Form 42

Engagement Letter for Registered Direct Offering

CONFIDENTIAL

[Month] \_\_, 20\_

[Placement Agent]

[Address]

Dear Sirs:

This letter agreement (the “Agreement”) confirms our understanding that [Company], a [State of Incorporation] corporation (the “Company”), has retained [Placement Agent] (the “Placement Agent”) to act as the Company’s exclusive placement agent for a period commencing on the date of this Agreement and terminating [six] months after the date of this Agreement, unless extended by the parties, to introduce the Company to certain investors as prospective purchasers of shares of the Company’s common stock, $[par value] par value per share (“Common Stock”), in such aggregate amount as will result in gross proceeds to the Company of up to $\_\_,000,000 or such greater amount as shall be mutually agreed upon by the Company and the Placement Agent (collectively, the “Securities”). The engagement described herein shall be in accordance with applicable laws and pursuant to the following procedures and terms and conditions.

1. The Company will:

(a) Cause the Company’s independent public accountants to address and deliver to the Company and the Placement Agent a letter or letters (which letters are frequently referred to as “comfort letters”) dated as of the effective date of the registration statement or prospectus supplement filed with respect to the Securities (the “Registration Statement”) and a “bring-down” letter as of the closing date of the consummation of the sale of the Securities (the “Closing Date”), both of which letters will at all times be in form and substance reasonably satisfactory to the Placement Agent. The Registration Statement is intended to cover the distribution of the Securities from the Company directly to certain investors. The actual timing of the distribution will be determined by the Company in consultation with the Placement Agent.

(b) On the Closing Date, cause outside general counsel to the Company to deliver an opinion to the Placement Agent regarding compliance by the Company with the U.S. Securities Act of 1933, as amended (the “Securities Act”), and such additional matters as the Placement Agent shall reasonably request.

(c) Immediately prior to the offering of the Securities, enter into a placement agency agreement with the Placement Agent in such form and substance as are customary for registered securities offerings, which, upon execution, will supersede this Agreement, except as provided herein. Upon the occurrence of such event, this Agreement shall be null and void and of no further legal consequence. The obligation of the Placement Agent to enter into a placement agency agreement pursuant to the first sentence of this paragraph is subject to: (i) the satisfactory completion of a due diligence investigation of the Company by the Placement Agent and its agents and (ii) the Placement Agent not becoming aware of any material misrepresentations or omissions by the Company or the occurrence of any material change in the operations of the Company during the term of this Agreement.

2. The Placement Agent’s aggregate fee for introducing the prospective investors and all other services provided by the Placement Agent in connection therewith will be [\_]% (the “Placement Fee”) of the gross proceeds of the Company from the sale of the Securities. Such fee shall be payable by the Company at the closing of the sale of the Securities (the “Closing”). The Company also agrees to promptly reimburse, regardless of the consummation of any sale of the Securities, the Placement Agent for all of its fees and expenses incurred in connection with the engagement hereunder, including, but not limited to, the reasonable fees and disbursements of its counsel. [Such expenses will not exceed a cumulative total of $\_\_\_\_\_\_\_\_\_ unless authorized by the Company.] The Company also shall be responsible for its own expenses, including, but not limited to, the reasonable fees and disbursements of the Placement Agent’s counsel in connection with any Financial Industry Regulatory Authority, Inc. filings and “Blue Sky” filings.

3. In consideration of the Placement Agent’s signing this Agreement and agreeing to perform services pursuant hereto, the Company agrees to indemnify and hold harmless the Placement Agent and each of its directors, officers, agents, employees and controlling persons (within the meaning of the Securities Act) to the extent and as provided in Addendum A attached hereto and incorporated herein by reference. The provisions of this Section 3 and Addendum A shall survive any expiration or termination of this Agreement and shall be binding upon any successors or assigns of the Company.

4. During the term of this engagement, the Company agrees that it will not (i) offer any Securities for sale to, or solicit any offers to buy from, any person or persons, whether directly or indirectly, other than through the Placement Agent or (ii) engage in any discussions with any person other than representatives of the Placement Agent for the purpose of engaging, or considering the engagement of, such person as a finder or broker in connection with the sale by the Company of the Securities to potential investors in the United States of America or overseas.

5. The Company will agree in connection with the Closing not to issue any equity securities for a period of [90] days from the Closing Date without the prior written consent of the Placement Agent, other than (i) securities issued pursuant to contractual obligations of the Company in effect as of the date of this Agreement and disclosed to the Placement Agent or its counsel prior to the effective date of the Registration Statement; (ii) securities issued on a pro rata basis to all holders of a class of outstanding equity securities of the Company; and (iii) equity securities issued pursuant to employee benefit or purchase plans in effect as of the date of this Agreement. In addition, the Company will cause each of its officers and directors not to dispose of any equity securities of the Company for a period of [90] days from the Closing Date without the prior written consent of the Placement Agent, and will use its best efforts to cause such of its stockholders as may be designated by the Placement Agent to become subject to a lock-up arrangement reasonably acceptable to the Placement Agent prohibiting the disposition of any equity securities of the Company for a period of [90] days from the Closing Date without the prior written consent of the Placement Agent. The placement agency agreement contemplated by Section 1(c) above may include a condition to the Placement Agent’s obligations thereunder to the effect that the Company has caused certain stockholders holding more than 5% of the Common Stock outstanding immediately prior to the Closing Date to become subject to a lock-up arrangement reasonably acceptable to the Placement Agent prohibiting the disposition of any equity securities of the Company for a period of [90] days from the Closing Date without the prior written consent of the Placement Agent.

6. The Placement Agent will not have any rights or any obligations in connection with the proposed offering contemplated by this Agreement other than those expressly provided herein. In no event shall the Placement Agent be obligated to purchase any shares of Common Stock for its own account or for the accounts of its customers.

7. This Agreement may be terminated with respect to the Securities in the sole discretion of the Placement Agent by written notice to the Company given prior to the Closing Date, in the event that the Company shall have failed, refused or been unable to perform all obligations and satisfy all conditions on its part to be performed or satisfied hereunder at or prior thereto or, if at or prior to the Closing Date, the Placement Agent determines in its sole discretion (which determination shall be conclusive) that:

(i) trading in the Company’s common stock or securities generally shall have been suspended by the Securities and Exchange Commission or the [Stock Exchange], or minimum or maximum prices shall have been established for the Common Stock or securities generally on such market;

(ii) a banking moratorium shall have been declared by New York or United States authorities; or

(iii) there shall have been (A) an outbreak or escalation of hostilities between the United States and any foreign power, (B) an outbreak or escalation of any other insurrection or armed conflict involving the United States or (C) any other calamity or crisis having an effect on the financial markets that makes it impracticable or inadvisable to proceed with the placement contemplated hereby or the delivery of the Securities as contemplated hereby.

Any such termination shall not affect the compensation, reimbursement, or indemnification provisions set forth herein nor the provisions of Sections 9 through 18, all of which will remain in full force and effect. This Agreement may be extended by mutual written consent of the parties.

8. The Company agrees that the Placement Agent shall have the right, subsequent to the Closing, to place advertisements at its own cost in financial and other newspapers and journals describing its services hereunder.

9. This Agreement shall be governed by and construed in accordance with the internal laws of the State of [New York], without regard to principles of conflicts of law. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

10. The Company acknowledges that it is a sophisticated business enterprise with competent internal financial advisors and legal counsel, and the Company has retained the Placement Agent for the limited purposes set forth in this Agreement. The parties acknowledge and agree that their respective rights and obligations as set forth herein are contractual in nature. Accordingly, the Company disclaims any intention to impose any fiduciary obligations on the Placement Agent by virtue of the engagement contemplated by this Agreement, and the Placement Agent shall not be deemed to have any fiduciary duties or obligations to the investors, the Company, any other business entities, or their respective officers, directors, shareholders, partners, members, affiliates or creditors, as a result of this Agreement or the services to be provided pursuant hereto. The Company agrees that any agreements documenting the sale of the Securities as contemplated by this Agreement shall include provisions reasonably acceptable to the Placement Agent in which the purchaser or other parties thereto disclaim and disavow any reliance upon the Placement Agent in connection therewith. Any such agreements also shall contain provisions, in a form reasonably acceptable to the Placement Agent, which reflect that the purchaser or other parties thereto relied solely upon their own independent investigation and counsel before deciding to enter into the contemplated purchase of the Securities.

11. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall together constitute one instrument. This Agreement also may be executed by signatures on facsimiles hereof.

12. All claims arising out of the interpretation, application or enforcement of this Agreement, including, without limitation, any breach hereof, shall be settled by final and binding arbitration in [New York] in accordance with the commercial rules then prevailing of the American Arbitration Association by a panel of three arbitrators appointed by the American Arbitration Association. The decision of the arbitrators shall be binding on the Placement Agent and the Company and may be entered and enforced in any court of competent jurisdiction by either party. The arbitration shall be pursued and brought to conclusion as rapidly as is possible. EACH OF [PLACEMENT AGENT] AND THE COMPANY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THE ENGAGEMENT OF [PLACEMENT AGENT] PURSUANT TO, OR THE PERFORMANCE BY [PLACEMENT AGENT] OF THE SERVICES CONTEMPLATED BY, THIS AGREEMENT.

