**Mutual Non-Disclosure and Confidentiality Agreement**

**Regarding a Proposed Merger/Acquisition/Formation of Law Practice**

This is a Mutual Non-Disclosure Agreement (“Agreement”), entered into on [DATE], (“Effective Date”) by and between the law firm of [LAW FIRM] (“[LAW FIRM]”), and the undersigned (“Recipient[s]”), for the purpose of protecting each party and such party’s clients in the course of discussions regarding a merger, acquisition, or formation of existing law practices of the Parties.

In consideration of the mutual covenants and mutual disclosure of Confidential Information (defined below) by each party to the other(s), the parties agree as follows:

BACKGROUND, RECITALS, AND REPRESENTATIONS:

[\_\_(DESCRIBE CONTEMPLATED, TENTATIVE ARRANGEMENT) \_\_\_\_\_]. In this context, each party believes and represents to the other, that exchanging Confidential Information (as defined herein) is necessary for each party to ensure compliance at all times with Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct in any proposed or contemplated arrangement between them.

1. “Confidential Information” of each party consists of information that would not have been provided or obtainable by the other, but for reliance on this Agreement, which specifically includes but is not limited to such things as the nature and ownership of the [LAW FIRM] and Recipient, the equity interests of the partners, identity of [LAW FIRM]’s clients, written reports, data, records, financial data, intellectual property, or any other proprietary or privileged information, trade secrets, and any proposed or future course of action of [LAW FIRM], its partners, principals, or employees, existing business activity, fee revenue, personal financial information, balance statements, ability to proceed with any proposed transaction, and future business plans.

2. The parties expressly acknowledge that “Confidential Information” includes without exception all materials described in: (i) Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct; (ii) Rule 5.03 of the Texas Rules of Evidence, (iii) Rule 5.01 of the Federal Rules of Evidence for United States Courts, and (iv) such parties’ fiduciary duty of loyalty to a third party; and (v) information that may be protected by the terms of a private contract with a third party, only to the extent necessary to evaluate potential conflicts of interest.

3. Confidential Information under this Agreement does not include the following: (a) Information that is or becomes public other than as a result of acts by the other party; (b) Information that is already known by the other party at the time of any disclosure under this Agreement; (c) Information that is independently obtained from a third party having no confidentiality obligation; (d) Information that is independently developed by the other party without use of any Confidential Information under this Agreement; and (e) Information that is obligated to be disclosed by law, regulation, or court order.

5. Confidential Information of either party is being provided to the other(s) solely in connection with a proposal to potentially affiliate or acquire [LAW FIRM], as described above. No portion of the Confidential Information shall be disclosed to any third party nor to any employee of a disclosing party, and a receiving party of Confidential Information agrees to keep such information strictly private and confidential. Each party understands that no representations or warranties are being made as to the completeness or accuracy of any Confidential Information. Each party further understands that other than the covenants and obligations of this Agreement itself, disclosing Confidential Information does not create any obligation, exclusive option, partnership, joint venture, or other arrangement. This Agreement does not obligate either party to actually disclose Confidential Information; rather, it is intended to have this Agreement in place in the event that a party voluntarily desires to proceed, on its own volition, with disclosing Confidential Information to the other(s).

6. Each party may disclose Confidential Information it receives to such party’s Advisors (for example, attorneys or accountants) if and only if: (i) the Advisor would be enabled or assisted in advising such party as a result of the Confidential Information; (ii) the Advisor already has an obligation of confidentiality to that party (for example, the attorney-client privilege); (iii) the identity of the Advisor and the intended further disclosure is made known in advance to the other party, and (iv) the Advisor assumes the same obligations of the parties to this Agreement. Each party hereby accepts full responsibility to the other to ensure the compliance of their Advisors for any breach of the terms of this Agreement. Each party agrees to indemnify and hold the other party harmless from any and all losses or damages caused by the misuse or release of any Confidential Information by such party’s own Advisors.

7. Each party further agrees that they will not use any Confidential Information for their own account or economic/competitive advantage.

8. Each party agrees not to use any Confidential Information to solicit any employee, client, or vendor of the other.

9. The obligations under this Agreement shall be in full force and effect for a period of one (1) year following the date of execution.

10. The parties agree that in the event of a breach of this Agreement, damages would be difficult or impossible to calculate. Therefore, the parties agree to liquidated damages in the amount of the greater of either (a) Ten-Thousand Dollars ($10,000.00) per disclosure in violation of this Agreement, or (b) lost revenue or business from a client as a result of a violation of this Agreement, measured by the total gross attorney fees over the three-year period preceding the violation.

11. Venue for any action under this Agreement shall occur in [OUTSIDE COUNTY] County, Texas, in order to avoid unwanted attention or publicity regarding this Agreement or any alleged breach. In any action to enforce this Agreement, the prevailing party shall be entitled to recover liquidated damages as described above, reasonable attorneys’ fees, court costs, and other expenses associated with such action.

12. The parties agree and acknowledge that the other party may assign this Agreement to any existing or future entity provided that such entity is entirely owned or controlled by a party to this agreement (for example, a partnership formed by Recipients), and further provided that such assignee assumes, in writing, all obligations of the assignor under this Agreement.

13. The signing party/person to this Agreement represents it has full legal authority to enter into this Agreement and each Recipient agrees to be jointly and severally responsible for the fulfillment of Recipients’ obligations under this Agreement. The undersigned individuals signing on behalf of [LAW FIRM] are the sole and exclusive representatives of [LAW FIRM] who may discuss this Agreement or receive Confidential Information as a result of this Agreement.

14. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Signatures exchanged electronically or by facsimile are effective to the same extent as original signatures.

15. All parties expressly understand and acknowledge to the others that he or she are active members of the State Bar of Texas, or under the control and direction as an agent or employee of an active member of the State Bar of Texas. All parties expressly represent and warrant to the other that he, she, or it fully understands that, as a consequence of the arrangement contemplated by this Agreement, it may be come necessary to withdraw from representation of an existing client to comply with Rule 1.06(e) of the Texas Disciplinary Rules of Professional Conduct, and each party assumes the risk of such circumstances as further mutual consideration for this Agreement and the exchange of Confidential Information.

16. Each party agrees that if, upon the first to occur of (a) receiving written notice from the other party that no further arrangements or transactions will proceed, or (b) one (1) year from the date of this Agreement, any Confidential Information received under this Agreement will be permanently destroyed. If requested by a party, the other party will certify in writing to such destruction or return of Confidential Information to the other.

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| [LAW FIRM]:  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Managing Partner | Recipients:  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |