

Financial Advisor

Independent Contractor Agreement

Version 2018-1a

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FP Transitions, LLC

**INSTRUCTIONS FOR USE OF THIS DOCUMENT**

1. This form document represents the negotiated terms of the parties.

2. Do not alter the text without the assistance of your attorney and/or your tax advisor.

3. Do not sign this document until you have reviewed it with your attorney, accountant, and tax advisor. This document impacts your legal rights and the legal issues that may arise in the future. In addition, there may be specific requirements under state law that this document does not cover, address, or comply with. FP Transitions not a law firm, it does not provide legal services, and your FP Transitions Consultant is not your attorney or legal advisor.

4. FP Transitions, LLC, has no responsibility for claims, demands, or damages arising from or related to this document.

5. Do not sign this document until you have fully investigated the circumstances and you are satisfied with the results of your investigation.

6. This document is designed to be fair and impartial to all parties. However, your attorney or CPA/tax advisor may recommend revisions to the text to protect your particular interests. If you have questions regarding your legal rights, tax liability, or other legal issues, contact your attorney, accountant, or other tax advisor.

**FINANCIAL ADVISOR**

**INDEPENDENT CONTRACTOR AGREEMENT**

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

Parties:  (the “Company”)

(the “Contractor”)

**RECORD**

**A.** The Company operates a business which supports properly licensed and registered financial advisors in providing investment advisory and wealth management services and other related services and products to the public (the “Company’s Business”).

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

**C.** Contractor desires to obtain investment advisory and support services from the Company, including investment reports, records, access for the Contractor’s clients to invest in certain funds, and investment strategies for the Contractor’s clients in connection with the Company’s Business, and the Company is willing to supply such services, subject the terms, covenants, and conditions set forth in this Agreement.

