

# INVICTUS

Form ADV

Part 2A Brochure

March 30, 2023

**Invictus Growth Management LLC**

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This brochure provides information about the qualifications and business practices of Invictus Growth Management LLC (“Invictus”). If you have any questions about the contents of this brochure, please contact us at 415-886-9830. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission (“SEC”) or by any state securities authority.

Registration of an investment adviser with the SEC does not imply a certain level of skill or training. In addition, the information in this Brochure has not been approved or verified by the SEC or by any state securities authority.

Additional information about Invictus also is available on the SEC’s website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

## **Item 2- Material Changes**

Item 4 has been updated to reflect the Firm's Regulatory Assets Under Management as of December 31, 2022.

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#### **Item 4- Advisory Business**

Invictus Growth Management LLC (“Invictus”) was founded on May 17, 2019, by John DeLoche and William Nettles. Invictus, by and through Invictus Growth Partners I GP, LLC, a Delaware limited liability company, and Invictus SPV Partners, LLC, a Delaware limited liability company (collectively the “General Partner”), that is managed by Mr. John DeLoche and Mr. William Nettles. The General Partner has engaged Invictus to provide investment advisory and administrative services.

Invictus executes a private equity strategy that invests capital into and acquires outstanding technology companies then helps them scale with expertise and access to our network. Our services include engaging in the business of making, managing, supervising, and disposing of investments and engaging in activities incidental or related to this purpose, including sourcing investment opportunities and negotiating investments. We execute this strategy by providing advisory services through private fund vehicles, to a limited number of qualified select investors offering the opportunity to realize long-term appreciation. The companies in which the Funds invest are sometimes referred to as a “Portfolio Company” or collectively as the “Portfolio Companies.”

The Firm’s advisory services include providing investment advice to a private fund vehicle, the Invictus Growth Fund I, L.P., (the “Fund”) and co-investment vehicles structured as private funds offered as separate and distinct legal entities which have separate assets, Portfolio Companies, investors and terms (the “SPVs” and collectively with the Fund each a “Client” and collectively the “Clients”). These services are further described in each Client’s respective governing documents and generally described below under “Methods of Analysis, Investment Strategies and Risk of Loss.” Each Portfolio Company investment will generally be made through our commingled private fund vehicles and or through single purpose vehicles established where appropriate or when investments require a larger equity commitment. Each co-investment vehicle is a private fund offered as a separate and distinct legal entity which may have separate assets, Portfolio Companies, investors, and terms. The Clients and the Firm may enter into consulting arrangements, side letter arrangements or other similar agreements with investors that have the effect of establishing rights under or altering or supplementing a Client’s governing documents with respect to such investors, including provisions relating to specific investments, as well as provisions relating to the Firm’s compensation. For more information regarding provisions that allow an investor’s investment to be altered or varied in certain circumstances, investors should refer to the relevant Client’s governing documents.

The investment objective and guidelines of the Clients are not specifically tailored to the individual needs of investors.

As of December 31, 2022, Invictus managed \$426,954,984 in Regulatory Assets Under Management on a discretionary basis. The Firm does not currently manage any non-discretionary assets and does not participate in wrap fee programs.

#### **Item 5- Fees and Compensation**

Invictus’s clients generally compensate Invictus and or its affiliates through a management fee (“Management Fee”) and an incentive-based allocation (“Carried Interest”). Please refer to the applicable offering documents and investment management agreements for the Funds and each client for a complete discussion of fees paid by investors related to each such vehicles.

##### **Management Fee**

Investors in the Fund offered by Invictus typically pay a Management Fee that is calculated in advance on a quarterly basis on the first day of each calendar quarter (January 1, April 1, July 1, and October 1 collectively the “Fee Date”). Unless negotiated otherwise, the Management Fee for each Fee Date shall be an amount

equal to the aggregate Capital Commitments of all Limited Partners as of the first day of each such quarter multiplied by 0.5% (i.e., 2% annually). The management fee percentage may be reduced based upon the ratio of the number of days in each such period bears to ninety (90). The management fee percentage is separately negotiated between Invictus and each client. The Management Fee Percentage for each period commencing on or after the termination of the Investment Period, shall be 0.25% (i.e., 1.0% annually) or as otherwise provided for in the offering documents.

The Management Fee is subject to certain fee offsets which include but are not limited to: any cash or other compensation paid as directors', consulting, management services, advisory, consultant, transaction, commitment, breakup or broken deal fees or similar fees paid to Invictus or its affiliates, as applicable. Such fee offsets do not include payments made to any entrepreneur-in-residence or venture partner, or any member of the Invictus Guild. Notwithstanding, any compensation received by Invictus, while acting as General Partner to a Fund or to Invictus's members, in connection with the Merger & Acquisition advisory business run by Invictus or its affiliates shall not reduce the management fee.

The Management Fee is also offset by an amount equal to any private placement or finder's fees, or other similar fees paid by Invictus during the immediately preceding quarterly period in connection with the formation and organization of the Fund or the sale of limited Funds interests in Invictus. Non-cash compensation in the form of options, warrants, or other similar rights received by Invictus or its affiliates shall be valued upon the earliest to occur of (i) the distribution of any Securities of the Portfolio Company issuing such non-cash compensation, (ii) the exercise of such options, warrants, or other similar rights, and (iii) the date of dissolution of the Fund. Offset amounts that exceed any Management Fee applicable in a quarter, the excess amount will offset against subsequent quarterly Management Fees.

Each such offset is subject to certain restrictions and additional considerations as laid out in the offering documents of each applicable fund.

### **Carried Interest**

Invictus also earns performance-based compensation that includes a proportion of profits earned over the Accounting Period that is transferred from investor capital accounts to Invictus by and through its affiliated General Partner. This performance-based fee is often referred to as carried interest and is calculated on an investor-by-investor basis for each client and generally ranges from 0% to 20% of the net appreciation in each investor's capital account subject to a loss carryforward, and preferred return. These fees may be negotiable.

### **Payment of Fees**

The Management Fee is required to be paid to Invictus even if the Funds experience net losses in a particular year or over the life of the Funds. Investors typically pay a Management Fee that is calculated in advance on a quarterly basis on the first day of each calendar quarter based on the aggregate capital commitments as of the first day of each quarter multiplied by the management fee percentage.

Each investor's capital contributions will be payable when called by the General Partner to meet anticipated Fund expenses and liabilities and to make investments. Each investor's capital contribution shall be due upon 10 business days' written notice. The General Partner's capital commitment will be made in cash, at the same time and in the same proportion as other Partners' contributions are made.

**SPV Considerations:** The SPVs are typically operated on a no management fee, no carry basis for Limited Partners of our discretionary funds. Investors in SPVs who are not Limited Partners of our discretionary funds pay fees ranging from 1% to 2% and carried interest ranging from 10% to 20%. However, the LPs of each SPV vehicle are responsible on a pro rata basis for the expenses associated with investment operations.

## **Expenses**

The Funds are responsible for all reasonable and documented costs and expenses that are incurred by or arise out of the operation and activities of the Funds, as determined by Invictus in good faith, including, but not limited to: costs and expenses incurred in the investigation, sourcing, holding, purchase, sale, monitoring or exchange of Securities (whether or not ultimately consummated), including, but not limited to, private placement fees, finder's fees, interest on and fees and expenses arising out of borrowed money, real property or personal property taxes on investments, including documentary, recording, stamp and transfer taxes, brokerage fees or commissions, legal fees, expenses incurred in connection with the investigation, prosecution or defense of any claims by or against the Funds, including claims by or against a governmental authority, audit and accounting fees, fees and expenses incurred in investigating, sourcing and evaluating investment opportunities of the Funds (including consulting fees and research services), travel costs and expenses (provided that airfare expenses shall be limited to first-class travel or the cost equivalent of first-class travel), fees and expenses associated with recruitment of employees and consultants of portfolio companies, taxes applicable to the Funds on account of its operations, fees and expenses incurred in connection with the maintenance of bank or custodian accounts, and all expenses incurred in connection with the registration of the Securities held by the Funds under applicable securities laws or regulations; provided, that if an investment is not consummated but is consummated directly or indirectly by Invictus or its affiliates, such fees or expenses shall not be paid by the Funds.

The Funds shall also bear reasonable and documented expenses incurred by Invictus in the course of serving as the General Partner. Such expenses include the cost of liability and other premiums for insurance protecting the Funds, the Advisory Committee, and their respective partners, members, stockholders, managers, managing directors, officers, directors, trustees, employees, or Affiliates in connection with the activities of the Funds or the loss of a Managing Director, legal fees and expenses associated with reporting, registration or compliance requirements of Invictus, including those incurred through its services as the General Partner imposed by the U.S. Securities and Exchange Commission or state regulatory agencies, all out-of-pocket expenses of preparing and distributing reports to Funds, out-of-pocket expenses associated with Funds' communications with investors, including preparation and distribution of annual, quarterly or other reports to the investors, costs associated with Funds' meetings or meetings with any Limited Partner, events for Limited Partners, or Advisory Committee matters, all legal, accounting, tax, audit, consulting and professional services fees and expenses (including tax preparation and public relations) relating to the Funds and its activities, bookkeeping services, fees and expenses relating to outsourced finance, reporting, administration, accounting, and back office services, out-of-pocket fees and expenses related to regulatory compliance, all fees, costs and expenses relating to litigation and threatened litigation involving the Funds, including the Funds' indemnification obligations, Arbitration expenses, and all expenses that are not normal and recurring operating expenses.

## **Item 6 – Performance-Based Fees and Side-by-Side Management**

As discussed in Item 5, the General Partner receives performance-based compensation generally referred to as Carried Interest allocation with respect to its Fund client, equal to a fixed percentage of realized profits subject to specified preferred return hurdles with related catch-up provision, as more fully described in the applicable governing document. Carried Interest arrangements may create an incentive for Invictus to recommend riskier or more speculative investments. Invictus invests in each of its Funds as the General Partner alongside each investor (typically in the amount of approximately 2.5%) to reduce potential conflicts of interest and more fully align Invictus's investment objectives with those of its investors.

At this time, Invictus manages SPVs that are not subject to performance-based fees alongside investment vehicles that are subject performance-based fees. Invictus may manage SPVs that are subject to performance-based fees alongside investment vehicles that are also subject to performance-based fees. Advisers concurrently

managing several clients subject to differing fees, such as differently calculated performance allocations, may be incentivized to prefer the client be subject to higher fees. Invictus seeks to align the interests of investors with their own interests through the implementation of fees at comparable rates and through General Partner investments alongside investors. Portfolio Company investments are typically negotiated on a case-by-case basis between Invictus and each Portfolio Company.

## **Item 7- Types of Clients**

Invictus advises pooled investment vehicles in the form of private funds that maintain exemption from registration under Sections 3(c)(1) and 3(c)(7) of the U.S. Investment Company Act of 1940. Investors in the Funds are typically U.S. Investors that “qualified purchaser” under Rule 205-32 of the Advisers Act and “accredited investors” within the meaning of Regulation D of the Securities Act of 1933. Invictus requires each investor to represent that it is an accredited investor prior to being accepted into any Funds being offered. Clients include the Invictus Growth Fund I, L.P., a Fund designed to invest in growth equity and buyout investments.

## **Item 8- Methods of Analysis, Investment Strategies and Risk of Loss**

### **Methods of Analysis**

Invictus’s Clients are typically organized to provide a limited number of select investors with an opportunity to realize long-term appreciation, generally from capital investments in assets and securities of all kinds, including debt securities, of public and private companies, with a particular focus on the technology industry. The companies in which the Fund invests are sometimes referred to collectively as the “Portfolio Companies.”

### **Investment Strategies**

Invictus is a private equity firm that invests capital into and acquires outstanding technology and technology enabled businesses with the goal of assisting entrepreneurs to realize their strategic vision and scale their companies for the long term.

- Target Segments: Automation applied to cloud software (primarily SaaS business models) with an emphasis on financial technology
- Product Market Fit: Strong revenue growth with established customer base, profitable, or clear path to profitability at the time of investment
- Growth Businesses: Bootstrapped and venture backed growth technology businesses
- Strong Management Teams: Founded by world-class entrepreneurs who share our values
- Use of Proceeds: Use of capital to accelerate organic and strategic business growth

### **Risk of Loss**

Prospective investors should be aware that an investment in the investment products offered by Invictus involve a high degree of risk and, therefore, should be undertaken only by investors capable of evaluating and bearing the risks it represents. There can be no assurance that Invictus’ investment objectives will be achieved, or that an investor will receive a return of its capital, and therefore, an investor should only invest if such investor is able to withstand a total loss of its investment. The following considerations, among others, should be carefully evaluated before making an investment in any product offered by Invictus. The following risks do not purport to be a complete explanation of all of the risks involved in acquiring an interest. Potential investors are urged to read this entirety of the applicable offering documents before making a determination whether to invest in any Fund or investment vehicle offered by Invictus. Prospective investors should also consult their

own financial, tax and legal advisors regarding the suitability of an investment prior to subscribing for an investment.

**THIS INFORMATION IS INTENDED TO SERVE AS A SUMMARY OF POTENTIAL RISKS OF INVESTING. THE FOLLOWING IS NOT A SUBSTITUTE FOR THE OFFERING DOCUMENTS OF THE FUNDS, SPVS OR INVESTMENT MANAGEMENT AGREEMENTS AS APPLICABLE. POTENTIAL INVESTORS IN THE FUNDS OR SPVS MUST REVIEW OFFERING DOCUMENTS IN THEIR ENTIRETY BEFORE INVESTING. THIS INFORMATION MAY BE BOTH SUPPLEMENTED AND SUPERSEDED BY INFORMATION IN THE OFFERING DOCUMENTS FOR THE FUNDS OR SPVS DISCLOSURES.**

**RISKS INHERENT IN PRIVATE INVESTMENTS.** The types of investments that the Clients anticipate making involve a high degree of risk. In general, financial, and operating risks confronting portfolio companies can be significant. While targeted returns should reflect the perceived level of risk in any investment situation, there can be no assurance that the Clients will be adequately compensated for risks taken. A loss of an investor's entire investment is possible. The timing of profit realization is highly uncertain. Losses are likely to occur early in the Clients' term, while successes often require a long maturation. Companies in which private equity funds invest often experience unexpected problems in the areas of product development, manufacturing, marketing, financing, and general management, which, in some cases, cannot be adequately solved. In addition, such companies may require substantial amounts of financing that may not be available through institutional private placements or the public markets. The percentage of companies that survive and prosper can be small. Investments in more mature companies in the expansion or profitable stage involve substantial risks. Such companies typically have obtained capital in the form of debt and/or equity to expand rapidly, reorganize operations, acquire other businesses, or develop new products and markets. These activities by definition involve a significant amount of change in a company and could give rise to significant problems in sales, manufacturing, and general management of these activities.

**INVESTMENTS IN GROWTH STAGE COMPANIES.** The Clients intend to invest in small and medium-sized companies that are seeking to grow substantially in the near term. While such investments may present opportunities for growth, they also may entail risks that may or may not be customarily associated with investments in large companies. Small and medium-sized companies may have more limited product lines, markets, and financial resources, may have higher customer concentration and may be dependent on a smaller management group. As a result, such companies may be more vulnerable to general economic trends and to specific changes in markets and technology. In addition, future growth may be dependent on additional financing, which may not be available on acceptable terms when required. Further, there is ordinarily a more limited marketplace for the sale of interests in smaller private companies, which may make realizations of gains more difficult due to the requirement to sell to other private investors. In addition, the relative illiquidity of growth equity investments generally, and the somewhat greater illiquidity of private investments in small and medium sized companies in particular, could make it difficult for the Clients to react quickly to negative economic or political developments.

**NO ASSURANCE OF RETURNS.** There can be no assurance that the Limited Partners will receive distributions from the Clients in an amount equal to their investment in the Clients. The timing of profit realization, if any, is highly uncertain.

**LACK OF OPERATING HISTORY.** The Clients and the General Partner are newly formed entities, and accordingly have limited operating history or investments upon which investors can evaluate the potential performance of the Clients. The prior performance of the Managing Partners or their investments is not necessarily indicative of the Clients' future results. There can be no assurance that investments by the Clients will achieve returns comparable to the historical performance of the Managing Partners or their investments,



and in any event, the returns achieved by the Clients will be subject to the management fee and the General Partner's carried interest. Any given investment made by the Clients may prove to be worthless, and there is a risk that investors could lose money.

**RELIANCE ON THE GENERAL PARTNER.** The General Partner will have sole discretion over the investment of the capital committed to the Clients as well as the ultimate realization of any profits. The investors will not receive the detailed financial information issued by Portfolio Companies that will be available to the General Partner. Accordingly, the investors will not have the opportunity to evaluate the relevant economic, financial, and other information that will be utilized by the General Partner in its selection of investments. As such, the pool of funds in the Clients represents a blind pool of funds. Investors in the Clients will be relying on the General Partner to identify, structure and implement investments consistent with the Clients' investment objectives and policies and to conduct the business of the Clients as contemplated by each Clients offering documents. Investors will not make decisions with respect to the management, disposition or other realization of any investment made by the Clients, or other decisions regarding the Clients' business and affairs.

**RELIANCE ON THE MANAGING PARTNERS** The loss of one or more of the Managing Partners could have a significant adverse impact on the business of the Clients and its financial performance. No assurances can be given that each of the Managing Partners will continue to be affiliated with the Clients throughout its term. Notwithstanding any prior experience that the Managing Partners may have in making investments of the type expected to be made by the Clients, any such experience necessarily was obtained under different market conditions and with different technologies at the forefront of development. There can be no assurance that the Managing Partners will be able to duplicate prior levels of success.

**KEY PERSON.** Invictus's operations are substantially dependent upon the skill, judgment and expertise of the Key Persons, which shall be Mr. John DeLoche and Mr. William Nettles (each a "Key Person"). The death, disability, departure or other unavailability of either Key Persons could have a material and adverse effect on the Clients and Invictus.

**RELIANCE ON PORTFOLIO COMPANY MANAGEMENT.** Although the General Partner may (but is not required and should not be expected to) seek representation on the board of directors of each of the Portfolio Companies, the Clients will not have an active role in the day-to-day management of the companies in which it invests. To the extent that the senior management of a portfolio company performs poorly, or if a key manager terminates employment, the Clients' investment in such company could be adversely affected.

**LIMITED PORTFOLIO DIVERSIFICATION.** The portfolio holdings of the Fund may not be broadly diversified. In addition, if the General Partner is unable to raise sufficient capital commitments for the Fund, the diversification of the portfolio holdings of the Fund will be further limited. A downturn of the economy or in the business of any one company could impact the aggregate returns delivered to an investor by the Fund. To the extent the Fund concentrate investments in a particular issuer, industry, security or geographic region, its investments will become more susceptible to fluctuations in value resulting from adverse economic and business conditions with respect thereto. In the case of SPVs the entities shall be designed to hold single assets.

**FOCUSED INVESTMENT STRATEGY.** The Clients will be focused on investments in the technology industry. Accordingly, the Clients may not enjoy the reduced risks of a broadly diversified portfolio. A specific investment focus is inherently riskier and could cause the Clients' investments to be more susceptible to particular economic, political, regulatory, technological or industry conditions or occurrences compared with a fund, or a portfolio of funds, that is more diversified or has a broader industry focus.

**NO ASSURANCE OF THE GENERAL PARTNER'S SUCCESS IN LOCATING OR INVESTING IN PORTFOLIO COMPANIES.** There can be no assurance the General Partner will be able to locate suitable investments for the Clients. Although the General Partner will attempt to make investments on behalf

of the Clients that meet the criteria set forth in the Clients agreement, there is no assurance that such investments can be located. Market and other conditions may require the Clients to make investments that offer a lower rate of return or involve a higher degree of risk.

**DIFFICULTY IN VALUING PORTFOLIO INVESTMENTS.** Generally, there will be no readily available market for a substantial number of the Clients' investments and hence, most of the Clients' investments will be difficult to value. Despite the General Partner's efforts to acquire sufficient information to monitor certain of the Clients' investments and make well-informed valuation and pricing determinations, the General Partner may only be able to obtain limited information at certain times. It is possible that the General Partner may not be aware on a timely basis of material adverse changes that have occurred with respect to certain of the Clients' investments. The General Partner may have to make valuation determinations without the benefit of an adequate amount of relevant information. Prospective investors should be aware that as a result of these difficulties, as well as other uncertainties, any valuation made by the General Partner may not represent the fair market value of the securities acquired by the Clients.

**COMPETITIVE MARKETPLACE.** The marketplace for private equity investing has become increasingly competitive. Participation by financial intermediaries has increased, substantial amounts of funds have been dedicated to making investments in the private sector and the competition for investment opportunities is at high levels. Some of the Clients' potential competitors may have greater financial and personnel resources than the General Partner. There can be no assurances that the General Partner will locate an adequate number of attractive investment opportunities. To the extent that the Clients encounter competition for investments, returns to investors in the Clients may vary.

**HEDGING.** The Fund may, but is not required to, engage in currency hedging transactions. There can be no assurance, however, that the Fund will engage in such hedging transaction at any given time or from time to time, or that such hedging transactions will be available or be available at a reasonable cost, or that such hedging transactions will be effective and actually eliminate the applicable currency risk. Such hedging transactions may even exacerbate any negative impact on the Fund resulting from changes in currency exchange rates. While such transactions may reduce certain risks, such transactions themselves may entail certain other risks. Thus, while the Fund may benefit from the use of these hedging mechanisms, unanticipated changes in interest rates, securities prices or currency exchange rates may result in a poorer overall performance for the Fund than if it had not entered into such hedging transactions.

**PROJECTIONS.** The Clients may rely upon projections, forecasts or estimates developed by the Clients or a company in which the Clients is invested concerning the company's future performance and cash flow. Projections, forecasts, and estimates are forward-looking statements and are based upon certain assumptions. Actual events are difficult to predict and beyond the Client's control and may differ from those assumed. Some important factors that could cause actual results to differ materially from those in any forward-looking statements include changes in interest rates and domestic and foreign business, market, financial or legal conditions, among others. Accordingly, there can be no assurance that estimated returns or projections can be realized or that actual returns or results will not be materially lower than those estimated therein.

**CONTROL PERSON LIABILITY.** The Clients may have significant or controlling interests in a number of its investments in portfolio companies. The exercise of control over a portfolio company may impose additional risks of liability for, among other things, environmental damage, product defects, failure to supervise management, violation of governmental regulations (including securities laws) or other types of liability in which the limited liability generally characteristic of business ownership may be ignored. If these liabilities were to arise, the Clients might suffer a significant loss

**EFFECTING OPERATING IMPROVEMENTS.** In some cases, the Client's investment strategy will depend, in part, on the ability of the Clients to restructure and effect improvements in the operations of a

portfolio company. The activity of identifying and implementing restructuring programs and operating improvements at portfolio companies entails a high degree of uncertainty. There can be no assurance that the Clients will be able to successfully identify and implement such restructuring programs and improvements.

**CHANGING ECONOMIC CONDITIONS.** The success of Invictus's investment strategy could be significantly impacted by changing external economic conditions in the United States and global economies. The stability and sustainability of growth in global economies may be impacted by terrorism or acts of war. The availability, unavailability or hindered operation of external credit markets, equity markets and other economic systems that the Clients may depend upon to achieve its objectives may have a significant negative impact on the Client's operations and profitability. There can be no assurance that such markets and economic systems will be available or will be available as anticipated or needed for the Clients to operate successfully. Changing economic conditions could potentially adversely impact the valuation of portfolio holdings.

**MINORITY INVESTMENTS.** Some of the Clients' investments may represent minority stakes in privately held companies. In addition, during the process of exiting investments, the Clients are likely to hold minority equity stakes if portfolio holdings are taken public. As is the case with minority holdings in general, such minority stakes that the Clients may hold will have neither the control characteristics of majority stakes nor the valuation premiums accorded to majority or controlling stakes. The Clients may also invest in companies for which the Clients has no right to appoint a director or otherwise exert significant influence. In such cases, the Clients will be reliant on the existing management and boards of directors of such companies, which may include representatives of other financial investors with whom the Clients are not affiliated and whose interests may conflict with the interests of the Clients. Additionally, the Clients may have limited ability to protect their position in such portfolio companies. Although it is expected that appropriate rights generally will be sought to protect the Client's interests, to the extent possible, there can be no assurance that such minority shareholder rights will be available. The General Partner may make investments in companies that have incurred or are permitted to incur indebtedness, or that may issue equity securities that rank senior to the Client's investment. By their terms, such instruments may provide that their holders are entitled to receive payments of dividends, interest, or principal on or before the dates on which payments are to be made in respect of the Client's investment. In the event of insolvency, liquidation, dissolution, reorganization, or bankruptcy of a company in which an investment is made, creditors or holders of securities ranking senior to the Client's investment in such portfolio company typically would be entitled to receive payment in full before distributions could be made in respect of the Client's investment. After repaying creditors and senior security holders, the company's remaining assets may not be sufficient for repayment of amounts owed in respect of the Client's investment. To the extent that any assets remain, holders of claims that rank equally with the Client's investment would be entitled to share on an equal and ratable basis in distributions that are made out of those assets.

**NEED FOR FOLLOW-ON INVESTMENTS.** The Clients may be called upon to provide follow-on funding to its portfolio companies or may have the opportunity to increase its investment in a portfolio company. Although the General Partner may use capital commitments to make follow-on investments, there is no assurance that the Clients and its co-investors will wish to make such follow-on investments or that the Clients and its co-investors will have sufficient capital to do so. Accordingly, third-party sources of financing may be required, but there is no assurance that such additional sources of financing will be available, or, if available, will be on terms favorable to the Clients. The Clients' decision not to make a follow-on investment or its inability to do so may have an adverse impact on such portfolio company in need of such an investment or may diminish the Clients' proportionate ownership in such portfolio company and thus its ability to influence such portfolio company's future development, and it could have a significant negative impact on the Clients' investment therein.

**FOREIGN EXCHANGE RISKS.** Contributions to the Clients and distributions from the Clients will be denominated in United States dollars. Investments generally will be denominated in United States dollars but

may, in limited circumstances, be denominated in currencies other than United States dollars if deemed advisable by the General Partner. As a result, the profits, or losses of the Clients on any investment, as measured in United States dollars, may be affected by fluctuations in currency exchange rates and exchange control regulations, as well as by the success of the investment itself. In addition, the Clients may incur costs in connection with conversions between various currencies. The Clients does not presently intend to seek to reduce currency risks through “hedging” or other methods.

**FUTURE AND PAST PERFORMANCE.** The performance of the Managing Partners and their investments is not necessarily indicative of the Clients’ future results. While the General Partner intends for the Clients to make investments that have estimated returns commensurate with the risks undertaken, there can be no assurance that targeted results will be achieved. Loss of principal is possible on any given investment.

**LEVERAGE.** To the extent that any investment is made in a portfolio company with a leveraged capital structure, or any portfolio company borrows or enters into other financing transactions requiring periodic payments, such investment will be subject to increased exposure to adverse economic factors such as a significant rise in interest rates, a severe downturn in the economy or deterioration in the condition of such company or its industry. If such a company is unable to generate sufficient cash flow to meet principal and interest payments on its indebtedness, the value of any equity investment by the Clients in such company could be significantly reduced or even eliminated.

#### **Item 9- Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to an investor or potential investor’s evaluation of Invictus or the integrity of Invictus’s management.

Invictus has no such facts to disclose.

#### **Item 10- Other Financial Industry Activities and Affiliations**

Invictus does not have any registrations or pending registrations to act as a broker-dealer or representative of a broker dealer, futures commission merchant, commodity pool operator, commodity trading advisor, or an associated person of any of the foregoing entities related to this item.

#### **Item 11- Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

Invictus is a fiduciary to its clients, and therefore must serve their interests with the utmost loyalty and care. Invictus has adopted a code of ethics (the “Code”), which is designed to meet the requirements of SEC Rule 204A-1, and to assist Invictus and its supervised persons in preventing violations of the Advisers Act and the rules promulgated under it. Item 11 provides a summary of certain provisions of the Code.

The Code applies to Invictus’s management and employees, and to any consultant or other nonemployee who the CCO determines to treat as a “supervised person” for purposes of the Code. The Code sets forth a standard of business conduct that considers Invictus’s status as a fiduciary to its clients and requires supervised persons to place the clients’ interests above their own interests. The Code requires supervised persons to comply with applicable federal securities laws.

Invictus comes into possession of confidential or material non-public information during its investment management and other activities from time to time. Invictus is prohibited from improperly disclosing or using such information for its own benefit or for the benefit of any other person, regardless of whether such other person is a client. Invictus maintains and enforces written policies and procedures that prohibit the communication of such information to persons who do not have a legitimate need to know such information

and that seek to ensure that Invictus remains in compliance with applicable law. Further, supervised persons are required to promptly bring violations of the Code to the applicable party.

Invictus is permitted, in appropriate circumstances, to cause Clients to purchase or sell securities in which Invictus, its affiliates and/or Clients, directly or indirectly, have a position or interest. Invictus's officers, directors, employees, and certain other persons associated with Invictus (collectively, "**Access Persons**") are required to follow the Code, which includes certain qualifications on the ability of Access Persons to trade instruments held by Clients. The Code is designed to assure that the personal transactions, activities, and interests of Access Persons will not interfere with (i) making decisions in the best interest of Clients and (ii) implementing such decisions while at the same time allowing its Access Persons to invest for their own accounts. If a personal trading transaction is in conflict with the Firm's restricted trading list, then the transaction may not commence. The Code requires pre-clearance of certain transactions and requires that the interests of Clients be placed ahead of those of Access Persons in their personal trading. Nonetheless, because the Code in some circumstances would permit Access Persons to invest in the same instruments as Clients, there is a possibility that Access Persons might benefit from market activity by a Client in an instrument held by an Access Person. Personal trading is regularly monitored under the Code in an effort to prevent conflicts of interest between Invictus and its Clients.

The General Partner may, in its discretion, offer co-investment opportunities to certain investors and to certain third-parties (on terms determined by the General Partner) and, to the extent such co-investment opportunities are offered, they may present inherent conflicts of interest between the interests of the Funds and the co-investors. These types of co-investments also may result in conflicts regarding decisions relating to a specific portfolio company, including with respect to timing or strategic objectives. The General Partner currently expects to offer co-investment opportunities to current investors or third-party investors when the size of a prospective portfolio investment for the Fund is greater than the maximum amount appropriate for the Fund, as determined by the General Partner in its sole discretion. Invictus may not offer co-investment opportunities, only the General Partner may offer such opportunities to the SPVs.

Invictus also has adopted policies and procedures intended to prevent employees from being unduly influenced in their decisions by the receipt of gifts or other inducements from third parties, such as brokers, trading counterparties or vendors. Invictus employees are required to seek approval to keep certain business gifts and are required to seek pre-approval to give certain types of business gifts. In addition, Invictus's policies set forth standards for receiving and providing business entertainment from or to certain third parties, and certain prohibited uses of social media, among other things.

The Code also includes general provisions regarding professionalism in all aspects of management and employee conduct for Invictus.

## **Item 12 – Brokerage Practices**

Invictus does not receive research or other soft dollar benefits currently. Invictus may make brokerage or investment bank recommendations to Clients as fully described in the governing documents for each Fund.

Invictus causes Clients to invest in private transactions that are not executed on an exchange and thus Invictus generally does not utilize brokers. Notwithstanding the above, in the future Invictus may utilize brokers and investment banks in connection with the purchase and sale of Portfolio Companies. This is typically done on a limited basis to remove restrictions from the securities and to help liquidate the securities in the open market. This may also occur due to Invictus's sale of in-kind distributions of stock from Portfolio Companies. Any such purchases or sales will be executed in accordance with Invictus's best execution obligation.

When selecting a broker dealer or investment bank, the Firm will consider certain factors including the capabilities with respect to the type of transaction being contemplated, commissions or fees charged, reputation of the firms being considered, responsiveness to requests for information, and overall experience. Although the Firm will evaluate the reasonableness of rates for such services, the market for such services involves subjective evaluations and the Clients may not necessarily pay the lowest commission or fee for such services. Certain transactions may require specialized services on the part of the broker or investment bank and therefore may entail higher commissions or their equivalents than would be the case with other transactions requiring more routine services. Although Invictus generally seeks competitive commission rates, it may not necessarily pay the lowest commission or commission equivalent.

In the event that Invictus's business were to evolve such that the Clients were to regularly execute transactions through a broker-dealer, then Invictus would adopt policies and procedures reflective of its duty to execute trades in publicly traded securities in a manner designed to seek best price and execution. To the extent Invictus utilizes broker-dealers in the future, Invictus need not solicit competitive bids and would not have an obligation to seek the lowest available commission or other transaction cost.

