



Sample Employee Confidentiality Agreement

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DISCLAIMER

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INTRODUCTION

To assist you in the process of succession planning, the attached sample Employee Confidentiality, Inventions & Non-Competition Agreement illustrates the types of provisions that are customary for agreements used in connection with the employment of a financial advisor, either as a stand-alone employment arrangement or in connection with a transfer of the business to another financial advisor. We have provided this overview to assist in your review of the attached sample document.

The attached document is a sample Employee Confidentiality, Inventions & Non-Competition Agreement relating to the employment of a financial advisor who provides investment management or broker-dealer services. As employers generally have significantly more bargaining leverage than employees, the overall terms of such an agreement are often quite favorable to the employer.

This sample document illustrates the types of provisions that are customary for an agreement of this type. It is intended for educational purposes only and does not purport to be definitive or comprehensive or to include all provisions that might be found in such an agreement.

Areas in which employees are typically bound to their employers include (1) non-disclosure and non-use of the employer's confidential or proprietary information, (2) assignment to the employer of any intellectual property created by the employee while performing his/her duties, (3) non-competition of the employee with the employer and (4) non-solicitation by the employee of other employees and clients of the employer.

1. Non-Disclosure. The confidentiality provisions that bind an employee typically contain (a) a broad definition of the confidential information that is covered by the agreement, subject to exceptions for information that is already public or available without restriction from other sources, (b) an obligation on the employee not to disclose or use the confidential information of the employer other than in performance of his/her duties or as expressly approved by the employer, and (c) an exception for disclosures that are required by applicable law or court order. The restrictions generally continue in effect for as long as the employee has confidential information of the employer.
2. Assignment of Inventions. Newly-created intellectual property generally belongs to the person who created it, but an entity can only act through individuals, so questions sometimes arise as to whether intellectual property created by an employee is the property of the employer entity or the individual employee. The assignment of inventions provisions in the attached sample document are intended to ensure that the employer gets the benefit of any inventions created by the employee during the course of his/her employment and is not later faced with claims that the employer is using intellectual property that belongs to the employee or one of his/her prior employers.
3. Non-Competition. Non-competition restrictions, such as the one in the attached sample document, typically restrict any participation by the employee in a business that competes with the employer, whether such participation is direct or indirect and whether it is for the employee's own account or for the account of others, although some exceptions may apply (such as for the employee's non-controlling investments in publicly-traded companies). The restrictions generally apply during the employee's term of employment and for a specified period thereafter. In order to be legally enforceable, a non-competition restriction must be reasonable in duration, in geographic scope and in the scope of the restricted business, but even an otherwise reasonable restriction may be unenforceable in certain jurisdictions. This is the case in California, where non-competition agreements are prohibited by Section 16600 of the California Business and Professions Code, with limited exceptions for sellers of businesses. Whether the restrictions are reasonable generally will be determined based on the scope of the employer's business during the employee's employment, with allowances made for reasonable expansion of that business.
4. Non-Solicitation. In addition to non-competition restrictions, an employer will typically require an employee to agree to non-solicitation restrictions that apply both during the employee's term of employment and for a specified period thereafter. Such non-solicitation restrictions generally prohibit the employee from (a) soliciting past, present and prospective clients of the employer, (b) hiring or attempting to hire away other employees of the employer, and (c) otherwise interfering with the employer's business relationships.

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The attached sample agreement illustrates the general principles described in this overview. It is intended for educational purposes only and does not purport to be definitive or comprehensive, or to include all provisions that may be found in an employee confidentiality, inventions and non-competition agreement. Required provisions and applicable laws may vary from state to state. Consult your own attorney.

SAMPLE EMPLOYEE CONFIDENTIALITY, INVENTIONS AND NON-COMPETITION AGREEMENT

[COMPANY NAME]

In consideration of my employment or continued employment by [COMPANY NAME] (the "Company"), and the compensation now and hereafter paid to me, I hereby agree to the terms contained within this Employee Confidentiality, Inventions, and Non-Competition Agreement (hereinafter, the "Agreement") as follows:

1. NONDISCLOSURE

1.1 Recognition of Company's Rights; Nondisclosure. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose, use, lecture upon, or publish any of the Company's Confidential Information (defined below), except as such disclosure, use, or publication may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I will obtain the Company's prior written consent before publishing or submitting for publication any material (written, oral, or otherwise) that relates to my work at the Company or incorporates any Confidential Information. Notwithstanding the foregoing, disclosure of any such information shall not be prohibited if such disclosure is directly related to a valid and existing order of a court of competent jurisdiction or other governmental body or agency within the United States; provided, however, that I shall have first given prompt notice to the Company of any possible or prospective order and the Company shall have been afforded a reasonable opportunity to prevent or limit any such disclosure. I hereby assign to the Company any rights I may have or acquire in any Confidential Information and recognize that all Confidential Information shall be the sole property of the Company and its assigns.

1.2 Confidential Information. The term "Confidential Information" means any and all confidential or proprietary knowledge, data, or information of the Company. By way of illustration but not limitation, "Confidential Information" includes: (a) business plans, marketing plans, financial statements and other financial information, investment performance, budgets and projections, pricing and fee information, client and/or investor lists, requirements and information, products and services, licenses and contract terms; and (b) technical and non-technical information, patents, copyrights, trademarks, service marks, trade secrets, strategies, methodologies, models, algorithms, technologies, inventions, mask works, software programs, software source documents, ideas, processes and procedures, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques (hereinafter collectively referred to as "Inventions"). For purposes of this Agreement, the term "Confidential Information" shall not include information which is or becomes publicly available without breach of: (i) this Agreement; (ii) any other agreement or instrument to which the Company is a party or a beneficiary; or (iii) any duty

owed to the Company by me or by any third party; provided, however, that if I shall seek to disclose, use, lecture upon, or publish any Confidential Information, I shall bear the burden of proving that any such information shall have become publicly available without any such breach.

1.3 Third Party Information. I understand that the Company has received and in the future will receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. During the term of my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

1.4 No Improper Use of Information of Prior Employers and Others. During my employment by the Company, I will not improperly disclose or use any confidential information or trade secrets, if any, of any former employer or any other person or entity to whom I have an obligation of confidentiality, and I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person or entity to whom I have an obligation of confidentiality unless consented to in writing by that former employer, person, or entity.

2. ASSIGNMENT OF INVENTIONS

2.1 Proprietary Rights. The term "Proprietary Rights" means all trade secret, patent, copyright, mask work and other intellectual property rights throughout the world.

2.2 Prior Inventions. Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on Exhibit A (Prior Inventions) attached hereto a complete list of all Inventions that I have, alone or jointly with others, conceived, developed, or reduced to practice or caused to be conceived, developed, or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties and that I wish to have excluded from the scope of this Agreement (collectively referred to as "Prior Inventions"). If disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I understand that I am not to list such Prior Inventions in Exhibit A but am only to disclose a cursory name for each such invention, a listing of the party or parties to whom it belongs, and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on Exhibit A for such purpose. If I do not attach such disclosure, I am representing thereby that there are no Prior Inventions. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product or process, the Company is hereby granted and shall have a nonexclusive, royalty free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, cause to be made, modify, cause to be modified, use, cause to be used and sell or cause to be sold such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions (defined below) without the Company's prior written consent.

2.3 Assignment of Inventions. Subject to Sections 2.4 and 2.6, I hereby assign and agree to assign in the future (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to the Company all my right, title and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made, conceived, reduced to practice, or learned by me, either alone or jointly with others, invented within the scope of my employment during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are referred to herein as "Company Inventions."

2.4 Obligation to Keep Company Informed. During the period of my employment and for six (6) months after termination of my employment with the Company, I will promptly disclose to the Company fully and in writing all Inventions authored, conceived, or reduced to practice by me, either alone or jointly with others. In addition, I will promptly disclose to the Company all patent applications filed by me or on my behalf within one (1) year after termination of my employment with the Company.

2.5 Government or Third Party. I also agree to assign all my right, title and interest in and to any particular Company Invention to a third party, including without limitation the United States, as directed by the Company.

2.6 Works for Hire. I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," pursuant to the United States Copyright Act (17 U.S.C., Section 101).

2.7 Enforcement of Proprietary Rights. I will assist the Company in every proper way in obtaining, and from time to time enforcing, United States and foreign Proprietary Rights relating to Company Inventions in any and all countries. To that end, I will promptly execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, I will promptly execute, verify and deliver assignments of such Proprietary Rights to the Company or its designee. My obligation to assist the Company with respect to Proprietary Rights relating to such Company Inventions in any and all countries shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate after my termination for the time actually spent by me at the Company's request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in the preceding paragraph, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agents and attorneys-in-fact, subject to full power or substitution and resubstitution, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

3. RECORDS. I agree to keep and maintain adequate and current records (in the form of notes, memoranda and in any other form that may be required by the Company) of all Confidential Information developed by me and all Inventions made by me during the period of my employment and in the scope of my employment at the Company, which records shall be available to and remain the sole property of the Company at all times.

