



ILLUSTRATIVE PRACTICE CONTINUATION AGREEMENT

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INTRODUCTION

- 01.** This guide serves to provide Chartered Accountants (CAs(SA)) and Associate General Accountants (AGAs(SA)) with a basic / generic reference tool when considering and compiling a Practice Continuous Agreement (PCA) in the context of a practitioner who desires to enter into an arrangement with another practitioner / firm related to the continuity of an identified professional practice or professional services in circumstances where certain 'exit' events are anticipated or occur (whether temporary or permanent).
- 02.** For purposes of this guide, the generic term **practitioner** refers to a CA(SA) or AGA(SA), who places professional services at the disposal of the public for reward. When the **practitioner** operates his/her business in the form of a firm, the term refers to the individual or the firm as required by the context.
- 03.** The generic term **partner** is used to refer to a practitioner who, together with other practitioners, operate a firm that places professional services at the disposal of the public for reward. Depending on the legal form of the firm in question, the term **partner** could refer to the partners in a partnership, directors in a company or members in a close corporation.
- 04.** The practitioner is at all times required to apply professional judgement as to any additional considerations derived from any laws or regulations, or professional pronouncements (including codes of conduct, engagement standards, guides, circulars, statements and the like) that are not necessarily addressed in this guide.
- 05.** Due to the nature of a PCA, it is neither possible nor practicable to provide a comprehensive illustrative example and as such users of this guide are reminded to apply professional judgement in determining the content of their particular PCA. Since every PCA is dependent on the circumstances of each case, it would be prudent for a practitioner to seek appropriate professional or legal advice for their circumstances.
- 06.** A PCA would ordinarily be considered by a sole proprietor (whether he/she practices in their own name or in an incorporated business, such as a company or close corporation), or by partnerships with a few partners. However, even in the case of bigger partnerships where there are partnership agreements, or firms in other structures where an ownership agreement may apply, terms and conditions similar to that of a PCA are often encapsulated in such agreements.
- 07.** A PCA serves to define the legal relationship between a practitioner that desires to enter into an agreement pursuant to which another practitioner will provide professional services to the practitioner's clients in the event of the practitioner's death, disability (temporary or permanent) or retirement. The key objectives / elements to a PCA is to:
- Provide an orderly means to capture the value of partner equity.

- Manage the transition of partners in order to provide capacity for new talent.
- Define when disability has occurred (permanent or temporary).
- Address voluntary retirement when the partner intends to remain in the profession, even to compete or enter a new non-competitive market.
- Introduce provisions restricting a partner's ability to compete with the firm (covenants).
- Address involuntary termination of a partner, including the actions that are commonly the basis for a termination (**Note: this is not dealt with in this guide**).

08.
The timing of the agreement is not dealt with in this guide.

09.
It is vital that the practitioner carefully considers every clause of the PCA and make sure that it is suitable for the practitioner's particular circumstances, bearing in mind that all parties need to agree to the terms.

10.
Written contracts are probably not necessary when things are going right, however things often do not go according to plan and written contracts are essential for when things go wrong and/or there is a dispute between the parties. Written contracts serve to protect the interests and manage the risks of the contracting parties, and raise certainty with respect to the specific circumstances or situations or scenarios that are addressed or anticipated in the agreement.

11.
A practitioner may also consider writing or updating his/her Will at the same time as compiling a PCA. For example, if a practitioner decides to incorporate his/her business this would become a separate legal entity. An incorporated business would be able to continue regardless of any dispute over the ownership interests in the incorporated business. Practitioners should consider the need to consult a tax specialist (or other suitable professional advisor) in order to determine any estate planning and inheritance tax implications.

12.
Furthermore, this guide does not deal with the business structure of a firm or any tax or other implications related to any particular business structure.

WHY DO I NEED A PRACTICE CONTINUATION AGREEMENT (PCA)?

13.
You need to have a PCA so that your practice can continue if you are away from work for a long period of time, as well as to make proper arrangements when certain 'exit' events occur. In this way you protect yourself and your clients (your largest intangible asset).

14.
A PCA is a contract that provides for the continued operation of a practitioner's practice in the event of:

- Death;
- Injury where you cannot continue your practice (either permanent or temporary disability);
- Some other reason that prevents you from continuing to manage your practice; or
- Retirement

15.
The nature of a PCA is such that you never know when you may need it. This agreement is similar to having a Will and life insurance. The consequences of not having a PCA is that it places an unnecessary burden on your family and firm (including your most important business asset, namely your clients).

16.
A PCA agreement also contributes to driving the following goals:

- Motivate partner behavior to achieve desired strategic and financial results for their practice.
- Create motivation for top performers by rewarding modified behavior.
- Build a strong partner team through retention of the best performers, potential removal of non-performers, and the attraction of new talent.
- Be perceived by fellow partners as a fair allocation of firm financial results.

17.
SAICA has issued a Succession Planning Guide for Small and Medium Practices which highlights the importance of a PCA, as well as what needs to be considered. Questions such as:

- Who? Considerations when choosing a successor
- When? Triggering events and termination
- How much? Considerations regarding value
- Compliance considerations for auditing, accounting and tax practices

are answered in the guide. The guide can be obtained by from the online shopping webpage on the SAICA website.

WHAT NEXT?

18.

Circumstances change, which means that any PCA should be reviewed and updated regularly and when a significant change has occurred.

19.

Once the agreement has been finalised, it should be communicated to the practitioner's spouse and his/her heirs, key staff members, as well as his/her attorney and executor, to ensure that everyone is aware of the practitioner's arrangements. Thus copies of the agreement should be left with key persons.

20.

It is also recommended that arrangements are communicated to key clients where deemed necessary.

21.

It is wise to keep:

- Procedures and process manuals up to date, to help the practitioner taking over the practice;
- Have a checklist of items that staff should update and keep at hand to help with a smooth transition;
- Document key information that is kept in a safe place i.e. memberships numbers, license numbers, policy numbers, password, etc.; and
- Have communication prepared to be sent to clients and stakeholders, in the event of disability or death, before it becomes public knowledge.

Illustrative example of a Practice Continuation Agreement

This illustrative example assumes an individual practitioner entering into a PCA with another practitioner or group of practitioners or firm to ensure the continuation of professional services to his/her clients, the transfer of other obligations and/or assets, and to negotiate a compensation as may be applicable when certain 'exit' events occur.

This agreement should be used or adapted / amended to suit the individual requirements and circumstances of the practitioner. Furthermore, it should be supplemented with paragraphs applicable to additional requirements and circumstances where appropriate.

PRACTICE CONTINUATION AGREEMENT

1. PARTIES

- 1.1 This PRACTICE CONTINUATION AGREEMENT (this "Agreement"), made and entered into this _____ day _____, 20_____, between _____, as individual chartered accountant(s) / associate general accountant(s) and director(s) / partner(s) / member(s) of _____ a South African professional corporation ("Firm") all of which jointly and / or severally hereafter are referred to as **Purchaser**, and _____ ("Practitioner") as individual chartered accountant / associate general accountant [and a director / partner / member of _____ a South African professional corporation ("Practitioner's Firm") all of which severally hereafter are referred to as **Seller**.

2. PREAMBLE:

- 2.1 WHEREAS, Purchaser and Seller are each engaged in the practice of providing professional accountancy services as described in the South African Institute of Chartered Accountants Code of Professional Conduct; and
- 2.2 WHEREAS, the parties hereto each desire to establish an agreement so that in an event of temporary disability of Seller, Purchaser shall furnish a competent staff person to handle work with the assistance of an individual of broader experience, or if necessary to furnish an individual who is capable of performing specific professional accountancy services, or supervision of staff capable of handling their own routine matters, or in the event of the death or disability of Seller or his retirement from the practice of providing professional accountancy services, Purchaser shall acquire the accounting practice of Seller and Seller shall transfer the same to Purchaser.
- 2.3 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.

3. DEFINITIONS

The terms defined in this Section 3 (unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this Section 3.

- 3.1 "**Professional Accountancy Services**" has the same meaning as 'professional services' as defined in the South African Institute of Chartered Accountants Code of Professional Conduct.
- 3.2 "**Accountancy Practice**" has the same meaning as 'public practice' as defined in the South African Institute of Chartered Accountants Code of Professional Conduct.

