

[FORM OF] CONFIDENTIALITY AGREEMENT

[Date]

[Potential Investor]

[Address]

[City, State, Zip]

Ladies and Gentlemen:

You have requested information from _____ ("**Company**") in connection with your consideration and evaluation of the possibility of acquiring an investment in Company (the "**Investment**"). As a condition to furnishing such information to you in connection with such consideration and evaluation, Company requires that you agree, as set forth below, to treat confidentially any such information that Company, or any of its agents or advisors, furnish to you or your representatives, including, without limitation, your directors, officers, employees, agents, affiliates, attorneys, accountants, other advisors and investment managers ("**Representatives**") (such information except as set forth in the following paragraph being collectively referred to herein as the "**Evaluation Material**").

The term "Evaluation Material" does not include any information that (i) at the time of disclosure or thereafter is available to the public other than as a result of a breach of this letter agreement (this "**Agreement**") by you or your Representatives, (ii) is already in your possession or becomes available to you on a nonconfidential basis from a source other than Company or its agents or advisors, *provided* that, to your knowledge such source is not bound by an obligation of confidentiality to Company or another party, or (iii) has been developed by you or your Representatives without use of or reference to the Evaluation Material.

You hereby agree that the Evaluation Material will be used by you solely for the purposes of evaluating and administering the Investment and will be kept confidential by you in accordance with procedures adopted by you in good faith to protect confidential information of third parties delivered to you; *provided, however*, that any of such Evaluation Material may be disclosed to your Representatives who need to have access to such Evaluation Material for the purpose of assisting you in evaluating and administering the Investment (it being agreed that such Representatives will be made aware of the confidential nature of such Evaluation Material and shall treat such Evaluation Material confidentially, and that you will be responsible for any disclosures by your employees and affiliates).

If you are requested to make a disclosure of any Evaluation Material or the fact that you are having or have had discussions with Company regarding the Investment or that you have received any Evaluation Material in connection with any legal or administrative proceeding or by a rating agency or the National Association of Insurance Commissioners (including the Securities Valuation Office) (the "**NAIC**") or similar organization or any other regulatory or quasi regulatory body having jurisdiction over you (a "**Disclosure**"), you will notify Company promptly (unless prohibited by law) of the request so that, if possible, Company may seek, at Company's expense, an appropriate protective order or other remedy or waive your compliance with this Agreement. You will cooperate with Company on a reasonable basis at

Company's expense in its efforts to obtain a protective order or other remedy, but, if a protective order or other remedy is not obtained, you may make such Disclosure without liability to Company if (a) you are nevertheless legally required to do so or, (b) if requested by a rating agency or the NAIC or any other regulatory or quasi regulatory body having jurisdiction over you, including the Securities Valuation Office thereof or similar organization).¹

Although the Evaluation Material will be information which Company believes to be relevant for the purpose of your investigation, you understand and acknowledge that neither Company nor any of its representatives or advisors have made or make any representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that neither Company nor any of its representatives or advisors shall have any liability to you resulting from the use or content of the Evaluation Material, except as may be provided in a definitive agreement.

If you decide not to acquire the Investment, then at the request of Company, you and your Representatives will promptly redeliver to Company or destroy all written Evaluation Material and any other written material containing or reflecting any information in the Evaluation Material and will not retain any copies, extracts, or other reproductions, in whole or in part, of the Evaluation Material; *provided, however*, that (a) to the extent required by law or by your internal legal, audit or document retention policies, you may retain the Evaluation Material as well as copies of any analyses, compilations, forecasts, studies, memoranda, notes or other working papers prepared by you or your Representatives ("**Your Work Product**") that contain or reflect Evaluation Material so long as any such confidential information and Your Work Product is kept confidential subject to the terms of your internal policies and procedures and in accordance with this Agreement, and (b) you and your Representatives shall in no event be required to erase, destroy or return any information from computer systems or hard drives, tapes or memory or other electronic forms of information retention processes, materials or equipment. All documents, memoranda, notes, and other writings whatsoever prepared by you or your Representatives based on the information in the Evaluation Material may be retained by you, *provided* you preserve the confidentiality of the Evaluation Material in accordance with this Agreement.

You and Company agree that unless and until a definitive agreement with respect to the Investment has been executed and delivered, neither Company nor you will be under any legal obligation of any kind whatsoever with respect to the Investment, except for the matters specifically agreed to in this Agreement.

It is understood and agreed that money damages may not be a sufficient remedy for any breach by you of this Agreement and that Company shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for your breach of this Agreement, but shall be in addition to all other remedies available at law or equity to Company.

No failure or delay by Company 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.

¹ This paragraph permits disclosure of the Evaluation Material to the NAIC "if requested." For certain Investments (e.g. ones involving off-the-beaten-path structural and/or credit risk), potential investors may want to submit the Investment to the NAIC pre-circle to determine the NAIC rating in making their decision to invest. In those instances, consider permitting disclosure to the NAIC in this paragraph which would not require a "request."

This Agreement may be modified or waived only by a separate writing between Company and you and shall terminate on the earlier of (i) one year from the date hereof and (ii) the execution by Company and you of a definitive agreement with respect to the Investment.

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in either Tagged Image Format File ("**TIFF**") or Portable Document Format ("**PDF**") shall be equally effective as delivery of a manually executed counterpart hereof. Any party delivering an executed counterpart of this Agreement by facsimile, TIFF or PDF shall also deliver a manually executed counterpart hereof, but failure to do so shall not affect the validity, enforceability, or binding effect of this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York excluding laws of such State that would permit the application of the laws of a jurisdiction other than such State. Venue for any action to enforce the provisions of this Agreement may be properly laid in the United States District Court for the Southern District of New York. **THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT.**

If you are in agreement with the foregoing, please so indicate by signing and returning one copy of this Agreement, which will constitute our agreement with respect to the matters set forth herein.

Very truly yours,

[COMPANY]

By: _____

Confirmed and agreed to as
of the date written above.

[POTENTIAL INVESTOR]

By: _____

Its: _____