

# NON-DISCLOSURE, CONFIDENTIALITY, AND NON-SOLICITATION AGREEMENT

**Recipient:** [NAME]

**Effective Date:** [DATE]

This Non-Disclosure, Confidentiality, and Non-Solicitation Agreement is entered into between \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (“Disclosing Party”) and the Recipient identified above.

## BACKGROUND:

1. Disclosing Party is in possession of and has participated in the development of certain Confidential Information for its own sake as a law firm, and on behalf of its Clients in accordance with the attorney-client privilege, and has undertaken substantial financing and other work to do so.
2. Pursuant to a potential business relationship between Recipient and Disclosing Party, Recipient may have access to such Confidential Information, including legal, personal, business, and financial information and Materials concerning Disclosing Party and Disclosing Party's Clients, employees, business associates, agents, and organizations, which are confidential and of substantial value.
3. Pursuant to a potential business relationship between Recipient and Disclosing Party, Recipient may observe, assist, and/or participate in the rendition of Disclosing Party's professional legal services.
3. Attorneys licensed by the State of Utah are required to adhere to the *Utah Rules of Professional Conduct* (“URPC”); supervising attorneys are required by URPC Rule 5.3(b) to ensure that all assistants employed by the practice/professional corporation, whether employees or independent contractors, conduct themselves in accordance with the URPC.
4. Whereas the value of Disclosing Party's Confidential Information, Disclosing Party's professional relationships, and Disclosing Party's compliance with the URPC will be significantly compromised if such information is disclosed to Third Parties, Disclosing Party desires to establish Recipient's obligations with respect to such information.

Accordingly, the parties agree:

## ARTICLE 1: DEFINITIONS.

**1.1 Definitions.** Terms defined in the preamble have their assigned meanings and each of the following terms have the following meaning in this Agreement:

- (a) **“Affiliate”** means any business affiliates of Disclosing Party or Disclosing Party's Clients including, but not limited to, directors, officers, partners, shareholders, employees, independent contractors, consultants, agents, and any parent, subsidiary, predecessor, successor, or otherwise affiliated company.
- (b) **“Agreement”** means this non-disclosure, confidentiality, and non-circumvention agreement, as amended from time to time.

- (c) **“Authorized Use”** means any use or transmission of Confidential Information which Disclosing Party has expressly authorized and communicated to Recipient via writing or through a direct and objective manifestation of consent.
- (d) **“Business Day”** means any weekday which is not a U.S. bank holiday.
- (e) **“Confidential Information”** means all information and Materials of and concerning, prepared by, or belonging to Disclosing Party or its partners, staff, employees, agents, and Clients, or of another party (such as, without limitation, Affiliates) whose information Disclosing Party may have in its possession, relating to past, present or future
- i. personal, business, or financial relationships,
  - ii. events or occurrences of any type, or
  - iii. legal strategy, including without limitation,
    - A. case planning,
    - B. research, development, or business plans,
    - C. operations of negotiations,
    - D. Clients and Client information,
    - E. Client development information,
    - F. financing, and
    - G. any technical and non-technical information related to Disclosing Party’s current, future, and proposed business and services.

Confidential information shall not include any information that:

- i. is known to Recipient before being obtained from Disclosing Party;
  - ii. is or becomes publicly known;
  - iii. is communicated by Recipient to a third party with express written consent of Disclosing Party; or
  - iv. is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, provided that before making such disclosure, Recipient shall give Disclosing Party an adequate opportunity to interpose an objection or take action to ensure confidential handling of any such information Recipient may be required to disclose.
- (f) **“Client”** means any individual, organization, or business entity that contacts and/or meets with Disclosing Party or any of its partners, staff, employees or agents for purposes of obtaining legal advice or legal representation of any nature or duration, regardless of whether the contact/meeting results in the formation of a representation agreement between Disclosing Party and any Client, or whether the representation has since concluded or been terminated by either party.
- (g) **“Materials”** includes without limitation all documents, records, files, lists, designs, memoranda, notebooks, manuals, objects, devices, supplies, recordings, drawings, models, computer programs, prototypes, equipment, inventory and other materials, or copies thereof, in electronic, paper, or any other form now known or hereafter invented, that are created, used or obtained by Disclosing Party or its partners, staff, employees, agents, and Clients, or that have been created, used, or obtained by Recipient in connection with of their Authorized Use of Confidential Information.
- (h) **“Third Party”** means any individual, business entity, or organization that is not an Affiliate or a partner, staff-member, employee, agent, or Client of Disclosing Party, and has not been expressly

authorized by Disclosing Party to receive Confidential Information, or has received authorization pending the execution of a confidentiality and non-disclosure agreement with Disclosing Party.