- 3.3 **“Temporary Disability”** of Seller shall mean when he/she is temporary disabled because of ill health, physical or mental disability due to sickness or injury, or for having failed to perform his/her duties for his/her clients for more than _____ (____) days but fewer than _____ (____) days, unless such condition shall be certified by Seller’s physician to be a condition that in medical probability will be permanent disabling for more than _____ (____) days from the outset.
- 3.4 **“Permanent Disability of Seller”** shall mean he/she is permanently disabled because of ill health, physical or mental disability as certified by Seller’s physician, or having failed to perform his/her duties for his/her clients for more than _____ (____) days.
- 3.5 **“Retirement of Seller”** shall mean a date specified in his/her written notice to Purchaser of his/her retirement from the practice of providing professional accountancy services; such retirement date shall not be more than _____ (____) days nor fewer than _____ (____) days from the receipt of such notice by Seller.
- 3.6 **“Effective Date”** shall mean the earliest of the following:
- 3.6.1 the date of Seller’s death,
 - 3.6.2 the date of temporary disability,
 - 3.6.3 the date of permanent disability, or
 - 3.6.4 the date of retirement.
- 3.7 **“Return Date”** shall mean the date when Seller is no longer temporary disabled, except that such term shall not include the period when Seller’s temporary disability exceeds _____ (____) days.
- 3.8 **“Seller”** shall mean the specified individual seller by the name of _____ (seller’s name), except that in the event of the death, temporary disability, or permanent disability of Seller, the term shall also deemed to mean his/her heirs, administrators, or legal representatives of Seller as legal circumstances require.
- 3.9 **“Purchaser”** shall mean the specified individual purchaser by the name of _____ (purchaser’s name).
- 3.10 **“Transfer”** means the transfer of a business (accountancy practice) by the Seller to the Purchaser as a going concern.

4. TRANSFER OF ACCOUNTANCY PRACTICE

- 4.1 **“Professional Accountancy Services to Be Provided”** Purchaser will commence within (____) working days after receipt of written notice of the Effective Date to provide all professional accountancy services of any nature whatsoever requested by Seller or the clients whom Seller served on the Effective Date, provided, however, that Purchaser shall not be obligated to undertake any request or to serve any client of Seller if such action would violate the South African Institute of Chartered Accountants Code of Professional Conduct or any laws or regulations that govern the provision of certain professional accountancy services or adversely affect the professional reputation of Purchaser. In the event any client of Seller refuses to accept the services of Purchaser, Purchaser will reasonably attempt to see that such client is served by another practitioner that provides the professional accountancy service(s) concerned.
- 4.2 **“Charge for Services”** Seller shall guarantee to Purchaser the receipt of the normal hourly or per diem charge of the staff person or individual furnished by Purchaser during the temporary disability of Seller. Purchaser shall charge Seller’s clients the regular and usual fees of Seller that are in effect at the time such services are performed. Any differences shall be adjusted accordingly. In all other instances, Purchaser shall charge Seller’s clients the regular and usual fees of Purchaser for services performed on or after the Effective Date.
- 4.3 **“Delivery of Records and Files”** Delivery should be within a reasonable time after the Effective Date except in the case of Temporary Disability, where Purchaser will only obtain temporary access to relevant records and files for the period of Seller’s temporary disability.
- 4.4 **“Work in Process”** In the event Purchaser completes any project that was in process at the Effective Date

and the work done prior to the Effective Date is billed to the client by Purchaser, Purchaser shall pay to Seller his proportionate share of the fee collected from the client for such work as determined by the ratio of the work done on the project at the Effective Date to the total work involved, less percent (____%) to be retained by Purchaser for collection services.

- 4.5 **“Accounts Receivable”** Seller shall retain all of the accounts receivable of his practice that are outstanding on the Effective Date. The value of all receivables for work performed after the effective date shall be retained by Purchaser. Purchaser will, when requested by Seller, render effective assistance in the collection of outstanding receivables and work in progress as of the Effective Date that is subsequently billed to the clients on behalf of Seller. Purchaser shall use its reasonable efforts to collect such amounts but Purchaser makes no representations that all amounts will be collected and shall not be liable to Seller for a failure to collect such amounts. Seller shall have the right to participate in the effort to collect all outstanding receivables and work in progress as of the Effective Date at its discretion. Purchaser shall be entitled to retain percent (____%) of all accounts receivable collected by Purchaser for collection services. Purchaser shall pay Seller the amounts collected of Seller’s receivables on the ____ day of the month following the receipt of such funds. Such amounts shall be excluded from the computation in compensation to be paid to Seller in Section 5.
- 4.6 **“Departing Clients”** In the event that a client discontinues business for any reason, that client shall be excluded from any further payments, but if any of the principal owners of the client shall use the services of Purchaser either personally or in a new business venture, that client shall be included for the remainder of the agreement. Any other client terminations shall be included to a maximum of the gross fee collected by Seller during the one (1) year prior to his death, permanent disability, or retirement.
- 4.7 **“Notification”** Seller, at his or her discretion, may notify all of his or her clients of this agreement.
- 4.8 **“Return of Accountancy Practice”** Within _____ (____) working days after Seller notifies Purchaser in writing of his Return Date, Purchaser shall make available for transfer and return to Seller all of the files and other records pertaining to Seller’s clients who accepted the services of Purchaser during Seller’s temporary disability. This Section does not apply to permanent disability, death, or retirement.

