**BACKUP PRACTITIONER AGREEMENT**

This Backup Practitioner Agreement (“Agreement”) is made as of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**(the “Effective Date”), by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Practitioner”)

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Backup”),

sometimes referred to collectively as “the Parties.”

WHEREAS, Backup is an independent <<patent practitioner>>, specializing in the field of <<patent prosecution>>;

WHEREAS, Practitioner is a professional <<patent Practitioner>> that provides patent drafting and prosecution services to its clients

WHEREAS, Practitioner provides its services under direct fee agreements with clients or indirectly with clients through foreign associates;

WHEREAS, Practitioner, as a means of mitigating harm to the client in the event Practitioner becomes unable to service its clients, desires to engage Backup as a backup practitioner in accordance with the terms and conditions of this Agreement; and

WHEREAS, Backup is agreeable to such engagement.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

|  |  |
| --- | --- |
| **1.** | **Duties of the Parties** |

* 1. Duties of the Practitioner.
     1. Engagement Letter
        1. Notification of Existing Clients
     2. Docket Maintenance:
     3. Practitioner is responsible to provide up-to-date information relating a) upcoming tasks, b) client, and c) client contact information to Backup. Client contact information includes at least an email address of the relevant client contact.  
        Alternative 1: Practitioner provides Backup access credentials[[1]](#footnote-1) to its docketing system to be used by Backup in case Practitioner becomes unavailable.  
        Alternative 2: Practitioner provides Backup a weekly updated spreadsheet which associates a) upcoming tasks, b) client, and c) client contact information.
     4. Regular contact with Backup: The Practitioner will reach out to Backup once every week. The Practitioner will provide Backup with contact information (phone and/or email) of at least two persons (e.g. relatives) who will likely know about any unavailability of Practitioner.
     5. Designation of Secondary Contact
  2. Duties of the Backup.
     1. Maintain Good Standing. The Backup shall follow the rules State of \_\_\_\_\_\_’s Attorney Registration and Disciplinary Commission and maintain their status of good standing.
     2. Obligation to Update. Upon Practitioner’s request from time to time, Backup shall provide certificates or other proof of continued compliance with Sections 1.2.1 above, and shall provide Practitioner written notice of any change in such status, not less than 30 days prior to the effective date of such change.
     3. Sufficient Contacts with Practitioner: Backup will put in place a system to a) recognize a lack of having been contacted by Practitioner and b) reach out to Practitioner and the at least two persons identified by Practitioner to inquire about Practitioner’s availability in case Practitioner fails to contact Backup as agreed.
     4. Duties during Unavailability of Practitioner
        1. Temporary Unavailability.
           1. Define Temporary Unavailability. Temporary Unavailability occurs as result of illness or injury.

How much information can be shared when the practitioner becomes temporarily unavailable?

* + - * 1. See Exhibit A for Compensation
      1. Permanent Unavailability
         1. Define Permanent Unavailability
         2. See Exhibit B for Sale of Practitioner/Practitioner Area
         3. Duties between Notice and Takeover
    1. Compliance with Professional Standards: Backup shall perform all services contemplated by this Agreement in accordance with the standards of professional ethics and Practitioner as may from time to time be applicable to the fields of intellectual property, in the United States and in each of the states in which Backup holds a license, including standards promulgated from time to time by the United States Patent & Trademark Office.

1. Relationship of the Parties: Independent Contractor. Backup is and shall at all times remain an independent contractor to Practitioner. Nothing in this Agreement shall create, or be construed to create, any relationship between Backup and Practitioner other than that of an independent contractor. Backup hereby consents to Practitioner identifying Backup to its clients, potential clients and the public as a Backup Practitioner of the Practitioner.
   1. ~~Client Information.~~
      1. ~~Client information is a trade secret. Belongs to Practitioner.~~
      2. ~~Non-Disclosure.~~
      3. ~~Non-Compete.~~
   2. Client Records. All Client records pertaining to professional services shall remain the property of Practitioner’s clients. No access to client records until *unavailablity* as contemplated under this Agreement
   3. Access to Books and Records. No access to client-specific accounting until *unavailablity* as contemplated under this Agreement.
2. Term and Termination
   1. Initial Term and Renewal. This Agreement shall have <<an initial term of two years from the Effective Date (the “Initial Period”) The Agreement shall automatically renew for subsequent one-year periods after the expiration of the Initial Period and each subsequent one-year period (each a “Renewal Period”), unless earlier terminated pursuant to Section 3.2. The Initial Period and each Renewal Period, if any, are collectively referred to herein as the “Term.”  <<OTHER OPTION IS PERPETUAL UNTIL TERMINATED>>
   2. Termination
      1. Termination Without Cause. Either party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other.
      2. Termination for Cause. Either party may terminate this Agreement for cause if the other party materially or repeatedly defaults in the performance of its obligations and has not cured such default within 30 days of receipt of a default notice specifying the default and the intention to terminate.
      3. Automatic Suspension. Upon the occurrence of any of the following events, each of which shall constitute a ground for termination for cause, then, without further action by either party, the provisions of Sections 1 of this Agreement shall be immediately suspended pending cure or termination in accordance with subparagraph b of this Section 3.2:
         1. If Backup is licensed to Practitioner law in any state or Backup’s license to Practitioner law in any state or territory of the United States is forfeited or restricted in any way;
         2. Backup’s registration to Practitioner before the USPTO is forfeited or restricted in any way;
         3. Backup fails to comply with any requirement under Section 2.1;
         4. Backup is convicted upon trial or plea of the commission of any felony or of the commission of a misdemeanor related to the delivery of professional services or a moral turpitude;
         5. Backup’s death or disability. For the purpose of this Section, “disability” means the inability of Backup to provide Services by reason of Backup’s illness or other physical or mental impairment or condition continuing for a period of thirty (30) calendar days or upon the death of the Backup.
   3. Consequences of Termination.
      1. Return of Property and Confidential Information. In the event of termination for any reason, Backup shall return to Practitioner all property and confidential information (as defined in Section 8.1) received from Practitioner, Backup shall immediately cease using any passwords or other information provided by Practitioner for access to Practitioner’s or Practitioner Client’s information systems, and Backup shall return to Practitioner at Backup’s own expense any other equipment or software provided to Backup by Practitioner.  Backup may not terminate after the Practitioner’s death or disability; instead, the Backup is responsible for the clients and may terminate specific clients as Backup would terminate his own clients.
3. Confidentiality and Prohibition against Competition
   1. Confidential Information Defined. For purposes of this Agreement, “Confidential Information” means a “trade secret” within the meaning of 18 U.S.C. § 1839, subd. 3, and includes without limitation thereof all information about Practitioner’s clients, products, services, personnel, pricing, sales strategy, technology, trade secrets, methods, processes, research, development, finances, systems, techniques, accounting, purchasing and plans, including Practitioner liability insurance policy. All information disclosed to Backup by Practitioner or to which Backup obtains access, whether marked as “confidential” or not, whether originated by Backup or by others (either prior to execution of this Agreement or thereafter), shall be presumed to be Confidential Information if it is treated by Practitioner as being Confidential Information or if Backup has a reasonable basis to believe it is Confidential Information.
   2. Obligation of Confidentiality. Except as required in connection with delivery of the Services hereunder, Backup shall not use or disclose to any person any Confidential Information for any purpose.
   3. Noninterference with Existing Relationships. Except as expressly contemplated in this Agreement, Backup agrees that during the Term and for a period of two years following termination of this Agreement, Backup will not directly or indirectly:
      1. induce or attempt to induce any person who is employed by or otherwise engaged to perform services for Practitioner to cease working for Practitioner;
      2. induce or attempt to induce any customer, client, vendor, or supplier of Practitioner to cease doing business with Practitioner.
   4. Freedom to Practitioner. Nothing in this agreement shall be construed as a prohibition on Backup, during the term of this agreement or after to directly or indirectly, engage or participate, either individually or as an employee, contractor, consultant, principal, partner, agent, trustee, officer, director or shareholder of a corporation, partnership or other business entity, in any business that provides intellectual property services, except to the extent such relationship creates an actual conflict of interest, and such conflict cannot be mitigated within the ethical framework of all relevant bodies of rules governing such relationships.
   5. Blue Pencil Doctrine. Backup acknowledges that Practitioner has expended substantial time and expense in the acquisition, research and development of processes, technology, techniques and products that are unique to Practitioner or not generally known to others and which could be unfairly taken or used by others in competition with Practitioner, and further acknowledges that competition with Practitioner is not based strictly on geographical location. Accordingly, Backup agrees that the restrictions contained in this Article are reasonable. If the scope of the restrictions contained in this Article is too broad to permit enforcement of such restrictions to their full extent, then such restrictions shall be construed or re-written so as to be enforceable to the maximum extent permitted by law.
   6. Effect of Prior Non-Competition Clauses. Backup represents and warrants that neither this Agreement nor Backup’s performance of services hereunder violates any other agreement to which Backup is a party, including any non-competition agreement in favor of such party.
4. Warranties and Indemnification
   1. Disclaimer of Warranties. Except as otherwise expressly provided herein, all services or products provided by Backup are provided without warranty of any kind, whether express, implied or arising from custom, course of dealing or trade usage, any implied warranties of non-infringement, merchantability or fitness for a particular purpose.
   2. Indemnification. Each party agrees to indemnify and hold the other harmless from any and all claims, liabilities, damages, taxes, fines, repayment obligations, or expenses, including court costs and reasonable attorney fees (collectively, “Claims”), arising from any act or omission by the indemnifying party or its employees or agents (excepting the indemnified party), or from the indemnifying party’s material breach of this Agreement. Without limiting the generality of the foregoing, Backup expressly agrees to indemnify and hold Practitioner harmless from any and all Claims arising from any other professional services provided by or on behalf of Backup or any other work Backup may engage in outside of this Agreement.

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| --- | --- |
| **10.** | **Miscellaneous** |

10.1 Force Majeure. Neither party shall be responsible for any damages, delay in performance or failure to perform by Backup or Practitioner, if caused by any act or occurrence beyond its reasonable control such as embargoes, changes in government regulations or requirements (executive, legislative, judicial, military or otherwise), acts of war or terrorism, power failure, electrical surges or current fluctuations, lightning, earthquake, flood, the elements or other forces of nature, delays or failures of transportation, or acts or omissions of telecommunications common carriers.

10.2 Amendment. This Agreement may be amended only by a writing that is signed by both parties.

10.3 Assignment. Practitioner acknowledges that the services to be rendered by Backup are unique and personal and therefore, Practitioner may only assign this Agreement to his heirs. Backup acknowledges that the services to be rendered to Practitioner are unique and personal and therefore Backup may not assign any rights or obligations under this Agreement.  However, Backup may assign specific clients to other patent practitioners to avoid legal conflicts.

10.4 Successors and Assigns. Subject to Section 10.3, the provisions of this Agreement shall be binding upon the parties hereto, upon any successor or assign of Practitioner, and upon Backup’s heirs and the personal representative of Backup’s estate.

10.5 Waiver. Any waiver by either party of compliance with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or of any subsequent breach by a party of the same or another provision of this Agreement. Any delay or failure by either Party to assert a right under this Agreement shall not constitute a waiver by said Party of any right hereunder, and either Party may subsequently assert all of its rights hereunder as if the delay or failure had not occurred. No waiver by Practitioner shall be valid unless in writing and signed by an authorized representative of Practitioner.

10.6 Severability. If any one or more of the provisions (or portions thereof) of this Agreement shall for any reason be held by a final determination of a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions (or portions of the provisions) of this Agreement, and the invalid, illegal, or unenforceable provision shall be deemed replaced by a provision that is valid, legal, and enforceable and that comes closest to expressing the intention of the parties.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ without reference to the conflict of law provisions thereof.

Arbitration. Any dispute, claim or controversy arising out of or related to this Agreement shall be resolved by binding arbitration by a single arbitrator in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Judgment upon the arbitration award shall be final, binding and conclusive and may be entered in any court having jurisdiction. If for any reason Backup performs Services under this Agreement outside of the United States, Backup agrees to submit to the jurisdiction of, be accountable to, and remain in compliance with, all applicable state and federal law, rules, regulations or executive orders of any U.S. or foreign government, agency or authority, and accreditation authorities.

10.8 Counterparts. This Agreement may be executed by facsimile signature and by either of the parties in counterparts, each of which shall be deemed to be an original, but all such counterparts shall constitute a single instrument.

10.9 Notices. All notices, requests, or other communications hereunder shall be in writing and either transmitted via email, overnight courier, hand delivery or registered mail, postage prepaid and return receipt requested, to the parties at the address listed below their respective signatures or such other addresses as may be specified by written notice. Notices shall be deemed to have been given when received or, if delivered by registered mail, five days after posting.

10.10 Equitable Relief. The parties acknowledge that their remedies at law for any breach or threatened breach of this Agreement may be inadequate. Therefore, a party shall be entitled to seek injunctive and other equitable relief restraining a party from violating this Agreement, in addition to any other remedies that may be available to it under this Agreement or applicable law.

10.11 Entire Agreement. This Agreement, including any attached Exhibits, schedules and appendices (which are hereby incorporated into the Agreement), constitutes the entire agreement between the parties hereto with respect to its subject matter and there are no other representations, understandings or agreements between the Parties relating to such subject matter.

10.13 Survival. The provisions of this Section, Sections \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall survive termination of this Agreement for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |
| **Practitioner** | | |  |  |  | **Backup** | | |
|  |  | |  | |  | | | |
| By: |  |  |  |  |  |  | | |
|  |  | Name and Title |  |  |  | Name | | |
|  |  | |  | |  | |  | |
| Date: |  |  |  |  |  | Date: |  |  |
| Address: | | |  | | Address: | | | |
|  | | |  |  |  |  | | |

EXHIBIT A

COMPENSATION AGREEMENT FOR

WORK PERFORMED DUE TO PRACTITIONER TEMPORARY UNAVAILABILITY

 This Agreement is entered into as of this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_ Limited Liability Corporation located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_- ("Practitioner") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Limited Liability Corporation located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("the Backup").

RECITALS

The Practitioner has been hired by one or more clients, each with a portfolio of one or more inventions, patents and patent applications that Practitioner is unable, for a temporary period of time, to service with patent drafting, filing, and prosecution, and Backup is interested in providing such services.

AGREEMENT

In consideration of the mutual promises made herein, the Practitioner and the Backup hereby agree as follows:

1. **Independent Consultant**. Subject to the terms and conditions of this Agreement, the Practitioner hereby engages the Backup as an independent consultant to perform the Services set forth herein, and the Backup hereby accepts such engagement (this “Engagement”). This Agreement shall not render the Backup an employee, partner, agent of, or joint venture with the Practitioner for any purpose. The Backup is and will remain an independent consultant in Backup’s relationship to the Practitioner. The Practitioner shall not be responsible for withholding taxes with respect to the Backup’s compensation hereunder. The Backup shall have no claim against the Practitioner hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

2. **Duties, Term, and Compensation**. The term of this Engagement, Backup’s duties or services during the term of this Engagement (the “Services”), Backup’s compensation and provisions for payment thereof shall be as set forth in Schedule A, which may be amended in writing from time to time, or supplemented with subsequent estimates for services to be rendered by the Backup and agreed to by the Practitioner, upon mutual agreement between the Practitioner and the Backup. Backup is responsible for invoicing and collecting from clients, but Backup may use the Practitioner’s bill formats and trademarks for this purpose.

3. **Insurance.** The Backup will maintain professional liability insurance coverage that would protect any claims by clients up to $\_\_\_\_\_\_\_\_\_\_\_\_ US dollars.

4. **Indemnity.** The Backup will defend, indemnify and hold the Practitioner its affiliated companies, and the officers, directors, shareholders, agents, employees, personnel, representatives and assigns of each (each an “**Indemnified Party**”), harmless from and against any and all claims, demands, suits, judgments, losses, and expenses of any nature whatsoever (including attorneys’ fees) (collectively, “**Claims**”) arising from or related to: any claims regarding the work performed by the Backup under this agreement or any other failure of the Backup to comply with its obligations hereunder.

5. **Conflicts of Interest.** The Backup represents that Backup is free to enter into this Agreement and that this Engagement does not violate the terms of any agreement between the Backup and any third party. During the term of this agreement, the Backup shall devote as much of Backup’s productive time, energy and abilities to the performance of the Services as is necessary to perform the Services in a timely and productive manner. The Backup is expressly free to perform services for other parties while performing services for the Practitioner. However, Backup shall not accept new clients that may conflict with the clients covered by this Agreement. Should Backup identify any conflicts with Practitioner’s clients, Backup will seek another patent attorney or agents to handle those specific clients and facilitate the transfer of the clients.

6. **No Exclusivity.** The Backup is free to perform other services for other parties while performing the Services for the Practitioner as long as such other services for the other parties are not in conflict with the Backup’s duties under this Agreement.

7. **Termination**. Either the Practitioner may terminate this Agreement at any time, with or without cause, by providing a fifteen (15) day advanced written notice to the other. The Backup may terminate this Agreement upon 45 days notice provided that Backup has identified another patent attorney or agent to assume responsibility for the Practitioner’s clients.

Notwithstanding the foregoing, the Practitioner at any time may terminate the engagement of the Backup immediately and without prior written notice to the Backup, if the Backup fails or refuses to comply with the written policies or reasonable directive of the Practitioner, is guilty of serious misconduct in connection with the Services hereunder, or materially breaches any provisions of this Agreement.

Upon termination of this Agreement, the Backup shall return all written materials provided by the Practitioner during this Engagement.

8. **Successors and Assigns**. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

9. **Governing Law and Choice of Forum**. This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, without regard to principles of conflicts of law. The Backup agrees that any litigation regarding the interpretation, breach or enforcement of this Agreement shall be filed in and heard by the state or federal courts with jurisdiction to hear such disputes in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the Practitioner and Backup hereby submits to the personal jurisdiction of such courts.

10. **Headings**. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

11. **Waiver**. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

12. **Assignment**. Practitioner may assign any of their rights under this Agreement, or delegate the performance of any of their duties hereunder, without the prior consent of the Backup. Backup may subcontract or employ other organizations to assist Backup in this matter, with notice to the Practitioner.

12. **Notices**. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or sent through electronic mail. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by electronic mail, such notice shall be conclusively deemed given when an acknowledgement is received by the other party. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:

*If to the Backup:*

Email:

Phone:

*If to the Practitioner:*

Email:

Phone:

Both parties will make good faith efforts to confirm receipt via electronic mail of all notices. Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

13. **Modification or Amendment**. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

14. **Entire Understanding**. This document and any schedule attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

15. **Unenforceability of Provisions**. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

16. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all such counterparts when taken together shall constitute one and the same instrument.

17. **Obligation.** The parties represent and warrant that each is NOT subject to any agreement, order, judgment or decree of any kind which would prevent the Practitioner, Backup or its respective principals from entering into this Agreement or performing fully their obligations hereunder. The Practitioner represents and warrants that it has the authority to enter into this Agreement and into the transaction contemplated in Schedule A.

18. **No Warrantee**. Backup provides no warranty hereunder that it will be able to meet the Goals articulated below.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

**Practitioner**: **Backup**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: By:

**SCHEDULE A**

**GOALS:** The Practitioner has been hired by one or more clients, each with a portfolio of one or more inventions, patents and patent applications that Practitioner is unable, at the moment, to service with patent drafting, filing, and prosecution, and Backup is interested in providing such services.

**DUTIES**: Backup will provide patent drafting, filing, and prosecution services for the inventions, patents, and patent applications listed in Schedule B.

**TERM**: This engagement shall commence upon execution of this Agreement and shall continue in full force and effect until the Practitioner is either able to resume servicing the portfolios or until it is determined that the Practitioner will not resume servicing the portfolios. The term may be extended by written or email agreement between the parties. Obligations to compensate Backup will survive termination of this Agreement.

**EXPENSES:** All expenses, such as USPTO fees, be invoiced directly by Backup to the clients, with the exception of client \_\_\_\_ and \_\_\_\_ who have prepaid expense or retainer accounts.

**COMPENSATION**: Backup will be compensated by the clients at 100% of the negotiated agreement between the Practitioner and the clients. There are three billing arrangements that apply:

1. Some clients are billed hourly as the work is performed. Backup is to bill these clients directly. Practitioner will have no obligations for collection of these bills nor to pay for any amounts that clients fail to pay for direct bill clients.

2. Some clients, such as \_\_\_\_ and \_\_\_\_ have prepaid for services. Practitioner will pay Backup $\_\_\_\_\_\_ to continue the delivery of the services.

3. Some clients, such as \_\_\_\_ and \_\_\_\_\_ have paid retainer account. The sums of these retainer accounts will be paid to Backup to place in retainer accounts.

EXHIBIT B

**PURCHASE OF Practitioner AREA(S) AGREEMENT**

**THIS PURCHASE OF Practitioner AREA(S)**(the "Agreement") made and entered into this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ (the "Execution Date"),

**BETWEEN:**

BUSINESS NAME of ADDRESS  
(the "Seller")

OF THE FIRST PART

and

PRACTITIONER of ADDRESS 2  
(the "Purchaser")

OF THE SECOND PART

**BACKGROUND**

**WHEREAS**, the Seller is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ which carries on the business of Practitioner at ADDRESS, AND

**WHEREAS**, the Seller owns and desires to sell certain assets of its business (the "Assets"),to the Purchaser, subject to any exclusions set out in this Agreement and the Purchaser desires to buy the Assets,

**IN CONSIDERATION**of the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Definitions**
   1. The following definitions apply in the Agreement:
      1. The "Assets"
         1. consist of the following:
            1. all interests of the Seller under contracts or agreements relating to Practitioner AREA(s) of the Seller;
         2. and do not include any Excluded Assets.
   2. "Closing" means the completion of the purchase and sale of the Assets as described in this Agreement by the payment of agreed consideration, and the transfer of title to the Assets.
   3. "Excluded Assets" means assets that are owned by the Seller but do not form any part of the Assets for the purpose of this transaction. Excluded Assets will include the following:
      1. cash items held by the Seller including, but not limited to, cash bank balances, and term deposits;
      2. accounts receivable and all other monies owed to the Seller due to operation of the Seller; and
      3. ANY OTHER EXCLUDED ASSETS SUCH AS OTHER Practitioner AREAS.
   4. "Parties" means both the Seller and the Purchaser and "Party" means any one of them.
2. **Sale**
   1. This Agreement is contingent upon the Seller being Permanently unavailable as defined in the Backup Practitioner Agreement executed by the Parties.
   2. Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties, and conditions set out in this Agreement, the Seller agrees to sell the Assets to the Purchaser and the Purchaser agrees to purchase the Assets from the Seller.
   3. In exchange for the Assets, Purchaser agrees to tender a <<PROMISSORY NOTE>><<LUMP SUM>>
      1. Terms of Payment
         1. Option 1: Defined Sum
            1. Option 1a: Lump Sum
            2. Option 1b: Payment Period
         2. Option 2: Percentage of Billings for a Period of Time, payments periodic
         3. Option 3: Defined amount per Matter, Payable over some period
   4. The Parties agree to co-operate in the filing of elections under the *Internal Revenue Code* and under any other applicable taxation legislation, in order to give the required or desired effect to the allocation of the Purchase Price.
3. **Closing**
   1. The Closing of the purchase and sale of the Assets will take place 30 days after satisfaction of the Conditions Precedent at the offices of the Seller, or at a time and place as the Parties mutually agree.
   2. At Closing and upon the Purchaser resolving the Purchase Price in full to the Seller, the Seller will deliver the Assets to the Purchaser. The Seller will deliver to the Purchaser possession of the Assets, in the same condition as on the Execution Date, and free and clear of any liens, charges, rights of third parties, or any other encumbrances, except those attached as a result of the Purchaser's actions.
   3. At Closing and upon the Purchaser resolving the Purchase Price in full to the Seller, the Seller will provide the Purchaser with duly executed forms and documents evidencing transfer of the Assets, where required including, but not limited to, bills of sale, assignments, assurances, and consents. The Seller will also co-operate with the Purchaser as needed in order to effect the required registration, recording, and filing with public authorities of the transfer of ownership of the Assets to the Purchaser.
4. **Payment**
   1. The Purchase Price for the Assets will be paid by the Purchaser with a promissory note (the "Promissory Note") in the form attached, in the amount of the Purchase Price, made out to the Seller.
   2. The Purchaser is responsible for paying all applicable taxes, including federal sales tax,state sales tax, duties, and any other taxes or charges payable pursuant to the transfer of the Assets from the Seller to the Purchaser.
5. **Seller's Representations and Warranties**
   1. The Seller represents and warrants the following to the Purchaser:
      1. The Seller has full legal authority to enter into and exercise its obligations under this Agreement.
      2. The Seller is a corporation duly incorporated or continued, validly existing, and in good standing and has all requisite authority to carry on business as currently conducted.
      3. The corporate Seller, BUSINESS NAME has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations. The execution and delivery of this Agreement, and this transaction has been duly authorized by all necessary corporate action on the part of the Seller.
      4. The Seller is the absolute beneficial owner of the Assets, with good and marketable title, free and clear of any liens, charges, encumbrances or rights of others. The Seller is exclusively entitled to possess and dispose of the Assets.
      5. To the best knowledge of the the officers of the Seller there is no pending or anticipated claim against the Assets or against the Seller's ownership or title in the Assets or against the Seller's right to dispose of the Assets.
      6. No third party contract is outstanding that could result in a claim against or affecting the Assets in whole or in part either now or in the future.
      7. The Seller does not have any outstanding contracts, agreements, or commitments of any kind, written or oral, with any third party regarding  the Assets, except for any material contracts described in, and/or attached to this Agreement. The Seller represents and warrants that no material default or breach exists with regard to any presently outstanding material contract.
      8. Execution of this Agreement will not hinder or unfairly disadvantage any pre-existing creditor.
      9. Except as otherwise provided in this Agreement, there has been no act or omission by the Seller that would give rise to any valid claim relating to a brokerage commission, finder's fee or other similar payment.
      10. The Seller is a resident of the United States for the purposes of the *Internal Revenue Code.*
      11. The Seller has withheld all amounts required to be withheld under income tax legislation and has paid all amounts owing to the proper authorities.
      12. The Seller is not bound by any written or oral pension plan or collective bargaining agreement or obligated to make any contributions under any retirement income plan, deferred profit sharing plan or similar plan.
      13. The Seller will not dismiss any current employees or hire any new employees, or substantially change the role or title of any existing employees, provide unscheduled or irregular increases in salary or benefits to employees, or institute any significant changes to the terms of any employee's employment, after signing this Agreement, unless the Purchaser provides written consent.
      14. There are no claims threatened or pending against the Seller by any current or past employee relating to any matter arising from or relating to the employment of the employee.
      15. The Assets, while owned by the Seller, have been maintained at all times in accordance with standard industry Practitioner. The Seller further warrants that all tangible assets are in good working order.
      16. The Seller is operating in accordance with all applicable laws, rules, and regulations of the jurisdictions in which it is carried on. In compliance with such laws, the Seller has duly licensed, registered, or qualified the Seller with the appropriate authorities and agencies.
      17. The Seller maintains insurance policies on the Assets and such policies are in full force and effect and of an adequate value as would be reasonable in its industry. The Seller has neither defaulted under these insurance policies, whether as a result of failure to pay premiums or due to any other cause, nor has the Seller failed to give notice or make a claim under these insurance policies in a timely manner.
      18. To the best knowledge of the officers of the Seller, the conduct of the Seller does not infringe on the patents, trademarks, trade names or copyrights, whether domestic or foreign, of any other person, firm or corporation
      19. The Seller owns or is licensed to use all necessary software and it can continue to use any and all computerized records, files and programs after the Closing Date in the same manner as before the Closing Date.
      20. The Seller has filed all tax reports and returns required in the operation of its business and has paid all taxes owed to all taxing authorities, including foreign taxing authorities, except amounts that are being properly contested by the Seller, the details of this contest having been provided to the Purchaser.
      21. This Agreement has been duly executed and delivered by the Seller and constitutes a legal and binding obligation of the Seller, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy and insolvency, by other laws affecting the rights of creditors generally, and by equitable remedies granted by a court of competent jurisdiction.
   2. The representations and warranties given in this Agreement are the only representations and warranties. No other representation or warranty, either expressed or implied, has been given by the Seller to the Purchaser, including, without limitation, any representations or warranties regarding the merchantability of the Assets or their fitness for a particular purpose.
   3. The Seller warrants to the Purchaser that each of the representations and warranties made by it is accurate and not misleading at the Closing Date. The Seller acknowledges that the Purchaser is entering into this Agreement in reliance on each representation and warranty.
   4. The Seller's representations and warranties will survive the Closing Date of this Agreement.
   5. Where the Purchaser has a claim against the Seller relating to one or more representations or warranties made by the Seller, the Seller will have no liability to the Purchaser unless the Purchaser provides notice in writing to the Seller containing full details of the claim on or before the third anniversary of the Closing Date.
   6. Where the Purchaser has a claim against the Seller relating to one or more representations or warranties made by the Seller, and the Purchaser is entitled to recover damages from a third party then the amount of the claim against the Seller will be reduced by the recovered or recoverable amount less all reasonable costs incurred by the Purchaser in recovering the amount from the third party.
6. **Purchaser's Representations and Warranties**
   1. The Purchaser represents and warrants to the Seller the following:
      1. The Purchaser has full legal authority to enter into and exercise its obligations under this Agreement.
      2. The Purchaser has funds available to pay the full Purchase Price and any expenses accumulated by the Purchaser in connection with this Agreement and the Purchaser has not incurred any obligation, commitment, restriction, or liability of any kind, absolute or contingent, present or future, which would adversely affect its ability to perform its obligations under this Agreement.
      3. The Purchaser has not committed any act or omission that would give rise to any valid claim relating to a brokerage commission, finder's fee, or other similar payment.
      4. The Purchaser is a resident of the United States for the purposes of the *Internal Revenue Code.*
      5. This Agreement has been duly executed by the Purchaser and constitutes a legal and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy and insolvency, by other laws affecting the rights of creditors generally, and by equitable remedies granted by a court of competent jurisdiction.
      6. The Purchaser has no knowledge that any representation or warranty given by the Seller in this Agreement is inaccurate or false.
   2. The representations and warranties given in this Agreement are the only representations and warranties. The Purchaser has given no other representation or warranty, either expressed or implied, to the Seller.
   3. The Purchaser warrants to the Seller that each of the representations and warranties made by it is accurate and not misleading at the date of Closing. The Purchaser acknowledges that the Seller is entering into this Agreement in reliance on each representation and warranty.
   4. The Purchaser's representations and warranties will survive the Closing Date of this Agreement.
   5. Where the Seller has a claim against the Purchaser relating to one or more representations and warranties made by the Purchaser, the Purchaser will have no liability to the Seller unless the Seller provides notice in writing to the Purchaser containing full details of the claim on or before the third anniversary of the Closing Date.
   6. Where the Seller has a claim against the Purchaser relating to one or more representations or warranties made by the Purchaser, and the Seller is entitled to recover damages from a third party then the amount of the claim against the Purchaser will be reduced by the recovered or recoverable amount less all reasonable costs incurred by the Seller in recovering the amount from the third party.
7. **Conditions Precedent to be Performed by the Purchaser**
   1. The obligation of the Seller to complete the sale of the Assets under this Agreement is subject to the satisfaction of the following conditions precedent by the Purchaser, on or before the Closing Date, each of which is acknowledged to be for the exclusive benefit of the Seller and may be waived by the Seller entirely or in part:
      1. All of the representations and warranties made by the Purchaser in this Agreement will be true and accurate in all material respects on the Closing Date.
      2. The Purchaser will obtain or complete all forms, documents, consents, approvals, registrations, declarations, orders, and authorizations from any person or any governmental or public body, required of the Purchaser in connection with the execution of this Agreement.
      3. The Purchaser will execute and deliver the Promissory Note to the Seller.
8. **Conditions Precedent to be Performed by the Seller**
   1. The obligation of the Purchaser to complete the purchase of the Assets under this Agreement is subject to the satisfaction of the following conditions precedent by the Seller, on or before the Closing Date, each of which is acknowledged to be for the exclusive benefit of the Purchaser and may be waived by the Purchaser entirely or in part:
      1. All of the representations and warranties made by the Seller in this Agreement will be true and accurate in all material respects on the Closing Date.
      2. The Seller will obtain and complete any and all forms, documents, consents, approvals, registrations, declarations, orders, and authorizations from any person or governmental or public body that are required of the Seller for the proper execution of this Agreement and transfer of the Assets to the Purchaser.
      3. No substantial damage to or alteration of the Assets that would adversely affect their value will occur between the date this Agreement is signed and the Closing Date.
      4. The Seller will have obtained any necessary consents for assigning any leases to the Purchaser as well as providing estoppel certificates from such owners or landlords that there are no arrears of rent, no breaches under such leases and the amount of the security deposits held by such third parties.
      5. The Seller will execute and deliver bills of sale for the Assets in favor of the Purchaser.
      6. The Seller will provide the Purchaser with complete information concerning the operation of the Seller, in order to put the Purchaser in a position to carry on in the place of the Seller.
      7. **Conditions Precedent Not Satisfied**. If either Party fails to satisfy any of its conditions precedent as set out in this Agreement on or before the Closing Date and that condition precedent was not waived, then this Agreement will be null and void  and there will be no further liability as between the Parties.
9. **Disclosure**
10. Upon the reasonable request of the Purchaser, the Seller will, from time to time, allow the Purchaser and its agents, advisors, accountants, employees, or other representatives to have reasonable access to the premises of the Seller and to all of the books, records, documents, and accounts of the Seller, during normal business hours, between the date of this Agreement and the Closing Date, in order for the Purchaser to confirm the representations and warranties given by the Seller in this Agreement.
11. **Employees**
12. The Purchaser will not be offering employment to any existing officer or employee of the Seller (the "Employees"). All individuals who are officers or employees of the Seller up to and including the Closing Date will remain the full responsibility of the Seller. Any individual hired by the Seller after the Closing Date will become the responsibility of the Purchaser.
13. The Seller will deliver to the Purchaser prior to the Closing Date, resignations of all Employees of the Seller, each such resignation will be effective on the Closing Date. The Seller will pay all Employee compensation incurred by it up to and including the Closing Date including all salaries, benefits, bonuses including share bonuses and share options and any other compensation owing to the Employees up to and including the Closing Date. The Seller will be responsible for all severance benefits, vacation days, sick days, personal days and other compensated time off accrued by all Employees up to and including the Closing Date.
14. The Seller is in compliance with all applicable foreign and domestic statutory rules and regulations respecting employment and employment Practitioners and has withheld and reported all amounts required by law with respect to wages and salaries and the Seller is not liable for any accrued taxes or penalties and is not liable or in arrears to any government pension, social security or unemployment insurance authority. The Seller indemnifies the Purchaser for any future liabilities relating to employment and employment Practitioners where the subject of the liability occurred prior to or on the Closing Date.
15. **Non-Solicitation**
16. The Seller agrees that any attempt to encourage or induce employees, directors, agents or contractors to leave their jobs with theSeller would be harmful and damaging to the Purchaser. The Seller further agrees that any attempt on the part of the Seller to interfere with the Purchaser's relationship with employees, directors, agents, contractors, vendors or service providers of the Seller would be harmful and damaging to the Purchaser.
17. The Seller agrees that during the term of this Agreement and for a period of two years after the Closing Date of this Agreement, the Seller will not in any way directly or indirectly:
    1. induce or attempt to induce any employee, director, agent, contractor or other service provider of the Purchaser to quit employment or retainer with the Purchaser;
    2. otherwise interfere with or disrupt the Purchaser's relationship with its employees, directors, agents, contractors or other service providers;
    3. discuss employment opportunities or provide information about competitive employment to any of the Purchaser's employees, directors, agents, contractors or other service providers; or
