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# Practice Continuation Agreements:

## A Practice Survival Kit

### Sample Agreements to Buy and Sell

The illustrative material in this appendix has been included for informational purposes only. Practitioners who feel that any of this material would be useful in their own agreements are advised to consult legal counsel for specific advice on the appropriateness and effect of such use.

#### Exhibit 1: Agreement to Buy and Sell

This agreement is made in \_\_\_\_\_ County, as of, \_\_\_\_\_, 20\_\_\_\_, by and between JANE DOE, individually in her capacity as survivor of the marriage of John Doe, Deceased, and JANE DOE, and in her capacity as independent executrix of the estate of John Doe, deceased, hereinafter referred to as **Seller**, and XYZ & COMPANY, a \_\_\_\_\_ [general partnership] [professional corporation], hereinafter referred to as **Buyer**.

The parties hereby agree as follows.

#### I. RECITALS

Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the following assets of the business known as John Doe, CPA, a sole proprietorship:

- A. All furniture, fixtures, and filing cabinets used in the business of John Doe, CPA, more particularly described in Exhibit A attached hereto and incorporated by reference herein for all purposes;
- B. All client lists of the audit clients of John Doe, CPA, more particularly described in Exhibit B attached hereto and incorporated by reference herein for all purposes;
- C. All client lists of the general tax clients of John Doe, CPA, more particularly described in Exhibit C attached hereto and incorporated by reference herein for all purposes.

#### II. WARRANTY OF OWNERSHIP

Seller represents and warrants to Buyer that on the date hereof, Seller is the owner and holder of all assets described herein.

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### III. DATE OF SALE AND CLOSING

The closing date of the sale shall be within \_\_\_\_\_ (\_\_\_\_) working days after the execution of this contract by all parties hereto.

### IV. PAYMENT OF PAYABLES BY SELLER

Seller agrees to pay promptly after closing all accounts payable of Seller currently due and unpaid.

### V. HOLD HARMLESS

Seller shall hold Buyer harmless from any and all obligations, contracts, causes of action and any and all other obligations that might accrue to or against Buyer for any actions taken by Seller or by John Doe, CPA, occurring before the date of closing hereunder. This indemnification and hold harmless agreement shall include the reasonable cost of representation of Buyer, or on Buyer's behalf, in any and all court actions that may occur or accrue relating to any actions of Seller or actions of John Doe, CPA, occurring before the date of closing hereunder. Buyer shall assist and lend its best efforts to and make available to Seller or her agent, or both, any records relating to the business of John Doe, CPA, that are sold to Buyer.

### VI. FREE OF LIENS

Seller agrees, contracts, and covenants to deliver any and all assets the subject of this contract of sale free and clear of any and all liens, except those expressly assumed by Buyer.

### VII. ASSIGNMENT AND SURVIVABILITY OF CONTRACT

It is expressly agreed by the parties hereto that Buyer may assign, transfer, and otherwise convey any and all interests that it has in and to its rights under this contract to a party mutually agreeable to the parties, providing that the assignee is a duly licensed certified public accountant authorized to practice in the state of \_\_\_\_\_. It is further agreed that this contract shall bind the successors, assigns, and heirs of both parties hereto.

### VIII. PURCHASE PRICE

Buyer agrees to pay to Seller as the purchase price for the furniture, fixtures, and client lists purchased hereunder a total sum calculated as follows:

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- A. \_\_\_\_\_ dollars (\$\_\_\_\_\_) payable in cash at closing for the furniture and fixtures described in Exhibit A hereof; plus
- B. A dollar sum equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross fees collected by John Doe, CPA, during the calendar year 20XX from all audit clients of John Doe, CPA, enumerated in Exhibit B attached hereto and incorporated by reference herein for all purposes, payable within one hundred and twenty (120) months after date of closing hereunder; plus
- C. A dollar sum equal to \_\_\_\_\_ percent (\_\_\_\_%) of the gross fees collected by John Doe, CPA, during the calendar year 20\_\_\_\_ from all general tax clients of John Doe, CPA, enumerated in Exhibit C attached hereto and incorporated by reference herein for all purposes, payable within \_\_\_\_\_ months after the date of closing hereunder.

### IX. PAYMENT OF PURCHASE PRICE

Buyer agrees to pay to Seller, at date of closing, the cash sum of \$\_\_\_\_\_ representing the portion of the purchase price allocated to the furniture and fixtures described above.