5. COMPENSATION

- 5.1 In the event of Seller’s death, permanent disability, or retirement, for the period ending (____) years after the Effective Date, Purchaser shall pay Seller, percent (____%) of all fees (excluding amounts reimbursed by clients for expenses paid on their behalf by Purchaser) collected by it during such period in relation to those clients who were Seller’s clients as at the Effective Date, but in no event less than an amount equivalent to the total gross fees collected by Seller during the ____ (____) months preceding his/her death, permanent disability, or retirement on each client in the List of Clients (refer to Annexure A, “List of Clients” attached). This ceiling amount shall be allocated among all clients of Seller based on their specific assigned value of the collected fees during the ____ (____) months preceding Seller’s death, permanent disability, or retirement. The List of Clients with assigned values shall be the basis for payment to Seller by Purchaser. Any payment made shall be client specific, and such payment shall not apply to any other clients on the List of Clients. If the client subsequently terminates the relationship with Purchaser prior to the end of the (____) years, then no further payment is due on that client. If the client stays beyond the (____) years and is not paid off in full, then the remaining amount of the client value to reach 100% of the assigned value to that specific client will be due to Seller by Purchaser as collections are made on that client. Such payment to Seller shall be made within (____) days from the end of the month during which such fees are received by Purchaser. The accounting records of Purchaser pertaining to Seller’s clients may be inspected during normal business hours at the principal offices of Purchaser by Seller or his or her authorised representative at any time during the (____) year period described above.
- 5.2 In the event of the temporary disability of Seller, the Purchaser shall render Professional Accountancy Services to Seller’s clients as contemplated in Section 4. While Seller is temporarily disabled, Purchaser shall devote adequate partner and staff resources, including Seller’s staff, to continue providing services to Seller’s clients. Purchaser shall retain _____ (____) percent of collections generated from the services provided to Seller’s clients.
- 5.3 In the event Seller requests Purchaser to perform services for Seller’s clients when Seller is not disabled

(permanent or temporary) or deceased and Purchaser agrees to same, Seller shall reimburse Purchaser based on _____ (____) percent of Purchaser's normal billing rates for the level staff devoted for each such mutually agreeable task(s).

- 5.4 Purchaser shall deliver to Seller or Seller's heirs, representative or assignee, a statement on or before the due date for each payment due under any provision of this Agreement, setting forth all relevant collections received by Purchaser during the prior month.
- 5.5 Seller or Seller's heirs, representative or assignee shall have _____ (____) days from the date it receives statements from Purchaser to review its records with respect to collections from clients. Purchaser agrees to allow Seller or Seller's heirs, representative or assignee full access to Purchaser's records with respect to such collections from clients during its normal business hours, upon written notice to Purchaser of Seller's intention to review such records. If Seller or Seller's heirs, representative or assignee determines that Seller's statements are inaccurate, they may dispute such statements and if the dispute cannot be resolved between the Parties, then the dispute shall be resolved in accordance with the arbitration procedure in Section 12.

6. ASSUMPTION OF LEASE OBLIGATION

- 6.1 *"Assumption of Leases"* Immediately (within _____ (____) days) after the Effective Date (except in the event of Seller's temporary disability), Purchaser shall assume Seller's rental obligations under any and all equipment and office space leases in existence on the Effective Date, provided, however, that
- 6.1.1 Purchaser shall not be obligated to assume any lease that has a remaining term of more than _____ (____) months from the Effective Date;
- 6.1.2 Purchaser does not hereby agree to assume or become obligated for any liability that Seller may have incurred under any lease except for the periodic rental charges after the Effective Date;
- 6.1.3 Purchaser shall not be obligated to assume any lease of Seller unless the lessor gives its written consent within _____ (____) days after Purchaser's request; and
- 6.1.4 If Seller has more than one lease, Purchaser shall be obligated to assume only such leases that have a combined rental obligation for the _____ (____) month period from the Effective Date of less than R_____ (____).
- 6.2 *"Assignment"* If Purchaser requests, Seller shall execute an appropriate assignment of lease assumed by Purchaser pursuant to this agreement.
- 6.3 *"Removal from Premises"* Within a reasonable time after Purchaser's assumption of any office lease, Seller will remove all his personal belongings from such leased premises.

