



Chapter Partner Agreement Task Force

Wednesday, January 5, 2011
APICS Headquarters
Chicago, IL

MINUTES

Attending:

Tony Zampello, Chair
John Drzik
Tom Geraghty
Dave Lehman
Buck Crouch
Wayne Collins
Ron Gilmour
Jim Timmons
Rick Leach

Staff:

Abe Eshkenazi
Pamm Schroeder
Dean Martinez
Henri Wingfield

Absent:

Lyle Henning
Elizabeth Hahn

Call to Order

The meeting was called to order by chair, Tony Zampello.

Review common/standard language for agreements

The task force reviewed the edited draft of the standard language and addressed some questions that had been submitted after the meeting on December 22, 2010. [A redlined version of the document is attached to these minutes as Attachment 1.]

The task force reviewed the draft and discussed some of the sections further:

- Code of Conduct: There was a great deal of discussion regarding the implications of changes to the code of conduct after an agreement is signed.

The relevant section of the Board Operating Procedures is attached to these minutes as Attachment 2. The verbiage will also be posted to CBOX.

- Intellectual Property: A question was asked about the issue of copyright notice and how that will need to be noted on chapter communications.

Answer: If a Chapter is using a proper logo of the R in a circle, it is sufficient. Tony noted that this is the current policy and reflects what should be done now. Nothing new is being added.

- General: Section 2 was clarified that the agreement terms may only be shared among the officers of the chapter and officers of APICS. Dean reminded the task force that the current draft is not the complete agreement and that the final version will include specifics that may be sensitive in nature.

A task force member asked about using the term Channel Partner versus Chapter. He strongly recommended using the term "channel partner" rather than Chapter. Task force members agreed that 'channel partner' is a better term.

In the draft agreement, 'chapter' will be changed to 'channel partner.'

It was also suggested that a 'definitions' section that will help create a common understanding of 'channel partner' versus 'chapter.'

Communications

Tony polled the call participants to ask what the district representatives have been hearing from their chapter leaders.

Task force members reported that they are not hearing much from their chapter leaders. Most seem to be waiting for more information before they comment.

Tony stressed that it's important to get the information out and keep the chapters advised as we go.

Next Call and Adjournment

The next meeting is scheduled for Wednesday, January 19, 2011 at 1:00 pm (central).

Items to be discussed:

- Other sections to be included in the final agreement

The call was adjourned at 2:00 pm (central)

ATTACHMENT 1

The following document contains boilerplate provisions that are generally contained in existing APICS agreements (IA and AEP Agreements) along with “tracked changes” as suggested by the CPA Taskforce. Please note that additional changes are likely to be made as the agreement evolves as the CPA Task Force continues to refine the suggest language for the Channel Partner Agreements.

PROPRIETARY AND CONFIDENTIAL INFORMATION

1. APICS shall retain sole and exclusive ownership, title, and interest in all APICS-owned intellectual property rights in the Licensed Products, Examinations, promotional and other APICS materials (including ownership of all trade secrets, copyrights, and trademarks pertaining thereto).
2. Chapter acknowledges that it may be given access to confidential and proprietary information solely for purposes of authorized use, as provided in this Agreement. Any information, which APICS considers to be confidential or proprietary shall, if tangible, be marked as such or, if communicated orally, designated at the time and promptly confirmed in writing as such. Information which is so marked or designated and confirmed in writing and past, present, or future research, technology development plans, business plans, chapter lists, business operations, finances, transactions, agreements, or proprietary products, materials, services, or technical knowledge, and other similar information. The Examinations, Licensed Products and other APICS materials made available to Chapter hereunder, regardless of form or designation shall be confidential information of APICS. All such information described in this section shall be considered “**Confidential Information**” of APICS and subject to the terms of this Agreement.
3. Chapter will protect the confidentiality of the Confidential Information in the same manner that itChapter protects the confidentiality of its own proprietary and confidential information of like nature, but with no less than a reasonable degree of care.
4. Confidential Information and any copies thereof that APICS party may have permitted Chapter to make shall at all times remain, as between the parties, the sole property of APICS.
5. Confidential Information may not be copied or reproduced by Chapter without APICS’ express prior written consent except as necessary for performance under the Agreement or under another agreement between

the parties. If APICS' consent is granted, any such copies shall contain such proprietary rights notices as appear on the original thereof.

6. Confidential Information shall not include information: (a) previously known to Chapter from sources other than APICS that were without an obligation of confidence, (b) that was generated independently by Chapter; (c) that is published or otherwise made known to the public by APICS, or that otherwise is or becomes publicly available through no breach of the Agreement by Chapter. In the event Chapter receives a subpoena or other validly issued judicial process demanding Confidential Information, the recipient shall promptly notify APICS and tender to it the defense of such demand. Unless the demand shall have been timely limited, quashed (nullified) or extended, Chapter shall thereafter be entitled to comply with such demand to the extent permitted by law. If requested by APICS, Chapter shall cooperate (at the expense of the disclosing party) in the defense of such a demand.
7. Chapter agrees that the Confidential Information shall be disclosed only to those employees or agents of Chapter who have a "need to know" such information and are under a binding obligation of confidentiality with respect to any such information received. Confidential Information shall not be disclosed to any other third party without the prior written consent of APICS. Chapter shall defend, indemnify and save APICS harmless from and against any and all damages, including reasonable attorney's fees, sustained as a result of the unauthorized use or disclosure of APICS' Confidential Information. Chapter acknowledges that the Confidential Information is valuable to APICS and that any threatened or actual breach of this Article (TBD) "Proprietary and Confidential Information" by the Chapter or the failure of the Chapter to return or turn over Confidential Information as required in the Agreement would cause irreparable injury to APICS, for which monetary damages would be inadequate. Accordingly, Chapter agrees that APICS shall have the right to seek an immediate injunction enjoining any such breach, threatened breach or failure by the Chapter. Chapter agrees to be responsible for all costs, including but not limited to, attorney fees, incurred by APICS in any action against the Chapter arising out of the Chapter's breach of the terms of this Article 9 and/or the Agreement's Confidential Information return requirements.
8. Chapter shall promptly advise APICS in writing of any unauthorized use or disclosure of Confidential Information of which Chapter becomes aware and shall provide reasonable assistance to APICS to bring about the cessation of such unauthorized use or disclosure.

ASSIGNMENT AND TRANSFER OF RIGHTS:

Chapter's rights and obligations under this Agreement may not be transferred, leased, assigned, or sublicensed to another entity without the prior written approval of APICS. This Agreement shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.

ETHICAL STANDARDS

Both parties shall at all times follow the highest legal and ethical standards. Chapter agrees to act in accordance with APICS' Code of Conduct , a copy of which will be supplied on the APICS website.

APICS' RIGHTS AND RESPONSIBILITIES

1. All rights and/or licenses not specifically and expressly granted to the Chapter in the Agreement are reserved by APICS.
2. APICS shall have the right to cease production of any Licensed Products and/or Examinations by Chapter at any time.

GENERAL INDEMNIFICATION

Chapter hereby agrees to and shall indemnify, defend, and hold harmless APICS from and against any and all claims, demands, or actions and any losses, expenses, and damages resulting directly there from (including without limitation, court costs and reasonable attorney's fees) based on any use, promotion, advertising, marketing or distribution of the Licensed Products, Third Party Materials and/or Examinations, including but not limited to, the violation of any applicable statute, law, treaty, regulation, code, standard or requirement, worldwide.

PROPRIETARY RIGHTS INDEMNIFICATION

APICS hereby does agree to and shall indemnify, defend, and hold harmless Chapter from and against any and all claims, demands or actions and any losses, expenses, and damages resulting directly there from (including court costs and reasonable attorney fees) based on any claim that the Licensed Products and/or Examinations, or portion thereof, violate any copyright, trademark, patent or other intellectual property rights held by any third party in the United States provided Chapter promptly advises APICS of any such claim in writing, and shall allow APICS to control the defense. Chapter agrees to reasonably cooperate at APICS' request in the defense. In no event shall

Chapter settle any claim, lawsuit or proceeding without APICS' prior written approval. Notwithstanding the foregoing, APICS shall have no obligation to indemnify, defend, or hold harmless Chapter if the claim of infringement arises out of: (1) Chapter's modification, revision, change or alteration of the Licensed Products, Third Party Materials or Examinations; or (2) Chapter's failure to comply with the terms of this Agreement, including without limitation, its applicable foreign trademark and copyright requirements.

WARRANTIES

1. Chapter Representation and Warranties Chapter represents, warrants and covenants throughout the term of this Agreement, that:
 - a. It is not and will not be bound by any agreements to the contrary; and that the persons executing this Agreement are fully authorized to do so;
 - b. It will not modify or revise the text or the cover of the Licensed Products, Examinations, Third Party Materials or any other materials provided to Chapter by APICS, except as may be expressly authorized or licensed in this Agreement or by a writing signed by APICS;
 - c. It will ensure that all permits, licenses, and other government approvals have been obtained or maintained (at its own expense), and will provide evidence of such to APICS upon request;
 - d. It will perform all services under this Agreement in a workmanlike manner and to a professional standard;
 - e. It will not disparage, misuse, defame or otherwise cast the "APICS" name, the Licensed Products, Third Party Materials or Examinations in a negative light;
 - f. It will comply with all applicable statutes, laws, regulations, codes, standards, or other requirements, worldwide, including, but not limited to, foreign trademark and copyright registration and the fair trade and competition laws in each country a Chapter operates;
 - g. It will, upon request from APICS, provide any requested data and information pertaining to the sale, reprinting, and distribution of APICS educational materials and programs being conducted by Chapter;
 - h. Unless licensed and authorized herein, Chapter shall not resell or distribute the Licensed Products, Third Party Materials and/or Examinations for further resale or distribution by another person or

entity, and in this regard, Chapter shall take appropriate and reasonable measures to ensure that its customers do not resell or distribute the Licensed Products, Third Party Materials and/or Examinations; and

- i. Chapter is, and shall remain throughout the term of this Agreement, a not-for-profit organization located in the Geographic Area.
- j. The above warranties shall be binding upon Chapter's successors and permitted assigns.

2. Licensed Products Warranty

- a. APICS warrants that the Licensed Products, if and as delivered to Chapter shall be free from material defects in materials and workmanship for a period of 90 days after the date the Licensed Products are supplied from APICS' facility. APICS shall, at Chapter's option, provide a credit voucher based upon the purchase price paid by Chapter in lieu of a replacement unit, or provide a cash refund.
- b. APICS represents and warrants that it is not bound by any agreements to the contrary; and that the persons executing this Agreement are fully authorized to do so.
- c. The foregoing states the entire liability of APICS and the exclusive remedies of Chapter with respect to APICS breach of the warranty with respect to the Licensed Products and Chapter hereby waives any other rights with regard to breach of the warranty set forth above.
- d. THE LICENSED PRODUCTS, THIRD PARTY MATERIALS, EXAMINATIONS AND ANY AND ALL UPDATES THERETO ARE PROVIDED "AS IS" WITH THE EXCEPTION OF THE WARRANTIES EXPRESSLY PROVIDED HEREIN. THE WARRANTIES IN THIS ARTICLE ARE LIMITED WARRANTIES AND ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY APICS. APICS MAKES AND CHAPTER RECEIVES NO ADDITIONAL WARRANTY, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF CHAPTER HAS BEEN INFORMED OF SUCH PURPOSE. APICS MAKES NO WARRANTY THAT THE LICENSED PRODUCTS DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANOTHER PERSON OR ENTITY OUTSIDE OF THE UNITED

STATES. NO AGENT, CONTRACTOR OR EMPLOYEE OF APICS IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF APICS AS SET FORTH HEREIN.

LIMITATION OF LIABILITY

1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL APICS BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE LOSSES, COSTS OF DELAY, LOST PROFITS, FAILURE OF DELIVERY, DAMAGES OR EXPENSES OF CHAPTER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF HOW SUCH LOSSES, DAMAGES OR EXPENSES ARISE AND IRRESPECTIVE OF WHETHER OR NOT CHAPTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES, DAMAGES OR EXPENSES.
2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE RESPECTIVE MAXIMUM LIABILITY OF APICS TO CHAPTER UNDER THIS AGREEMENT, FOR ANY AND ALL CLAIMS, SHALL NOT EXCEED THE FEES PAID TO APICS BY CHAPTER.

TAXES, DUTIES

1. Chapter shall be solely responsible for payment of all taxes, withholdings, duties or other charges relating to its receipt and/or use (including any sale, resale or distribution) of the Licensed Products, Third Party Materials, and/or Examinations.
2. The prices and fees in this Agreement do not include any customs duties or federal, state or local taxes of any nature, including without limitation, Value Added Tax, which may be assessed in connection with the sale or delivery of the Licensed Products, Third Party Materials and/or Examinations. Chapter shall be solely responsible for the payment of all such taxes and duties in full.

NON-DISCRIMINATION

Including but not limited to the authorized promotion, reprinting, distribution, or revision of the Licensed Products, Third Party Materials and/or Examinations, Chapter shall not discriminate against any individual, or otherwise deny equal access to its products, on the basis of corporate affiliation, race, sex, national origin, age, disability or protected status.

INTELLECTUAL PROPERTY

1. Chapter agrees to include APICS' copyright notice on all copies of materials used in promoting, advertising, and marketing the Licensed Products and/or Examinations that have been provided by APICS. Unless otherwise provided in the Agreement, said notice shall be printed in English in the following form, which must be updated upon APICS' request to include the applicable year:
2. "This product is the proprietary property of the American Production and Inventory Control Society ("APICS"). Any unauthorized use, reproduction, or transfer of this product is strictly prohibited. Copyright © APICS _____ [insert year from the applicable material]. All rights reserved."
3. Neither party shall, during the term of this Agreement or at any time thereafter, indicate or imply an endorsement of presentations, activities, or programs by the other party without the prior written approval of that party.
4. Except as expressly authorized herein, neither party shall use the other party's name, trademarks, service marks, logos, copyrighted material or other intellectual property outside of this Agreement without the other party's prior written approval.
5. This Article shall survive termination of this Agreement and shall continue to bind the parties hereto.

APICS LINK AND LOGO

Chapter agrees to place APICS' logo and maintain a link to APICS' website on the home page of Chapter's website. Chapter further agrees that in the event the display of APICS' logo and the link to APICS' website violates the terms of this Agreement, including Article (TBD), Chapter shall immediately remove or revise said link and/or APICS logo as required by APICS.

ENTIRE AGREEMENT

1. This Agreement, and any Appendices hereto (which may be updated or revised by APICS from time to time), shall constitute the entire Agreement between APICS and Chapter, there being no other representations to the contrary, and shall supersede all prior arrangements and communications between the parties concerning such matter, whether oral or written. Except for changes made by APICS as expressly set forth herein, any agreement hereafter made shall be ineffective to change, modify, add or discharge in whole or in part the obligations and duties under this Agreement, unless such Agreement is in writing and signed by the chief officer of both organizations who are authorized to do so by the governing bodies of both APICS and Chapter.

2. It is acknowledged and agreed by the parties that this Agreement shall be deemed to have been prepared and drafted jointly by the parties, and that, therefore, the terms and conditions herein shall not be construed or interpreted in favor of, or against, either party on this basis.

SEVERABILITY

In the event any provision of this Agreement is held invalid by an Illinois court of competent jurisdiction, this Agreement shall be modified to delete any provisions held to be invalid for any reason. In that event, all limitations of liability and exclusions of damages shall, to the greatest extent possible, continue in full force and effect and apply to the remaining provisions. This Agreement shall be construed and enforced as if said invalid provision had never been inserted herein.

WAIVER

1. Waiver by either party of any term or condition of this Agreement or any breach shall not constitute a waiver of any other term or condition or breach of this Agreement.
2. The failure of either party to enforce, in any one or more instances, any of the terms or conditions of this Agreement, shall not be construed as a waiver of the future performance of any such term or condition.

GENERAL

The rights and remedies of the parties provided in this Agreement are in addition to any other rights and remedies provided at law or in equity.

1. Other than as expressly permitted within this Agreement, Chapter shall not use APICS' name and/or trademarks for any purpose without APICS' prior written approval.
2. Each party agrees that it shall not publicize in any way, shape, or form the terms and conditions of this Agreement to any third party (excepting its attorneys, accountants, and financial advisors) without the prior written consent of the other party.
3. Notices under this Agreement shall be addressed to the parties at the addresses set forth on the first page of this Agreement.
4. Notice shall be sent by a traceable express courier, registered or certified mail, postage prepaid, return receipt requested. The date of notice shall be deemed to be the date on which such notice was actually received.

Each party shall promptly give the other party written notice of any change of address. All communications and correspondence shall be in the English language, unless otherwise agreed to in writing by each party.

5. This Agreement shall be governed by the laws of the State of Illinois and the United States without giving effect to any choice of law principles. Each party hereby submits to the exclusive jurisdiction of the state and federal courts within the State of Illinois in respect of any dispute arising out of, or in connection, with this Agreement.
6. This Agreement may be executed in one or more counterparts, each of which taken together shall be considered one and the same document.
7. Unless specifically limited in this Agreement, neither party shall be liable for any default or delay on its part in performing any obligation under this Agreement if such default or delay is caused by superior power (natural disaster, accident, war, civil disorder, strike, or any other cause beyond the reasonable control of such party or its agents or employees). In the event that either party is prevented by such an occurrence or circumstance for a period of more than 90 days from fulfilling its obligations under this Agreement, the other party may terminate this Agreement upon 90 days written notice.
8. Each party agrees that no offer, promise, or authorization of any kind to any government official will be made for the purpose of influencing decisions in order to assist party in obtaining or retaining related business.

ATTACHMENT 2

APICS Code of Ethical Principles and Standards of Conduct

APICS Code of Ethical Principles

1. Personal and Professional Integrity.

The APICS working environment is one of respect, fairness, and integrity. All representatives of the APICS organization, including the professional staff, the board of directors, and volunteers will act with honesty, integrity, and openness when acting on behalf of the association.

2. Mission

APICS has a clearly stated mission, approved by the board of directors. The APICS mission is responsive to the voice of the customer and to the communities served by the APICS organization. Each APICS program supports the mission. Each individual who works for, or on behalf of, APICS must understand and be loyal to the mission and purpose.

3. Governance

The APICS Board of Directors has the responsibility and the authority to set the mission and strategic direction of the organization, as well as provide oversight of the finances, operations, and policies of the organization. The board of directors

- a. ensures, through the Nominating Committee, that its members have the requisite skills and experience to carry out their duties and that all board members understand and fulfill their governance duty to act for the benefit of APICS.
- b. has a conflict of interest policy that ensures that any conflicts of interest, or the appearance thereof, are addressed through prompt and timely disclosure, recusal, investigation, and/or other appropriate action.
- c. ensures the chief executive officer and the designated professional staff provide timely and comprehensive information so the board of directors can effectively carry out its duties.
- d. ensures that APICS conducts all transactions and dealings with integrity and honesty.
- e. ensures that APICS promotes working relationships with board members, professional staff, volunteers, and other stakeholders that are based on mutual respect, fair dealing, openness, and respect for applicable laws and regulations.
- f. ensures that the organization is fair and inclusive in its employment conditions, including but not limited to its staff hiring and promotion policies. (APICS is committed to the spirit and the letter of regulations and

laws that promote and ensure equality of treatment in hiring and all employment conditions and opportunities.)

- g. ensures that the organization is fair and inclusive in its selection of board members and its assignment of volunteers to committees and positions of leadership, and in accord with the spirit and the letter of regulations regarding equality of treatment in professional opportunities.
- h. ensures that APICS policies are in writing, clearly articulated, officially adopted, and implemented impartially and with respect for the spirit and the letter of the policies.
- i. ensures that the resources of the organization are responsibly and prudently managed.
- j. ensures that APICS has the resources and capacity to carry out its programs effectively.

4. Legal Compliance

It is APICS policy to be knowledgeable of, and in compliance with, all applicable laws and regulations.

5. Responsible Stewardship

- a. It is APICS policy to manage its funds responsibly and prudently.
- b. APICS spends a reasonable percentage of its annual budget on programs in pursuance of its mission.
- c. APICS spends an adequate amount on administrative expenses to ensure effective accounting systems, internal controls, competent staff, and other expenditures critical to professional and legally compliant management of the APICS organization.
- d. APICS compensates professional staff, and any others who may receive compensation, reasonably and appropriately and with full regard for all applicable laws and regulations.
- e. APICS does not accumulate operating funds excessively.
- f. APICS ensures that all spending practices and policies are fair, reasonable, and appropriate to fulfill the mission of the organization.
- g. All financial reports are factually accurate and complete in all material respects.

6. Openness and Disclosure

APICS provides comprehensive and timely information to its stakeholders, as appropriate, and is responsive in a timely manner to reasonable and appropriate requests for information. It is also APICS policy to ensure that all financial, organizational, and program reports are complete and accurate in all material respects.

7. Program Evaluation

APICS regularly reviews the effectiveness of its programs and incorporates the data gathering when developing or revising programs. APICS is committed to improving program and organizational effectiveness. APICS responds to changes in its field of activity and to the needs of its stakeholders.

8. Inclusiveness and Diversity

APICS has a policy of promoting inclusiveness and diversity. The APICS professional staff, board, and volunteers reflect that commitment to diversity to enrich its programmatic effectiveness. It is APICS policy to promote inclusiveness and diversity in matters pertaining to employment conditions provided to its professional staff, as well as in the recruitment of board members and volunteers, and among the communities served by the APICS organization.

9. Professional Conduct

The APICS Standards of Conduct statement and Code of Ethical Conduct for Professional-Staff Financial Managers must be adhered to by its professional staff and volunteers, including the APICS Board of Directors.

Professional staff members, board members, and other volunteers serving in an elected or appointed fiduciary capacity for the association are required to sign a written agreement to abide by the Code before assuming association office or beginning employment.

APICS Standards of Conduct

Members of the APICS professional staff, board of directors, and committees must

1. Maintain the highest standards of personal conduct.
2. Actively promote and encourage the highest level of ethics within the industry or profession APICS represents.
3. Act in the best interest of APICS.
4. Act openly, fairly, and in good faith toward APICS.
5. Maintain loyalty to APICS and pursue its objectives in ways that are consistent with the public interest.
6. Recognize and discharge their personal responsibility and that of APICS to uphold all laws and regulations relating to the organization's policies and activities.
7. Strive for excellence in all aspects of the management of APICS.
8. Use only legal and ethical means in all APICS activities.
9. Serve all members of APICS impartially and provide no special privilege for any individual member.
10. Accept no personal compensation for activities related to duties as a board member without full disclosure to, and the consent of, the board of directors. This does not apply to small gifts (e.g., gift certificates, plaques, apparel) provided by

- sponsoring organizations, such as chapters, for unpaid speaking engagements and so forth.
11. Comply with all APICS Bylaws, rules and policies, including without limitation, those policies pertaining to disclosure of actual or apparent conflicts of interest and improper acceptance of gratuities.
 12. Maintain the confidentiality of privileged information.
 13. Refrain from engaging in or countenancing activities for personal gain at the expense of APICS.
 14. Refrain from using a position with APICS to advance outside interests.
 15. Refrain from engaging in or countenancing discrimination or harassment on the basis of race, sex, age, religion, national origin, sexual orientation, disability, or any other protected class.
 16. Refrain from engaging in or countenance infringement or misuse of APICS' intellectual property.
 17. Always communicate APICS internal and external statements truthfully and accurately by ensuring that there is integrity in the data and information used by APICS.