Form 15

Confidentiality Agreement

Disclosing Party: [Company name]

Recipient: [insert name]

This CONFIDENTIALITY AGREEMENT (this “Agreement”) dated as of [Month] \_\_, 20\_ is made between [Company name], a corporation organized under the laws of the State of [insert name of state] (the “Company”), and [insert name] (the “Recipient”) to assure the protection and preservation of the confidential and/or proprietary nature of information to be disclosed to the Recipient by the Company.

WHEREAS, in order to evaluate and/or pursue negotiations or discussions in contemplation or furtherance of a transaction involving the sale of shares of common stock, par value $[par value] per share, of the Company, the Company has disclosed or expects to disclose to the Recipient certain data and other information that are of a proprietary and confidential nature (as defined in paragraph 1 below and referred to herein as “Confidential Information”);

NOW, THEREFORE, in reliance upon and in consideration of the following undertakings, and for other good and valuable consideration, the receipt of which is acknowledged, the parties to this Agreement agree as follows:

1. Subject to the limitations set forth in paragraph 2, “Confidential Information” shall mean all confidential, proprietary, or non-public information (including financial information), concerning the business, operations, business opportunities, and activities of the Company, including without limitation, current and future (i) investors, manufacturers, suppliers, vendors, competitors, and customers; (ii) sales and marketing plans, research and development plans or strategies, business development plans, intellectual property and technology, and manufacturing plans; (iii) subsidiaries, operating units, acquisitions, and divestitures; (iv) financing plans and liability management plans, including a recapitalization; and (v) any of the foregoing information disclosed or provided by any third party to the Company on a confidential basis.

2. The term “Confidential Information” shall not be deemed to include information that:

(a) at the time of disclosure is in the public domain;

(b) after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by the Recipient;

(c) was in the Recipient’s possession at the time of disclosure by the Company, provided such information was not knowingly received in violation of any obligation of confidentiality with respect to such information;

(d) the Recipient received from a third party that to its knowledge was not in violation of any obligation of confidentiality with respect to the Confidential Information; or

(e) is independently developed by Recipient without reference to the Confidential Information and without violating any of the Recipient’s obligations under this Agreement.

3. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure:

(a) is in response to a valid order of a court or to another governmental body of the United States or any political subdivision thereof; or

(b) is required by law, regulation, or a regulatory authority having jurisdiction over the Recipient; provided, however, that in the case of disclosure under either 3(a) or 3(b), the Recipient shall use reasonable best efforts to give prior written notice (unless prohibited by order, law, regulation, or regulatory authority, and except in connection with examination by a regulatory agency) to the Company within a reasonable time prior to any such proposed disclosure so that the Company may obtain at its own expense a protective order or confidential treatment with respect to such Confidential Information, and in any event such Confidential Information may be disclosed by the Recipient only to the extent it reasonably believes is required by such order, law, regulation, or regulatory authority, and Recipient understands is intended to be used only for purposes for which such order was issued or as required by such law or regulation.

4. The Recipient shall use reasonable best efforts to maintain in trust and confidence, and not disclose to any third party or use for any unauthorized purpose any Confidential Information received from the Company. The Recipient may use such Confidential Information only to the extent required for the purposes described herein. Confidential Information shall not be used for any purpose or in any manner that would constitute a violation of any laws or regulations, including, without limitation, the export control laws or the securities laws of the United States. No other rights are implied or granted under this Agreement. Without limiting the foregoing, no licenses or other rights whatsoever to trademarks, inventions, copyrights, or patents are implied or granted under this Agreement.

5. Confidential Information supplied shall not be reproduced in any form except as required to accomplish the purposes of this Agreement.

6. The Recipient shall advise its employees, members, officers, directors, tax, legal, financial, and accounting advisors, agents, and affiliates (“Representatives”) who may, in accordance with the terms of this Agreement, require access to such Confidential Information of the confidential nature thereof. Confidential Information shall be disclosed only to such Representatives who require access to such information for the purposes described herein and who are advised of the confidentiality obligations of the Recipient under this Agreement. The Recipient shall be responsible to the Company for any breach of this Agreement by the Recipient’s Representatives.

7. All Confidential Information (including copies and reproductions thereof) shall remain the property of the Company, and shall be returned to the Company within five business days after a written request by the Company. The Recipient shall use reasonable best efforts to destroy all notes, analyses, summaries, or other records or data that contain any Confidential Information, and such destruction confirmed by an authorized representative of the Recipient, upon written request by the Company. Notwithstanding anything contained herein to the contrary, Recipient shall be entitled to retain any Confidential Information or portions thereof as required by law, regulation, or internal policy.