    4. solicit, entice, or hire away any employee, director, agent, contractor or other service provider of the Purchaser.
18. **Non-Assumption of Liabilities**
19. It is understood and agreed between the Parties that the Purchaser is not assuming and will not be liable for any of the liabilities, debts or obligations of the Seller arising out of the ownership or operation of the Seller prior to and including the Closing Date.
20. The Seller will indemnify and save harmless the Purchaser, its officers, directors, employees, agents and shareholders from and against all costs, expenses, losses, claims, and liabilities, including reasonable legal fees and disbursements, or demands for income, sales, excise or other taxes, suffered or incurred by the Purchaser or any of the above mentioned persons arising out of the ownership or operation of the Seller prior to and including the Closing Date.
21. **Transfer of Third Party Contracts**
22. This Agreement is not to be construed as an assignment of any third party contract from the Seller to the Purchaser if the assignment would be a breach of that third party contract.
23. The Purchaser will be solely responsible for acquiring new contracts with third parties where the existing contracts are not legally assignable from the Seller to the Purchaser.
24. Notwithstanding any other provision in this Agreement to the contrary, the Seller will not be liable for any losses, costs or damages of any kind including loss of revenue or decrease in value of the Seller resulting from the failure of the Purchaser to acquire any third party contracts.
25. **Notices**
26. Any notices or deliveries required in the performance of this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the Parties at the addresses contained in this Agreement or as the Parties may later designate in writing.
27. **Expenses/Costs**
28. The Parties agree to pay all their own costs and expenses in connection with this Agreement.
29. **Confidentiality**
30. The Seller and the Purchaser will keep confidential all information (the "Confidential Information") pertaining to this Agreement including, but not limited to, the terms of this Agreement, the Purchase Price, the Parties to this Agreement, and the subject matter of this Agreement as well as any written or oral information obtained about the respective Parties that is not currently in the public domain. Confidential Information will not include the following:
    1. Information generally known in the respective industries of the Purchaser and the Seller.
    2. Information that enters the public domain through no fault of the Purchaser or the Seller.
    3. Information that is independently created by the Purchaser or the Seller respectively without direct or indirect use of information obtained during the course of negotiations for this Agreement.
    4. Information that is rightfully obtained by the Purchaser or the Seller from a third party who has the right to transfer or disclose the information.
31. The Seller and the Purchaser may disclose any Confidential Information relating to this Agreement to any of its employees, agents and advisors where there is a need to know in relation to this Agreement and where the personnel agree to be legally bound by the same confidentiality obligations.
32. The Parties each agree to indemnify the other against any harm suffered as a result of a breach of the confidentiality obligations contained in this Agreement on the part of their respective employees, agents and/or advisers.
33. The confidentiality obligations in this Agreement will continue to apply after the Closing Date of this Agreement without any limit in time.
34. **Severability**
35. The Parties acknowledge that this Agreement is reasonable, valid, and enforceable; however, if any part of this Agreement is held by a court of competent jurisdiction to be invalid, it is the intent of the Parties that such provision be reduced in scope only to the extent deemed necessary to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected or invalidated as a result.
36. Where any provision in this Agreement is found to be unenforceable, the Purchaser and the Seller will then make reasonable efforts to replace the invalid or unenforceable provision with a valid and enforceable substitute provision, the effect of which is as close as possible to the intended effect of the original invalid or unenforceable provision.
37. **Governing Law**
38. This Agreement will be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_.
39. The courts of the State of \_\_\_\_\_\_\_\_\_\_ will have jurisdiction to settle any dispute arising out of or in connection with this Agreement.
40. **General Provisions**
41. This Agreement contains all terms and conditions agreed to by the Parties. Statements or representations which may have been made by any Party to this Agreement in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value to either Party. Only the written terms of this Agreement will bind the Parties.
42. This Agreement may only be amended or modified by a written instrument executed by all of the Parties.
43. A waiver by one Party of any right or benefit provided in this Agreement does not infer or permit a further waiver of that right or benefit, nor does it infer or permit a waiver of any other right or benefit provided in this Agreement.
44. This Agreement will not be assigned either in whole or in part by any Party without the written consent of the other Party.
45. This Agreement will pass to the benefit of and be binding upon the Parties' respective heirs, executors, administrators, successors, and permitted assigns.
46. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.
47. All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity.
48. Time is of the essence in this Agreement.
49. This Agreement may be executed in counterpart.
50. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

**IN WITNESS WHEREOF**the Parties have duly affixed their signatures under hand and seal on this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_.

|  |  |
| --- | --- |
|  | BUSINESS NAME  Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal) |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PRACTITIONER |

AGREEMENT FOR SALE OF Practitioner OR Practitioner AREA

1. Transfer of Business Records
2. Rights to an Accounting (Depending on Terms of Payment)
3. Parties’ Compliance with ABA Model Rules 1.17 and any other applicable rules on Sale of a Practitioner
4. Conflicts
5. Boiler Plate Terms.Can reuse ones from above, but want to have those reviewed by the group/edited before duplicating.

1. Consider challenges of two-factor authentication with cloud based docketing systems. [↑](#footnote-ref-1)