13. This Agreement and Addendum A constitute the entire agreement and understanding between the Placement Agent and the Company regarding the subject matter hereof and supersede any and all prior, contrary agreements and understandings, whether oral or written, relating to the subject matter hereof. This Agreement cannot be modified or changed nor can any of its provisions be waived, except by a writing signed by all parties.

14. In conjunction with the engagement outlined herein, the Company agrees to provide the necessary assistance and information required at all steps and to have management reasonably available as may be required by the Placement Agent. In connection with the Placement Agent’s services, the Company will furnish to the Placement Agent such information and data relating to the Company as the Placement Agent may reasonably request. The Company recognizes and confirms that the Placement Agent, in the performance of its services hereunder: (i) may rely upon such information received from the Company, its advisors or investors, without independent verification by the Placement Agent; and (ii) does not assume responsibility for the accuracy or completeness of such information received from the Company, its advisors or investors, whether or not the Placement Agent makes an independent verification thereof.

15. The Company may not publish, refer to, describe or characterize the Placement Agent’s engagement hereunder, or the advice provided to the Company by the Placement Agent, without the prior written approval of the Placement Agent in each instance.

16. In connection with its performance under this Agreement, the Placement Agent will familiarize itself with the business, operations, properties, financial condition and prospects of the Company. Accordingly, the Company agrees to provide the Placement Agent with all information concerning the Company and its business prospects which the Placement Agent deems appropriate, to provide the Placement Agent with access to the Company’s officers, directors, employees, counsel, accountants and consultants, and to provide all assistance necessary to the Placement Agent’s performance under the Agreement. In addition, the Company shall promptly furnish to the Placement Agent the names and addresses of all persons and entities with which the Company has had, or does have, discussions or contacts concerning the sale of the Securities or any similar sale of assets or securities of the Company or its securityholders. The Company hereby represents and warrants to the Placement Agent that, unless otherwise clearly and conspicuously noted thereon, all information made available to the Placement Agent pursuant hereto will, to the best of the Company’s knowledge, be complete and correct in all material respects and will not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements therein not misleading. The Company further represents and warrants to the Placement Agent that, unless otherwise clearly and conspicuously noted thereon, any and all projections (financial or otherwise) provided to the Placement Agent pursuant hereto will have been prepared in good faith and will be based upon assumptions which are, in the Company’s business judgment, reasonable. The Company hereby acknowledges that, in rendering its services hereunder, the Placement Agent will be using and relying on the information provided to it by or at the direction of the Company or its advisors without independent verification thereof. Moreover, the Placement Agent does not assume any responsibility for the accuracy and completeness of any such information or any other information regarding the Company whether or not it makes an independent verification thereof.

17. The services provided by the Placement Agent hereunder are solely for the benefit of the Company and are not intended to confer any rights upon any persons or entities not a party hereto (including, without limitation, securityholders, employees or creditors of the Company) as against the Placement Agent or its affiliates or their respective directors, officers, agents and employees.

If this Agreement conforms to your understanding of the terms of our engagement, please sign and return to us the enclosed duplicate hereof.

Very truly yours,

[PLACEMENT AGENT]

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |  |

AGREED AND ACCEPTED:

[COMPANY]

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |  |

Attachment

ADDENDUM A

Pursuant to the foregoing letter dated [Month] \_\_, 20\_ (the “Agreement”), [Company] (the “Company”) agrees to indemnify and hold harmless [Placement Agent] (the “Placement Agent”), together with their respective officers, directors, shareholders, employees and agents, and each person, if any, who controls the Placement Agent and any of its affiliates within the meaning of the U.S. Securities Act of 1933, as amended, or the U.S. Securities Exchange Act of 1934, as amended (all of the foregoing indemnified parties are referred to, collectively, as the “Indemnified Parties” and, individually, as an “Indemnified Party”), from any and all losses, suits, actions, judgments, penalties, fines, costs, damages, liabilities or claims of any kind or nature, whether joint or several (including, without limitation, any legal or other expenses as they are incurred by an Indemnified Party in connection with the investigation of, preparation for or defense of any action, claim or proceeding, whether or not resulting in any liability) (all of the foregoing being collectively defined as the “Indemnified Claims”) to which such Indemnified Party may become subject or liable or which may be incurred by or assessed against any Indemnified Party under any statute, common law, contract or otherwise, relating to or arising out of any of: (a) any actions or omissions of the Company or anyone acting on the Company’s behalf, including its employees, officers, advisors, directors and agents; (b) the Agreement or the services to be performed pursuant to the Agreement; (c) any securities, tax, corporate or other filings of the Company; or (d) any transactions referred to in the Agreement or any transactions arising out of the transactions contemplated by the Agreement; provided, however, that the Company shall not be liable to an Indemnified Party in any such case solely to the extent that any such Indemnified Claim is found, in a final, unappealable judgment by a court of competent jurisdiction, to have resulted from said Indemnified Party’s willful misconduct or gross negligence in the performance of its duties on behalf of the Placement Agent. The Company also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or its securityholders or creditors related to or arising out of the appointment of the Placement Agent pursuant to, or the performance of the Placement Agent of the services contemplated by, the Agreement, except to the extent any loss, claim, damage or liability resulted from said Indemnified Party’s willful misconduct or gross negligence in the performance of its duties on behalf of the Placement Agent.