7. PURCHASE OF FURNITURE AND EQUIPMENT

- 7.1 Within _____ (____) days after Effective Date, Purchaser shall offer to purchase from Seller the supplies, accounting systems (including software), furniture, and equipment owned by Seller as of the Effective Date and utilised in his business office. The purchase price for such assets shall be their cost less depreciation to the Effective Date. If Seller accepts such offer, Purchaser shall pay the amount within _____ (____) days after such acceptance against delivery of the assets and an appropriate bill of sale executed by Seller.

8. SELLER RESTRICTIVE CONVENANT

- 8.1 With respect to Seller's clients as at the Effective Date (Clients), Seller agrees that he/she will not, for as long as the compensation described in Section 5.1 is being received by Seller and for the period of _____ (____) years after such compensation terminates, solicit any business from Professional Accountancy Services whether for compensation or not, or in any way interfere with Purchaser maintaining its fees to such Clients unless requested by Purchaser or approved by Purchaser. Seller and Purchaser agree that the restrictions of this paragraph are reasonable in time and in scope and are fair in all respects.
- 8.2 In the event Seller breaches the restrictions of this Section 8:
- 8.2.1 In addition to any rights Purchaser may have at law, Purchaser shall have the right to, and Seller consent to granting and do not oppose, injunctive relief, to enjoin Seller from performing any acts prohibited herein.

8.2.2 When such breach results in loss of fees from any Client covered by this Agreement, Seller shall pay Purchaser liquidating damages in the amount of 150% of the prior _____ (____) months collected fees for any such Clients, whenever collected. Such amount shall be paid in _____ (____) equal monthly payments paid consecutively, commencing one month after the date of such breach.

9. PURCHASER RESTRICTIVE COVENANT

- 9.1 With respect to Seller's clients (Clients), Purchaser agrees that it will not, for as long as this Agreement is not terminated and for the period of _____ (____) years after termination, solicit any business from Professional Accountancy Services whether for compensation or not, or in any way interfere with Seller maintaining its fees to such Clients unless requested by Seller or approved by Seller. Only Clients that have been periodically reported to Purchaser as Clients shall be covered by these provisions. However, the restrictions in this Section 9 shall not apply following Seller's permanent disability or death or retirement, unless this Agreement has been terminated prior. Seller and Purchaser agree that the restrictions of this paragraph are reasonable in time and in scope and are fair in all respects.
- 9.2 Purchaser agrees that for a period of _____ (____) years following Purchaser's furnishing Professional Accountancy Services to Seller's clients hereunder, it will not accept engagement / appointment for any client of Seller's who accepts Purchaser's services during Seller's temporary disability unless Purchaser purchases Seller's practice from Seller.
- 9.3 In the event Purchaser breaches the restrictions of this Section 9:
- 9.3.1 In addition to any right Seller may have at law, Seller shall have the right to, and Purchaser consents to granting and does not oppose, injunctive relief, to enjoin Purchaser from performing any acts prohibited herein.
- 9.3.2 When such breach results in the loss of fees from any Client covered by this Agreement, Purchaser shall pay Seller liquidating damages in the amount of 150% of the prior _____ (____) months collected fees for any such Clients, whenever collected. Such amount shall be paid in _____ (____) equal monthly payments paid consecutively, commencing one month after the date of such breach.

10. TRANSFER OF EMPLOYMENT CONTRACTS OF STAFF

- 10.1 As per Section 197 of the Amended Labour Relations Act No. 66 of 1995 the Purchaser substitute the Seller in respect of all contracts of employment immediately before the date of the transfer; the 'date of transfer' being the Effective Date as it relates to Seller's death, permanent disability or retirement. All the rights and obligations between the Seller and employees at the time of the transfer continue in force as if they had been rights and obligations between the Purchaser and the employee.
- 10.2 The transfer does not interrupt an employee's continuity of employment, and an employee's contract of employment continues with the Purchaser as if with the Seller.
- 10.3 Purchaser will employ employees on terms and conditions that are on whole not less favorable to the employees than those on which they were employed by the Seller.
- 10.4 Purchaser is also liable for paying:
- 10.4.1 Leave pay accrued to the employees of Seller;
- 10.4.2 Severance pay that would have been payable to the employees of Seller in the event of dismissal by reason of operational requirements; and
- 10.4.3 Other payments that have accrued to the employees of Seller but have not been paid at the date of the transfer.
- 10.5 Seller and Purchaser are jointly and severally liable in respect of any claim concerning any term or condition of employment that arose prior to the date of transfer.
- 10.6 This section does not affect the liability of any person to be prosecuted for, convicted of and sentenced for, any offence.

11. INDEMNIFICATION

- 11.1 Seller covenants and agrees that at all times hereafter he/she will indemnify and hold harmless Purchaser against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that Purchaser may sustain or incur by reason of services rendered by Seller prior to or after the Effective Date or by reason of any act or omission, regardless of whether such action or omission arises out of negligence or malfeasance, whatsoever by Seller prior to or after the Effective Date.
- 11.2 Purchaser covenants and agrees that at all times hereafter he/she will indemnify and hold harmless Seller against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that Seller may sustain or incur by reason of services rendered by Purchaser after the Effective Date or by reason of any act or omission, regardless of whether such action or omission arises out of negligence or malfeasance, whatsoever by Purchaser after the Effective Date.

12. DISCLAIMER

- 12.1 It is agreed that this Agreement does not constitute Seller as the agent, employee, or legal representative of Purchaser for any purpose whatsoever. Seller is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of Purchaser. Nothing in this Agreement is intended so as to give to Seller any rights as a partner in the business of Purchaser or to entitle him/her to control in any manner the conduct of such business.

13. ARBITRATION

- 13.1 The parties agree that any dispute or claim concerning this Agreement will be settled by arbitration. The arbitration proceeding shall be conducted by certified public accountants, one of whom shall be selected by each party, under the Arbitration Act, 42 of 1965 and any statutory modification or re-enactment thereof. In case of the inability of the arbitrators to reach a decision, a third certified public accountant shall be selected by the arbitrators to serve as a third arbitrator. The decision of the arbitrators, including determination of amount of any damages suffered, shall be inclusive, final, and binding on both parties, their heirs, executors, administrators, successors, and assignees. Each party shall bear its own expenses in the arbitration for arbitrators' fees and attorneys' fees, for its witnesses and other expenses of presenting its case. Other arbitration costs, including administrative fees and fees for records or transcripts, shall be borne equally by the parties.

14. PURCHASER WARRANTIES, REPRESENTATION AND COVENANTS

- 14.1 Purchaser represents, warrants and agrees that:
- 14.1.1 Purchaser has the full right, power and authority to enter into this Agreement, and by the execution of the Agreement, Purchaser has not caused a default under nor breached any provisions or any other written or oral agreement into which Purchaser has previously entered.
- 14.1.2 Purchaser shall not hold itself out as having any authority to represent Seller, nor do anything which may tend to expose Seller to any debt, liability or claim nor anything that may adversely reflect upon the reputation of Seller.
- 14.1.3 Purchaser shall indemnify and hold Seller harmless for any malpractice claims, or judgements, preparer penalties, or the like, with regard to any work performed or that should have been performed after the Effective Date, by Purchaser or its employees, affiliates or associates. Purchaser shall defend Seller in any such action for which it holds Seller harmless, and reimburse Seller for any reasonable legal fees, expenses and disbursements Seller may incur in connection therewith.
- 14.1.4 Purchaser shall protect any collected fees in its possession or fees to be collected from any loss, lien, or taking by a third party arising out of any claim against Purchaser or its Partners by a third party for malpractice, negligence, breach of contract, injury, liability or other cause of action in law or equity. Purchaser and its Partners shall reimburse Seller for fees lost or not paid as agreed because of any event described herein.
- 14.1.5 Seller is not assuming any liabilities or debts of Purchaser and all debts and liabilities of Purchaser shall remain Purchaser's obligations. To the best of Purchaser's knowledge, there is no outstanding judgements, claims or lawsuits pending against Purchaser which materially affect the obligations of Purchaser hereunder.

15. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS

- 15.1 Seller warrants and represents that:
- 15.1.1 The Practice is free of any encumbrances, liens and security interests.
 - 15.1.2 Purchaser is not assuming any liabilities or debts of Seller, and all debts and liabilities of Seller shall remain Seller's obligations. To the best of Seller's knowledge, there are no outstanding judgements, claims or lawsuits presently pending against Seller.
 - 15.1.3 Seller shall not hold themselves out as having any authority to represent Purchaser, nor do anything which may tend to expose Purchaser to any debt, liability or claim or anything which may adversely reflect upon the reputation of Purchaser, except as set forth herein.
 - 15.1.4 Seller shall indemnify and hold Purchaser harmless from and defend any action on behalf of Purchaser and reimburse Purchaser for any reasonable liabilities, legal fees, expenses and disbursements Purchaser may incur in connection with any malpractice claims, suits, actions, judgements, preparer penalties, or the like, in regard to any work which was performed or should have been performed by Seller or its associates prior to the Effective Date.
 - 15.1.5 Seller has the full right, power and authority to enter into this Agreement, and by the execution of this Agreement, Seller has not caused a default under or breached any provision or any other written or oral agreement into which Seller has previously entered. Seller is not bound by any agreement with anyone that prohibits all or any part of this Agreement.

16. MISCELLANEOUS

- 16.1 **"Governing Law"** This Agreement shall be governed and construed and enforced in accordance with the laws of the Republic of South Africa.
- 16.2 **"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 represents the entire understanding of the Parties, and no modifications or additions hereto have been agreed to or will be binding hereafter unless executed in writing by all of the Parties hereto.
- 16.3 **"Termination"** This Agreement may be terminated by either party upon a _____ (___) day written notice delivered to the other party at its last known business address. All rights and obligations of the parties that have accrued prior to such termination shall survive the termination of this Agreement.
- 16.4 **"Captions"** The captions contained in this Agreement are for convenience of reference only and do not form a part of this Agreement.
- 16.5 **"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. Each party shall provide the other with proof of such insurance within seven (7) working days upon signature of the Agreement, failing which this Agreement shall be of no force and effect.
- 16.6 **"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 ventures or co-ventures by reason of this Agreement, the performance of this Agreement or payment of compensation hereunder.
- 16.7 **"Power of attorney"** The coveree shall enter into a power of attorney in the form annexed (Annexure B) to give the professional nominee the authority to act on behalf of the coveree in the event of death, permanent or temporary disability.
- 16.8 **"Notices"** Any notices required or permitted to be given under this Agreement shall be sufficient if in writing, and if delivered personally, or sent by registered mail or certified mail to the address of the Party set forth above, or subsequently changed in writing pursuant to the provisions of this paragraph. Such notices shall be deemed to have been given at the time when personally delivered to and received by the Party, or their representative getting such notice.
- 16.9 **"Modification or amendments"** No provision in this Agreement may be modified or amended, except by written consent of the Parties. In the event any part or parts of this Agreement are found to be void or

unenforceable, the remaining provisions of this Agreement shall nevertheless be binding, with the same force and effect as though the void or unenforceable part or parts were deleted.

16.10 **“Intent”** The Parties will execute any instruments necessary to give effect to the intent of the Parties as herein expressed.

16.11 **“Delegation”** This Agreement, and a Party’s obligations hereunder, may be delegated or assigned with the prior written consent of the other Party, which will not be unreasonably withheld, provided, however, that any such assignment shall not relieve Purchaser or the principals thereof or Seller of their rights and respective obligations hereunder.

17. NOTICES AND DOMICILIUM

17.1 The parties choose as their domicilium citandi et executandi (address for purpose of legal proceedings and legal notices) their respective addresses set out in clause 17.2 below, at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the Parties.

17.2 For the purposes of this Agreement the Parties’ domicilium citandi et executandi is:

17.2.1 as regards the Seller at:

17.2.2 as regards the Purchaser at:

or at such other physical address, not being a post office box or poste restante, of which the Party concerned may notify the other in writing.

17.3 Any written notices required in terms of clause 17.1 shall only be satisfied if such notice is given in a written, paper based form. The provisions of the Electronic Communications and Transactions Act, 25 of 2002 are expressly excluded from the provisions of clause 17.1.

17.4 Any notice given in terms of this Agreement shall be in writing and shall:

17.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;

17.4.2 if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting; and

17.4.3 if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) Business Day after despatch.

17.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen domicilium address set out above, shall be an adequate written notice of communication to such Party.

18. JURISDICTION

18.1 The Parties irrevocably agree that the Johannesburg Magistrate’s Court of South Africa, the Johannesburg Magistrates’ Court shall have jurisdiction to hear and determine any suit action or proceeding and to settle any dispute which may arise out of or in connection with this Agreement.

18.2 The submission to the jurisdiction of the court referred to in clause 18.1 shall not be construed so as to limit the rights of either Parties to institute proceedings against the other Party in any other court of competent jurisdiction for the purpose of obtaining urgent or interdictory relief.

19. SEVERABILITY

19.1 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

20. WAIVER

20.1 The failure of either Party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power or remedy consequent upon a breach hereof shall not constitute a waiver by such Party to require strict and punctual compliance with each and every provision of this Agreement.

21. ENTIRE AGREEMENT AND VARIATION

21.1 This document embodies the entire Agreement between the Parties hereto.

21.2 No amendment or variation of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties. This requirement will only be satisfied if such amendment or variation is made in a written, paper based form. The provisions of the Electronic Communications and Transactions Act, 25 of 2002 are expressly excluded from this clause 21.2.

22. APPLICABLE LAW

22.1 This Agreement shall be governed exclusively, in all respects by, and shall be interpreted in accordance with the laws of South Africa.

23. COUNTERPARTS

23.1 This Agreement may be signed in counterparts and the copies signed in counterpart shall constitute the Agreement. This shall include faxed and scanned copies of this document.

24. COSTS

24.1 Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement.

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

SIGNED AT _____ ON THE _____ DAY OF _____ 20_____

for and on behalf of
[NAME OF SELLER]

Name of Signatory Duly Authorised

Designation of Signatory

ID Number

Witnesses

Name: _____
I.D. Number: _____
Signature: _____ Date: _____

Name: _____
I.D. Number: _____
Signature: _____ Date: _____

SIGNED AT _____ ON THE _____ DAY OF _____ 20_____

for and on behalf of
[NAME OF PURCHASER]

Name of Signatory Duly Authorised

Designation of Signatory

ID Number

Witnesses

Name: _____
I.D. Number: _____
Signature: _____ Date: _____

Name: _____
I.D. Number: _____
Signature: _____ Date: _____

LIST OF CLIENTS

This Annexure A contains a list of Seller's clients for purposes of Section 5 of this Agreement

Client name and registration number, if applicable	Type of professional accountancy service(s) provided to Client

POWER OF ATTORNEY

This power of attorney is made on _____ [date] by _____ [Name of Coveree] of _____ [address of Coveree] ("Principal").

1. Appointment

1.1. In the event of an activating event (as defined in the agreement dated [date] made between _____ and _____ [coveree and professional nominee] the Principal appoints _____ [NAME of the Professional Nominee] of _____ [address of professional nominee] as his or her lawful attorney and in the Principal's name or otherwise on his or her behalf:

- 1.1.1. To consider, settle, approve, sign, execute, deliver and / or issue all agreements, documents, certificates and instruments (all whether as a deed or not) which the Attorney in his or her absolute discretion considers desirable in connection with the Attorney's obligations under the agreement; and
- 1.1.2. To take any steps or do anything the Attorney in his or her absolute discretion considers necessary or desirable in order to safeguard and where necessary promote the business interests of the Principal.

2. Ratification

The Principal undertakes to ratify and confirm whatever the Attorney does or purports to do in good faith in the exercise of any power of attorney.

3. Duration

The power of attorney shall continue until the Principal or his executors or trustees revoke this appointment by giving notice in writing to the Attorney.

4. Validity

The Principal declares that a person who deals with the Attorney in good faith may accept a written statement signed by that Attorney to the effect that this power of Attorney has not been revoked as conclusive evidence of that fact.

5. Jurisdiction

This power of attorney (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this agreement or its formation or any act performed or claimed to be performed under it) shall be governed by and construed in accordance with the South African law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Signed as a deed by [NAME of PRINCIPAL] _____
[SIGNATURE OF PRINCIPAL]

in the presence of [NAME of WITNESS] _____
[SIGNATURE OF WITNESS]

[NAME OF WITNESS]

[ADDRESS OF WITNESS]

in the presence of [NAME of WITNESS] _____
[SIGNATURE OF WITNESS]

[NAME OF WITNESS]

[ADDRESS OF WITNESS]