**ACRES (Advisor/Client Relationship Equitable Split) Agreement**

***A sample mutual restrictive covenant agreement***

***for RIAs and their IARs***

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THIS DOCUMENT REFLECTS A SAMPLE RESTRICTIVE COVENANT AGREEMENT ONLY. IT IS OFFERED PURELY AS A GENERAL RESOURCE FOR INFORMATIONAL PURPOSES AND IS NOT TAILORED TO ANY SPECIFIC STATE’S LAWS OR ANY SPECIFIC EMPLOYER/EMPLOYEE RELATIONSHIP. NOTHING CONTAINED HEREIN SHALL BE CONSIDERED LEGAL, COMPLIANCE, OR ANY OTHER PROFESSIONAL ADVICE. LEGAL, COMPLIANCE AND OTHER PROFESSIONAL ADVICE IS SPECIFIC TO EACH INDIVIDUAL, ENTITY, AND STATE’S LAWS, AND YOU SHOULD CONSULT WITH A LICENSED ATTORNEY TO RECEIVE SUCH PERSONALIZED ADVICE.

BEACH STREET LEGAL LLC (“BSL”) AND KITCES.COM LLC (“KITCES”) DO NOT WARRANT THE ACCURACY, COMPLETENESS OR USEFULNESS OF THIS SAMPLE AGREEMENT. ANY RELIANCE YOU PLACE ON SUCH SAMPLE AGREEMENT IS STRICTLY AT YOUR OWN RISK. BSL AND KITCES DISCLAIM ALL LIABILITY AND RESPONSIBILITY ARISING FROM ANY RELIANCE PLACED ON THIS SAMPLE AGREEMENT BY YOU. THIS SAMPLE AGREEMENT IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED.

YOU ARE PERMITTED TO USE THIS SAMPLE AGREEMENT INTERNALLY AS BETWEEN YOUR ADVISORY FIRM AND ITS IARS, BUT ARE NOT PERMITTED TO SUB-LICENSE OR SELL THIS SAMPLE AGREEMENT FOR COMMERCIAL PURPOSES

**MUTUAL RESTRICTIVE COVENANT AGREEMENT**

This Mutual Restrictive Covenant Agreement (this “Agreement”), effective as of the date last signed by a party (the “Effective Date”) is entered into by and between the undersigned parties, which on the one hand represents an investment adviser registered, or exempt from registration, with the U.S. Securities and Exchange Commission (“SEC”) or applicable state securities authority(ies) (the “Firm”), and on the other hand represents an individual employed or otherwise retained by the Firm as an investment adviser representative (the “Individual Advisor”).

WHEREAS, the parties mutually desire to enter into this Agreement to govern their respective rights, obligations, and restrictions with respect to the clients and prospective clients of the Firm and/or the Individual Advisor (each, a “Client”) both during the term of this Agreement and in the event the Individual Advisor ceases to be employed or otherwise retained by the Firm as an investment adviser representative (“Separation”).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Identification of Clients. The parties acknowledge and agree that it is in their mutual best interests that all Clients and prospective clients be categorized as a “Firm Client,” an “Individual Advisor Client,” or a “Joint Client” (each, a “Client Category”) such that specific rights, obligations, and restrictions of the parties can be respectively ascribed to each Client Category as described in this Agreement in the event of Separation. Applicable Client introduction and Client servicing conditions have been ascribed to a corresponding Client Category in Exhibit A as mutually agreed by the parties.

	1. In no event shall either party unilaterally change an assigned Client Category without the express written consent of the other party as evidenced by an amended and restated Exhibit A and signed by each party.
	2. A list of Clients and their corresponding Client Category as of the Effective Date has been attached and is hereby incorporated into this Agreement as Exhibit B, and shall be so ascribed in Firm’s CRM System.
	3. The parties shall make good faith efforts to assign a Client Category to each Client in the Firm’s customer relationship management system or other mutually-agreeable written record (e.g., the Firm’s “CRM System”) pursuant to the Client Categories assigned in Exhibit A; however, in the event that the parties dispute a particular Client’s Client Category as indicated in Firm’s CRM System, the Client Categories ascribed in Exhibit B shall govern.
	4. Prospective Clients that have not yet engaged the Firm for services, or any other Client that engages the Firm for services after the Effective Date, shall be contemporaneously ascribed a Client Category (as determined by the Client Category definitions in Exhibit A) in Firm’s CRM System and confirmed by the parties.
	5. Any Client not specifically ascribed a Client Category shall be deemed to be categorized as either a Firm Client, an Individual Advisor Client, or a Joint Client as elected by checking the applicable box below:

	[ ]  Firm Client

	[ ]  Individual Advisor Client

	[ ]  Joint Client
2. Restrictive Covenants. The parties acknowledge and agree that it is in their mutual best interests to set forth the nature and extent of their respective rights, obligations, and restrictions with respect to pre- and post-Separation competition, solicitation, non-disparagement, and confidentiality.

	1. Competition.

		1. For so long as the Individual Advisor remains employed or otherwise retained by the Firm as an investment adviser representative, the Individual Advisor shall not directly or indirectly engage in a business similar to or competitive with the Firm without the Firm’s prior written approval.
		2. From and after Separation, the Individual Advisor shall not be restricted from directly or indirectly engaging in a business similar to or competitive with the Firm.
	2. Solicitation.

		1. For so long as the Individual Advisor remains employed or otherwise retained by the Firm as an investment adviser representative or in any other capacity, the Individual Advisor shall not directly or indirectly induce or encourage any Client to terminate or reduce his, her, or its engagement or relationship with the Firm, or to otherwise interfere with the relationship between the Firm and any Client.
		2. For so long as the Individual Advisor remains employed or otherwise retained by the Firm as an investment adviser representative or in any other capacity, the Individual Advisor shall not directly or indirectly induce or encourage any employee, independent contractor, agent, or service provider to terminate or reduce his, her, or its engagement or relationship with the Firm, or to otherwise interfere with the relationship between the Firm and any employee, independent contractor, agent, or service provider.
		3. From and after Separation, neither the Firm nor the Individual Advisor shall directly or indirectly encourage any independent contractor, agent, or service provider to terminate, limit, or otherwise reduce his, her, or its engagement or relationship with the other party, or otherwise interfere with the relationship between the Firm or Individual Advisor and its independent contractors, agents, or service providers.
		4. The parties hereby agree that the solicitation restrictions checked below shall apply from and after Separation unless the Individual Advisor is terminated for Cause (as defined in Section 5.5), and subject to Section 2.7 (check all that apply):

		[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Individual Advisor Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Individual Advisor Client away from the Firm.

[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Joint Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Joint Client away from the Firm.

[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Firm Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Firm Client away from the Firm.

* + 1. In the event that Individual Advisor is terminated for Cause (as defined in Section 5.5), the parties hereby agree that the solicitation restrictions checked below shall apply from and after Separation, superseding Section 2.2.4 above, and subject to Section 2.7 (check all that apply):

		[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Individual Advisor Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Individual Advisor Client away from the Firm.

[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Joint Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Joint Client away from the Firm.

[ ]  The Individual Advisor **shall not be restricted** from directly or indirectly inducing or encouraging any **Firm Client** to terminate or reduce his, her, or its engagement or relationship with the Firm, or from otherwise soliciting any Firm Client away from the Firm.

* 1. Separation Compensation Payments For Servicing. The parties hereby agree that, to the extent certain Clients transition away from the Firm to receive investment advisory and/or financial planning services directly or indirectly from the Individual Advisor or an entity through which the Individual Advisor performs such services after Separation (“Post-Separation Services”), the Individual Advisor Client Payment(s), Joint Client Payment(s), and/or Firm Client Payment(s) (as defined below) (collectively, the “Separation Compensation Payments”) checked below shall apply from and after Separation unless the Individual Advisor is terminated for Cause (as defined in Section 5.5), and subject to Section 2.7 (check all that apply):

	[ ]  For each **Individual Advisor Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Individual Advisor Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Individual Advisor Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Individual Advisor Client Payment(s)”).

	[ ]  For each **Joint Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Joint Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Joint Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Joint Client Payment(s)”).

	[ ]  For each **Firm Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Firm Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Firm Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Firm Client Payment(s)”).
	2. In the event that Individual Advisor is terminated for Cause (as defined in Section 5.5), the Separation Compensation Payments below shall apply from and after Separation, superseding Section 2.2.4 above, and subject to Section 2.7 (check all that apply):

[ ]  For each **Individual Advisor Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Individual Advisor Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Individual Advisor Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Individual Advisor Client Payment(s)”).

[ ]  For each **Joint Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Joint Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Joint Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Joint Client Payment(s)”).

[ ]  For each **Firm Client** that terminates his, her, or its engagement or relationship with the Firm to receive Post-Separation Services directly or indirectly from the Individual Advisor within twelve (12) months of Separation (each, a “Firm Transitioned Client”), the Individual Advisor shall compensate the Firm in an amount equal to the trailing twelve (12) months’ gross revenue earned by the Firm from such Firm Transitioned Client(s) from the date of Separation, multiplied by \_\_\_\_\_ (the “Firm Client Payment(s)”).

* 1. The Separation Compensation Payments shall by payable by the Individual Advisor to the Firm pursuant to a \_\_\_\_ year promissory note bearing interest equal to \_\_\_\_%, and requiring payments of principal and interest \_\_\_\_ time(s) per year at the end of each \_\_\_\_\_\_\_\_\_\_\_\_. The Individual Advisor may prepay all or a portion of the promissory note without penalty.
	2. Non-Disparagement. The parties agree and covenant that they will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning each other. This does not, in any way, restrict or impede a party from exercising his, her, or its protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation or order. This section does not, in any way, restrict or impede a party from disclosing information as permitted by any rule or regulation of the SEC, Department of Labor, federal or state law enforcement agency, or any state securities administrator or secretary of state.
	3. Confidentiality & Information Sharing. To the extent the parties have signed a separate non-disclosure or confidentiality agreement, the terms and conditions of such agreement shall remain in full force and effect except to the extent such agreement conflicts with the restrictive covenants described in this Agreement or the portability of the specific Client information described in this Section 2.7.

		1. Subject to applicable state law, the Firm’s privacy notice, and any required Client consent to the disclosure or sharing of information described in this Section 2.7.1, the Individual Advisor shall be permitted to indefinitely retain a copy of the name, phone number(s), email address(es), and account title(s) solely with respect to the following Clients upon Separation:

		[ ]  OPTION 1: Individual Advisor Clients.

		*or*

		[ ]  OPTION 2: Individual Advisor Clients and Joint Clients.

*or*

[ ]  OPTION 3: Individual Advisor Clients and Joint Clients and Firm Clients.

* + 1. Upon Separation, the Individual Advisor shall not be permitted to retain any originals or copies of any information or documents with respect to any Client Category(ies) not checked in Section 2.7.1, above. In no event will the Individual Advisor, upon Separation, be permitted to retain any originals or copies of any information other than the names, phone numbers, email addresses, or account titles, with respect to any Clients, unless otherwise agreed in writing by the parties and subject to applicable state law, the Firm’s privacy notice, and any required Client consent to the disclosure or sharing of the information to be retained.
1. Separation Communication.

	1. Upon Separation, a written communication (the “Separation Communication”) shall be drafted and distributed to applicable Clients as mutually agreed-to by the parties. The Separation Communication shall be drafted to inform applicable Clients of the Individual Advisor’s separation in a fair and equitable manner, shall be distributed only to the Client Category(ies) to which the Individual Advisor is permitted to solicit pursuant to Section 2.2, and shall contain any necessary information sharing consent language required by applicable state law and the Firm’s privacy notice.
	2. For the avoidance of doubt, nothing contained in this Agreement shall prohibit the Individual Advisor, after Separation and subject to Section 2.7, from engaging in general advertising of his or her services.
	3. Notwithstanding the provisions of Section 3.1 and 3.2, above, in the event that the Individual Advisor is terminated by the Firm for “Cause” (as defined in Section 5.5) the Firm shall be authorized to unilaterally draft and distribute the Separation Communication to all Clients or only those Clients that it may determine in its sole and absolute discretion.
2. Dispute Resolution.

	1. If a dispute, controversy or claim arises among the parties or any of their respective affiliates, the parties shall first attempt to resolve the matter in good faith among themselves. If such efforts are unsuccessful, the parties shall next submit the matter to any mutually agreed-to mediation service for mediation either virtually or in closest proximity to the city and state identified below, the costs of which shall be borne equally among the parties:

	City and State for dispute resolution, if not virtual: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	2. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
	3. *If the parties cannot resolve the dispute, controversy or claim for any reason after mediation, any Party shall commence binding arbitration either virtually or in closest proximity to the city and state identified in Section 4.1, above, before a single arbitrator in accordance with the Arbitration Rules & Procedures of JAMS then applying. If a single arbitrator cannot be agreed to by the parties, each party shall nominate up to two arbitrators to JAMS (without identification of the nominating party), and JAMS shall thereafter select a single arbitrator from the nominated arbitrators submitted by the parties. Judgment on the award rendered by the arbitrator shall be final and binding, and may be entered in any court having jurisdiction thereof. The parties understand that they are waiving their respective rights to seek remedies in court, including the right to a jury trial.*
	4. Notwithstanding the provisions of this Section 4, the parties are entitled to seek and obtain an injunction, including a mandatory injunction, to be issued by any court of competent jurisdiction ordering compliance with this Agreement or enjoining and restraining a party from the commencement or continuation of a breach of this Agreement.
3. Miscellaneous.

	1. This Agreement shall be governed by and construed in accordance with the laws of the state of the following state without regard to the conflict of laws provisions thereof: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	2. This Agreement may not be assigned by the Individual Advisor without the Firm’s express written consent. This Agreement may be assigned by the Firm upon thirty (30) days written notice to the Individual Advisor.
	3. This Agreement may not be amended by either party without the mutual written agreement of both parties.
	4. This Agreement is terminable only upon the mutual written agreement of both parties.
	5. For purposes of this Agreement “Cause” shall mean the Individual Advisor’s:
		1. Willful misconduct, gross negligence, or breach of fiduciary duty;
		2. Conviction of, or the entering of a plea of guilty or nolo contendere to, a crime that constitutes a felony, or any willful or material violation by the Individual Advisor of any federal, state or foreign securities laws;
		3. Conviction of any other criminal act or act of material dishonesty, disloyalty or misconduct that has a material adverse effect on the property, operations, business or reputation of the Firm;
		4. Material violation of any other rule or policy of the Firm that results in a material violation of applicable state or federal securities laws;
		5. Material breach of any written covenant or agreement with the Firm not to disclose any confidential information; or
		6. Material breach of this Agreement.
	6. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such term or provision shall be automatically reformed and construed so as to be valid, operative, and enforceable while preserving its original intent. Such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
	7. This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
	8. Each party shall deliver all notices under this Agreement in writing and addressed to the other party at the addresses set forth below (or to such other addresses as may be designated by a party from time to time in accordance with this section). Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the notice has complied with the requirements of this paragraph. Each party represents that it has all necessary hardware, software and connectivity for access to notices made via email.
	9. Each party agrees that the electronic signatures of the parties included in this Agreement, whether digital or encrypted, are intended to authenticate this writing and to have the same force and effect as physical, manual, or “wet” signatures. Electronic signature shall be construed to include any electronic sound, symbol, or process attached to or logically associated with this Agreement and executed and adopted by a party with the intent to sign this Agreement, including facsimile or email electronic signatures and signatures obtained through a third-party electronic software service provider.

~ The remainder of this page has intentionally been left blank. Signature page to follow. ~

**Signature Page to the Mutual Restrictive Covenant Agreement**

|  |  |
| --- | --- |
| **The “Firm”** | **The “Individual Advisor”** |
| Firm Name: [ - ] | Individual Advisor Name: [ - ] |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: [ - ] | By: [ - ] |
| Title: [ - ] | Title: [ - ] |
| Date: [ - ] | Date: [ - ] |
| Email: [ - ] | Email: [ - ] |
| Address: [ - ] | Address: [ - ] |

**EXHIBIT A**

Client Categories

|  |  |  |  |
| --- | --- | --- | --- |
| **Firm Client** | **Individual Advisor Client** | **Joint Client** | **Client Description** |
|  |  |  | Introduced to the Firm solely by the Individual Advisor and serviced solely by the Individual Advisor. |
|  |  |  | Introduced to the Firm solely by the Individual Advisor and serviced solely by the Firm. |
|  |  |  | Introduced to the Firm solely by the Individual Advisor and serviced jointly by the Firm and the Individual Advisor. |
|  |  |  | Introduced to the Firm solely by the Firm and serviced solely by the Individual Advisor. |
|  |  |  | Introduced to the Firm solely by the Firm and serviced jointly by the Firm and the Individual Advisor. |
|  |  |  | Family member of the Individual Advisor. |
|  |  |  | [Existing friend/relationship of the Individual Advisor.] |
|  |  |  | [Existing client of the Individual Advisor from the Individual Advisor’s prior employer] |
|  |  |  | [Other client description]. |

**EXHIBIT B**

List of Clients

Firm Clients

1. [ - ]

Individual Advisor Clients

1. [ - ]

Joint Clients

1. [ - ]