Form 16

Confidentiality Agreement

This Confidentiality Agreement (this “Agreement”) dated [Month] \_\_, 20\_ sets forth the terms and conditions under which [Placement Agent] (the “Placement Agent”), as agent for [Issuer] (the “Disclosing Party”) may disclose to [Receiving Party] (the “Receiving Party”) proprietary and confidential information, including, but not limited to, any and all information relating to the business of the Disclosing Party that is contained in any offering materials, a potential private placement transaction by the Disclosing Party or pro forma financial data (all such information, the “Information”).

1. The Receiving Party agrees not to divulge the Information to any third party or use such Information for any purposes other than its evaluation of whether to participate in the proposed private placement transaction for the Disclosing Party, subject to the next paragraph. The Receiving Party shall take all reasonable steps to prevent the disclosure of the Information.

2. Notwithstanding the above, nothing in the foregoing shall be construed to prevent the Receiving Party from disclosing or using any Information, as the case may be: (a) to its officers, employees, agents, affiliates, and consultants as the Receiving Party considers necessary, though the Receiving Party shall be legally responsible for the actions of such parties with respect to the Information; (b) which was in the Receiving Party’s possession or control prior to the date of disclosure; (c) which was in the public domain or enters into the public domain through no improper act on the Receiving Party’s part or on the part of any of the Receiving Party’s officers, employees, agents, affiliates and consultants (“Representatives”) (including but not limited to any disclosure of such Information by the Disclosing Party in any filing with the U.S. Securities and Exchange Commission (the “SEC”)); (d) which is approved for public release by written authorization by the Disclosing Party; (e) which is developed independent of the information derived from the Information; or (f) which is required to be disclosed by legal, administrative, or judicial process, provided, however, the Receiving Party will give the Disclosing Party prompt prior written notice of any such impending disclosure to allow the Disclosing Party a reasonable opportunity to obtain a protective order.

3. It is understood and agreed that the Receiving Party shall have no right, title, or interest in or to any of the Information.

4. The Receiving Party acknowledges that the Information contains material non-public information within the meaning of the U.S. federal securities laws. As such, the Receiving Party agrees not to purchase (other than in connection with the proposed private placement transaction) or sell any securities of the Disclosing Party until such Information has been publicly disclosed by the Disclosing Party through a press release or by a filing with the SEC. The Disclosing Party expects to issue a press release containing such Information or file such Information with the SEC no more than one business day following the signing of definitive agreements with respect to the proposed private placement transaction. If all Information has been so disclosed, other than the fact the Disclosing Party is contemplating a transaction, the restrictions contained in the previous sentence will continue to apply until the earlier of such time as (i) the transaction is announced by the Disclosing Party or (ii) the Placement Agent informs the Receiving Party that the transaction is no longer pending. The Disclosing Party has agreed that it will issue a press release containing such Information or file such Information with the SEC no later than [specified date].

5.

(a) The Receiving Party acknowledges that only the Disclosing Party is responsible for the accuracy and adequacy of the Information. No representation, warranty or covenant, express or implied, is made by the Placement Agent, and no responsibility of any kind exists with the Placement Agent with respect to the completeness or accuracy of the Information or to any other matter concerning it or the statements made regarding it by the Placement Agent. The Receiving Party further acknowledges that any potential transaction between it and the Disclosing Party will be effected only pursuant to a negotiated transaction between it and the Disclosing Party.

(b) The Receiving Party acknowledges and confirms that it has not received or relied on any communication, investment advice, or recommendation from the Placement Agent in making its investment decision regarding the proposed private placement transaction and that it will undertake its own independent analysis of the merits and risks of an investment in the securities of the Disclosing Party based on the Receiving Party’s own financial circumstances.

6. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the parties with respect to such subject matter are hereby superseded in their entirety. This Agreement may not be modified, amended, or waived in any manner except by an instrument in writing signed by each of the parties hereto. The waiver by either party of compliance with any provision of this Agreement by the other party shall not operate or be construed as a waiver of such party of any other provision of this Agreement. Neither party may assign its rights or obligations hereunder. In the event of a breach or threatened breach by the Receiving Party of any of the provisions of this Agreement, the Disclosing Party, in addition to any other remedies available to it under law, shall be entitled to an injunction restraining the Receiving Party from the performance of acts that constitute a breach of this Agreement.

7. For the convenience of the parties, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one and the same agreement. Facsimile or PDF signatures shall be deemed to be original signatures for all purposes.

8. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

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| --- | --- |
|  | [Placement Agent] |
|  | As agent-in-fact for Disclosing Party |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Name: |
|  | Title: |
|  | RECEIVING PARTY: |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Name: |
|  | Title: |