

## NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT**, effective the date signed below, 2022 (“**Agreement**”) is between The State Bar of South Dakota (referred to hereafter as “State Bar” or “Receiving Party”), and \_\_\_\_\_ (referred to hereafter as “Applicant” or “Disclosing Party”). In consideration of the promises, the delivery and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. GENERAL.** This Agreement establishes a non-disclosure agreement between the Parties to facilitate the discussion and exchange of certain information related to the process of selecting an Executive Director for the State Bar and Applicant’s interest in the position of Executive Director of the State Bar.
- 2. CONFIDENTIAL INFORMATION.** The Parties acknowledge that they may each have access to Confidential Information. “**Confidential Information**” shall mean all confidential and proprietary information of a disclosing party that is disclosed under this Agreement, including, without limitations: (a) any data or information that is not generally known to the public.
- 3. OBLIGATIONS.** Except as expressly authorized by the prior written consent of the party disclosing the Confidential Information (“**Applicant**”), and the party receiving the Confidential Information (“**State Bar**”) shall: (a) keep all Confidential Information confidential by using that degree of care used by the State Bar in safeguarding its own confidential information or material; but in no event less than a reasonable degree of care; (b) use all Confidential Information solely for purposes of evaluating applicant and selection of the Executive Director of the South Dakota State Bar; and (c) limit access to any Confidential Information to the State Bar’s representatives invested in the hiring and selection process relating to the Executive Director of the State Bar of South Dakota and those who have a need-to-know in connection with the evaluation of the Applicant.
- 4. EXCEPTIONS TO CONFIDENTIALITY.** The obligations of confidentiality and restriction on use in Section 3 shall not apply to any Confidential Information that: (a) was in public domain prior to the date of disclosure or subsequently came into the public domain other than by any act or failure to act on the part of the State Bar; (b) was lawfully received by the State Bar free of any obligation of confidence from a third party; (c) was already known to the State Bar prior to disclosure; (d) is required to be disclosed in a judicial or administrative proceeding; (e) is subsequently and independently developed by the State Bar’s Representatives without reference to Confidential Information; (f) Applicant has violated a provision or is violating a provision of the Code of Professional Conduct; (g) the Confidential Information may be used by the State Bar’s representatives for the purpose of contacting references and/or verifying information and/or investigating the applicant. No information received from applicant’s references will be considered Confidential Information, however the State Bar shall not disseminate information obtained from references to the public; or (h) Applicant’s name and/or identity. Applicant understands that by applying for the position of Executive Director of the State Bar of South Dakota that his/her name and/or identity may become known to the general public.

5. **PERIOD OF AGREEMENT.** This Agreement shall commence on the date set forth above, and shall expire six (6) months after the termination or expiration of the business relationship. All provisions of confidentiality concerning Confidential Information shall survive the termination of the Agreement. Upon the expiration of this Agreement or the Applicant's request, the State Bar shall return to the Applicant all of the Applicant's Confidential Information or warrant in writing that it has destroyed such Confidential Information.

6. **WARRANTY.** Applicant promises and warrants that the information it is supplying to the State Bar is true and accurate and any false statement or untrue information may be subject to the Rules of Conduct.

7. **EQUITABLE RELIEF.** The Parties agree that monetary damages shall not be an appropriate remedy for breach of the confidentiality and other obligations of this Agreement. Accordingly, as a sole remedy Applicant shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of the confidentiality and other obligations of this Agreement. The parties agree to waive any requirement for a bond in connection with any such injunctive or other equitable relief.

8. **MISCELLANEOUS.** The terms hereof shall be governed by and interpreted in accordance with the substantive and procedural law of the State of South Dakota, and any dispute arising hereunder shall be heard by a court of competent jurisdiction located in the County of Hughes, State of South Dakota. The relationship of the Parties hereto shall be that of independent contractors, and this Agreement is not intended to and shall not otherwise constitute, create, give effect to or otherwise recognize a job offer or position of employment.

11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding and agreement of and between the parties with respect to the subject matter hereof, and the parties hereto agree that the terms and conditions set forth herein shall supersede all prior representation, agreements, statements and understandings, whether oral or in writing. This Agreement shall only be varied by an instrument in writing duly executed by authorized representatives of the parties.

**ON THE BEHALF OF  
STATE BAR OF SOUTH DAKOTA**

**APPLICANT**

By:  /s/ Lisa Marso  
Name: Lisa Marso  
Its: President

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Name: