

# MODEL AGREEMENT BETWEEN TWO SOLE PRACTITIONERS TO ENSURE CONTINUANCE OF THEIR PRACTICES

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*(Members are advised to consult a solicitor before entering into an agreement of this nature).*

THIS AGREEMENT is made the                      day of                      200                      BETWEEN

of

(hereinafter called "X") of the one part and

of

(hereinafter called "Y") of the other part WHEREAS X is a Certified Public Accountant and Registered Auditor.

AND WHEREAS "Y" is a Registered Auditor in a sole practice under the name of

AND WHEREAS both parties desire to ensure that their respective practices continue in the event of death or continuing incapacity on the terms and conditions hereinafter contained.

Whereby it is agreed as follows:-

1. In this agreement unless the subject or context otherwise requires:-
  - (a) "representative(s)" means in the case of X-his wife Mrs. X his solicitor Mr. his doctor Dr. the executors appointed by his WILL Messrs. , or any other person nominated by X to be his representative under this Agreement.
  - (b) "representative(s)" means in the case of Y-his wife Mrs. Y his solicitor Mr. his doctor Dr. the executors appointed by his WILL Messrs. , or any other person nominated by X to be his representative under this Agreement.
  - (c) "continuing incapacity" means in relation to X or to Y that X has a written medical certificate from a properly qualified medical practitioner stating that he is unfit through illness accident or otherwise from effectively carrying on his practice and is likely to be so incapacitated for a period of not less than [ ] weeks.
  - (d) "personal representative(s)" means that the persons named as executors in relation to the will of X or Y or in the case of intestacy the persons who apply for the grant of letters of administration of his estate.

2. In the event of the continuing incapacity of either party (hereinafter called the “incapacitated party”) the other party (hereinafter called the “managing party”) shall when requested to do so in writing by the incapacitated party or his representative(s) and on receipt of a medical certificate shall manage the practice on the following terms and conditions:-
- (a) The managing party shall with due care, skill and diligence carry on the practice under its existing name in a manner befitting to the profession, shall take all reasonable steps to preserve the goodwill of the practice and shall carry on the practice in its then existing style.
  - (b) Subject to the condition that he shall exercise all reasonable care and skill the managing party shall be entitled with the written consent of the incapacitated party or his representative(s) (which shall not unreasonably be withheld) to:-
    - (i) operate the bank account of the practice.
    - (ii) employ staff, whether his own or otherwise, to assist with the running of the practice.
    - (iii) sign letters and other documents relating to the practice in the name of the incapacitated party.
  - (c) Meetings with clients and others relating to the practice shall not normally take place at the office of the managing party.
  - (d) Within [ ] days of receipt of the request and medical certificate detailed at (a) above the managing party shall:-
    - (i) inform the Institute of Certified Public Accountants of his position with regard to the practice of the incapacitated party.
    - (ii) inform the insurers of the incapacitated party’s professional indemnity policy of the arrangement and obtain any extra cover necessary for himself and other employees on behalf of the incapacitated party.
    - (iii) notify the clients of the practice and other parties concerned that he will be managing the practice temporarily
  - (e) The managing party shall maintain and keep all books of accounts and other records of the practice up to date. The incapacitated party and/or his representatives shall have reasonable access to the practice records during normal working hours.
  - (f) The managing party shall be remunerated for the work carried out for the practice at a rate agreeable to both parties. (In the event the managing partner and the incapacitated party and/or his representatives cannot reach agreement, the matter will be referred to [ ] who will determine a reasonable rate. Also the managing party shall be reimbursed for any expenses reasonably incurred while managing the practice subject to the production on request of original receipts as evidence of expenditure reasonably incurred.
  - (g) Should the subscription of the incapacitated party become due, the managing party shall inform the Chief Executive of the Institute of Certified Public Accountants of the arrangement and renew the subscription of the incapacitated party.
  - (h) The incapacitated party or his representative(s) may terminate the agreement by giving the managing party [ ] months’ notice in writing provided that the period of management shall not exceed a period of [ ] months unless the managing party otherwise agrees.
  - (i) On the termination of his management the managing party shall hand over the practice to the incapacitated party or his representative(s) or to any other person as directed and shall give all the necessary assistance to make the handover satisfactory. With effect from the termination date, the managing partner will not hold himself out as an agent of the practice.
  - (k) Should the agreement terminate in accordance with Sub-clause (h) above and the managing party has not been instructed by the incapacitated party or his representative(s) to whom the practice should be handed over, the managing party shall report this matter to the Institute of Certified Public Accountants and shall not then be held responsible for any liability resulting from the termination of the arrangement.

3. In the event of the death of either party (hereinafter called the “deceased party”) the other party (hereinafter called the “surviving party”) shall when requested to do so in writing by the personal representatives of the deceased party manage the practice on the following terms and conditions:-
- (a) The surviving party shall carry on the practice under the existing name.
  - (b) The surviving party shall inform the Institute of Certified Public Accountants of this agreement and shall place his name as manager on the letterheading of the practice and shall arrange that there is uninterrupted professional indemnity insurance cover and other necessary insurances.
  - (c) The personal representatives shall immediately authorise the surviving party to open and operate the necessary accounts in the name of the practice at its existing bank to enable the practice business to continue and salaries and expenses to be paid pending the grant of probate of the WILL of the deceased party or the grant of letters of administration.
  - (d) The personal representatives shall make an arrangement with the bank for temporary overdrafts to enable the practice’s bank accounts to operate and for the overdrafts to be repaid out of the deceased party’s estate when probate or letters of administration have been granted.
  - (e) After the death of the deceased party and prior to the grant of probate or letters of administration being granted all moneys received by the practice shall be paid into the new accounts.
  - (f) As soon as probate or letters of administration are granted the personal representative(s) shall register the same with the bank instructing that the practice’s accounts be placed under the surviving party’s control and the bank charges or interest be debited to the office accounts.
  - (g) Sub-clauses (a), (b)(ii) and (iii), (c), (d), (e), (f), (h), (i) and (j) of Clause 2 above shall apply to this clause save with the substitution of “deceased party” for “incapacitated party” and “managing party” and “personal representative(s)” for “representative(s)”.
  - (h) In the event of the period of management continuing for more than one year the managing party shall report annually to the Institute of Certified Public Accountants.
  - (i) The surviving party may acquire the deceased party’s practice if he so wishes as long as the personal representative(s) are independently advised in connection with the transaction.
4. All questions or differences whatsoever arising between the parties or their respective representative(s) touching this agreement shall in the first instance be referred to the Administration Committee of the Institute of Certified Public Accountants.
5. This agreement may be terminated before Clauses 2 or 3 come into operation by either party giving 3 months’ notice in writing to the other party.

**AS WITNESS**

**the hands of the parties the day and year first before written etc.**