

Mutual Non-Disclosure Agreement

A practitioner-grade template for sell side lower middle market M&A; processes

How to use this template

This template is a mutual non-disclosure agreement designed for use in sell side lower middle market M&A; processes. It is intended to be signed by a prospective buyer (the "Recipient") and the seller or its banker (the "Discloser") before the Recipient receives the Confidential Information Memorandum and access to the data room. **This is not legal advice.** Have your counsel review and customize before use on a specific deal.

Bracketed text in *red italic* identifies fields to fill in or sections to consider removing depending on deal context. Common customizations: governing law (default New York), term length (default two years), non solicit period (default 18 months), standstill clause (omit for private targets).

Parties and effective date

This Mutual Non-Disclosure Agreement (this "Agreement") is entered into as of *[Effective Date]* by and between *[Discloser Name]*, a *[State of Organization] [entity type]* with offices at *[Address]* (the "Discloser"), and *[Recipient Name]*, a *[State of Organization] [entity type]* with offices at *[Address]* (the "Recipient"). Each of Discloser and Recipient is a "Party" and together the "Parties."

Recitals

WHEREAS, the Parties wish to discuss a potential transaction (the "Transaction") that may involve the acquisition, investment in, or other business arrangement with the Discloser or its affiliates;

WHEREAS, in connection with such discussions the Discloser may furnish certain confidential information to the Recipient, and the Recipient may furnish certain confidential information to the Discloser; and

WHEREAS, each Party desires to ensure that any such confidential information is treated as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definition of Confidential Information

"Confidential Information" means any non public information disclosed by one Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with the Transaction, whether disclosed orally, in writing, electronically, or by inspection of tangible objects, that is identified as confidential at the time of disclosure or that should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, financial information, business plans, customer lists, vendor information, technical data, trade secrets, know how, intellectual property, the existence and status of the Transaction discussions, and the terms or fact of this Agreement.

2. Use restrictions

The Receiving Party shall use Confidential Information solely for the purpose of evaluating, negotiating, and (if applicable) consummating the Transaction (the "Permitted Purpose"). The Receiving Party shall not use Confidential Information for any other purpose, including without limitation any competitive or commercial advantage relative to the Disclosing Party or its affiliates.

3. Standard of care

The Receiving Party shall protect Confidential Information using at least the same degree of care it uses to protect its own confidential information of like importance, but in no event less than reasonable care. The Receiving Party shall promptly notify the Disclosing Party in writing of any actual or suspected unauthorized use or disclosure of Confidential Information.

4. Permitted disclosures

The Receiving Party may disclose Confidential Information only to its directors, officers, employees, attorneys, accountants, financial advisors, lenders, and other professional advisors (collectively, "Representatives") who (a) have a need to know such information for the Permitted Purpose, (b) have been informed of the confidential nature of the information, and (c) are bound by obligations of confidentiality at least as restrictive as those set forth herein. The Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

5. Exceptions

The obligations of confidentiality and use restrictions set forth herein shall not apply to information that the Receiving Party can demonstrate by written records: (a) was already known to the Receiving Party at the time of disclosure without an obligation of confidentiality; (b) was or becomes generally available to the public through no breach of this Agreement by the Receiving Party; (c) was rightfully received by the Receiving Party from a third party without an obligation of confidentiality; or (d) was independently developed by the Receiving Party without use of or reference to the Confidential Information.

6. Compelled disclosure

If the Receiving Party is required by law, regulation, or legal process (including subpoena or court order) to disclose any Confidential Information, the Receiving Party shall, to the extent legally permitted, give the Disclosing Party prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. The Receiving Party shall cooperate with the Disclosing Party in seeking such protection and shall disclose only the portion of Confidential Information that the Receiving Party's counsel advises is legally required.

7. Term

This Agreement shall commence on the Effective Date and continue for a period of *[two (2) years]*, unless earlier terminated by mutual written agreement of the Parties. The obligations of confidentiality with respect to any Confidential Information that constitutes a trade secret under applicable law shall continue for so long as such information remains a trade secret.

8. Return or destruction

Upon written request by the Disclosing Party, or upon termination of discussions regarding the Transaction without consummation, the Receiving Party shall promptly (a) return to the Disclosing Party or, at the Disclosing Party's election, destroy all Confidential Information in its possession or control, including all copies, summaries, and notes; (b) certify in writing the completeness of such

return or destruction; and (c) permanently delete electronic copies, except that the Receiving Party may retain one archival copy in secure storage solely for the purpose of complying with legal, regulatory, or internal compliance obligations, subject to the continuing obligations of this Agreement.

9. Non solicitation of employees

For a period of *[eighteen (18) months]* after the Effective Date, the Receiving Party shall not, directly or indirectly, solicit for employment any employee of the Disclosing Party with whom the Receiving Party had contact in connection with the Transaction; provided that this restriction shall not apply to (a) general public solicitations not specifically directed at such employees, or (b) employees who respond to such general solicitations or who initiate contact with the Receiving Party without solicitation.

10. No representations or warranties

The Disclosing Party makes no representations or warranties, express or implied, regarding the accuracy or completeness of any Confidential Information, except as may be expressly set forth in a definitive transaction agreement. The Receiving Party shall not have any claim against the Disclosing Party or its affiliates or representatives based on any inaccuracy or incompleteness of Confidential Information except as expressly provided in such definitive transaction agreement.

11. No license; no obligation to proceed

No license or other rights, whether express or implied, are granted to the Receiving Party in any Confidential Information by virtue of this Agreement. Neither this Agreement nor the disclosure or receipt of Confidential Information shall be deemed to obligate either Party to enter into any business relationship with the other Party or to consummate the Transaction.

12. Remedies

The Parties acknowledge that any breach of this Agreement may cause irreparable harm for which monetary damages would be inadequate. Accordingly, the non breaching Party shall be entitled to seek injunctive or other equitable relief in addition to all other remedies available at law or in equity, without the requirement of posting a bond. The prevailing Party in any action to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

13. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of *[State, e.g., New York or Delaware]*, without regard to conflicts of law principles. The Parties submit to the exclusive jurisdiction of the state and federal courts located in *[County, State]* for any dispute arising out of or relating to this Agreement.

14. Assignment

Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, except that either Party may assign this Agreement without consent to an affiliate or to a successor by way of merger, consolidation, or sale of all or substantially all of the assets of such Party. Any attempted assignment in violation of this Section shall be void.

15. Notices

All notices and other communications under this Agreement shall be in writing and shall be deemed given when delivered (a) personally, (b) by reputable overnight courier with tracking, or (c) by email

with confirmation of receipt, in each case to the addresses or email addresses set forth on the signature page or such other address as a Party may designate in writing.

16. Miscellaneous

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous discussions, negotiations, and agreements. This Agreement may be amended only by a writing signed by both Parties. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it enforceable and the remaining provisions shall remain in full force and effect. This Agreement may be executed in counterparts, including by electronic or facsimile signatures, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Signatures

IN WITNESS WHEREOF, the Parties have executed this Mutual Non-Disclosure Agreement as of the Effective Date.

Discloser

[Discloser Name]

By: _____

Name: *[Print Name]*

Title: *[Title]*

Date: *[Date]*

Email: *[Email]*

Recipient

[Recipient Name]

By: _____

Name: *[Print Name]*

Title: *[Title]*

Date: *[Date]*

Email: *[Email]*

Notes from LockRoom (delete before signing)

This template is provided as a practitioner reference. It is not legal advice and should not substitute for review by qualified counsel.

Common deal-specific customizations:

1. **Governing law:** Default to the state where the seller is organized; New York and Delaware are most common defaults.

2. **Term length:** Two years is standard. Longer terms (3-5 years) used in highly competitive sectors. Trade secrets continue indefinitely.

3. **Non solicit period:** 18 months is typical. Some bankers push for 24 months on competitive auctions.

4. **Standstill clause:** This template omits a standstill (acquisition restriction) because it is rarely needed in private LMM deals. Add for public targets.

5. **Customer/supplier non-contact:** Some deals add a clause prohibiting the Recipient from contacting the Discloser's customers or suppliers regarding the Transaction without consent. Add this if the seller has concentration concerns.

6. **Definitive agreement carveout:** Note that representations and warranties in a definitive transaction agreement supersede this NDA's no-rep clause. Section 10 already reflects this.

7. **Assignment:** Section 14 permits assignment to affiliates and successors. Some sellers tighten this to require consent for any assignment.

8. **Term retention of archival copy:** Section 8 permits retention of one archival copy. Some sellers require destruction of all copies including archival.

Recommended workflow:

- a. Banker drafts deal-specific NDA from this template, customizing the bracketed fields.
- b. Outside counsel reviews and approves before sending to bidders.
- c. Bidders sign upon expressing interest after teaser; CIM and data room access flow only after signed NDA returned.
- d. Counter-redlines from bidders are common; banker's counsel handles negotiation. Final signed NDA is filed in the deal management system.

Want a deeper analysis of NDA fundamentals in M&A? See lockroom.com/blog/nda-fundamentals-ma-advisors. For broader sell-side process guidance, see lockroom.com/blog/sell-side-ma-process-timeline.