Promptly after receipt by an Indemnified Party of notice of the occurrence of an Indemnified Claim, or any claim or the commencement of any action or proceeding in respect of which indemnity may be sought against the Company, such Indemnified Party will notify the Company in writing of the commencement of such Indemnified Claim or other such claim, action or proceeding, as the case may be; provided, however, that any failure by an Indemnified Party to so notify the Company will not relieve the Company from its obligations hereunder. The Company shall immediately assume the full defense of such Indemnified Claim or such other claim, action or proceeding (including the employment of counsel satisfactory to the Indemnified Party and the payment of the fees and expenses of such counsel). Notwithstanding the preceding sentence, the Indemnified Party will be entitled to employ its own counsel in any circumstances in which the Indemnified Party is advised in a written opinion of counsel that a conflict of interest exists which makes representation by counsel chosen by the Company not advisable or if the Company fails to assume the defense of such Indemnified Claim or such other claim, action or proceeding. In such event, the reasonable fees and disbursements of such separate counsel will be paid by the Company.

If for any reason (other than as specifically provided herein) the foregoing indemnity for an Indemnified Claim is unavailable to an Indemnified Party or insufficient to fully hold any Indemnified Party harmless, then the Company shall contribute to the amount paid or payable by such Indemnified Party as a result of such Indemnified Claim or such other claim, action or proceeding (i) in such proportion as is appropriate to reflect the relative benefits (or anticipated benefits) to the Company and its affiliates, on the one hand, and to the Indemnified Party, on the other hand, from the possible relevant transaction, or (ii) if such allocation in the preceding clause (i) is not permitted by applicable law, then in such proportion as is appropriate to reflect not only the relative benefits received by the Company and its affiliates, on the one hand, the Indemnified Party, on the other hand, but also the relative fault of the Company and its affiliates, on the one hand, and the Placement Agent and the relevant Indemnified Parties, on the other hand, as well as any other relevant equitable considerations. Notwithstanding any provisions herein to the contrary, the aggregate contribution of all of the Indemnified Parties shall not exceed the amount of fees actually received by the Placement Agent pursuant to the Agreement. It is hereby further agreed that the relative fault of the Company on the one hand and an Indemnified Party on the other hand with respect to the transactions shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or incorrect opinion or conclusion or the omission or alleged omission to state a material fact related to information supplied by the Company on the one hand or by the Indemnified Party on the other hand, as well as the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent such statement, opinion, conclusion or omission. No Indemnified Party shall have any liability to the Company or any other person in connection with the services rendered pursuant to this Agreement, except for any liability for losses, claims, damages or liabilities finally judicially determined to have resulted from actions taken or omitted to be taken as a direct result of such Indemnified Party’s gross negligence or willful misconduct. The indemnity, contribution and expense reimbursement agreements and obligations set forth herein shall be in addition to any other rights, remedies or indemnification which any Indemnified Party may have or be entitled to at common law or otherwise, and shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Indemnified Party. In addition, the Company shall offer such indemnification and expense advance and reimbursement as it may be permitted to offer or extend pursuant to its bylaws, charter, certificate or articles of incorporation, and other governing documents, or insurance. The Company further agrees that the indemnification and expense advance and reimbursement obligations set forth herein, shall apply whether or not the Placement Agent or any other Indemnified Party is a formal party in any such Indemnified Claim. The Company will not be permitted to settle any Indemnified Claim without the prior consent of the Placement Agent or any Indemnified Party involved therein if any admission of wrong doing, negligence or improper activity of any kind of the Placement Agent or such Indemnified Party is a part of such settlement. The Company shall not, without the prior written consent of an Indemnified Party, effect any settlement of any pending or threatened action, suit or proceeding in respect of which an Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such action, suit or proceeding.