**SEPARATION AGREEMENT AND RELEASE**

This **SEPARATION AGREEMENT AND RELEASE** (this “Agreement”) is dated as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 by and between **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** a Delaware corporation with business operations in Raleigh, North Carolina (the “Company”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, a resident of the state of North Carolina (“Employee”). (The Company and Employee will be referred to collectively herein as the “Parties” and individually as a “Party.”)

WHEREAS, the Company is engaged in the business of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Business”).

WHEREAS, Employee was previously employed at-will with the Company;

WHEREAS, the Company terminated Employee’s employment effective \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Termination Date”); and

WHEREAS, the Employee voluntarily resigned his / her employment with the Company effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Resignation Date”); and

WHEREAS, the Company has agreed to provide Employee with certain separation payments and benefits as more fully described below in exchange for Employee’s execution of this Agreement, including Employee’s release of all claims and his agreement to be bound by the restrictive covenants contained herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are expressly acknowledged by the Parties hereto, the Parties agree as follows:

1. Final Paycheck; Current Benefits Coverage. The Company will issue Employee’s final paycheck with all wages earned through the Termination Date (including any accrued, but unused vacation days remaining as of the Termination Date) on or before the Company’s next regularly scheduled payroll date. Employee’s current health insurance benefits coverage with the Company will terminate on \_\_\_\_\_\_\_\_\_\_\_\_. Employee will receive separate notice of his rights to continue his health insurance benefits coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”).
2. Separation Payments and Benefits. In exchange for Employee’s execution of this Agreement and his full compliance with the terms of this Agreement, including the restrictive covenants contained herein, the Company hereby agrees to provide to Employee separation payments and benefits as follows:

The Company will pay Employee the total amount of \_\_\_\_\_\_\_\_\_\_\_\_\_, less required withholdings, which amount is equal to \_\_\_\_\_\_\_\_ months of his current annual base salary as of the Termination Date (the “Separation Payments”). The Separation Payments will be paid in \_\_\_\_\_\_ equal installments on the Company’s regularly scheduled payroll dates commencing on the first payroll date following receipt of Employee’s signed Agreement by the Company.

 Employee understands that the Company’s provision of the separation payments and benefits provided for herein is expressly conditioned upon Employee’s execution and return of this Agreement to the Company and his full and continuing compliance with the obligations under this Agreement, including Sections 4 and 5 below.

1. No Further Compensation, Separation Payments, Severance or Benefits. Except as specifically set forth herein, Employee will not receive nor be entitled to (a) any salary, payments or other severance, (b) any bonus, (c) any payments, entitlements or benefits under any employee benefit plan of the Company or any of its affiliates providing for payments, benefits or perquisites to employees of the Company or any of its affiliates generally or individually (including, but not limited to, medical benefit insurance, dental insurance, life insurance or disability insurance).
2. Nondisclosure Covenant. Employee acknowledges that during the course of his employment with the Company, he learned and developed information that is not generally available to the public and is valuable to the Company, its affiliates, and/or its and their customers because it is not generally available to others (the “Confidential Information”). Confidential Information may be oral, written, or pictorial, in the form of computer data, software or programs (including object code and source code) or otherwise documented. Except as provided in the last sentence of this Section 4, Confidential Information includes, but is not limited to, all information related to the Company’s and its affiliates’ current and prospective customers and suppliers; research and development plans and results; all confidential and proprietary information provided to the Company and its affiliates by its and their customers and suppliers; the Company’s and its affiliates’ customer lists; confidential and proprietary Company personnel information; Company ideas, techniques; methods, and processes; financial projections and results; strategic and business plans; customer requirements and contracts; trade secrets, including trade secrets within the meaning of the state and federal trade secret law; information that Employee ought reasonably to know is confidential; and information in respect of which the Company owes obligations of confidentiality to third parties. For purposes of this Agreement, Confidential Information will not include information that the Company has disclosed publicly or which becomes known to the public through no action or assistance on Employee’s part. Employee understands that he shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Further, an individual who files a lawsuit for retaliation by the Company for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order. Except as provided herein, Employee agrees he will not disclose any Confidential Information to others, nor use any Confidential Information for any purpose following the Resignation Date. This provision shall not be construed as preventing Employee from using his general skills, knowledge, and expertise to perform duties for others subsequent to the Resignation Date, so long as he can perform those duties without using or disclosing Confidential Information.
3. Return of Company Property. Employee hereby represents and warrants to the Company that he has returned all Company records, documents, files, lists, including computer generated lists, drawings, notes, notebooks, letters, handbooks, manuals, financial documents, account information and passwords, strategic plans, sales and business plans, supplier lists, contracts, vendor contacts and phone numbers, lists of contacts, pricing information, software, credit cards, keys, equipment and all other items relating to the Company’s or any of its affiliates’ business, together with any other property of the Company and its affiliates or property which Employee received in the course of his employment with the Company. Employee further represents to the Company that he has not copied and will not copy or cause to be copied, and has not printed out and will not print out or cause to be printed, any software, documents or other materials originating with or belonging to the Company or any of its affiliates other than in the course of Employee’s legitimate performance of his job duties through the Resignation Date and that all such materials shall be returned to the Company as provided herein.
4. Release of Claims. As a material inducement to the Company to provide the consideration described herein, Employee, for himself and his heirs, executors, administrators and assigns, hereby irrevocably and unconditionally forever releases and discharges the Company and its parents, predecessors, successors, subsidiaries, related entities, benefits plans, and assigns, and their respective directors, officers, shareholders, investors, trustees, administrators, employees, former employees, representatives, agents and attorneys from any and all actual or potential claims, demands, actions, causes of action or liabilities of any kind or nature, whether known or unknown, including, but not limited to, all claims regarding, related to or arising out his employment relationship or separation from employment with the Company, or any employment agreement or other contract with the Company, whether based on tort, contract (express or implied) or any federal, state or local law, statute or regulation, including, but not limited to: (i) the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq*.; (ii) the Family and Medical Leave Act, as amended, 29 U.S.C. § 2611 *et seq*.; (iii) race, color, religion, sex, or national origin discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*., as amended; (iv) the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq*.; (v) the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff *et seq.*; (vi) the North Carolina Equal Employment Practices Act, N.C. Gen. Stat. § 143-422.2; (vii) the North Carolina Persons with Disabilities Protection Act, N.C. Gen. Stat. § 168A-3; (viii) the North Carolina Retaliatory Employment Discrimination Act, § 95-240 *et seq*.; (ix) the North Carolina Wage and Hour Act, N.C. Gen. Stat. § 95-25.1 *et seq.*; (x) any claims for additional compensation or benefits, including any wages, commissions, bonuses, severance, paid time off, or health or medical benefits; and (xi) any other claims for personal injury, compensatory or punitive damages, or attorneys’ fees. (This release does not apply to any claims that may arise after the date this Agreement is executed by Employee, any claims for breach of this Agreement, or any claims prohibited from release by Employee under applicable law.)
5. Complete Bar. Employee agrees that the parties released above in Section 7 may plead this Agreement as a complete bar to any action or suit before any court or administrative body with respect to any claim released herein; provided, however, this Agreement shall not impair the exercise of any rights made non-waivable by applicable law.
6. Agreement Not to Sue. Except as prohibited by law, Employee agrees that he will never institute a claim released above in Section 7 against the Company or any of the parties released in Section 7. If Employee violates this Agreement by suing the Company or any of the parties released above in Section 7, Employee agrees that he will pay all costs and expenses of defending the suit incurred by the Company or any of the parties released above, including reasonable attorneys’ fees.
7. No Agency Complaints. Employee represents that he has not filed any other complaint, charge, claim or proceeding, if any, against the Company or any of the parties released in Section 7 above before any local, state, or federal agency, court, or other body (each, individually, a “Proceeding”). Employee represents that he is not aware of any basis on which such a Proceeding could reasonably be instituted against the Company or any other party released in Section 7 above.
