

Financial Advisor Employment and Compensation Agreement

Version 2019-2a

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FP Transitions, LLC

**INSTRUCTIONS FOR USE OF THIS CONTRACT**

1. This form contract has been developed based on the negotiated terms of the parties.

**2.** FP Transitions, LLC, suggests that you do not alter the text of this contract without the assistance of your attorney. We are not a law firm, we do not provide legal services, and your FP Transitions Consultant is not your attorney or legal advisor.

3. If you do handwrite changes to the text, then all parties should initial those changes.

4. *D****o not sign this contract until each of you has reviewed it with your attorney*.** You need to understand the impact this contract has on your legal rights moving forward and the legal issues that may arise in the future. Employment law is unique to each state, so you need to be aware of any specific requirements under the applicable state law that this contract does not cover, address, or comply with.

5. *Once signed, this is a legally binding contract upon all signatory parties* and each party is subject to legal liability and monetary damages for failure to perform under the terms of this contract.

**This contract is designed to be fair and impartial to all parties. However, your attorney may recommend revisions to the text to protect your particular interests.**

**If you have questions regarding your legal rights or other legal issues, contact your attorney.**

**FINANCIAL ADVISOR EMPLOYMENT AND COMPENSATION AGREEMENT**

Date: \_\_\_\_\_\_\_, 20\_\_\_

Parties: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(the “Employee”)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(the “Company”)**

**RECORD**

**A.** The Company provides investment advisory and wealth management services to the public and other related services and products (the “Company’s Business”).

**B.**  Employee is a registered Financial Advisor currently holding these licenses: Series \_\_\_\_\_\_\_, in one or more of these state: \_\_\_\_\_\_\_\_\_\_.

**C.** The Company desires to employ Employee as a Financial Advisor in connection with the Company’s Business on the terms, covenants, and conditions set forth in this Agreement.

**D.** Employee now desires to affiliate with the Company and accept such employment with the Company on the terms, covenants, and conditions set forth in this Agreement.

**E.** Employee acknowledges that it will receive, have access to, and learn of certain Confidential Information belonging to the Company.

**AGREEMENT**

For and in consideration of the foregoing recitals and the terms, covenants, and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties enter into the following Agreement:

1. **Employment Relationship.** Subject to the terms and conditions of this Agreement, the Company hereby employs Employee as a Financial Advisor at the Company and Employee hereby accepts such employment. It is expressly agreed that the Company owns all right, title, and interest in all of the client relationships and client accounts for which any employee or independent contractor of the Company, including Employee, either originates or provides services. Employee shall have no ownership interest in the client relationships and client accounts for which Employee or any other employee or independent contractor provides services.
2. **Term.** The term of Employee’s employment under this Agreement (the “Term”) shall commence on \_\_\_\_\_\_\_, 2017, and shall continue thereafter for an indefinite period of time until such time as such employment is terminated in accordance with the terms of this Agreement.
3. **Employment Duties.**
   1. Employee shall provide such lawful services as are usually provided by and are consistent with those of a Financial Advisor in the investment or insurance services marketplace for the Company and its customers or clients as are from time to time reasonably requested of and assigned to Employee (the “Services”). The services shall include, but shall not be limited to:
      1. Keeping, or causing to be kept, appropriate records, reports, claims, and correspondence (“Records”) necessary and appropriate in connection with Services provided by Employee;
      2. To the extent permitted by applicable law and regulations, promoting the Company’s Business;
      3. Performing all acts reasonably necessary to maintain all of Employee’s knowledge and skills at an appropriate level; and
      4. Participating, at the Company’s request, in activities designed to enhance and develop the Company’s Business.
   2. The Company may reasonably modify Employee’s duties at its discretion.
4. **Revenue and Compensation.** 
   1. **Assignment of Revenue.** All revenue and rights to future revenue earned or in any other way generated by or to be paid to Employee, as a registered representative of a broker/dealer, an independent advisor representative of a registered investment advisor, an appointed agent of an insurance company, or in any other way attributable to, affiliated with, or caused by Employee’s performance of services as a Financial Advisor, inures to the benefit of, and shall be the exclusive property of, the Company. Whenever possible, Employee will direct such revenue to be remitted by the payor directly to the Company. In the event regulation precludes direct payment to the Company, Employee will promptly pay-over all such revenue to the company in accordance with reasonable accounting and banking practices specified by the Company. The Parties will establish joint representative codes when appropriate and possible.
   2. **Base Salary.** Throughout the Term, Employee shall receive an annual base salary of $\_\_\_\_\_\_ (the “Base Salary”), payable in equal semi-monthly/monthly/quarterly installments, less applicable withholdings. From time to time, the Company shall review the Base Salary and other compensation of Employee, and based upon the performance of the Company and other factors deemed appropriate by the Company, make such adjustments to Employee’s compensation package as it deems necessary or desirable in its sole and absolute discretion.
   3. **Bonus.** In addition to the Base Salary, Employee shall be eligible to receive performance based compensation (the “Bonus”) for each calendar year during the Term of Employment in an amount equivalent to $\_\_\_\_\_ or \_\_\_\_\_% of Base Salary if, and to the extent that, Employee is employed by the Company on December 15 of such calendar year and the following goals are achieved:
      1. \_\_\_\_\_\_\_\_