The portions of the total purchase price calculated pursuant to the foregoing Paragraphs VIII B and C shall be allocated as to each enumerated client such that Buyer and Seller are able to determine the exact amount of the purchase price allocated to each client of John Doe, CPA, based on 20XX receipts from each client and the proper multiplication factor. Buyer agrees to pay to Seller in \_\_\_\_\_ County, \_\_\_\_\_, a sum equal to \_\_\_\_\_ percent (\_\_\_\_%) of all fees collected from all of the clients of John Doe, CPA, enumerated in Exhibits B and C hereof until such time as Buyer has paid to Seller an amount equal to the respective \_\_\_\_\_ percent (\_\_\_\_%) or \_\_\_\_\_ percent (\_\_\_\_%) of gross billings charged to and collected from each respective client of John Doe, CPA, in calendar year 20\_\_\_\_. Buyer agrees that all payments contemplated by the foregoing paragraph shall be fully paid to Seller in cash within \_\_\_\_\_ (\_\_\_\_) months after the date of closing hereunder.

In the event that Buyer has made all contemplated monthly installment payments to Seller during the contract period, and a balance remains due and owing to Seller representing a portion of the purchase price allocated to any client, in exhibits B and C, then at the end of \_\_\_\_\_ (\_\_\_\_) months after the date of closing hereunder, the balance due and owing to Seller with respect to such client will be paid by Buyer to Seller in cash.

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Buyer agrees to pay to Seller on or before the 15th day of each month during the contract period \_\_\_\_\_ percent (\_\_\_\_%) of all monthly billings to the clients of John Doe, CPA, referenced in Exhibits B and C hereof, that were collected during the preceding calendar month. The monthly payments contemplated hereunder shall begin on \_\_\_\_\_, 20\_\_\_\_, for any billings by buyer to the respective clients of John Doe, CPA, that were collected during the month of \_\_\_\_\_, 20XX. All monthly payments thereafter must be made on or before the 15th day of each respective month of the contract period. Buyer is obligated to make the \_\_\_\_\_ percent (\_\_\_\_%) monthly payments herein above contemplated only in reference to the accounts receivable from the clients listed in exhibits B and C hereof that are actually collected during each respective month of the contract period. Buyer's payments made hereunder with respect to each listed client of John Doe, CPA, shall further be limited to the specific dollars amount of the purchase price allocated to each respective client in Exhibits B and C hereof.

### **X. ACCOUNTS RECEIVABLE**

Seller specifically retains all accounts receivable of John Doe, CPA, and none of said accounts receivable are being sold to Buyer pursuant to the terms of this contract.

### **XI. RECORDS**

Seller hereby agrees to convey to Buyer title to all records, documents, and papers of John Doe, CPA, relating to any other business of John Doe, CPA. In any case, the party receiving or retaining such records shall make them available to the other during the period of \_\_\_\_\_ (\_\_\_\_) years following the closing date hereof in the event said documents are necessary for any legitimate business purpose of the other party. Buyer shall promptly forward to Seller all correspondence, mail, payments, and documents received by Buyer after the date of closing that relate to the operation of the business sold hereunder occurring prior to date of closing, except that Buyer may retain any letters and documents relating to the enumerated clients in Exhibits B and C hereof or relating to transactions with such clients occurring after the date of closing hereunder. Each party shall promptly forward to the other party all mail received of the type that the respective party is entitled to receive and retain hereunder.

### **XII. EXPENSES OF THIS AGREEMENT**

Buyer and Seller each agree that each shall pay their own expenses incident to the preparation and carrying out of this agreement, whether or not the transactions contemplated hereby are consummated.

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### XIII. BROKERS FEES AND COMMISSIONS

Seller agrees to pay to \_\_\_\_\_, CPA, all fees incurred in connection with this sale and agrees to hold Buyer harmless from said expenses.

### XIV. ATTRITION

The parties hereby contemplate that the payments required from Buyer hereunder are to be paid entirely from fees generated from the customers enumerated in Exhibits B and C hereof after \_\_\_\_\_, 20\_\_\_\_. In the event that any client enumerated in Exhibits B and C hereof ceases to do business with Buyer, for any reason, after the date of closing hereunder, Buyer's obligations to pay to Seller the balance of the purchase price attributable to such client shall be extinguished as of that time, and Buyer shall only be obligated to remit to Seller the \_\_\_\_\_ percent (\_\_\_\_%) of gross payments received from such client up to the time said client ceases to do business with Buyer.

Buyer covenants and agrees that it will use its best efforts to retain the clients of John Doe, CPA, enumerated in Exhibits B and C hereof and will not intentionally cease to do business with any of the enumerated clients in Exhibits B and C solely for the purpose of decreasing the amount payable to Seller pursuant to the terms of this contract.

### XV. RECORDS TO BE KEPT BY BUYER

Buyer agrees to set up and maintain separate client ledgers on each of the clients of John Doe, CPA, enumerated in Exhibits B and C hereof, separate and apart from any other client records of Buyer, and Buyer agrees to make such ledgers, billing records, and receipt records available to Seller or Seller's agents upon reasonable notice, during normal business hours, for the purpose of allowing Seller to document that Buyer is paying to Seller, on a monthly basis, \_\_\_\_\_ percent (\_\_\_\_%) of all billings actually received from each of the clients enumerated in Exhibits B and C hereof during the term of this agreement.

### XVI. NOTICES

Any notices to be given hereunder shall be given in writing and delivered personally or sent by registered or certified mail, postage prepaid, as follows:

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If to Buyer, addressed to XYZ & COMPANY, Certified Public Accountants, Suite \_\_\_\_\_, ABC Building, \_\_\_\_\_, \_\_\_\_\_.

If to Seller, addressed to Jane Doe, 1234 Any Street, \_\_\_\_\_, \_\_\_\_\_, with a copy to \_\_\_\_\_, Attorney at Law, ABC Building, \_\_\_\_\_, \_\_\_\_\_.

### XVII. GOVERNING LAW AND ENTIRE AGREEMENT

This agreement contains the entire agreement between the parties hereto with respect to the transaction contemplated herein. This agreement shall be governed by and construed in accordance with the laws of the state of \_\_\_\_\_, and is performable in \_\_\_\_\_ County, \_\_\_\_\_.

### XVIII. WARRANT

Buyer warrants to Seller that XYZ & COMPANY and its [partners] [shareholders] are duly licensed to practice in the state of \_\_\_\_\_.

### XIX. ENFORCEMENT OF CONTRACT

XYZ & COMPANY hereby agrees to be liable to Seller for performance of all obligations of Buyer pursuant to this buy/sell agreement.

IN WITNESS WHEREOF, the parties hereto have signed this agreement in \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

SELLER:

\_\_\_\_\_  
JANE DOE, as community survivor of the marriage of John Doe, Deceased, and JANE DOE, as Independent Executrix of the Estate of John Doe, Deceased

BUYER:

\_\_\_\_\_  
XYZ & COMPANY

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### Exhibit 2: Agreement to Buy and Sell Client List Only

This agreement is made in \_\_\_\_\_, County, as of, \_\_\_\_\_, 20\_\_\_\_, by and between JANE DOE and RICHARD ROE, Independent Co-Executors of the Estate of JOHN DOE, Deceased (the **Estate**), hereinafter referred to as **Seller**, and XYZ, PLLC, a professional limited liability company, hereinafter referred to as **Buyer**. Seller and Buyer are sometimes hereinafter referred to individually as a **Party** and collectively as the **Parties**.

The Parties hereby agree as follows.

#### I. RECITALS

Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the Estate's interest in and to the following assets of the business known as JOHN DOE, CPA and JOHN DOE, P.C. (all hereinafter referred to as the **Businesses**) to wit: all client lists of the general tax and business clients of the Businesses, more particularly described in Exhibit A attached hereto and incorporated by reference herein for all purposes (the **Purchased Assets**).

#### II. WARRANTY OF OWNER

Seller represents and warrants to Buyer that on the date hereof Seller is the owner and holder of the Purchased Assets.

#### III. DATE OF SALE AND CLOSING

The consummation of the purchase and sale contemplated hereby (the **Closing**) shall be on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### IV. LIABILITIES OF SELLER

Unless otherwise assumed by Buyer, Seller agrees to pay all obligations of Seller due and unpaid as of Closing. Notwithstanding the foregoing, Buyer shall assume the rental obligations for the month of \_\_\_\_\_, 20\_\_\_\_, an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_), under that certain lease by and between \_\_\_\_\_ for the premises commonly known as \_\_\_\_\_ (the **Assumed Rental**).

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### V. HOLD HARMLESS

Seller agrees to indemnify and hold the Buyer harmless of and from any and all losses, damages, claims, costs or expenses (including all court costs and attorneys' fees reasonably and actually incurred by Buyer) arising from or in connection with any act occurring prior to the Closing relating to the Purchased Assets. Buyer agrees to indemnify and hold the Seller harmless of and from any and all losses, damages, claims, costs or expenses (including all court costs and attorneys' fees reasonably and actually incurred by Buyer) arising from or in connection with any act occurring subsequent to the Closing relating to the Purchased Assets. The obligations imposed by this section shall survive for a period of \_\_\_\_\_ (\_\_\_\_) years after Closing.