8. The Recipient shall not reveal the fact that Confidential Information has been disclosed pursuant to this Agreement, nor that Recipient is conducting, or has conducted, discussions or negotiations in contemplation or furtherance of a business relationship. It is understood that disclosure pursuant to this Agreement is not a public disclosure or sale, or offer for sale of any product or securities, but is made for the limited purposes relating to potential business activities stated herein.

9. The Company disclaims all warranties regarding the Confidential Information disclosed pursuant to this Agreement, including all warranties as to the accuracy, completeness, or utility of the Confidential Information; provided, however, that to the best of the Company’s knowledge, the Confidential Information is not inaccurate or materially misleading. Only those representations or warranties that are made in a definitive agreement between the parties, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect. For purposes of this Agreement, the term “definitive agreement” does not include any executed letter of intent or any other preliminary written agreement, nor does it include any written or verbal acceptance of any offer or bid made by one party. Each party understands and agrees that no agreement providing for any transaction involving the parties shall be deemed to exist unless and until a definitive agreement has been executed and delivered, and each party waives in advance any claims, including without limitation claims for breach of contract, in connection with any transaction between the parties unless and until the parties shall have entered into a definitive agreement. Each party also agrees that unless and until a definitive agreement regarding a transaction between the parties has been executed and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement or any other written or oral communication with respect to such transaction, except for the matters specifically agreed to herein.

10. Neither the provision of the Confidential Information nor the existence of any discussions or negotiations between the Recipient and the Company creates any obligation on the Recipient or the Company to enter into any engagement or transaction, and the Recipient or the Company may end discussions without giving any reason for doing so and without incurring any liability to the other party. [The Company understands that Recipient and its affiliates and Representatives are engaged in the business of providing venture capital financing and management advice to companies in which they invest, and review and invest in many opportunities that may involve similar or competing technologies, products, or services as offered by the Company. Company agrees that neither this Agreement nor any disclosure of Confidential Information hereunder (a) obligates Recipient to receive any information from, perform any work for, or enter into any agreement with Company or its affiliates or any third party; (b) limits Recipient or its affiliates or Representatives from assigning or reassigning personnel in any way; or (c) limits Recipient or its affiliates or Representatives from engaging in or operating any business; entering into any agreement or business relationship with any third party; or evaluating, engaging in investment discussions with, or investing in any third party, whether or not competitive with the Company or its affiliates, except insofar as this Agreement restricts the use and disclosure of Confidential Information.]

11. The Recipient acknowledges and agrees that the Company is a publicly-held company. Recipient confirms to the Company that it is aware of and will comply with any applicable laws and regulations (including those related to insider dealing) relating to the use of the Confidential Information, and hereby undertakes not to use any Confidential Information for any unlawful purpose.

12. Without prejudice to any other rights or remedies that the Company may have, the Recipient acknowledges and agrees that damages may not be an adequate remedy for any breach by it of the terms of this Agreement and accordingly, the Recipient hereby agrees that the Company shall be entitled to seek specific performance of the Recipient’s obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction, in addition to any and all other rights and remedies as may be available under applicable law.

13. To induce the Company to provide the Confidential Information to the Recipient, the Recipient acknowledges and agrees that it will not, during the period commencing on the date hereof and ending on the Standstill Expiration Date (as defined below), directly or indirectly effect any purchase or sale transaction in any securities of the Company, including any transaction that transfers, in whole or in part, any of the economic consequences of ownership of any of such securities. The foregoing sentence shall not apply to the sale of any of the Company’s securities to the Recipient by the Company. For purposes of this Agreement, the “Standstill Expiration Date” shall mean the earlier of: (i) one business day following the announcement of the contemplated transaction, or (ii) [Month] \_\_, 20\_.

14. This Agreement shall be governed by the laws of the State of [New York] without regard to its conflicts of law provisions.

15. This Agreement contains the entire agreement of the parties and may not be changed, modified, amended, or supplemented, except by a written instrument signed by both parties. The unenforceability of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement. Neither this Agreement nor the disclosure of any Confidential Information pursuant to this Agreement shall restrict the Company from disclosing any Confidential Information to any third party.

16. This Agreement shall not be assignable by the Recipient without the prior written consent of the Company; any such purported or attempted assignment of this Agreement, or any right or benefit conferred upon the Recipient hereby shall be void and unenforceable. This Agreement shall inure to the benefit of the Company’s successors and assigns.

17. Recipient’s obligations hereunder shall terminate upon the Standstill Expiration Date.

EXECUTED as of the date first above written.

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|  | [COMPANY NAME] |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: |
|  |  | Title: |
|  | [INSERT NAME] |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | Name: |
|  |  | Title: |