**D.** Contractor 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. **Independent Contractor Relationship.** Subject to the terms and conditions of this Agreement, the Company hereby engages Contractor as a Financial Advisor affiliated with the Company, and Contractor hereby accepts such affiliation. Nothing in this Agreement is intended to create, nor should be interpreted to create, an employment contract between the Company and the Contractor.
2. **Term.** The term of this Agreement (the “Term”) shall commence on \_\_\_\_\_\_\_, 20\_\_\_, and shall continue thereafter until this Agreement is terminated.
3. **Authority.** Upon receipt of the Company’s written authorization to commence solicitation efforts on its behalf, Contractor will have the authority to offer and provide investment advisory programs, services, and products to the Contractor’s existing and prospective clients. Programs, services, and products may include but will not be limited to financial planning services, managed account investment programs, other investment programs, and the sale of life, annuity, long-term care, and disability insurance products. The authority granted herein requires the Contractor to be a Licensed Investment Advisory Representative solely for the Company. This Agreement is inclusive of a subagent relationship with the Company or its designated affiliates to provide insurance and annuity products and services.
4. **Duties.**
   1. Contractor shall provide such lawful services as are usually provided by and are consistent with those of a Licensed Investment Advisory Representative in the investment or insurance services marketplace to the Contractor’s clients (the “Services”), which shall include, but shall not be limited to:
      1. Managing the relationships with Contractor’s clients;
      2. Keeping, or causing to be kept, appropriate records, reports, claims, and correspondence (“Records”) necessary and appropriate in connection with Services provided by Contractor;
      3. To the extent permitted by applicable law and regulations, promoting the Company’s Business;
      4. Knowing and complying with all written compliance and other rules, policies, and directives of the Company;
      5. Attending and completing required training courses, compliance, and other meetings;
      6. Performing all acts reasonably necessary to maintain all of Contractor’s knowledge and skills at an appropriate level;
      7. Achieving and maintaining specified performance, proficiency, and quality of business; and
      8. Participating, at the Company’s request, in activities designed to enhance and develop the Company’s Business.
   2. The Company may reasonably modify Contractor’s duties at its discretion.
   3. Contractor agrees that for the compensation and opportunity provided herein, he or she shall devote all working time and efforts to the performance of his or her duties hereunder, and, during the Term, to engage in no other employment or business enterprise unless specifically approved by the Company. Any outside employment or business enterprise must be disclosed and approved in advance in writing.
5. **Book of Work.** The Company will not own Contractor’s list of accounts and clients (“Book”) during the Term; however, Contractor shall keep his or her clients with the Company and custody their investment assets with a custodian approved by the Company as long as this Agreement is in effect. Upon termination of this Agreement, the Contractor will be free to move his or her Book to another company.
6. **Compensation and Expenses.** 
   1. **Compensation.**  The Company will take as compensation \_\_\_\_% of the gross asset fees due to the Contractor from the Contractor’s Book. The remaining balance of \_\_\_% of the fees will be paid to the Contractor. The Contractor is an independent contractor and shall be paid compensation in the form of 1099 income.Contractor shall be responsible for all taxes, FICA, or other deductions they are legally required to pay.
   2. **Expenses.** Contractor will pay his or her Errors & Omissions insurance premiums throughout the term. Contractor will pay his or her proportionate share of expenses. These expenses include, but are not limited to, costs for investment research, financial planning software, and licensing fees. These expenses will be equally divided among all Licensed Investment Advisor Representative of the Company. Contractor agrees to pay for his or her own office space and all expenses incurred at the Company facilities unless otherwise agreed in writing by an authorized representative of the Company. To the extent permitted by applicable law, Contractor’s signature on this Agreement constitutes express authorization to the Company to deduct the Errors & Omissions insurance premiums, if necessary, and to deduct all other expense accrued by the Contractor and due to the Company.
7. **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. Contractor 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.** Contractor 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 Contractors 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 Contractor’s authorized contractual 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 Contractor’s authorized contractual 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.** Contractor understands and acknowledges that its obligation under this Agreement with regard to any particular Confidential Information shall commence immediately upon Contractor first having access to such Confidential Information (whether before or after the effective date of this Agreement) and shall continue during the term of this Agreement and after its termination until such time as any individual article of Confidential Information becomes public knowledge other than as a result of Contractor’s breach of this Agreement or breach by those acting in concert with Contractor or on Contractor’s behalf.
8. **Termination.** Notwithstanding anything herein to the contrary, both the Contractor and the Company retain the right to terminate this Agreement in writing at any time, with or without cause or prior warning, for any reason not prohibited by applicable law.
9. **Covenants to Not Solicit or Accept.**
   1. **Covenant to Not Solicit Clients.** Contractor agrees to not directly or indirectly solicit business from any clients or client accounts serviced or held by the Company or any other independent contractor affiliated with the Company. This covenant to not solicit clients survives termination of this Agreement for a period of \_\_\_\_\_ (\_\_\_\_) years from the date of termination.
   2. **Covenant to Not Accept Clients.**  Contractor agrees to not accept the business of any clients or client accounts serviced or held by the Company or any other independent contractor affiliated with the Company. This covenant to not accept the business of certain clients or client accounts survives the termination of this Agreement for a period of \_\_\_\_\_ (\_\_\_\_) years from the date of termination.
   3. **Covenant to Not Solicit Employees or Independent Contractors.**  Contractor agrees to not induce or attempt to induce any employee or independent contractor now or hereafter employed by or affiliated with the Company to leave the Company’s employment or terminate its affiliation with the Company without the prior written consent of the Company. This covenant survives termination of this Agreement for a period of \_\_\_\_\_ (\_\_\_\_) years from the date of termination.
   4. **Transfer Fee.** If Contractor breaches any restriction set forth in this section, Contractor shall not be liable to the Company for damages if Contractor pays the Company a transfer fee equal to \_\_\_\_ 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.** Contractor acknowledges that the covenants set forth in this § 9 do not impose unreasonable restrictions or create a hardship for Contractor, are essential to the willingness of the Company to enter into this Agreement with Contractor, are necessary and fundamental to the protection of the business conducted by the Company, and are reasonable as to scope, duration, and territory.
10. **Injunctive Relief.** Contractor acknowledges that monetary damages for the breach of §§ 9.1 through 9.3 above will be inadequate, and Contractor agrees that the Company will be entitled to preliminary and permanent injunctive relief, in addition to any other legal remedies that may be available to it, if Contractor breaches § 9.1, 9.2, and 9.3 above.
11. **General Terms.**
    1. **Acknowledgement.** Contractor has had the opportunity to consult with independent legal counsel of his or her own choosing before entering into this Agreement.
    2. **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.
    3. **Notices.** Any notice required under this Agreement must be made in writing and will be deemed to have been given if mailed by certified mail, return receipt requested, or by such manner that delivery is confirmed, addressed to the parties at the following addresses or at such other address as either may have notified the other in writing:

Company: Contractor:

* 1. **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.
  2. **Assignment.** Contractor may not assign his/her rights or obligations under this Agreement without prior written consent of the Company.
  3. **Survival.** The covenants in §§ 7 and 9 survive the termination of this Agreement.
  4. **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.
  5. **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.
  6. **Arbitration.** Except for the Company’s right to pursue equitable relief for a breach of the Non-Solicitation, Non-Acceptance, and Non-Disclosure covenants set forth in § 8 above, 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.
  7. **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, \_\_\_\_\_.
  8. **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.
  9. **Indemnification.**  Contractor agrees to indemnify and hold the Company harmless from any and all actions brought against the Contractor by any clients of the Contractor arising out of any investment advice rendered by the Contractor to the Contractor’s clients or out of any other action or omission by the Contractor.
  10. **Indebtedness.** To the extent permitted by applicable laws, the Company may offset as a first lien against any claim for compensation under this Agreement, any debt due or to become due, hereunder or otherwise, from the Contractor to the Company or any of its affiliated companies. Debts not satisfied by such offset become personal debts of the Contractor that are recoverable at any time, with interest at the Prime Rate reported by the *Wall Street Journal* on the date the debt was incurred plus one percent. “Debt” as used herein includes compensation or fees attributable to refunded termination values or to premiums unpaid or refunded, advances, loans, and amounts due to the Company or any of its affiliated companies under any account with the Contractor.
  11. **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 [Manager or President’s Name, Title] [Contractor’s name]