### VI. FREE OF LIENS

Seller warrants that, as of Closing, the Purchased Assets shall be free and clear of any and all liens, except those expressly assumed by Buyer.

### VII. ASSIGNMENT AND SURVIVABILITY OF AGREEMENT

Buyer shall not assign, transfer, or otherwise convey any and all interests under this Agreement without Seller's prior written consent. Any such permitted transferee must expressly assume Buyer's duties and obligations hereunder. Seller may assign Seller's rights and obligations under this Agreement to the devisees named in JOHN DOE's will.

### VIII. PURCHASE PRICE

Buyer agrees to pay to Seller as the purchase price for the Purchased Assets a sum equal to \_\_\_\_\_ percent (\_\_\_\_%) of gross fees collected by Buyer attributable to the Purchased Assets for each of the \_\_\_\_\_ (\_\_\_\_) years after Closing (the **Purchase Price**), which shall be paid to Seller as hereinafter provided.

### IX. PAYMENT OF PURCHASE PRICE

Buyer shall advance the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), toward the Purchase Price at the Closing (the **Down Payment**). The Down Payment shall be applied toward the initial \_\_\_\_\_ dollars (\$\_\_\_\_\_), due Seller under the provisions of Article VIII. Thereafter, Buyer shall pay Seller the remaining sums due under Article VIII, as follows: On the twentieth (20th)



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day of each month, commencing on the twentieth (20th) day of the first month following Closing and continuing thereafter on the twentieth (20th) day of each successive month for a period of \_\_\_\_\_ (\_\_\_\_) years after Closing, Buyer shall pay Seller \_\_\_\_\_ percent (\_\_\_\_%) of gross fees collected by Buyer that are attributable to the Purchased Assets for the immediately preceding month.

### X. ASSETS OF SELLER

Except for the Purchased Assets, Seller specifically retains all assets of the Businesses, including, but not limited to, cash, fixed assets (including software, computers, equipment, and furniture), and accounts receivable, and none of said assets are being sold to Buyer pursuant to the terms of this Agreement.

### XI. RECORDS

At Closing, Seller shall deliver to Buyer all records, documents, and papers in Seller's possession related to the Purchased Assets. The Party receiving or retaining such records shall make them reasonably available to the other Party during the \_\_\_\_\_ (\_\_\_\_) year period following Closing in the event said documents are necessary or desirable for any legitimate business purpose of the other Party. Buyer shall promptly forward to Seller all correspondence, mail, payments, and documents received by Buyer after Closing relating to or concerning the Businesses or the Purchased Assets prior to Closing provided, however, that Buyer may retain copies of any letters and documents relating to the Purchased Assets.

### XII. EXPENSES OF THIS AGREEMENT

Buyer and Seller agree that each shall pay their own expenses incurred with respect to the preparation and execution of this Agreement.

### XIII. ATTRITION

The parties hereby contemplate that the payments required from Buyer hereunder are to be paid entirely from fees attributable to and collected from the clients listed in Exhibit A. In the event that any client listed in Exhibit A ceases to do business with Buyer, for any reason after Closing, Buyer's obligations with respect to such client shall be only to remit to Seller \_\_\_\_\_ percent (\_\_\_\_%) of gross payments received from such client until the date said client ceased to do business with

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Buyer provided, however, that, in the event any principal owner(s) of any client listed in Exhibit A uses the services of Buyer either personally or with regard to a new business venture, such substituted client shall be included for the remainder of the term of the Agreement for all purposes and shall be automatically added to Exhibit A without further action of the Parties.

Buyer covenants and agrees that Buyer shall use its best efforts to retain the clients listed in Exhibit A and shall not intentionally cease to do business with any of such clients for the purpose of decreasing the amount payable to Seller pursuant to the terms of this Agreement.

### XIV. RECORDS TO BE KEPT BY BUYER

Buyer agrees to set up and maintain separate client ledger on each of the clients enumerated in Exhibit A and shall keep such ledgers separate and apart from any other client records of Buyer. Buyer agrees to make such ledgers (which shall include billing records and receipt records) available to Seller or Seller's agents upon reasonable notice (such notice shall be deemed to be reasonable if given at least three days prior to the date of any proposed inspection), during Buyer's normal business hours, for the purpose of allowing Seller to verify that Buyer is paying to Seller, on a monthly basis, \_\_\_\_\_ percent (\_\_\_\_%) of all gross fees actually received by Buyer attributable to the Purchased Assets.