If earned, such Bonus shall be paid no later than January 15 of the following calendar year. Further, Employee may be eligible to receive additional bonus compensation as may be awarded to Employee from time to time by the Company in its sole discretion.

* 1. Any eligibility for Employee to receive profit distributions from the Company is outside the scope of this Agreement. Profit distributions to members is as determined by the Board of Directors or Managing Member of the Company in accordance with the Company’s Operating Agreement. ***– remove if employee is not an owner***

1. **Benefits.**
   1. **Benefits.** Employee shall be entitled to the following benefits throughout the Term:
      1. Benefits and fringes (whether subsidized in part, or paid for in full by the Company) including, but not limited to, medical, dental, and disability insurance, which the Company now or in the future generally offers to its employees and, if applicable, its executive officers, to the extent permitted by law;
      2. $\_\_\_\_ or \_\_\_\_% of each monthly premium for full family coverage for the benefit of Employee and the Employee’s family under the Company's health and dental insurance plans in which Employee and Employee's family members are eligible to participate;
      3. Participation in any of the Company’s savings, retirement, 401(k), deferred compensation, company-owned life insurance, and other qualified and non-qualified plans sponsored by the Company;
      4. Participation in all cash incentive, equity incentive, savings, and retirement plans, practices, policies, and programs applicable generally to other employees of the Company; and
      5. If Employee is a director or officer for the company, Employee shall be entitled to other perquisites on the same terms and conditions as such perquisites are made available to other executive officers of the Company from time to time. ***– remove if employee is not an owner of the company***
   2. **Business Expenses.** Employee shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by Employee in connection with the performance of his/her duties hereunder. Upon Employee's termination of employment pursuant to this Agreement, any outstanding reimbursement requests must be submitted promptly and payment shall occur thereafter but no later than December 31 of the calendar year following the calendar year in which such expenses were incurred.
   3. **Paid Time Off.** Employee shall be entitled to a specific number of days of paid time off in accordance with the policies periodically established by the Company, provided that the use of such vacation days does not materially and adversely affect Employee’s ability to diligently, conscientiously, and competently devote Employee's full business time, attention, energy, knowledge, skill, and efforts to the Company’s Business and the discharge of Employee's duties and responsibilities under this Agreement.

[*AND/OR*]

The Company does not provide paid time off to its employees. Employee is not required to work set hours established by the Company, but must schedule his work hours and scheduled time off in a manner that does not materially and adversely affect his ability to diligently, conscientiously, and competently devote his full business time, attention, energy, knowledge, skill, and efforts to the Company’s business and the discharge of Employee's duties and responsibilities under this Agreement.  The Company and Employee will coordinate scheduled absences to ensure that the needs of the Company’s clients are met.

1. **Termination.** 
   1. The Parties agree that Employee’s employment with the Company is at-will.

[*OR*]

The Company shall have the right to terminate Employee’s employment under this Agreement immediately for Cause or upon Employee’s death or permanent disability. For purposes of this Agreement, the term “Cause” means: (a) Employee’s misappropriation or theft of the Company’s funds or property; (b) Employee’s conviction or entering of a plea of *nolo contendere* of any fraud, misappropriation, embezzlement, or similar act, felony, or crime involving dishonesty or moral turpitude involving the Company or the Company’s Business; (c) Employee’s material breach of this Agreement or failure to perform any of his/her duties and responsibilities set forth in this Agreement; or (d) Employee’s commission of any act involving gross negligence or willful misconduct in connection with the performance of any of his/her duties and responsibilities set forth in this Agreement.

* 1. The Company may deduct from Employee’s final pay disbursement and future contingent payment, if any, full reimbursement for any sums owed to the Company by Employee.

