
Practice Continuation Agreements:

A Practice Survival Kit

Sample One-on-One Agreement

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, between XYZ & COMPANY, a _____ [general partnership] [professional corporation] (hereinafter referred to as XYZ) and JOHN DOE (d/b/a John Doe, CPA, in _____, _____) (hereinafter referred to as *Doe*).

W I T N E S S E T H :

WHEREAS, XYZ and Doe are each engaged in the practice of public accounting with their principal offices of business both being located in _____; and

WHEREAS, the parties hereto each desire to establish an agreement so that in the event of the total temporary disability of Doe, XYZ 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 tax matters, reviews, collections, or supervision of a staff capable of handling their own routine matters, or in the event of the death or total disability of Doe or his retirement from the practice of public accounting, XYZ shall acquire the accounting practice of Doe and Doe shall transfer the same to XYZ.

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. Definitions

The terms defined in this section 1 (unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this section 1.

1.1 “Total Temporary Disability” of Doe shall mean when he is totally disabled because of ill health, physical or mental disability, or for having failed to perform his duties for his accounting clients for more than _____ (____) days but fewer than _____ (____) days, unless such condition shall be certified by Doe's physician to be a condition that in medical probability will be totally disabling for more than _____ (____) days from the outset.

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1.2 “Total Disability of Doe” shall mean when he is permanently disabled because of ill health, physical or mental disability, or having failed to perform his duties for his accounting clients for more than _____ (____) days.

1.3 “Retirement of Doe” shall mean a date specified in his written notice to XYZ of his retirement from the practice of public accounting; such retirement date shall not be more than _____ (____) days nor fewer than _____ (____) days from the receipt of such notice by XYZ.

1.4 “Effective Date” shall mean the earliest of the following: (1) the date of Doe's death, (2) the date of total temporary disability, (3) the date of total disability, or (4) the date of retirement.

1.5 “Return Date” shall mean the date when Doe is no longer totally temporarily disabled, except that such term shall not include the period when Doe's total temporary disability exceeds _____ (____) days.

1.6 “Doe” shall mean John Doe, d/b/a John Doe, CPA, except that in the event of the death, total temporary disability, or total disability of Doe, the term shall be deemed to mean the heirs, administrators, or legal representatives of Doe as legal circumstances require.

Section 2. Transfer of Accounting Practice

2.1 Accounting Services to Be Provided. XYZ will commence within _____ (____) working days after receipt of written notice of the Effective Date to provide all public accounting services of any nature whatsoever requested by Doe or the clients whom Doe served on the Effective Date, provided, however, that XYZ shall not be obligated to undertake any request or to serve any client of Doe if such action would violate the professional code of ethics of the State Board of Public Accounting, Society of Certified Public Accountants, or American Institute of Certified Public Accountants or adversely affect the professional reputation of XYZ. In the event any client of Doe refuses to accept the services of XYZ, XYZ will reasonably attempt to see that such client is served by other public accountants.

2.2 Charge for Services. Doe shall guarantee to XYZ the receipt of the normal hourly or per diem charge of the staff person or individual furnished by XYZ during the total temporary disability of Doe. XYZ shall charge Doe's clients the regular and usual fees of Doe that are in effect at the time such services are performed. Any differences shall be adjusted accordingly.

XYZ shall charge Doe's clients the regular and usual fees of XYZ for services performed after the acquisition by XYZ of Doe's accounting practice.

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2.3 Delivery of Records and Files. Within a reasonable time after the Effective Date, Doe shall transfer and deliver to XYZ all of his files and other records pertaining to his clients who accept the services of XYZ.

2.4 Payment to Doe. In the event of Doe's death, total disability, or retirement, for the period ending _____ (____) years after the Effective Date, XYZ shall pay Doe _____ percent (____%) of all fees (excluding amounts reimbursed by clients for expenses paid on their behalf by XYZ) collected by it during such period from those clients whom Doe served on the Effective Date, but in no event less than an amount equivalent to the total gross fees collected by Doe during the one (1) year preceding his death, total disability, or retirement. Such payment to Doe shall be made within _____ (____) days from the end of the month during which such fees are received by XYZ. The accounting records of XYZ pertaining to Doe's clients may be inspected during normal business hours at the principal offices of XYZ by Doe or his authorized representative at any time during the _____ (____) year period described above.

2.5 Work in Process. In the event XYZ 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 XYZ, XYZ shall pay to Doe 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 XYZ for collection services.

