Summary of Material Modifications (SMM) which is a description of the change. An SMM generally will be furnished within 210 days after the end of the plan year in which a modification or change is adopted.
- If the change relates to a material reduction in covered benefits or services, the SMM will be provided by the Carrier no later than 60 days after the date of adoption of the reduction. Depending on the nature of the change, the Carrier may issue the SMM prior to the effective date of the change. You must distribute Your SMM in the same manner as the SPD explained above.

Updated SPD. You will also be required to furnish an updated SPD at least once every five years if there have been any material changes during that period of time. You will be required to furnish a new SPD once every ten years even if no material changes have been made.

Summary Annual Report. The Trustees will provide You with an annual statement summarizing the Trust’s financial condition. You will be required to furnish this summary annual report within nine months of the close of the plan year.

### **Section 3: Required Contributions; Service and Access Fee**

You are required to pay the monthly Required Contribution on behalf of Your Participants and Beneficiaries. The Required Contribution amount will be calculated based on the number of Participants and Beneficiaries that are shown in the Trust's (or the Carrier's) enrollment records at the time of calculation.

We may make retroactive adjustments to the Required Contribution for any additions or terminations of Participants or Beneficiaries or changes in coverage that are not reflected in Our records at the time We calculate the Required Contribution. Adjustments will not be made for changes occurring more than 60 days prior to the date We received notification of the change from You.

You must notify Us in writing within 31 days of the effective date of any enrollment, termination or other changes. You must also notify Us in writing each month of any change in the Coverage Classification for any Participant.

The Trust reserves the right to change the schedule of Required Contribution amounts at any time if such amount was determined based on a material misrepresentation that resulted in the rates being different than they would have been without such material misrepresentation. If this happens, We may change the rates retroactive to the effective date of Your coverage. We reserve the right to change the schedule of Required Contributions, after a 31-day prior written notice on the first anniversary of the effective date of this Participation Agreement specified in the application or on any monthly due date thereafter, or on any date the provisions of this Participation Agreement are amended.

*Service and Access Fee.* Each premium statement will include a separately identified Service and Access Fee. It is important that you pay the Service and Access Fee solely out of the funds that belong to your business. No Participant contributions can be used to fund the Service and Access Fee. Your participation in the Trust means that you agree to this requirement. The amount will be distributed by the Carrier directly to NRAS for services provided by in connection with the establishment and maintenance of the Plan. No part of the Service and Access Fee will be remitted to the Trust. Payment of the Service and Access Fee will be due at the same time as the Required Contribution. Participant Contributions may be used to fund the Required Contribution.

*Payment of the Required Contribution and Service and Access Fee.* The Required Contribution and Service and Access Fee must be paid in advance by You on a monthly basis. The first Required Contribution and Service and Access Fee is due and payable on or before the effective date of coverage. Subsequent contributions are due and payable no later than the first day of each payment period while this Participation Agreement is in force.

A charge for late payments will be assessed for any Required Contribution and Service and Access Fee not received within 10 calendar days following the due date. A service charge will be assessed for any insufficient funds check received. All Required Contributions and Service and Access Fees must be accompanied by documentation that states the names of the

Participant for whom payment is being made. In the event of a delinquency, You may be charged attorneys' fees and any other costs related to the collection of Required Contributions and Service and Access Fees.

Grace Period: A grace period of 31 days will be granted for the payment of any Required Contribution and Service and Access Fee not paid when due. During the grace period, Your coverage will continue in force. The grace period will not extend beyond the termination of this Participation Agreement. You are liable for payment of the Required Contribution and Service and Access Fee during the grace period. If We receive written notice from You to terminate the coverage during the grace period, We will adjust the Required Contribution and Service and Access Fee so that it applies only to the number of days coverage was in force during the grace period. Coverage terminates as described in Section 5 if the grace period expires and the Required Contribution and Service and Access Fee remains unpaid.

#### **Section 4: Eligibility and Enrollment**

Eligibility Rules. Minimum participation rules can be found in Section 6. Those rules are in addition to the eligibility provisions in Your SPD in the *When Coverage Begins* section of Your *Certificate of Coverage*.

Application Form: The Trust may, in its discretion, require that Your Eligible Employees complete an application form prior to enrollment in the Plan. You will be informed if this requirement applies to Your employees. When it does apply, Your Eligible Employees will not be allowed to enroll for coverage without completing the application.

Initial Enrollment Period. Eligible Employees may enroll for coverage under the Plan during an initial enrollment period preceding the effective date of this Participation Agreement.

Open Enrollment Period. An Open Enrollment Period of at least 31 days must be provided annually during which Eligible Employees may enroll for coverage under the Plan.

Special Enrollment. The Plan also provides for special enrollment opportunities upon the occurrence of certain events. Refer to Your SPD to learn more about these special enrollment opportunities.

Effective Date of Coverage. The effective date of coverage for properly enrolled Eligible Employees and their Dependents is the effective date of this Agreement.

#### **Section 5: Termination of Coverage**

Conditions for Termination of Coverage Under This Participation Agreement. This Participation Agreement and all Benefits for Covered Health Services under this Participation Agreement shall automatically terminate with respect to Participants and Beneficiaries on the earliest of the dates specified below:

- On the last day of the grace period if Your Required Contribution and Service and Access Fee remain unpaid. You remain liable for payment of the Required Contribution and Service and Access Fee for the period of time the Participation Agreement remained in force during the grace period.
- On the date We specify, after 31 days written notice to You, that this Participation Agreement shall be terminated with respect to Your coverage due to Your violation of participation and contribution rules.
- On the date We specify, in written notice to You, that this Participation Agreement shall be terminated with respect to Your coverage because You provided Us with false information material to the execution of this Participation Agreement or to the provision of coverage under this Participation Agreement. In this case, We have the right to rescind this Participation Agreement back to the effective date. Any unearned premium will be refunded.
- On the date specified by You, after at least 31 days prior written notice to Us, that Your coverage under the Participation Agreement shall be terminated.
- On the date We specify, in written notice to You, as a result of You no longer being a member of the Association.

*Payment and Reimbursement Upon Termination.* Upon any termination of coverage under the Plan, You are and will remain liable to Us for the payment of any and all Required Contributions and Service and Access Fees that are unpaid at the time of termination, including a pro rata portion of the Required Contribution and Service and Access Fee for any period this Participation Agreement was in force during the grace period preceding the termination.

## **Section 6: General Provisions**

*Entire Agreement.* This Participation Agreement and any Amendments, Notices of Change, and Riders constitute the entire Agreement between the Trust and You. All statements made by Us, the Participating Employer, or by a Subscriber will, in the absence of fraud, be deemed representations and not warranties.

*Amendments and Alterations.* Amendments to this Participation Agreement are effective on the date We specify. No change will be made to this Participation Agreement unless made by an Amendment which is approved by the Trustees. No agent has authority to change the Participation Agreement or to waive any of its provisions.

*Relationship Between the Parties.* We have agreements in place that govern the relationship between us, our Groups and Network providers, some of which are affiliated providers. Network providers enter into agreements with us to provide Covered Health Services to Covered Persons. The relationship between a network provider and any Participant or Beneficiary is that of provider and patient. The network provider is solely responsible for the services provided by it to any Participant or Beneficiary. The relationship between any

Participating Employer and any Participant and Beneficiary is that of employer and employee (or former employee), dependent, or any other category of individuals specified in this Participation Agreement. Each Participating Employer is solely responsible for enrollment and coverage classification changes (including termination of a Covered Person's coverage).

Records. You must furnish Us with all information and proofs which We may reasonably require with regard to any matters pertaining to this Participation Agreement. We may at any reasonable time inspect:

- All documents furnished to You by any individual in connection with coverage.
- Your payroll.
- Any other records pertinent to the coverage under this Participation Agreement.

The parties agree that information and records with respect to benefits under the Plan will be considered confidential. We have the right to release any and all records concerning health care services which are necessary to implement and administer the terms of the Plan, including records necessary for appropriate medical review and quality assessment or as We are required by law or regulation.

Administrative Services. The services necessary to administer the Plan and the benefits provided under it will be provided in accordance with standard administrative procedures or those standard administrative procedures of the Carrier. If You request that administrative services be provided in a manner other than in accordance with these standard procedures, including requests for non-standard reports, You must pay for such services or reports at the then-current charges for such services or reports.

Employee Retirement Income Security Act (ERISA). When coverage is obtained by a Participating Employer to provide benefits under an employee welfare benefit plan governed by ERISA, We will not be named as, and will not be, the plan administrator or the named fiduciary of the welfare benefit plan, as those terms are used in ERISA.

Examination of Participants and Beneficiaries. In the event of a question or dispute concerning benefits for covered health services, We may reasonably require that a physician chosen by Us examine the Participant or Beneficiary at Our expense.

Clerical Error. Clerical errors will not deprive any individual of benefits under this Participation Agreement or create a right to benefits. Failure to report enrollments will not be considered a clerical error and will not result in retroactive coverage for eligible persons. Failure to report the termination of coverage will not continue the coverage for a Participant or Beneficiary beyond the date it is scheduled to terminate according to the terms of this Participation Agreement. Upon discovery of a clerical error, any necessary appropriate adjustment in premiums will be made. However, We will not grant any such adjustment in premiums or coverage to You for more than 60 days of coverage prior to the date We received notification of the clerical error.

Workers' Compensation Not Affected. Benefits provided under this Participation Agreement do not substitute for and do not affect any requirements for coverage by workers' compensation insurance.

Standard Industry Classification Codes: Participating Employers must be in one of the following Standard Industry Classifications (SIC): 5812 (Eating Places), 5813 (Drinking Places), 7011 Hotels and Motels, 7032 Sporting and Recreational Camps, or 7041 Organization Hotels and Lodging Houses.

Conformity with Law. Any provision of this Participation Agreement which is or becomes in conflict with the requirements of state or federal statutes or regulations (of the jurisdiction in which this Participation Agreement is delivered) is deemed to be amended to conform to the minimum requirements of those statutes and regulations.

Notice. When We provide written notice regarding administration of this Participation Agreement to an authorized representative of the Trust, that notice is deemed notice to all Participating Employers and their affected Participants and Beneficiaries. The Trust is responsible for giving notice to Participating Employers for the benefit of Participants and Beneficiaries on a timely basis.

Continuation Coverage. Federal and state law sometimes requires that the Trust permit certain individuals known as "Qualified Beneficiaries" to continue coverage under the Plan even in the event that they are no longer otherwise eligible for coverage. The Trust makes continuation coverage available in these circumstances through the Carrier, although You will be assessed an additional charge for this service. The circumstances under which Participants and Beneficiaries become Qualified Beneficiaries are described in Your SPD.

Written notice to Qualified Beneficiaries shall be provided by Us to the Participating Employee's last known address as contained in Your business records.

System Access. The term "systems" as used in this provision means systems that the Trust has made available, or arranged with the Carrier to make available, to Participating Employers to facilitate the transfer of information in connection with this coverage.

The Trust and its service provider(s) grant Participating Employers the nonexclusive, nontransferable right to access and use the functionalities contained within the systems, under the terms set forth in this Participation Agreement. Participating Employers agree that all rights, title and interest in the systems and all rights in patents, copyrights, trademarks and trade secrets encompassed in the systems will remain property of the Trust and/or the Carrier. In order to obtain access to the systems, the Participating Employer will obtain, and be responsible for maintaining, at its own expense, the hardware, software and Internet browser requirements We provide to the Participating Employer, including any amendments to those requirements. The Participating Employer is responsible for obtaining an internet service provider or other access to the Internet.



The Participating Employer will not:

- Access systems or use, copy, reproduce, modify, or excerpt any of the systems documentation provided by Us in order to access or utilize systems, for purposes other than as expressly permitted under this Participation Agreement.
- Share, transfer or lease its right to access and use systems, to any other person or entity which is not a party to this Participation Agreement.

The Participating Employer may designate any third party to access systems on its behalf, provided the third party agrees to these terms and conditions of systems access and the Participating Employer assumes joint responsibility for such access.

The Participating Employer will use commercially reasonable physical and software-based measures, and comply with Our security procedures, as may be amended from time to time, to protect the system, its functionalities, and data accessed through systems from any unauthorized access or damage (including damage caused by computer viruses). The Participating Employer will notify Us immediately if any breach of the security procedures, such as unauthorized use, is suspected.

The Trust and the Carrier reserve the right to terminate the Participating Employer's system access:

- On the date the Participating Employer fails to accept the hardware, software and browser requirements provided by Us, including any amendments to the requirements.
- Immediately on the date We reasonably determine that the Participating Employer has breached, or allowed a breach of, any applicable provision of this Participation Agreement. Upon termination of this Participation Agreement, the Participating Employer agrees to cease all use of Our systems, and We will deactivate the Participating Employer's identification numbers and passwords and access to the system.

*Trust's Status.* The Trust will not be deemed or construed to be the common law employer of Plan Participants and is not responsible for fulfilling any duties of an employer other than those in connection with the Plan. The Trust does not agree to assume any of Your obligations. To the extent services offered through the Trust overlap with any action You are required to perform by law, the Trust does not agree to assume Your legal duty, and You should not rely on the Trust as the primary source of information or services in order to meet its legal obligations. No statements, representations, or communications by the Trust should be construed as legal, medical or tax advice and should not be relied upon as such.

*Minimum Participation Requirement.* The minimum participation requirement is 75% of Eligible Employees and their Dependents, excluding valid waivers, but no less than 50% of all Eligible Employees/Dependents must be enrolled for coverage under this Participation

Agreement. For this purpose, a waiver is valid when it is for group or individual coverage that provides major medical coverage

Minimum Contribution Requirement – You must maintain a minimum contribution level of 50% of the Base Plan’s Employee Only premium for each subscriber enrolled under the terms of the Plan.

Eligibility. You are responsible for establishing eligibility rules, which We will reasonably abide by, subject to any limits imposed by law or by Your SPD.

State Law. This Agreement will be governed by the laws of the State of Illinois (without regard to any conflict of law provisions).

You will be deemed to have accepted the terms of this Participation Agreement by the payment of any Required Contribution and the acceptance of coverage for Eligible Employees and their Dependents.

Participating Employer

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

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