4. NON-COMPETITION; NON-SOLICITATION; NON-DISPARAGEMENT.

4.1 Non-Competition; Non-Solicitation. I agree that for the period of my employment by the Company and for [one (1)] year after the date of termination of my employment with the Company for any reason (such period, the "Restricted Period"), I will not, without the Company's prior written consent, directly or indirectly, except as may be required in connection with my work for the Company:

- a. become employed by or affiliated with any past client, present client, or prospective client of the Company or its affiliates in a role which provides services which involve: (i) the management of an investment account or fund (or portions thereof or a group of investment accounts for funds); (ii) the giving of advice with respect to the investment and/or reinvestment of assets or funds (or any group of assets or funds); or (iii) the provision of broker-dealer services (collectively, "Financial Advisor Services");
- b. provide Financial Advisor Services to any person or entity that is a past client, present client, or prospective client of the Company or its affiliates;
- c. solicit or induce any person or entity with the effect or for the purpose of: (i) causing any funds with respect to which the Company or its affiliates provides Financial Advisor Services to be withdrawn from the Company's management; (ii) causing any present client or prospective client of the Company or its affiliates to refrain from engaging the Company or any of its affiliates to provide Financial Advisor Services for any funds or any additional funds; or (iii) causing any present client to terminate or diminish its relationship involving Financial Advisor Services with the Company or its affiliates;
- d. on behalf of myself or on behalf of a Financial Advisor Services business that is similar or competitive with the Company, contact, solicit, canvas, provide services to, contract with, or accept Financial Advisor Services business from any person or entity which: (i) is a past client, present client, or prospective client of the Company; or (ii) has received, as of the date of termination of my employment with the Company, an outstanding proposal or offer from the Company or its affiliates;
- e. induce, offer, assist, solicit, encourage, or suggest, in any manner whatsoever: (i) that I or another business or enterprise offer employment to, hire, employ or contract with, or enter into a business affiliation with, any employee, agent or representative of the Company or its affiliates; or (ii) that any employee, agent, or representative of the Company or its affiliates terminate his or her employment or business affiliation with the Company or its affiliates; or
- f. render services to, become affiliated with or employed by, own, or have a financial or other interest in (either as an individual, partner, joint venturer, owner, manager, stockholder, employee, partner, officer, director, independent contractor, or other such role) any business which is engaged in Financial Advisor Services (except

nothing herein shall prohibit owning less than 5% of the outstanding shares in a publicly traded corporation).

4.2 Non-Disparagement. At all times during my employment and thereafter, I will not disparage the Company or any of its affiliates, their respective products or services, or their respective directors, officers, or employees. Similarly, the Company and its affiliates will not, and will cause their respective directors, officers and employees not to, disparage me. Nothing in this Section 4.2 shall preclude truthful statements made pursuant to subpoena or as otherwise required by applicable law.

5. ACKNOWLEDGEMENTS; SEVERABILITY

5.1 Acknowledgements. I hereby agree and acknowledge that:

- (a) the restrictions imposed on me pursuant to Section 4 of this Agreement: (i) are reasonable as to time and scope; (ii) are necessary in order to protect the legitimate interests of the Company; (iii) do not impose undue hardship on me; (iv) will not interfere with my ability to earn a livelihood; and (v) are not injurious to the public;
- (b) [the Company competes for clients on an international basis and the competitors of the Company are unlimited by geography;]¹
- (c) my failure to observe and comply with Section 1, 2, 3, or 4 of this Agreement will cause the Company to suffer irreparable injury and harm;
- (d) I have carefully considered the nature and extent of the restrictions placed upon me, and the rights and remedies conferred upon the Company, under the provisions of this Agreement, and I believe that the same are reasonable;
- (e) the Company would not have agreed to employ me in the absence of my agreement to comply with the covenants contained in this Agreement, and such covenants shall be construed as covenants that have been made by me to the Company which are independent of any provisions contained in any other agreements or arrangements between the Company and me, it being further agreed and acknowledged by me that the existence of any claim or cause of action that I may have against the Company, whether predicated on such other agreements or arrangements or otherwise, shall not constitute a defense to the Company's enforcement of such covenants and the terms of this Agreement;
- (f) I have been advised to seek the advice of independent counsel, and have had adequate opportunity to seek the advice of independent counsel in connection with this Agreement;
- (g) I have read and understand the terms of this Agreement; and
- (h) I am signing this Agreement voluntarily and of my own free will.

5.2 Severability. If, despite the express agreement of the parties, any one or more of the provisions contained in this Agreement shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; provided, however, that, notwithstanding the foregoing, if any

one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be excessively broad as to time, scope, activity, or subject, such provision(s) shall be considered amended to have the broadest terms which such court shall find to be valid, legal and enforceable.

6. NO CONFLICTING OBLIGATION. I represent that my performance of all the terms of this Agreement and as an employee of the Company has not breached, and does not and will not breach, any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any agreement, either written or oral, in conflict herewith.

7. RETURN OF COMPANY DOCUMENTS AND DATA. When I leave the employ of the Company, I will deliver to the Company any and all correspondence, notes, memoranda, processes, formulas, programs, documents, CDs and DVDs, records and data of every nature and description, together with all copies thereof (including, without limitation, all electronic copies in my possession), and any other material containing or disclosing any Company Inventions, Third Party Information, or Confidential Information. I further agree that any property situated on the Company's premises and owned by the Company, including CDs, DVDs and other storage media, filing cabinets, or other work areas, is subject to inspection by Company personnel at any time with or without notice. Prior to leaving, I will cooperate with the Company in promptly completing and signing the Company's termination statement.

8. LEGAL AND EQUITABLE REMEDIES. Because my services are personal and unique and because I will have access to and become acquainted with the Confidential Information, the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance, or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement.

9. NOTICES. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address, one business day after dispatch if sent by nationally recognized courier or overnight delivery service, on the date of dispatch if sent by facsimile for which confirmation of transmission is provided, or, if sent by certified or registered mail, five business days after the date of mailing.

10. NOTIFICATION OF NEW EMPLOYER. In the event that I leave the employ of the Company and accept new employment, I hereby agree to notify my new employer of my rights and obligations under this Agreement and consent to the notification of my new employer of such rights and obligations.

11. GENERAL PROVISIONS

11.1 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the internal laws of the [State/Commonwealth of _____], without regard to principles of conflicts of law that would require the application of the law of any other jurisdiction. Any legal action or proceeding with respect to this Agreement shall be commenced exclusively in the state and federal courts sitting in [City/State/Commonwealth]. I hereby irrevocably: (a)

¹ The geographic scope of the non-compete should be tailored to the locations where the Company conducts business and competes for clients.

submit to the exclusive jurisdiction of the state and federal courts sitting in [City/County] for the adjudication of any dispute hereunder or in connection herewith; and (b) waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that I may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

11.2 Successors and Assigns. I may not assign this Agreement without the prior written consent of the Company. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

11.3 Survival. The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest or other assignee.

11.4 Employment. I agree and understand that nothing contained in this Agreement shall confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause.

11.5 Waiver. No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

11.6 Entire Agreement; Amendment; Counterparts. The obligations pursuant to Sections 1, 2, 3 and 4 of this Agreement shall apply to any time during which I was previously employed, or am in the future employed, by the Company. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof and merges all prior discussions between us; provided, however, that, notwithstanding the foregoing, nothing contained in this Agreement shall limit or impair my obligation to comply with the lawful rules, regulations, policies and practices of the Company and its affiliates that are applicable to me and similarly situated employees. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary, or compensation will not affect the validity or scope of this Agreement. This Agreement may be executed in counterparts (including by facsimile or other electronic transmission), all which together shall constitute one and the same agreement.

This Employee Confidentiality, Inventions and Non-Competition Agreement shall be effective as of the first day of my employment with the Company, namely: _____, 201____.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.

Dated: _____, 201____

(Signature)

(Printed Name)

ACCEPTED AND AGREED TO:

"Company Name"

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____, 201____

EXHIBIT A

TO: [COMPANY NAME]

FROM:

DATE:

SUBJECT: Prior Inventions

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by [COMPANY NAME] (the "Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my employment by the Company:

No inventions or improvements.

See below:

Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

Invention or Improvement	Party(ies)	Relationship
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____

Additional sheets attached.

3. I acknowledge that this Exhibit A, if completed, forms a part of the Employee Confidentiality, Inventions and Non-Competition Agreement to which the Company and I are parties, and that the failure to complete this Exhibit A and cause it to be attached to such Agreement constitutes a representation by me that I have no Prior Inventions.

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