2.6 Accounts Receivable. Doe shall retain all of the accounts receivable of his practice that are outstanding on the Effective Date. XYZ will, when requested by Doe, render effective assistance in the collection of such accounts. XYZ shall be entitled to retain _____ percent (____%) of all accounts receivable collected by XYZ for collection services.

2.7 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 XYZ 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 Doe during the _____ (____) year prior to his death, total disability, or retirement.

2.8 Notification. Doe agrees to notify all of his clients of this agreement within _____ (____) days of the date of its execution.

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Return of Accounting Practice. Within _____ (____) working days after Doe notifies XYZ in writing of his Return Date, XYZ shall make available for transfer and return to Doe all of the files and other records pertaining to Doe's clients who accepted the services of XYZ during Doe's total temporary disability.

Work in Progress. In the event Doe completes any project that was in process at the Return Date and the work done prior to the Return Date is billed to the client by Doe, Doe shall pay to XYZ its 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 Return Date to the total work involved, less _____ percent (____%) to be retained by Doe for collection services.

Section 3. Assumption of Lease Obligation

3.1 Assumption of Leases. Immediately (within _____ [____] days) after the Effective Date (except in the event of Doe's total temporary disability), XYZ shall assume Doe's rental obligations under any and all equipment and office space leases in existence on the Effective Date, provided, however, that

- i. XYZ shall not be obligated to assume any lease that has a remaining term of more than _____ (____) months from the Effective Date;
- ii. XYZ does not hereby agree to assume or become obligated for any liability that Doe may have incurred under any lease except for the periodic rental charges after the Effective Date;
- iii. XYZ shall not be obligated to assume any lease of Doe unless the lessor gives its written consent within _____ (____) days after XYZ's request; and
- iv. If Doe has more than one lease, XYZ 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 \$_____.

3.2 Assignment. If XYZ requests, Doe shall execute an appropriate assignment of lease assumed by XYZ pursuant to this agreement.

3.3 Removal From Premises. Within a reasonable time after XYZ's assumption of any office lease, Doe will remove all his personal belongings from such leased premises.

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Section 4. Purchase of Furniture and Equipment

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

Section 5. Noncompetition by Doe

Except upon return to work following total temporary disability, Doe agrees that he will not provide public accounting service of any nature as employer, employee, principal, agent, shareholder, or otherwise, directly or indirectly, for any of his clients who accept the services of XYZ (except during total temporary disability of Doe), at any time during the period beginning with the Effective Date and ending on the date _____ (____) years after the Effective Date. If Doe does provide public accounting services in violation hereof to Doe's clients who accept XYZ's services, XYZ shall be entitled to recover damages and to obtain an injunction by any competent court of equity enjoining and restraining him and each and every other person concerned thereby from continuance of providing public accounting services to such clients or other act in aid of a rival concern providing such public accounting services to such clients in violation hereof.

Section 6. Noncompetition by XYZ

XYZ agrees that for a period of _____ (____) years following XYZ's furnishing services to Doe hereunder, it will not accept employment or perform public accounting services for any client of Doe's who accepts XYZ's services during Doe's temporary total disability unless XYZ purchases Doe's practice from Doe.

Section 7. Indemnification

Doe covenants and agrees that at all times hereafter he will indemnify and hold harmless XYZ against any and all liabilities, losses, damages, costs, or expenses of whatever kind or nature, including attorney's fees, that XYZ may sustain or incur by reason of services rendered by Doe 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 Doe prior to or after the Effective Date.

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Section 8. Disclaimer

It is agreed that this Agreement does not constitute Doe as the agent, employee, or legal representative of XYZ for any purpose whatsoever. Doe 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 XYZ. Nothing in this Agreement is intended so as to give to Doe any rights as a partner in the business of XYZ or to entitle him to control in any manner the conduct of such business.

Section 9. Arbitration

The parties agree that any dispute or claim concerning this Agreement, including whether such dispute or claim is arbitratable, 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 State General Arbitration Act or other applicable statute of the state of _____ in effect at the time a demand for arbitration is made. 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 assigns. 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.

Section 10. Miscellaneous

10.1 Governing Law. This Agreement shall be governed and construed and enforced in accordance with the laws of the state of _____.

10.2 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 shall not be assignable by either party hereto without the written consent of each party.

10.3 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.

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10.4 Captions. The captions contained in this Agreement are for convenience of reference only and do not form a part of 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.

XYZ & COMPANY

BY: _____

JOHN DOE, Individually and d/b/a
JOHN DOE, CPA