



## **The ILPA Model Non-Disclosure Agreement**

**[January 2021]**

**This Model Non-Disclosure Agreement was developed with the assistance of an ILPA working group comprised of counsel representing LPs, outsourced CIOs and a GP organization. It was created to serve the private equity industry by providing a standard document to streamline due diligence access for limited partners and general partners.**

## **Non-Disclosure Agreement**

This Non-Disclosure Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date"), between **[Full name of manager]** ("Manager") and **[Full name of recipient]** ("Recipient"). Manager and Recipient are sometimes referred to herein as the "Parties" or, singularly, as a "Party."

Recipient is considering whether to make an investment in a fund sponsored by Manager or establish a managed account or similar vehicle with Manager ("Purpose"). In consideration for and as a condition of Manager's furnishing information to Recipient in connection with the Purpose, Manager and Recipient hereby agree as follows:

1. Confidential Material. (a) Recipient agrees to keep confidential any and all information provided by or on behalf of Manager to Recipient on or after the Effective Date in connection with the Purpose ("Confidential Material"). However, the term "Confidential Material" shall be deemed to exclude all information that (i) is or becomes generally available to the public through no action of Recipient (including Recipient's trustees, directors, investment committee members, employees, affiliates, agents and representatives of its legal and accounting advisors (collectively, "Representatives")), (ii) is developed by or on behalf of Recipient or in its possession prior to receipt of relevant information by or on behalf of Manager, or (iii) is developed independently by or on behalf of Recipient without reference to the Confidential Material as shown by evidence thereof.

(b) Recipient shall ensure that each Representative is obligated to protect the confidentiality of the Confidential Material in a manner no less protective of Manager than under the terms of this Agreement, and Recipient is responsible for any disclosure made by a Representative that would be in violation of this Agreement if made by Recipient.

(c) The Manager acknowledges and agrees that it will not knowingly furnish to Recipient any material non-public information relating to any issuer of publicly traded securities, whether with respect to the Manager's portfolio companies or otherwise. If, notwithstanding the foregoing, Manager inadvertently or otherwise discloses any material non-public information (or information which Manager believes or suspects may constitute such) to Recipient, Manager shall notify Recipient as soon as reasonably practicable in writing and prominently and specifically identify the information which may constitute such material non-public information, and then promptly notify Recipient once the Manager has knowledge that such information has been made public.

2. Undertakings. (a) Other than to its Representatives, Recipient shall not disclose such Confidential Material to any third party without Manager's prior written consent (in Manager's sole discretion), provided that nothing in this Agreement will prevent Recipient from disclosing Confidential Material (i) as required by law, rule, regulation, other legal process or the rules of any national stock exchange applicable to such person or any of its affiliates, or (ii) that is or has become publicly available without breach of this Agreement by Recipient.

(b) Without Recipient's prior written consent in each instance, Manager will not disclose to any third party or person not affiliated with Manager the fact that Recipient has entered into this Agreement or is assessing the Purpose.

3. Representations and Warranties. To the extent, if any, that Confidential Material includes or reflects information of one or more third parties, Manager represents and warrants to Recipient that Manager has the legal right to share such information with Recipient pursuant to the terms hereof.

4. Further Undertakings. Upon Manager's written request, Recipient will destroy all Confidential Material in a manner consistent with its internal policies and procedures for document destruction, and instruct Representatives to whom Recipient has disclosed, or who are in possession of, such information to destroy it in a manner consistent with the Representative's respective internal policies and procedures for document destruction; provided, however, that notwithstanding the foregoing, to the extent required by law, rule or regulation or in accordance with Recipient's existing internal record keeping or archiving policies, Recipient is entitled to retain, in accordance with the terms of this Agreement, copies of any Confidential Material received by Recipient in connection with its evaluation of the Purpose. The absence of a request by the Manager to destroy Confidential Material shall have no impact on Section 13 ("Term") below.

5. Required Disclosure. If Recipient or any Representative is required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, regulatory review, or other process) to disclose Confidential Material, Recipient will, to the extent permitted by laws, rules or regulations affecting Recipient, timely notify Manager thereof to the extent reasonably practicable in the circumstances.

6. No Obligation. The Parties acknowledge that the transfer of Confidential Material does not constitute an agreement to enter into any investment-related or other agreement between the Parties. Neither Party is obligated to consummate the Purpose by reason of this Agreement. Each Party expressly reserves the right, in its sole discretion and at any time, to terminate discussions and negotiations with the other Party or to negotiate with one or more other persons or entities and enter into a definitive agreement for a transaction with such other persons or entities without prior notice to the other Party or any other person or entity.

7. Remedies and Waiver. Monetary damages may not be a sufficient remedy for any actual or threatened breach of any of the provisions of this Agreement, and either Party may seek specific performance and injunctive and other equitable relief as a remedy for any such breach. It is further understood and agreed that no failure or delay by either Party in exercising any right, power 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, power or privilege hereunder.

8. Assignment. This Agreement shall be binding solely upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Any assignment of this Agreement by either Party without the prior written consent of the other Party shall be void.

9. Governing Law. Except as provided in paragraph (b), this Agreement shall be governed by and construed in accordance with the laws of the [State of \_\_\_\_\_<sup>1</sup>], without regard to conflict of laws principles. Recipient and Manager irrevocably and unconditionally consent hereby to submit to the nonexclusive jurisdiction of the [United States District Court for the \_\_\_\_\_<sup>2</sup>] for any action, suit or proceeding arising out of or relating to this Agreement and hereby further irrevocably and unconditionally waive and agree not to plead in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) If Recipient is a public institution in the U.S., this Agreement shall be governed by the and construed in accordance with the laws of the State in which its headquarters is located, and Recipient and Manager irrevocably and unconditionally consent hereby to submit to the nonexclusive jurisdiction of the federal and state courts of such State with proper venue based on the headquarters location.

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<sup>1</sup> Select main location of Manager if both parties are principally located in the same jurisdiction. For non-U.S. based Manager and U.S.-based Recipient, select State of Delaware or New York.

<sup>2</sup> Select jurisdiction of main office of Manager if both parties are principally located in the same jurisdiction. For non-U.S. based Manager and U.S.-based Recipient, select the District of Delaware or the Southern District of New York.

10. Severability. If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted here from to the minimum extent necessary to cure such violation.

11. Independent Contractors. Recipient and Manager are independent contractors, and nothing contained in this Agreement shall be construed to constitute Recipient and Manager as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

12. Term. The terms and conditions of this Agreement, and all obligations of confidentiality contained herein, shall expire on the [first anniversary] of the Effective Date or the consummation of the Purpose, if earlier.

13. Entire Agreement; Amendments. This Agreement contains the entire agreement between Manager and Recipient concerning the subject matter hereof, and merges all prior negotiations and drafts of the Parties, pertaining to the subject matter hereof. To the extent that any dataroom access agreement or other "click-on" or other agreement provided by or on behalf of Manager contains terms inconsistent or contrary to the terms hereof, the terms hereof shall govern. This Agreement may only be modified or waived by separate writing by the Parties hereto, expressly modifying or waiving such agreement.

If Recipient is in agreement with the foregoing, please sign and return a countersigned copy of this Agreement, whereupon this Agreement will be a binding obligation of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[MANAGER'S FULL LEGAL NAME]

By: \_\_\_\_\_  
Name:  
Title:

[RECIPIENT'S FULL LEGAL NAME]

By: \_\_\_\_\_  
Name:  
Title: