

Financial Institution IOLTA Participation Agreement
June 1, 2009 to May 31, 2010

PARTICIPATION AGREEMENT

Execution of this Participation Agreement constitutes an agreement with the Arizona Foundation for Legal Services and Education (“the Foundation”) to comply with the Arizona IOLTA program as regulated under Rule 43 of the Arizona Supreme Court (ATTACHMENT A), all provisions of this Participation Agreement, and all provisions of Arizona Revised Statutes (“A.R.S.”) as may be applicable to the Financial Institution¹ executing this agreement. See A.R.S. § 6-181 *et seq.*

I. Operation Compliance

- A. In the event that any properly payable instrument is presented for payment against an attorney’s trust account containing insufficient funds, uncollectible funds, or a negative available balance, and regardless of whether the Financial Institution honors the instrument or not, the Financial Institution must send notification of such event to the Chief Bar Counsel of the State Bar of Arizona at the following address:

**Chief Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 200
Phoenix, AZ 85016**

- B. Financial Institutions shall not offer credits or other incentives that in any manner directly or indirectly benefit the attorney, as the holder of the account.

II. Interest Payments and Service Charges

- A. Financial Institutions shall remit the sum total of all interest earned on the aggregate IOLTA accounts minus the allowed charges against the interest as defined in this agreement D(2) , calculated during the applicable reporting period, of all IOLTA accounts held by that Financial Institution, directly to the Foundation in one single payment, for each reporting period. The interest calculation on aggregate balances does not diminish the ownership and control of the principal balance for each account holder.
- B. Financial Institutions shall remit interest payments to the Foundation by ACH, check, or by wire transfer. The Foundation’s account information is set forth in ATTACHMENT B.
- C. The Financial Institution acknowledges that by participating in the Arizona IOLTA program they are agreeing to act in a fiduciary capacity and therefore, will put forth best efforts for the highest return on the principal balances held under the Arizona IOLTA program for the benefit of the purposes outlined under Rule 43 and further, understands that the financial institution will not retain any portion of the interest earned other than the agreed upon fee outlined in this agreement (D).

¹ “Financial Institution” means any bank or savings and loan association authorized by federal or state laws to do business in Arizona and insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Arizona, all of which must meet the requirements set out in Rule 43.

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- D. The purpose and intent of Rule 43 of the Arizona Supreme Court is to use all interest payable on IOLTA accounts to support and increase access to justice in Arizona less a reasonably charged fee. Accordingly, Financial Institutions may only impose limited and reasonable service charges on such accounts in the following manner and subject to the following limitations:
1. The Financial Institution may charge its agreed-upon rate to the attorney, as holder of the account, for any of recording or reporting expenses in maintaining an IOLTA account, but the Financial Institution shall not deduct such charges from the interest earned on the IOLTA trust account. Reasonable service charges to the attorney, as holder of the account, include, but are not limited to: overdraft charges, wire transfers, stop payment charges, and check printing charges as the cost of doing business.
 2. The Financial Institution may retain not greater than an amount equal to 10% of the interest earned during a reporting period, as computed in accordance with the institution's or company's standard accounting practice. For the purpose of this Agreement, a reporting period shall be either the monthly or quarterly period, as the case may be in accordance with Section II (B) hereof, with respect to which the applicable interest payment relates. Such fee may be assessed and deducted from the interest payment made to the Foundation for such reporting period. For any percentage of the allowed 10% charge which is not retained by the Financial Institution, the Foundation will work with the Financial Institution toward recognition as a contribution and/or Community Reinvestment Act inclusion as regulators permit. Further, the Foundation understands that some Financial Institutions' accounting practices do not allow for an exact segregated calculation of total yield on IOLTA balances, and therefore, the Foundation will accept 'good faith' calculations of the Financial Institution in estimating the defined return on IOLTA aggregate balances and will hold harmless the Financial Institution for such good faith calculations providing they remain within the specifications of II.(E)(1) and IV.(E) of this agreement with the understanding that the good faith calculation includes intent to correct any negative differences if found during the Financial Institution's end of period accounting reconciliation.
 3. Other than the de minimus charges permitted under II(D)(1) above and the other charges permitted under II(D)(2) above, the Financial Institution will earn no return off of and make no charge with respect to the IOLTA accounts the Financial Institution maintains for the benefit of the Foundation.
- E. Financial Institutions *may* remit interest payments to the Foundation on a monthly basis, but, pursuant to Rule 43 of the Arizona Supreme Court, the Financial Institution *shall* remit to the Foundation all interest earned on all IOLTA accounts, at least on a quarterly basis. The Foundation, as beneficiary of the Arizona IOLTA trust accounts, holds, a right to an expectation of reasonable care and a productive return meeting the guidelines for earning interest under Rule 43.

