



## **2016-2017 BOARD OF GOVERNORS CONFIDENTIALITY AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT (“the Agreement”), made and effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”), between the Hispanic National Bar Association (“HNBA”) and \_\_\_\_\_, (“Board Member”). Hereinafter such parties may be addressed individually as the “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, the Parties have been engaged in and/or expect to further engage in confidential written and oral communications (“Confidential Communications”) relating to the business affairs of the HNBA;

WHEREAS, it is expected that Confidential Communications may involve the disclosure by or on behalf of the HNBA of information not in the public domain, including, but not limited to, business and financial information, membership lists, personal information concerning candidates for judicial or other government office provided by the candidates or other third parties, drawings, samples, devices, demonstrations, computer programs, analyses, studies, compilations, and other data, and proprietary and novel features contained in any of the foregoing, as well as communications that may be protected by the Attorney-Client and/or Attorney Work Product Privileges (“Confidential Information”).

WHEREAS, the Parties wish to define their rights with respect to Confidential Information delivered to the other Party;

NOW THEREFORE, in consideration of the above premises, it is agreed as follows:

1. The term “Confidential Information” shall include:

(a) All information that is delivered by or on behalf of the HNBA to the Board Member in written, graphic or electronic form and that is marked “confidential” or “proprietary;”

(a) Any information, whether in oral, written, graphic, electronic, machine readable or any other form, that is provided to the Board Member by or on behalf of the HNBA in connection with the Board Member’s performance of his or her duties as an HNBA Board Member and that is not otherwise readily available to the public, including membership lists, financial reports, personnel evaluations, program plans and reports, memoranda, e-mail and communications related to HNBA business – whether originated by an HNBA member or not, and communications that may be protected by the Attorney-Client Privilege or the Attorney Work Product Doctrine;

(c) Written and spoken information provided to the Board Member in the performance of his or her duty to evaluate prospective nominees for judicial or executive office who have requested the support of the HNBA, including but not limited to (1) completed questionnaires and any other data furnished by the candidate or third parties to the HNBA; (ii) confidential information gathered by the Board Member or told to the Board Member during any investigation or evaluation of any candidate being considered for endorsement; (iii) conversation, colloquy, deliberations, evaluations, and conclusions concerning a prospective nominee expressed during the evaluation or consideration of the candidates' qualifications or endorsement request; and (iv) the decision of any committee or the Board of Governors concerning whether a prospective nominee is qualified for appointment; and

(b) Any personally identifiable information including, but not limited to, name, address, telephone number, date of birth, social security number, e-mail address or any combination thereof provided by or on behalf of the HNBA to the Board Member.

2. All Confidential Information shall be subject to the restrictions of this Agreement. Notwithstanding anything in this Agreement to the contrary, the amount, type, and items of Confidential Information disclosed by the HNBA shall be solely within its discretion and it may refuse to disclose information if it believes that it is not in its best interests to do so. In addition, while the HNBA will exercise its best effort to ensure that all Confidential Information it provides to Board Member is accurate and complete, the HNBA makes no representation or warranty as to the accuracy or completeness of the Confidential Information disclosed. The information may be redacted when the Candidate or third party places restrictions on further disclosure of the information.

1. The Board Member agrees that the Confidential Information he or she receives shall be used **solely** for the benefit of the HNBA Board Work, and that all rights to the proprietary and novel features contained in the Confidential Information are reserved by the disclosing Party. The Board Member will not use or disclose Confidential Information to any third party for any purpose other than the performance of his or her duties as a Board Member of the HNBA unless and until the HNBA expressly authorizes the disclosure in writing. Board Member specifically agrees not to use any personally identifiable information provided by or on behalf of the HNBA, its contractors, affiliates, vendors, sponsors or employees, for any direct marketing and not to transfer such information to any third party.

2. The Board Member agrees to restrict dissemination of Confidential Information to those persons employed by the Board Member (or the Board Member's employer) who require access to the Confidential Information so as to assist the Board Member in carrying out his or her duties to the HNBA and then only if such personnel has a clear understanding of the confidentiality obligations imposed by this agreement and also agrees to maintain the confidentiality of the Confidential Information in accordance with the terms hereof by signing this Agreement before any Confidential Information is disclosed.

3. The HNBA agrees that the Board Member shall not be liable for any disclosure or use of any Confidential Information if:

(a) Such Confidential Information is publicly available or later becomes publicly available other than through a breach by the Board Member of this Agreement; or

(b) Such Confidential Information is lawfully obtained by the Board Member from a third- party or parties independent of the HNBA prior to the Board Member's disclosure;

(c) The Board Member can demonstrate by documentary evidence or otherwise that such Confidential Information was known to him or her prior to its disclosure to the Board Member by the HNBA or was independently developed by the Board Member prior to such disclosure for purposes unrelated to his or her service as a Board Member; or

(d) The Board Member was legally required to disclose the Confidential Information, provided that the Board Member (i) provides the HNBA and/or other disclosing party with written notice within five (5) days of knowing of such legal requirement so that the HNBA has the opportunity to pursue its rights regarding such potential disclosure, and (ii) utilizes reasonable efforts to obtain reliable assurances that the person receiving such Confidential Information will maintain the confidentiality of the same.

6. The Board Member agrees that no license under any patent, copyright or other intellectual property right is granted by implication or otherwise to Board Members under this Agreement.

1. Once the purpose of the disclosure is achieved, the HNBA will instruct the Board Member to destroy all Confidential Information supplied to the Board Member by the HNBA. The HNBA will keep a copy in its files for a period of two (2) years after the completion of each Candidate's specific request.

2. The Agreement shall expire five (5) years from its effective date specified above unless earlier terminated by a Party by giving the other Party thirty (30) days written notice. Termination or expiration of this Agreement shall not relieve the Board Member of any obligation with respect to the Confidential Information disclosed or developed hereunder prior to termination.

3. This Agreement embodies all the understandings between the Parties concerning the subject matter hereof, and merges all prior discussions and writing between them as to confidentiality of Confidential Information. Neither Party shall be bound by any conditions, warranties nor representations with respect to confidentiality of Confidential Information other than as expressly provided in this Agreement.

4. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the District of Columbia, without regard to principles of conflicts of laws. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instruments.

11. In addition to all other legal rights and remedies the disclosing Party may have upon a breach of this Agreement by the receiving Party, the disclosing Party shall be entitled to specific performance or injunctive relief respecting the covenants contained herein, and the receiving Party expressly waives the defense that a remedy in damages will be adequate. Each of the Parties hereby agrees that the prevailing party in any action to enforce this Agreement shall be entitled to full recovery of its attorneys' fees.

5. No failures of delay by the disclosing Party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right or privilege hereunder.

Both parties signify their agreement to the above terms by signing or causing their authorized representatives to sign this Agreement effective as of the date specified in the opening paragraph of this Agreement.

**ON BEHALF OF THE HISPANIC  
NATIONAL BAR ASSOCIATION**

**HNBA BOARD MEMBER**

\_\_\_\_\_  
Pedro J. Torres-Diaz, Esq.  
HNBA 2016 /2017 National President

\_\_\_\_\_  
Board Member Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Board Member Name

\_\_\_\_\_  
Board Position