1. **Protection of Confidential Information.**
   1. **Definitions.** For purposes of this Agreement, “Confidential Information” includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic, or any other form or medium, relating directly or indirectly to: plans and specifications for new products; research and development; inventions; marketing strategies; lists of the Company’s clients, customers, markets, and suppliers; nonpublic financial information; budgets; and projections. Employee understands this list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.
   2. **Disclosure and Use Restrictions.** Employee agrees and covenants: (a) to treat all Confidential Information as strictly confidential; (b) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or made available, in whole or part, to any entity or person whatsoever (including other employees of the Company not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of Employee’s authorized employment duties to the Company; and (c) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of Employee’s authorized employment duties to the Company. Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government or other regulatory agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order.
   3. **Commencement of Obligation.** Employee understands and acknowledges that its obligation under this Agreement with regard to any particular Confidential Information shall commence immediately upon Employee first having access to such Confidential Information (whether before or after it begins with employment by the Company) and shall continue during and after its employment by the Company until such time as any individual article of Confidential Information becomes public knowledge other than as a result of Employee’s breach of this Agreement or breach by those acting in concert with Employee or on Employee’s behalf.
2. **Non-Competition and Non-Solicitation.**
   1. **Covenant to Not Compete.** At all times throughout the Term and for a period of \_\_\_\_\_ years after Employee’s last date of employment by the Company, Employee shall not, directly or indirectly, engage in any activity that competes with the Company for the business of any clients or client accounts serviced or held by the Company, nor will Employee have any physical office, within a \_\_\_\_\_\_ mile radius of any office of the Company.
   2. **Covenant to Not Solicit.** At all times throughout the Term and for a period of \_\_\_\_ years after Employee’s last date of employment by the Company, Employee shall not, directly or indirectly, solicit business from any clients or client accounts serviced or held by the Company. Further, Employee shall not, for the benefit of Employee or any other person or enterprise, (a) induce or solicit any person who is then employed by the Company, or has been employed by the Company at any time during the one (1) year period preceding such inducement or solicitation, to accept any other employment or position; or (b) otherwise assist any person or enterprise in hiring or otherwise engaging such person. There is no geographical limitation that applies to these restrictions.
   3. **Covenant to Not Accept.**  At all times throughout the Term and for a period of\_\_\_\_ years after Employee’s last date of employment by the Company, Employee shall not accept the business of any clients or client accounts serviced or held by the Company. There is no geographical limitation that applies to this restriction.
   4. **Transfer Fee.** If Employee breaches any restriction set forth in this section, Employee shall not be liable to the Company for damages if Employee pays the Company a transfer fee equal to 2½ times the Company’s 12-month trailing revenue from the client or client account calculated as of the date such client or client account was last serviced by the Company (the “Transfer Fee”) and such Transfer Fee is paid to the Company within 90-days of the termination of the client account with the Company.
   5. **Reasonableness of Restrictions.** Employee acknowledges that the covenants set forth in this § 8 do not impose unreasonable restrictions or create a hardship for Employee, are essential to the willingness of the Company to employ Employee, are necessary and fundamental to the protection of the business conducted by the Company, and are reasonable as to scope, duration, and territory.
3. **General Terms.**
   1. **Waiver.**  No delay by the parties seeking to enforce this Agreement will operate as a waiver of any rights they may have. A waiver or consent given on any one occasion is effective only in that instance and it will not be construed as a bar to or waiver of any right on any other occasion. Further, no waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
   2. **Binding Effect.**  The obligations under this Agreement are binding upon the successors, assigns, heirs, and the estate of each of the respective parties to this Agreement.
   3. **Personal Services; Assignment.** Employee’s rights, duties, and obligations under this Agreement inure to the benefit of its successors and assigns.
   4. **Survival.** The covenants in § 7 survive the termination of this Agreement.
   5. **Severability.** If any provision of this Agreement is found to be invalid, inoperative, or unenforceable for any reason, then this Agreement shall be reformed and construed to the fullest extent permitted under the law.
   6. **Counterparts.** This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. The delivery of a legible photocopy, facsimile, or electronic copy of a signed original of this Agreement shall be treated the same as a delivery of the original.
   7. **Arbitration.** Any controversy or claim arising out of this Agreement or the interpretation of any of the provisions in this Agreement shall be resolved by binding arbitration by one arbitrator.
   8. **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of \_\_\_\_, without regard to the conflict of law principles thereof, and of the United States of America. Any legal action or proceeding with respect to this Agreement shall be brought and maintained in \_\_\_\_ County,\_\_\_\_.
   9. **Attorney Fees.** If any action is brought to interpret or enforce this Agreement, the prevailing party shall recover from the other party reasonable attorney fees, costs, and expenses incurred in connection with the proceeding as determined by the arbitrator or court.
   10. **Integration; Modification.** This Agreement contains the entire agreement and the full and final expression of the parties with regard to its subject matter only and may not be changed or supplemented orally. Any changes to this Agreement must be in writing and signed by all of the parties.

*In witness whereof*, the Parties have made and executed this Agreement intending to be bound hereby.

[Company name]

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By name, title employee name