8. Non-Disparagement. Employee agrees not to disparage, bring into disrepute or make any negative statement concerning the Company, its affiliates or any of their respective employees, officers, directors, members, or managers or make any other statement that would disrupt, impair or affect adversely the reputation, business interests or operations of the Company, its affiliates or their respective employees, officers, directors, members or managers or place the Company, its affiliates or such individuals in any negative light. Notwithstanding the provisions hereof, it shall not constitute a breach of this Agreement for either party to testify truthfully about any subject matter when compelled to do so by properly issued legal process.
9. Confidentiality. Employee agrees and acknowledges that this Agreement, its terms, and the circumstances surrounding the execution of this Agreement shall be confidential. Employee further agrees that he shall not disclose the substance or terms of this Agreement to anyone other than his spouse, attorney, accountant or income tax preparer and to require them to keep this information in strictest confident. Furthermore, to the extent Employee is permitted to disclose and does disclose such information as provided herein, Employee agrees to require, and he warrants, that the person receiving such information shall maintain its confidentiality. Employee may, however, answer truthfully any governmental or judicial inquiry about this Agreement that Employee is legally required to answer whether by subpoena, court order or other lawful process. Employee may also make disclosures regarding this Agreement as agreed upon by the Company or as may be necessary for Employee to fulfill his obligations hereunder.
10. Consideration. Employee acknowledges and agrees that the Company would not agree to enter into this Agreement in the absence of the covenants made by Employee in this Agreement, including Employee’s agreement to comply his obligations under Sections 4 and 5, and that the agreements by the Company constitute adequate and sufficient consideration for the covenants made by Employee in this Agreement.
11. No Admission of Liability. Employee acknowledges that separation payments and benefits provided by the Company herein are made in good faith and will never for any purpose be considered an admission of liability of any kind on the part of the Company to Employee, by which liability of any kind is expressly denied, and no past or present wrongdoing on the part of the Company or any other party released in Section 7 shall be implied by such payment or agreement.
12. Acknowledgement of Wage Payment. Employee acknowledges that except as provided herein, the Company has paid him all wages, compensation, severance and other amounts earned or due for all work and services performed by him through the date of his execution of this Agreement, including any amounts due or owed under any employment agreement or contract with the Company.
13. Exercise or termination of stock options. Employee and Company entered into a stock option grant agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Employee understands that the vesting of these stock options stops on the Termination Date, and that he has a limited time to exercise any vested stock options, if Employee choses to do so, in accordance with that stock option grant agreement, and that, should he fail to do so in said period, all vested stock options expire and Employee will not have any ownership, shares, or stock options in the Company anymore.
14. Further Acknowledgments by Employee. Employee represents that he has been given a reasonable time to consider this Agreement, that he has carefully read and fully understands all the provisions of this Agreement, that he is entering into this Agreement knowingly and voluntarily, and that he is entering this Agreement upon the advice of his legal counsel.
15. Miscellaneous.
	1. Entire Agreement. This Agreement, together with the Confidentiality Agreement, contains the entire agreement between the Parties relating to Employee’s employment and termination therefrom, integrates all the terms and conditions mentioned or incidental to this Agreement, and supersedes all prior negotiations or writings. In the event of any conflict between this Agreement and the Confidentiality Agreement, this Agreement shall control.
	2. Binding Effect; Assignment. This Agreement shall be binding upon, and inure to the benefit of, Employee and the Company and their respective permitted successors and assigns. Neither this Agreement nor any rights, interest or obligations hereunder shall be assignable by Employee, Employee’s beneficiaries or Employee’s legal representatives, without the prior written consent of the Company. The Company may transfer or assign its rights, interest and obligations under this Agreement to any affiliate or other entity.
	3. Amendment; Waiver. This Agreement may not be modified or amended except by an instrument in writing signed by the Parties hereto. No delay or omission by either Party hereto in exercising any right, power or privilege hereunder shall impair such right, power or privilege, nor shall any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The provisions of this Section 18(c) may not be waived except in writing signed by both Parties.
	4. Remedies; Enforcement. The Parties agree that monetary damages would be an inadequate remedy for any breach by Employee of any of the provisions of this Agreement. In the event of a breach or threatened breach of this Agreement, the Company or its successors or assigns may, in addition to any other rights and remedies existing in their favor, apply to any court of competent jurisdiction for specific performance and/or injunctive relief or other equitable relief in order to enforce or prevent any violations of this Agreement (without posting a bond or other security). If any provision contained in Section 4 or 5 shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but Section 4 or 5, as applicable, shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein. The Parties hereto agree that in the event a court determines that Section 4 or 5 or any of the covenants contained therein is unreasonable, void or invalid for any reason whatsoever, then the duration, geographical or other limitation imposed therein shall be as the court, or jury if applicable, shall determine to be fair and reasonable, IT BEING THE INTENT OF THE PARTIES HERETO TO BE SUBJECT TO AN AGREEMENT FOR THE NECESSARY PROTECTION OF THE LEGITIMATE INTEREST OF THE COMPANY, WHICH IS NOT UNDULY HARSH IN CURTAILING THE LEGITIMATE RIGHTS OF EMPLOYEE. Employee hereby represents that his experience and capabilities are such that the provisions contained in each of Section 4 or 5 will not prevent him from earning a livelihood.
	5. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of North Carolina, as they are applied to contracts made and to be wholly performed in this state, without regard to conflicts of laws principles.
	6. Jurisdiction. Employee consents to the jurisdiction of any North Carolina court over any claims arising under or relating to this Agreement.
	7. Severability. If any provision contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
	8. Construction. This Agreement shall not be construed against any Party but shall be construed equally as to each Party hereto.
	9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic device (including .pdf) shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic device shall also deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart of this Agreement shall not affect the validity, enforceability and binding effect of this Agreement.

**NOW THEREFORE**, the Parties have caused this Agreement to be executed as of the day and year first above written.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By:

Name:

 Title:

**EMPLOYEE**

By:

Name:

 Address:

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_