### XV. NOTICES

Any notice to be given hereunder shall be given in writing and delivered personally or sent by registered or certified mail, postage prepaid, as follows:

If to Buyer, addressed to the attention of \_\_\_\_\_, CPA, XYZ, PLLC, Certified Public Accountants, [address].

If to Seller, addressed to JANE DOE, [address], with a copy to RICHARD ROE, [address].

### XVI. GOVERNING LAW AND ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties with respect to the transaction contemplated herein. This Agreement shall be governed by and construed in accordance with the laws of the state of \_\_\_\_\_ and is performable in \_\_\_\_\_ County, \_\_\_\_\_.

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### XVII. WARRANTY

Buyer warrants to Seller that XYZ, PLLC, and its CPA members are duly licensed by the State Board of Public Accountancy to practice in the state of \_\_\_\_\_. Buyer further warrants that Buyer has all requisite power and authority to enter into this Agreement. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action by the Buyer, and this Agreement has been duly executed and delivered and is the legal, valid, and binding agreement of the Buyer, enforceable in accordance with its terms. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will result in the breach or violation of any term or provision of, or constitute a default under, any agreement, mortgage, deed of trust, note, bond, license, lease, indenture, instrument, order, writ, injunction, decree, statute, law, rule, or regulation to which Buyer is a party or that is otherwise applicable to Buyer. There is currently no pending, and Buyer is not aware of any threatened, lawsuits or administrative proceedings against Buyer that would enjoin the consummation of the transactions contemplated hereby. Buyer has conducted and completed Buyer's own due diligence review and is relying solely on such review, investigations, or judgments in determining to purchase the Purchased Assets. The purchase price contemplated by this Agreement is fair and reasonable. Buyer (1) has information regarding the Purchased Assets and the transactions contemplated hereby sufficient to enable Buyer to make a fully informed decision regarding such transaction; (2) is aware of the accounting industry in \_\_\_\_\_; (3) is aware of the competition; (4) is aware of the historical financial results of the Businesses; and (5) is aware of the cash flow required to make the Businesses operate.

### XVIII. ENFORCEMENT OF CONTRACT

XYZ, PLLC, hereby agrees to be liable to Seller for performance of all obligations to Buyer pursuant to this buy/sell Agreement.

### XIX. MISCELLANEOUS

1. This Agreement shall not be strictly construed for or against any Party.
2. This Agreement shall be construed in accordance with the laws of the state of \_\_\_\_\_. Venue for any action thereon shall lie in \_\_\_\_\_ County.
3. The Parties agree that this Agreement contains the entire agreement between the Parties and supersedes any and all prior written or oral agreements, contracts, arrangements, or other understandings between the Parties relating to the subject matter hereof, and that any such prior agreements, contracts, arrangements, or other understandings are null, void, and of no

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further force and effect. No oral understanding, statements, or promises contrary to the terms of this Agreement exist or have been made. This Agreement can be amended only by written instrument signed by all Parties hereto.

4. If, as a result of a finding by a court of competent jurisdiction of a Party's breaching this Agreement, another Party employs an attorney or attorneys to enforce such Party's rights under this Agreement, then the breaching party shall pay the other Party the reasonable attorneys fees and costs incurred to enforce this Agreement.

5. If any provision of this Agreement is held to be illegal, invalid, void, or unenforceable under present and future laws effective during the terms of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

6. The undersigned represent and warrant each to the other that they have read and hereby execute this Agreement voluntarily and upon their own judgment and solely for the consideration herein. The undersigned further acknowledge and agree that they have not relied upon the representations of any other party except as set forth herein, upon entering into this Agreement.

7. This agreement may be executed in multiple counterparts, all of which shall constitute one and the same document, and facsimile signatures shall have the same force and effect just as if an original of this Agreement had been executed and delivered.

Executed by the Parties this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SELLER:

\_\_\_\_\_  
JANE DOE, as Co-Independent  
Executor of the Estate of JOHN DOE, Deceased

\_\_\_\_\_  
RICHARD ROE, as Co-Independent  
Executor of the Estate of JOHN DOE, Deceased

BUYER:

\_\_\_\_\_  
XYZ, PLLC  
BY: \_\_\_\_\_, CPA, Director