### **Aggregation of Securities Transactions**

The private securities which are the primary investments by the clients are generally purchased in private transactions, and thus if a transaction is suitable for multiple clients, a purchase or sale transaction by multiple clients will generally be consummated simultaneously. Although unlikely, there could be circumstances in which the liquidity, Clients terms or other considerations require the purchase of a Portfolio Company, at different times. In such cases, Invictus will seek to act in a fair and equitable manner with regard to all participating clients and to take into account the investment objectives and results of each client. Notwithstanding the foregoing, the purchase of a Portfolio Company, by different Clients at different times could result in increased transaction costs and different investment results for such Clients and their Investors. Invictus recognizes that, as a fiduciary, it has a duty to allocate investment opportunities among its Clients in a fair and equitable manner.

Co-investment opportunities may be offered by the General Partner, in its discretion, to certain investors and to certain third-parties (on terms determined by the General Partner) and, to the extent such co-investment opportunities are offered, they may present inherent conflicts of interest between the interests of the Clients and the co-investors. These types of co-investments also may result in conflicts regarding decisions relating to a specific portfolio company, including with respect to timing or strategic objectives.

### **Item 13- Client Accounts**

The Firm closely monitors all investments held by the Clients and the Firm's Chief Compliance Officer periodically ensures that all investments meet the Firm's stated objectives.

Invictus distributes quarterly investment summaries to investors in the Fund. Invictus provides audited financials to clients and their underlying investors consistent with Advisers Act Rule 206(4)-2 (the "Custody Rule") within 120 days of the year end. In addition, each investor will be provided annually an IRS Schedule K-1 and such other information as may reasonably be requested by such investor as necessary for the completion of federal income tax returns

### **Item 14- Client Referrals and Other Compensation**

Invictus and its personnel may provide business and consulting services to those companies in the Clients' portfolio. Such business and consulting fees may offset Management Fees as described in the applicable offering documents of the Clients. These fees in other cases may be considered as fees in addition to Management Fees and Carried Interest allocations as more fully described above in Item 5 Fees and Compensation.

Invictus does not receive economic benefit from anyone other than clients for providing investment advice or other advisory services to Clients. Invictus uses Moelis and Company, LLC as a placement agent to the Fund.

#### **Item 15- Custody**

Due to the legal structure of the Clients and the role of Invictus, Invictus is generally deemed to have legal custody of the Clients it currently advises. The Clients maintain their assets, in their own name, with qualified custodians or otherwise as permitted under the Custody Rule. To ensure compliance with the Custody Rule, Invictus has a reasonable belief that all Investors will be provided with financial statements for their respective Clients, audited by an independent accounting firm that is registered with and subject to review by the Public Company Accounting Oversight Board, in accordance with U.S. Generally Accepted Accounting Principles, within 120 days of the end of such Clients fiscal year.

#### **Item 16- Investment Discretion**

Investment advice is provided directly to the Clients. Investment advice is not provided to individual investors in the Clients. Services are provided to each Fund in accordance with the governing documents of the Fund. As more fully described in each Fund's governing documents, the terms of an investor's investment may be altered or varied in certain circumstances.

#### **Item 17- Voting Client Securities**

Invictus does not vote public equity proxies on behalf of its Clients or portfolio companies, nor does it anticipate doing so in the future. Should one of Invictus's portfolio companies go public or be acquired for stock by a public company or should Invictus otherwise make an investment in a public company, Invictus has adopted a proxy voting policy in accordance with SEC Rule 206(4)-6 to detail how it will vote its clients' proxies.

In the event that Invictus receives proxies sent to a Client, the portfolio manager for the applicable Client's account will be responsible for casting the proxy, consistent with Invictus's general voting guidelines and other applicable firm policies.

Invictus does not expect that there will be any material conflicts of interest with respect to any proxy vote between the Firm or its supervised persons and the Fund. However, the Chief Compliance Officer will monitor the potential for conflicts of interest on the part of the Firm with respect to proxy voting as a result of personal relationships, significant Client relationships, potential conflicts of interests among the Clients or special circumstances that may arise during the conduct of the Firm's business. If a conflict of interest is identified, Invictus will not make related proxy voting decisions until it has been determined that the conflict of interest is not material or a method for resolving the conflict of interest has been agreed upon and implemented, in accordance with Invictus's proxy voting policies and procedures.

Investors in the Clients may obtain a copy of Invictus's complete proxy voting policies and procedures and information about how Invictus voted any proxies on behalf of such Clients by contacting Invictus at 415-886-9830.

#### **Item 18 – Financial Information**

Registered investment advisers are required in this Item 18 to provide certain financial information or disclosures about their financial condition. The Firm maintains a line of credit on behalf of the Fund, which currently has an outstanding debt obligation. Invictus has not been the subject of a bankruptcy proceeding.

#### **Item 19 – Requirements for State-Registered Advisers**

Item 19 does not apply to Invictus.