

DISCLAIMER

This sample document is an example for purposes of illustration only and is intended to serve only as a general resource, not as a form or recommendation. It has not been approved, sanctioned, or officially promulgated by the North Carolina Association of Certified Public Accountants or by any attorney, nor is it intended to represent the standard of practice in North Carolina or any other state.

In making this form available, neither the North Carolina Association of Certified Public Accountants, nor the attorneys who prepared the form, are rendering any legal, tax, accounting, or other professional services, or advice to the user, or making any representation regarding the content of the document. In addition, please note this document will not be updated to address changes in applicable law, or in any industry custom or practice. Each user of this document is solely responsible for the contents of such document and assumes all risks in connection with such use. Users are advised to engage their own legal advisors for assistance in drafting a practice continuation agreement appropriate for the user.

DESCRIPTION OF SAMPLE DOCUMENT

This is a sample practice continuation agreement that may be appropriate for use when a practitioner desires to enter into an arrangement pursuant to which another CPA will provide accounting services to the practitioner's clients in the event of the practitioner's death or disability.

In addition, the agreement provides for the sale of the practitioner's practice to the CPA, providing for continuity of service for clients and liquidity for the practitioner's estate. This sample document does not include all of the issues and terms appropriate or necessary for a sale of an accounting practice, but does provide the basic economics of the transaction. It is intended the other details of any such sale, such as receivables, employees, any tangible assets that may be sold, or other terms and provisions, would be negotiated later based upon the circumstances at that time. The economic terms presented in this sample document are solely for purposes of illustration and are not intended to represent any standard, custom, or practice within the industry or the state of North Carolina or otherwise, nor should they be viewed as setting any market, or having any precedential value. The parties should negotiate their own business terms with respect to any sale of the practice or its assets.

PRACTICE CONTINUATION AGREEMENT

THIS PRACTICE CONTINUATION AGREEMENT (this "Agreement"), is entered into as of January 1, 2010, by and between CPA FIRM, P.A., a North Carolina professional corporation ("Firm"), JOE A. COUNTING, CPA, P.A., a North Carolina professional corporation ("Practitioner's Firm"), and JOE A. COUNTING, CPA, a resident of North Carolina ("Practitioner.")

WITNESSETH:

WHEREAS, Practitioner is a Certified Public Accountant with offices in High Point, North Carolina; and

WHEREAS, Practitioner is the sole shareholder of Practitioner's Firm; and

WHEREAS, the Firm is a public accounting firm with offices in Greensboro, North Carolina; and

WHEREAS, both parties desire to establish an arrangement, whereby the Firm would continue the public accounting practice of the Practitioner's Firm by providing public accounting services to clients of Practitioner's Firm ("Practitioner's Clients") in the event of the Practitioner's death or disability.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings herein contained, and for other good and valuable consideration, the full receipt and sufficiency of which is hereby expressly acknowledged by each party hereto, it is agreed as follows:

Section 1. Temporary Disability

- 1.01 In the event of Temporary Disability (as defined below) of Practitioner lasting longer than two (2) weeks, Practitioner or Practitioner's Firm shall provide the Firm with written notice thereof, including the anticipated duration of disability. Firm shall commence accounting services for Practitioner's clients as needed within 7 days after receipt of written notice of Practitioner's disability. The Firm shall act as a subcontractor and shall provide such professional staff and non-professional staff as may be reasonably necessary to provide public accounting services to Practitioner's clients and back-office support services to Practitioner's Firm. Prior to delivering any opinion or filing any tax returns for a Practitioner's Client, the Firm shall obtain the consent of the Practitioner's client.
- 1.02 The Firm shall not be obligated to provide services to any Practitioner's client or undertake any assignment if such action would violate the Code of Ethics and Conduct of North Carolina State Board of Certified Public Accountant Examiners, or any other organization of which the Firm is a member or to whom the Firm is

SAMPLE PRACTICE CONTINUATION AGREEMENT

subject, or if such services or assignment would present a conflict of interest for the Firm.

- 1.03 As compensation for providing services described above, Practitioner's Firm shall pay the Firm standard hourly or per diem rates for the Firm's professionals and staff, providing services under this Agreement are in effect at the time such services are performed. During any period of Practitioner's Temporary Disability, Practitioner's clients shall remain clients of Practitioner's Firm, and Practitioner's Firm shall be responsible for all billing and collections, provided the Firm may provide billing and collections services as part of back-office support services provided hereunder to the extent necessary or appropriate.
- 1.04 As used herein, the term "Disability" shall mean a physical or mental illness, or injury suffered by Practitioner, that prevents Practitioner from performing usual and customary duties of a Certified Public Accountant, as determined by Practitioner's physician; and the term "Temporary Disability" means any Disability which is not expected to exceed one year in duration.