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1. Rule 43, states that IOLTA accounts shall be “invested to the extent practicable in the higher earning return...”. The intention for the interest earned on IOLTA funds is that it the highest under the guidelines set forth.

Therefore, all IOLTA account funds must yield no less than the same rate (APY) as the highest yielding interest bearing deposit account representing funds for which the bank does not reserve the right to require at least seven days’ written notice of intended withdrawal (personal or business, and including sweep rates) offered by the Financial Institution, while following the guidelines and recommendations set forth in Rule 43 of the Arizona Supreme Court²

III. Required Data

- A. Financial Institutions shall submit the required composite data reporting, covering the period relating to the interest payment remitted to the Foundation, no later than fifteen (15) days after making such interest payment to the Foundation pursuant to the terms hereof. Further instructions for interest remittance are available in ATTACHMENT B.
- B. Financial Institutions shall complete and submit their data report as outlined in ATTACHMENT C

IV. Revocation and Termination Causes

- A. A Financial Institution’s failure to sign an annual agreement by June 15th of the agreement year (June 1 – May 31) constitutes a withdrawal from the Arizona IOLTA Program. The Financial Institution understands that the State Bar and Foundation will assure notification to the attorneys regarding the financial institution’s withdrawal from the program and explain the attorney has 45 days to transfer IOLTA accounts to an approved participating financial institution.
- B. A Financial Institution’s failure to remit interest earned on accounts 30 days beyond the quarterly period allowed, will cause the initiation of the Revocation and Termination process.
- C. A Financial Institution’s failure to remit completed reports as required under this agreement (attachment C) 30 days beyond the quarterly period allowed, will cause the initiation of the Revocation and Termination process.
- D. A Financial Institution’s failure to report insufficient funds, uncollectible funds or negative available balance incidents pertaining to an Arizona attorney IOLTA account and failure to respond with requested information to a State Bar of Arizona inquiry on such account, will cause the initiation of the Revocation and Termination process.

² It is not the expectation of the Foundation that promotional products developed to attract new customers and have a limited time frame offering of less than three months (maximum IOLTA reporting period) be included in evaluating the expected return for IOLTA aggregate balances

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- E. A Financial Institution's net remittance to the Foundation, for a reporting period, is less than 70% of the three month LIBOR for same reporting period and there is failure to submit upon request a signed statement from the bank's IOLTA representative verifying that the interest return does represent the financial institution's best fiduciary efforts to meet the minimum requirement set forth in this agreement (E) (1.), will cause the initiation of the Revocation and Termination process.
- F. A Financial Institution's disregard for the fiduciary nature of the account as evidenced by use of the interest earned on the principal balances on IOLTA accounts for the benefit of an entity or person other than the Foundation, will cause the initiation of the Revocation and Termination process.

V. Revocation and Termination Process

- A. As "Partnering Entities" in the Arizona IOLTA program, the State Bar of Arizona and the Foundation each have the right to initiate recommendations to the other for the revocation and termination of a Financial Institution as a qualified participant in the Arizona IOLTA program, following documentation of the following:
 - 1. Identification and documentation of the Financial Institution's deficiency in meeting the requirements of Rule 43 of the Arizona Supreme Court (ATTACHMENT A), or breach of any provision of this Participation Agreement, or any provision of the Arizona Revised Statutes ("A.R.S.") as may be applicable to the Financial Institution executing this agreement.
 - 2. Partnering Entity's contact with and notification to the Financial Institution's identified IOLTA representative detailing the area of deficiency and outlining the need for corrective action;
 - 3. Sufficient time for the Financial Institution to correct the deficiency of no less than 10 days and no more than 45 days;
 - 4. Partnering Entity's final corrective action notice to the Financial Institution, by certified mail to the Financial Institution's identified IOLTA representative, indicating that the Financial Institution has failed to correct the deficiency and that the Partnering Entity is considering revocation and termination as a participating Arizona IOLTA Financial Institution; and,
 - 5. A Partnering Entity may recommend revocation and termination of a Financial Institution as a qualified participant in the Arizona IOLTA program 10 days following the date of the final corrective action notice to the Financial Institution for failure to correct the deficiency.
- B. The Partnering Entity recommending revocation and termination shall provide the other Partnering Entity with a copy of each notice as it is sent to the Financial Institution and shall provide the Partnering Entity with copies of any response from the Financial Institution. Upon completion and documentation of items IV.A.1-5 above, either Partnering Entity can submit a formal written revocation and termination request to the other Partnering Entity's designated IOLTA representatives. Upon receiving the formal request, the Partnering Entities shall notify the State Bar attorney members, via the posting on the IOLTA Approved Financial Institution Website, that the Financial

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Institution in question is under review for continuation of approval as a qualified participant in the Arizona IOLTA program. The Partnering Entities' designated IOLTA representatives shall, within two weeks of receipt of the formal revocation and termination request and documentation, review the material and take one of the following actions:

1. Adopt the recommendation for revocation and termination of the Financial Institution. Partnering Entities shall then jointly provide written Notice of Termination of the Financial Institution as a qualified participant in the Arizona IOLTA program to both the Financial Institution and the State Bar attorney members holding accounts in that Financial Institution. This termination notice will give the attorneys, as holders of the accounts, 45 days to move their accounts to another Financial Institution approved as a participant in the Arizona IOLTA program. The terminated Financial Institution must submit all interest earned on the IOLTA accounts during this 45 day period of transition to the Foundation (in accordance with Section III above) and remains liable for all obligations under the terms of this agreement during that period.
2. Send a Revocation Option Notice to the Financial Institution indicating that the Financial Institution has two options to avoid revocation of their status as a qualified as a participant in the Arizona IOLTA program: (a) within 10 days of the date of the Revocation Option Notice, submit verification and documentation to the Participating Entities that they have corrected the deficiency at issue; or, (b) submit a voluntary resignation as an approved participant in the Arizona IOLTA program within 10 days of the date of the Revocation Option Notice.
3. Send a Presentation of Evidence Notice to the Financial Institution indicating that the Partnering Entities are considering revocation of the Financial Institution's status as an approved participant in the Arizona IOLTA program and that the Financial Institution has two weeks from the date of the notice to present evidence to the Partnering Entities as to: (a) why the Partnering Entities should allow the Financial Institution to continue as an approved participant in the Arizona IOLTA program; and, (b) the Financial Institution's efforts toward reconciling their deficiencies and/or differences with the Partnering Entity recommending revocation. After presentation of such evidence to the Partnering Entities' designated IOLTA representatives, the Partnering Entities' designated IOLTA representatives shall meet to evaluate the evidence, determine appropriate action and advise the Financial Institution, in writing, of their decision. If the Partnering Entities decide to proceed with the Financial Institution's termination as an approved participant in the Arizona IOLTA program, then the Partnering Entities shall issue a Notice of Termination to both the Financial Institution and the State Bar attorney members holding accounts in that Financial Institution. This termination notice will give the attorneys, as holders of the accounts, 45 days to move their accounts to another Financial Institution qualified as a participant in the Arizona IOLTA program. The de-authorized Financial Institution must submit all interest earned on the IOLTA accounts during this 45 day period of transition to the Foundation (in accordance with Section III

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above) and remains liable for all obligations under the terms of this agreement during that period.

VI. Further Understanding

- A. The Foundation is not subject to any interest withholding requirements and pursuant to Internal Revenue Service (IRS) regulations does not need to file an exemption certificate. The Financial Institution shall not issue an IRS Form 1099 to the Foundation on any interest earned and paid on IOLTA accounts to the Foundation.
- B. Financial Institutions should use the Foundation's taxpayer identification number: 95-3351710 for any reports to taxing authorities.
- C. If the Financial Institution receives a subpoena duces tecum issued pursuant to Arizona Supreme Court Rule 47(h), requesting documents pertaining to an attorney's IOLTA account with the Financial Institution, the Financial Institution shall, pursuant to 15 U.S.C. §6802(e)(8), provide the documents specified in the subpoena duces tecum. The State Bar of Arizona shall pay the reasonable costs associated with producing the requested documents.
- D. The Financial Institution acknowledges that Rule 43 of the Arizona Supreme Court states: "The State Bar and the Foundation shall establish regulations governing approval and termination of approval status for financial institutions" and that this "Participation Agreement" constitutes the regulations governing the approval and termination of approval status for Financial Institutions pursuant to that Rule.

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By signing below, the undersigned acknowledge that he/she has reviewed and understands the specifications outlined by this Agreement and Attachments and agrees to the terms and conditions stated herein. This Participation Agreement is effective from June 1, 2009 until May 31, 2010. The State Bar of Arizona and the Foundation have equal rights to enforce this Agreement.

AUTHORIZED REPRESENTATIVE

<hr/> Authorized Representative Signature	<hr/> Date
<hr/> Printed / Typed Name	<hr/> Printed / Typed Title
<hr/> Address	<hr/> City, State, Zip
<hr/> E-Mail	<hr/> Phone

IOLTA REPORT CONTACT

<hr/> IOLTA Report Contact Signature	<hr/> Date
<hr/> Printed / Typed IOLTA Report Contact	<hr/> Printed / Typed Title
<hr/> Address	<hr/> City, State, Zip
<hr/> E-Mail	<hr/> Phone

Signed IOLTA Agreement should be returned to:

Arizona Foundation for Legal Services and Education
ATTN: IOLTA Administrator
4201 N. 24th Street, Ste 210
Phoenix, AZ 85016
Or by fax to:
(602) 773-3160