

1917

# Partnership agreement

Nau, Rusk & Swearingen

Carl H. Nau

Charles L. Swearingen

Stephen G. Rusk

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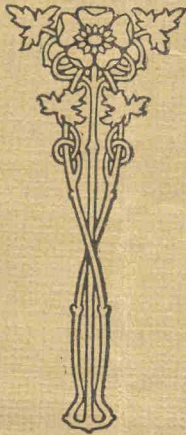
SEP 7 1956

# Partnership Agreement

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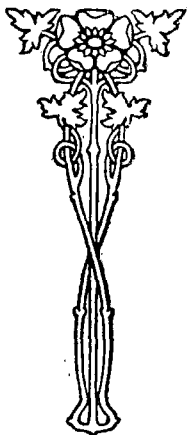
1917

# Partnership Agreement

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## **PARTNERSHIP AGREEMENT**

WHEREAS, Carl H. Nau, Stephen G. Rusk and Charles L. Swearingen have been for many years associated as partners under the firm name and style of NAU, RUSK & SWEARINGEN in the general practice of public accounting and have so conducted their business that a goodwill of great value has accrued thereto, and

WHEREAS, the said partners desire to provide for the indefinite continuance of said business under the aforesaid firm name through survivors and successors to the end that the goodwill thereof may be preserved, and

WHEREAS, the said partners further desire to so organize said business that competent and trusted employees may be taken in either as full partners or on a basis of participation in the profits,

NOW, THEREFORE, THIS MEMORANDUM signed the day and year noted at the end hereof

### **Witnesseth:**

that the said Carl H. Nau, Stephen G. Rusk and Charles L. Swearingen have agreed upon the following

### **Articles of Partnership.**

ARTICLE I. The purpose and business of this partnership shall be the general practice of public accounting and such further activities as may be incidental thereto. The principal office shall be in Cleveland, Ohio, but branch offices may be located elsewhere and the business of the partnership may be conducted wherever the Managing Board may desire.

ARTICLE II. The partnership shall be under the firm name and style of NAU, RUSK AND SWEARINGEN, except as hereinafter provided, and shall be a continuation of the partnership business heretofore conducted by said partners under said name.

ARTICLE III. For convenience in effecting the purposes of these articles the entire partnership interest shall be represented by one hundred goodwill shares of which Carl H. Nau shall receive and hold \_\_\_\_\_ shares, Stephen G. Rusk \_\_\_\_\_ shares and Charles L. Swearingen \_\_\_\_\_ shares, and they and their successors who shall come into the partnership in the manner and upon the terms and conditions hereinafter set forth are designated and shall be known as the goodwill partners.

ARTICLE IV. The goodwill partners shall contribute to the capital of the partnership in proportion to their respective holding of goodwill shares and they shall own and hold title to all of the partnership assets and be liable for its debts in such proportion. At a convenient date following the signing of these articles the books of the business heretofore conducted by NAU, RUSK AND SWEARINGEN shall be balanced and the contributions of the said partners adjusted to meet the requirements of this Article.

ARTICLE V. The management and control of all business of the partnership shall be under the direction of the goodwill partners sitting as a Managing Board. Unless and until the number of goodwill partners exceeds five persons, all of the goodwill partners shall constitute the Managing Board clothed with full authority in the premises, but in the event the number of goodwill partners shall exceed five then an election shall be held annually at which a Managing Board of not less than three nor more than five persons shall be selected from among the goodwill partners by a majority vote of the goodwill shares and such Board so elected shall, until the next annual election and their successors are chosen, manage the business of the partnership. One of the goodwill partners shall be chosen by the Board as a business manager who shall be general manager of the business subject to the orders of the Managing Board. So long as the number of goodwill partners shall not exceed five the selection of the business manager and the management and control of the business of the partnership shall be by a majority vote of goodwill shares, but when the goodwill partners exceed five the members of the Managing Board selected by the goodwill partners shall have one vote each without regard to the number of shares held. When the election of a Managing Board shall become necessary, the annual meeting for that purpose shall be held on

the first Monday occurring more than thirty days after the annual accounting day.

ARTICLE VI. A dissolution of the partnership shall not be worked by the death, incapacity or retirement of any of the partners so long as there shall remain any goodwill partners qualified as such under the terms of these Articles.

ARTICLE VII. In the event of death of any of the goodwill partners the partnership business shall continue under the surviving goodwill partners. No inventory or appraisal of partnership assets shall be required upon the death of a goodwill partner nor during the course of the administration of his estate. The method herein provided for fixing the paying out the value of a deceased partner's interest shall be exclusive and in lieu of any method that now or hereafter may be provided by the Statutes of the State.

The interest of a deceased goodwill partner in the assets and goodwill of the business shall be ascertained and paid to his legal representatives in the following manner, to-wit: His share of the capital of the partnership shall be as the same appears in his capital account upon the books of the partnership at the time of his decease. His share of the goodwill of the business shall be the proportion represented by his goodwill shares, in a sum that shall be the equivalent of one and two-thirds ( $1 \frac{2}{3}$ ) times that portion of the average annual profits which have accrued to the goodwill partners (including profits from both goodwill and non-goodwill shares) for the three fiscal years preceding the last annual accounting preceding the date of the death of such partner.

The sum of money representing such deceased goodwill partner's share in the capital and the goodwill of the business, as above determined, shall be payable to his legal representatives in quarterly installments spread over a period of five years, commencing three (3) months after the decease of such goodwill partner. Deferred payments on account of the sum representing the deceased partner's interest in the capital shall draw interest at six per cent, but deferred payments on account of the sum representing goodwill value shall not draw interest. Therefore in computing interest on deferred payments on account of capital, all quarterly payments herein provided for shall be held to apply on capital until they equal the deceased partner's share of the partnership capital, and subsequent quarterly payments shall be applied upon goodwill.

The legal representatives of a deceased goodwill partner shall share also the profits and losses of the business for the current fiscal year and his share thereof shall be that portion of the full year's profits and losses when determined at the end of the year as the time of such year preceding his decease bears to the whole year. His share of such profits, if any, minus any debit balance and plus any credit balance in his drawing account, shall be paid when ascertained at the end of the current fiscal year. His share of the losses, if any, plus any debit balance and minus any credit balance in his drawing account, shall be deducted from the first payments hereinbefore provided for on account of capital and goodwill.

ARTICLE VIII. Any goodwill partner shall be entitled to withdraw from the partnership on the ground of incapacity, which is defined to include only the following causes, to-wit: insanity, either judicially determined or found by the Managing Board of Partners to exist, a condition of health that shall preclude active participation in all business affairs, or after five years active participation in the affairs of the partnership as a goodwill partner, including the business heretofore conducted by NAU, RUSK AND SWEARINGEN, such condition of health as shall reasonably require an abandonment of active practice as necessary to prolong life. The incapacity of any goodwill partner having been brought to the attention of the Managing Board, the interest of such goodwill partner in the capital, profits and goodwill of the partnership shall be ascertained upon request made by the interested party or his Guardian, which interest shall be determined and made payable in the same amounts and in the same manner as is hereinbefore provided for in the event of the death of a goodwill partner. The Managing Board shall be entitled, in the first instance, to determine whether the condition of health of such goodwill partner be such as to warrant or require his retirement on the ground of incapacity but a certificate of a reputable physician shall be prima facie evidence of the condition of health of the partner desiring to retire.

ARTICLE IX. Any goodwill partner may voluntarily retire from the partnership or dispose of any of his shares therein upon an agreement in writing for the disposition of his shares in the partnership made with the unanimous consent of all the members of the Managing Board. If he cannot reach an agreement with the Managing Board he may retire from the firm in the manner and upon the conditions following, to-wit: He shall notify the Managing Board in writing of his desire and intention

to retire. At the expiration of sixty (60) days thereafter he shall cease to be a member of the partnership and his interest in the capital, goodwill and profits of the partnership shall then be determined and made payable in the same manner as hereinbefore provided in the event of the death of a goodwill partner, except that his proportionate share of the goodwill of the business shall be based upon one and one-half (1 1/2) times that portion of the average annual profits which have accrued to the goodwill partners (including profits from both goodwill and non-goodwill shares) for the three fiscal years preceding the last annual accounting preceding the date of his retirement. But the allowance and value herein fixed for the goodwill interest of such voluntarily retiring partner is made for and in consideration of his agreement that he will not, for a period of five years from and after his retirement from the partnership, engage in the practice of public accounting within the United States east of the Mississippi River and north of the thirty-fifth parallel of latitude. If he shall at any time during said period violate such agreement he shall have no further interest in the goodwill of the business. He shall be entitled in any event to the payments hereinbefore provided to be made on account of his interest in the capital and profits, but his violation of his agreement not to engage in the practice of public accounting in said territory shall terminate his right to receive any further payments thereafter on account of his interest in the goodwill of the partnership.