Section 2. Permanent Disability or Death

- 2.01 In the event of Practitioner's Disability, which is expected to exceed one year in duration, as determined by Practitioner's physician (a "Permanent Disability"), or death, the Firm shall purchase the accounting practice of Practitioner's Firm on the terms set forth in this Section 2 and such other terms as may be mutually agreed to by the Firm and Practitioner's Firm, or Practitioner's personal representative or guardian. The purchase of the accounting practice of Practitioner's Firm will include only public accounting clients ("Practitioner's clients") and related files, work papers, and data (the "Practice"), and will not include the purchase of any accounts receivable, equipment, or the assumption of any leases, or other obligations, unless otherwise agreed to by the Firm and Practitioner, or his personal representative or guardian.
- 2.02 The purchase price for the Practice shall be 45% of all fees for professional services collected by the Firm from Practitioner's clients during the twenty-four (24) months following the date of purchase, provided the purchase price shall not exceed ninety percent (90%) of total fees for professional services collected by Practitioner's Firm in the twelve (12) months immediately preceding Practitioner's death or total disability. The purchase price shall be paid within 30 days following each of the first two anniversary dates of the closing. Purchase price shall be paid in quarterly payments over a two year period. Payment amounts will be calculated each quarter, based on the collection of fees from Practitioner's clients during the previous calendar quarter.

SAMPLE PRACTICE CONTINUATION AGREEMENT

- 2.03 The Firm agrees to collect accounts receivable of Practitioner's Firm for a period of six (6) months and remit any such collections to Practitioner's Firm on a monthly basis. The Firm shall be entitled to retain a collection fee equal to two percent (2%) of the collections.
- 2.04 Any work-in-process as of the date of Practitioner's death or Permanent Disability shall be completed by the Firm. Practitioner's Firm shall be paid for its proportionate share of such work upon collection by the Firm. The proportionate share for Practitioner's Firm shall be determined by subtracting the standard rate for the work performed by the Firm from the total amount collected by the Firm.

Section 3. Noncompetition

- 3.01 In the event the Practice is purchased by the Firm, Practitioner and Practitioner's Firm agree that he and it will not provide public accounting services of any nature as employer, employee, principal, agent, shareholder, or otherwise, directly or indirectly, for any of Practitioner's clients who become clients of the Firm, in each case for a period of seven (7) years after the date of such sale, anywhere within the state of North Carolina.
- 3.02 In the event the Firm provides services hereunder as a result of a Temporary Disability of Practitioner, and Practitioner returns to work, the Firm agrees the Practitioner's clients are, and shall remain, clients of Practitioner and Practitioner's Firm, and that the Firm shall not provide or solicit for purposes of providing accounting services to any of Practitioner's clients whom the Firm services or about whom the Firm learns confidential information, in each case at any time for a period of seven (7) years after the date of the last services provided by the Firm to such client, anywhere within the state of North Carolina.

Section 4. Miscellaneous

- 4.01 Indemnification by Practitioner and Practitioner's Firm. Practitioner and Practitioner's Firm shall indemnify, defend, and hold harmless, the Firm from and against any and all damages, liabilities, fines, judgments, awards, costs, fees, penalties, losses, amounts paid, or incurred, in defense or settlement, and expenses and fees (including reasonable attorneys fees) (collectively, "Losses") incurred by the Firm arising out of any claim, demand, or action made by a third party, relating to the Firm's performance of this Agreement, except to the extent such claim, demand, or action is based on the Firm's own negligence, gross negligence, or willful misconduct.
- 4.02 Insurance. Each party to this Agreement shall keep in force, throughout the term of this Agreement, professional liability insurance insuring such party against claims made for professional negligence.

SAMPLE PRACTICE CONTINUATION AGREEMENT

- 4.03 Access. The Firm shall provide Practitioner, or his personal representative or guardian, with a quarterly report setting forth all fees collected from Practitioner's clients pursuant to this Agreement. Practitioner and his personal representative or guardian shall have the right to inspect the Firm's books and records relating to Practitioner's clients during normal business hours upon reasonable advance notice for purposes of verifying the Firm's collections of fees from Practitioner's clients.
- 4.04 Governing Law; Entire Agreement; Amendment and Waiver; Severability. This Agreement shall be governed, and construed, and enforced, in accordance with the laws of the State of North Carolina without regard to its principles of conflicts of laws. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. This Agreement may be modified, amended, changed, or terminated only by an agreement in writing signed by all parties hereto. No waiver shall be deemed to have been made by any party of any of its rights under this Agreement unless the same is in writing and is signed on its behalf by an authorized signatory. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. In the event one or more of provisions of this Agreement should, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and such provision (or part thereof) shall be ineffective to the extent of such invalidity, illegality, or unenforceability.
- 4.05 Benefit. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their respective heirs, legal representatives, and successors. This Agreement may not be assigned by any party hereto without the written consent of each other party.
- 4.06 Relationship of the Parties. No provision in this Agreement and no course of dealing between the parties shall be deemed to create any fiduciary duty owing from the Firm to Practitioner or Practitioner's Firm, and the parties shall not be deemed to be partners, joint venturers or co-venturers by reason of this Agreement, the performance of this Agreement or payment of compensation hereunder.
- 4.07 Termination. This Agreement may be terminated by either party upon a ninety (90) day written notice delivered to the other party at his last known business address. All rights and obligations of the parties which have accrued prior to such termination shall survive the termination of this Agreement.

SAMPLE PRACTICE CONTINUATION AGREEMENT

[Signatures appear on the following page.]

SAMPLE

SAMPLE PRACTICE CONTINUATION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CPA FIRM, PA

By: _____

JOE A. COUNTING, CPA, PA

By: _____

Joe A. Counting, CPA

SAMPLE