**ARTICLE 2: URPC COMPLIANCE; NON-DISCLOSURE;  
AUTHORIZED USE; RESTRICTED DISCLOSURE.**

**2.1 URPC Compliance.** While within the scope of the business relationship with Disclosing Party, Recipient shall adhere to the ethical and confidentiality requirements of the *Utah Rules of Professional Conduct*, including but not limited to Rules 1.6-1.11, 4.1-4.3, and 7.3.

**2.2 Non-Disclosure.** Except as provided in §2.3 of this Agreement, Recipient shall not disclose Confidential Information, or the existence of Confidential Information, to any Third Party without Disclosing Party's express consent.

**2.2 Authorized Use.** Except as provided in §2.3, Recipient shall not use Confidential Information for any purpose other than Authorized Use.

**2.3 Restricted Disclosure.**

- (a) Recipient may disclose to Third Parties or Affiliates such Confidential Information as is objectively and reasonably necessary to fulfill Recipient's obligations to Disclosing Party, facilitate Authorized Use, or for any other purpose expressly authorized by Disclosing Party in writing.
- (b) If disclosure is permissible under §2.3(a), Recipient shall disclose the least amount of Confidential Information possible to only those Third Parties or Affiliates who
  - i. need to know such information and,
  - ii. if necessary depending on the nature of the information, have first objectively manifested consent to be bound by the terms of this Agreement and have the authority and/or resources to act accordingly.

**ARTICLE 3: PROTECTION OF CONFIDENTIAL INFORMATION; NOTIFICATION OF DEMAND.**

**3.1 Protection of Confidential Information.** Recipient shall use their best affirmative efforts in exercising reasonable care to protect Confidential Information and prevent inadvertent disclosure or dissemination of Confidential Information to Third Parties.

**3.2 Notification and Mitigation of Unauthorized Disclosure Risks.** Should Recipient become aware of any past or ongoing unauthorized use or dissemination of Confidential Information, or any future risk of the same, Recipient shall notify Disclosing Party immediately and shall take such affirmative steps as reasonably necessary to cease or prevent such use/dissemination and mitigate the consequences therefrom.

**3.2 Notification of Third Party Demand.** If any Third Party requests, subpoenas, or otherwise attempts to obtain Confidential Information from Recipient, Recipient shall notify Disclosing Party immediately and cooperate fully in any legal action by Disclosing Party seeking protection against disclosure.

**3.3 Notification of Disclosures Required by Law.** If Recipient is legally required, by any court or government authority having jurisdiction over Recipient, to disclose any Confidential Information, Recipient shall, before making such disclosure, provide immediate notice to Disclosing Party sufficient to allow Disclosing Party to apply for a protective order or other restriction regarding such disclosure and shall cooperate fully with Disclosing Party's efforts.

## **ARTICLE 4: ONGOING CONFIDENTIALITY; NON-SOLICITATION.**

**4.1 Ongoing Confidentiality.** Except as provided in § 6.2, Recipient shall be bound by the following ongoing duties of confidentiality:

- (a) **Clients.** Regardless of when Recipient's business relationship with Disclosing Party terminates or concludes, with respect to Confidential Information of and concerning, prepared by, or belonging to Clients Recipient shall continue to be bound to the same extent that Disclosing Party remains bound by the ongoing duty of confidentiality set forth in the URPC, specifically, but not limited to Rules 1.6, 1.9, and 1.10.
- (b) **Disclosing Party.** Regardless of when Recipient's business relationship with Disclosing Party terminates or concludes, with respect to Confidential Information of and concerning, prepared by, or belonging to Disclosing Party or its partners, staff, employees, or agents, Recipient shall continue to be bound by the terms of this Agreement until such time as the information no longer falls within the definition of "Confidential Information" set forth in §1.1(e), or until such time as Disclosing Party executes a written release from this obligation.

### **4.1 Non-Solicitation.**

- (a) **Clients.** For a period of 2 years from the date of this Agreement Recipient shall not, directly or indirectly, solicit, or recommend to any other party that such party solicit any of Disclosing Party's current or proposed Clients.

## **ARTICLE 5: REPRESENTATIONS; WARRANTIES.**

**5.1 Disclosing Party's Representations and Warranties.** Disclosing Party represents and warrants as follows:

- (a) **Organization.** Disclosing Party is a professional corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation.
- (b) **Power and Authority.** Disclosing Party has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement.
- (c) **Ownership and Possession of Confidential Information.** Disclosing Party has lawfully obtained possession and/or ownership of the Confidential Information.
- (d) **Reliance on Recipient's Statements.** In signing this Agreement Disclosing Party relies in good faith on Recipient's statements that Recipient is not bound by any other agreements or fiduciary duties which would make entering into this Agreement unlawful or unethical.

**5.2 Recipient's Representations and Warranties.** Recipient represents and warrants as follows:

- (a) **Power and Authority.** Recipient has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement.
- (b) **Prior Agreements.** There are no duties, restrictions, agreements, or understandings, oral or written, to which the Recipient is a party, or by which the Recipient is bound, that prevent or make unlawful or unethical the Recipient's execution and performance of this Agreement.
- (c)

## **ARTICLE 6: TERM; TERMINATION OF OBLIGATIONS.**

**6.1 Term.** This Agreement shall govern all relevant interactions between Recipient and Disclosing Party from the date of this Agreement until Recipient receives written notice from Disclosing Party that subsequent interactions shall not be so governed.

**6.2 Qualifying Grounds for Termination of Confidentiality.** Recipient's covenants under this Agreement with respect to any piece of Confidential Information shall terminate when Recipient provides written documentation that the specific piece of Confidential Information

- (a) was in the public domain at the time it was communicated to Recipient by Disclosing Party;
- (b) entered the public domain through no act or omission of Recipient subsequent to the time it was communicated to Recipient by Disclosing Party;
- (c) was already in Recipient's possession free of any obligation of confidence at the time it was communicated to Recipient by Disclosing Party;
- (d) was rightfully received by Recipient from a Third Party not owing a duty of confidentiality to the Disclosing Party or any Client or Affiliate;
- (e) was independently developed by Recipient without reference to Confidential Information; or
- (f) was intentionally communicated by Disclosing Party to a Third Party free of any obligation of confidence.

**6.2 Non-Qualifying Grounds.** If Confidential Information is disclosed under the circumstances described in §2.3, such information shall continue to constitute Confidential Information with respect to this Agreement, and Recipient shall continue to perform its obligations with respect to that information.

## **ARTICLE 7: OTHER BUSINESS PROVISIONS.**

**7.1 Notice.** All notices required to be given by Recipient under this Agreement must be in writing and will be deemed to be duly given when

- (a) personally delivered,
- (b) delivered by a nationally recognized overnight delivery service, or
- (c) when mailed by via first-class United States mail, postage prepaid, and
- (d) addressed to such address as Disclosing Party has furnished to Recipient in writing.

**7.2 Ownership.** Nothing in this Agreement shall be construed as creating, conveying, transferring, granting or conferring upon the Recipient any rights, license, or authority with respect to Confidential Information, except the limited right to Authorized Use.

**7.3 Return of Materials.** By 5pm MST on the tenth Business Day from receipt of a request from Disclosing Party, Recipient shall return or destroy all requested Materials and Confidential Information within its possession, and if destroyed, shall provide sufficient evidence of its destruction.

**7.4 Remedies.** Recipient acknowledges that unauthorized disclosure of Confidential Information will incur irreparable harm and damages to Disclosing Party; accordingly, if Recipient breaches any of its obligations hereunder, Disclosing Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief, as well as money damages.

**ARTICLE 8: GENERAL PROVISIONS.**

**8.1 Governing Law.** The laws of Utah govern all matters relating to this Agreement, including torts.

**8.2 Amendments.** This Agreement may only be amended by the parties' written agreement.

**8.3 Waiver.** The waiver by either party of the other party's breach of any provision of this Agreement will not operate as the waiving party's waiver of any subsequent breach.

**8.4 Merger.** This Agreement is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this Agreement, and supersedes all previous negotiations and agreements.

**8.5 Severability or Limitation.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force; in the event any covenant made in this Agreement shall be more restrictive than permitted by applicable law, that covenant shall be limited to the extent which is so permitted.

IN WITNESS OF THEIR AGREEMENT, the parties have signed and delivered it this \_\_ day of \_\_\_\_\_, 20\_\_.

DISCLOSING PARTY

RECIPIENT

\_\_\_\_\_

\_\_\_\_\_