ARTICLE X. A goodwill partner may be expelled from the partnership for any breach of trust or for any cause that would in law justify his discharge were he an employee of the partnership under contract. He shall be entitled to a hearing before the Managing Board and if discharged he shall be entitled to the interest in the capital and accrued profits to the date of his discharge, hereinbefore fixed in the case of a deceased partner. He shall have no interest in the goodwill of the partnership. His interest in the capital shall be paid to him in four quarterly installments commencing three months after the date of his expulsion and his profits shall be paid to him when ascertained at the end of the fiscal year, but all of such payments shall be subject to adjustment by his drawing account or any losses of the partnership under the terms of this contract properly chargeable to him.

ARTICLE XI. Upon the retirement from the partnership of any goodwill partner either by death, incapacity, voluntary retirement or expulsion the goodwill partners shall have the right



to determine whether it will be expedient to continue the business of the partnership. If the said goodwill partners unanimously agree that the business shall be discontinued and the partnership dissolved, then the managing board shall proceed at once to wind up the business of the partnership, adjust its accounts, dispose of its property and distribute the proceeds in accord with the interest of the parties therein, and in such event the rights secured to deceased, incapacitated, retiring or expelled partners as set forth in Articles VII, VIII, IX and X hereof shall be of no force or effect and the rights of all such partners shall be determined and paid as upon dissolution of the partnership in accord with the provisions of this Article.

ARTICLE XII. Upon any retirement from the partnership, either by death, incapacity, voluntary retirement or expulsion, the goodwill shares of such retiring goodwill partner shall be disposed of as follows:

The Managing Board, with the unanimous consent of the remaining goodwill partners, may sell all or part of said goodwill shares to desirable incoming goodwill partners, from among the employees hereinafter designated as non-goodwill partners holding ten or more non-goodwill shares upon the terms hereinbefore set forth, fixing the value of the goodwill shares of a deceased goodwill partner or upon such other terms as may, by unanimous consent be agreed upon, but in no event, at a value higher than hereinbefore fixed for the goodwill shares of a deceased goodwill partner. Any goodwill shares not so disposed of shall be charged to the personal account of the remaining goodwill partners in the proportion of the goodwill shares held by each and upon the terms at which said shares reverted to the partnership. The capital account of the retiring goodwill partner shall be transferred and credited to each goodwill partner in the proportion of the number of goodwill shares thus acquired by each and all other values involved in the transaction of transferring the goodwill shares of such retiring goodwill partner to the remaining or incoming goodwill partners shall be adjusted through their respective personal accounts.

Upon the purchase of the goodwill shares of any retiring goodwill partner, the partnership or purchasers, shall have the right upon payment of cash, to discount the deferred payments at six per cent per annum.

ARTICLE XIII. The Managing Board is authorized from time to time to contract with trusted and competent employees

for the payment of compensation, in whole or in part, in proportion to definite fractional parts of the net profits of the partnership. Such employees are designated and shall be known in the organization as non-goodwill partners.

For the purpose of providing a uniform method of ascertaining the compensation of such employees there is hereby created what shall be known as non-goodwill shares. Fifteen (15) of such shares shall be held by each of the original goodwill partners, Carl H. Nau, Stephen G. Rusk and Charles L. Swearingen. The number of such shares to be held by designated employees shall be determined by the Managing Board but no more than fifteen (15) non-goodwill shares shall at any time be held by any partner or employee.

The number of outstanding non-goodwill shares shall be added to the one hundred shares which represent the partnership interests of the goodwill partners, and the total of the two kinds of shares shall constitute the denominator of the fraction to be used in determining the division of profits among the partners, and in measuring the compensation of employees holding non-goodwill shares. In the case of goodwill partners the sum of their respective good-will shares and non-goodwill shares shall constitute the numerator of a fraction representing their respective interests in the partnership profits. In the case of employees holding non-goodwill shares their respective shares shall be the numerator of the fraction which shall measure the amount of their compensation. Before any profits are declared there shall be charged to the profits and credited to the goodwill partners six per cent per annum upon the capital of the partnership. For the purpose of determining the amount of employees' compensation the profit account shall be taken without deduction by any part of their compensation which is dependent upon the net profits. For all other purposes employees' compensation based upon profits shall be charged to the expense account. No partner or employee shall at any time have a right to object that his fractional interest is decreased by an increase in the number of outstanding non-goodwill shares.

Employees holding non-goodwill shares shall have no interest in the assets or the goodwill of the partnership nor any voice in the management of the business. Such non-goodwill shares shall evidence only the measure which the employee holding such shares shall be entitled to have applied to the net profits in measuring his compensation. Such non-goodwill shares shall not be

subject to sale or assignment and upon the death of any partner or employee holding such shares, or upon the retirement from the firm of a partner holding such shares, or termination of the contract of employment of an employee holding such shares, then and in every such case such non-goodwill shares shall be cancelled and thereafter cease to be used as a measure of compensation of employees or as a measure of the interest of partners in the profits.

ARTICLE XIV. The contract of employment of any employee holding non-goodwill shares, unless in writing and specific, shall be treated as indefinite as to time, with the right, however, in the Managing Board to terminate such employment upon three months' notice and with the further right in the Managing Board to terminate such employment at any time, or for any cause, that would in law be sufficient to warrant the discharge of an employee. Before discharge an employee holding non-goodwill shares shall be entitled to a hearing before the Managing Board but the finding and judgment of such Managing Board by a majority thereof shall be final and conclusive.

In the event of termination of employment by discharge, or otherwise, an employee holding non-goodwill shares shall, except as hereinafter set forth, be entitled to receive his compensation up to the time of the termination of his employment based upon his proportionate share of the net profits in the partnership and if such termination accrues during a fiscal year his compensation shall be measured by that portion of the annual net profits, when determined at the end of the year, as the time of such year preceding the date of the termination of employment bears to the whole year.

ARTICLE XV. From the compensation of every employee holding non-goodwill shares there shall be retained annually by the partnership, for the period of five years, ten per cent of the amount of his compensation that was based upon partnership profits. Upon the sum so retained such employee shall be paid annually six per cent.

In the event of his death, or in the event of his discharge for reasons other than cause that would in law be sufficient to warrant the discharge of an employee, such sums so retained shall be paid to him or to his legal representatives within thirty days.

In the event of his resignation said accumulated sums shall be paid to him in three equal annual installments due in one,

two and three years from the date of his resignation, provided, however, that he shall not thereafter engage in the practice of public accounting, either in his own name, in partnership with others or as an employee of a public accountant within the United States, east of the Mississippi River and north of the thirty-fifth parallel of latitude, and if he violates this provision, he shall forfeit all right to the sums so retained and the amount thereof credited upon the books to him shall be transferred to Profit Account.

In the event of his discharge for cause that would in law be sufficient to warrant the discharge of an employee he shall forfeit all right to the sums so retained and the amount thereof credited on the books to him shall be transferred to Profit Account.

In the event of an employee holding non-goodwill shares being discharged for reasons other than termination of his employment by dissolution of partnership, or other than for cause that would in law be sufficient to warrant the discharge, or other than a termination of his contract of employment by the limitation of time, he shall, in addition to his share in the profits, be paid a sum equal to one-third of his average annual compensation based upon the average annual profits during the three fiscal years preceding the date of his discharge.

ARTICLE XVI. The fiscal year of the partnership shall commence on January 1st, until some other date shall hereafter be fixed by the Managing Board. The net profits for the preceding year shall be ascertained immediately at the close thereof and distributed among the partners and employees holding non-goodwill shares in proportion to their respective shares.

The Managing Board shall have a right to levy assessments against the goodwill partners and increase the capital in proportion to the number of goodwill shares held by each, payable only out of accrued profits unless such assessments in excess of profits shall be unanimously agreed to by all of the goodwill partners.

The goodwill partners and the employees holding non-goodwill shares shall have the right at any reasonable time to examine the books of the partnership but such right shall be exercised by them personally and not by any agent or attorney. The representatives of any deceased partner or incapacitated partner may examine the books at any reasonable time and may do so by an agent or attorney, provided such agent or attorney shall not be engaged in any business in competition with this partner-

ship. The accounts of the partnership shall be balanced at the end of each fiscal year and unless challenged within sixty (60) days after the balances shall be entered, the same shall constitute a stated account conclusive between all of the goodwill partners and employees holding non-goodwill shares except for manifest errors and fraudulent entries.

ARTICLE XVII. The Managing Board may at any time, by unanimous consent of the goodwill partners, change the partnership name, otherwise the name shall not be changed on account of the decease or retirement of any partner whose name appears as a part of the firm name. If, however, the partnership shall at any time become insolvent, which shall be held to include not only an excess of liability over assets but also inability to pay or extend partnership obligations, then any partner who shall have retired from the firm shall have the right to require his name to be dropped from the firm name.

ARTICLE XVIII. This contract shall become effective from the date hereof except that the respective shares of Carl H. Nau, Stephen G. Rusk and Charles L. Swearingen in the partnership assets and profits and losses accruing prior to January 1st, 1918, shall be as defined in the preceding partnership agreement between said parties. The good-will value of said parties in the partnership shall be determined and made payable as herein provided.

IN WITNESS WHEREOF the parties have hereunto signed their names this                      day of                      1917. Any good-will partners hereafter coming into the partnership, and any employees acquiring the right to participate in profits, as herein set forth, may be required to sign this memorandum or a written or printed copy thereof.