

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 OR 15(d)  
of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **January 19, 2023**

**AGRIFY CORPORATION**  
(Exact name of registrant as specified in its charter)

**Nevada**

(State or other jurisdiction of  
incorporation)

**001-39946**

(Commission File Number)

**30-0943453**

(IRS Employer  
Identification No.)

**76 Treble Cove Rd.  
Building 3  
Billerica, MA 01862**

(Address of principal executive offices)

**01862**

(Zip Code)

Registrant's telephone number, including area code: **(617) 896-5243**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	AGFY	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

On January 19, 2023, Agrify Corporation (the “Company”) received a deficiency letter (the “Notice”) from the Listing Qualifications Department (the “Staff”) of The Nasdaq Stock Market, LLC (“Nasdaq”) notifying the Company that, for the last 30 consecutive business days, the bid price for the Company’s common stock had closed below \$1.00 per share, which is the minimum closing price required to maintain continued listing on the Nasdaq Stock Market under Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Requirement”).

The Notice has no immediate effect on the listing of the Company’s common stock on Nasdaq. In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company has 180 calendar days to regain compliance with the Minimum Bid Requirement. To regain compliance with the Minimum Bid Requirement, the closing bid price of the Company’s common stock must be at least \$1.00 per share for a minimum of 10 consecutive trading days during this 180-day compliance period, unless the Staff exercises its discretion to extend the minimum trading day period pursuant to Nasdaq Listing Rule 5810(c)(3)(G). The compliance period for the Company will expire on July 18, 2023.

In the event that the Company does not regain compliance within the 180-day compliance period, the Company may be eligible for an additional 180 calendar day compliance period. To qualify, the Company would need to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for Nasdaq, with the exception of the Minimum Bid Requirement, and provide written notice to the Staff of its intention to cure the deficiency during the second compliance period. However, if it appears to the Staff that the Company will not be able to cure the deficiency, or if the Company does not meet the other listing standards, the Staff could provide notice that the Company’s common stock will become subject to delisting. In the event the Company receives notice that its common stock is being delisted, the Nasdaq Listing Rules permit the Company to appeal any such delisting determination by the Staff to a Hearings Panel.

There can be no assurance that the Company will be able to regain compliance with the Minimum Bid Requirement or that the Company will otherwise remain in compliance with the other listing standards for the Nasdaq Stock Market.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On January 23, 2023, the Company’s Board of Directors appointed Timothy Hayden as the Company’s Interim Chief Financial Officer, and Mr. Hayden will assume the role of the Company’s principal financial and accounting officer, in each case effective as of March 1, 2023.

Mr. Hayden, age 44, served as the Company’s Senior Vice President of Corporate Development since July 2022, and his role later expanded to become Chief Revenue Officer. During his career, Mr. Hayden, who is a Certified Public Accountant and Chartered Accountant in Ontario, Canada, has amassed 20 years of broad experience across corporate finance, business development, operations, and M&A. Prior to joining Agrify, Mr. Hayden served in several roles at Vivo Cannabis Inc., a Canadian licensed cannabis producer, serving as Vice President of Corporate Development from August 2019 to August 2020, Chief Business Development Officer from August 2020 to November 2020 and Chief Operating Officer from November 2020 to May 2022. From January 2017 to August 2019, Mr. Hayden served as M&A Senior Manager at Deloitte Canada, and from November 2015 through January 2017, he served as Corporate Finance Manager – Deal Advisory for the healthcare and public sector at KPMG UK LLP. Mr. Hayden’s previous experience includes positions at BDO UK LLP, National Health Service Improvement, HDI Group and Deloitte South Africa. Mr. Hayden received a B.A. in Accounting from Rhodes University.

On July 25, 2022, the Company entered into an Employment Agreement (the “Employment Agreement”) with Mr. Hayden. Pursuant to the terms of the Employment Agreement, Mr. Hayden receives an annual base salary of \$225,000 and be eligible to participate in all employee benefit programs sponsored by the Company. Mr. Hayden will also be eligible to receive a discretionary performance-based bonus of up to \$75,000 with respect to each fiscal year of the Company, based on the mutually agreed upon goals that will be set by the compensation committee of the Board, and was previously issued 7,500 restricted stock units that will vest in three equal installments on the one-year, two-year and three-year anniversaries of grant. If Mr. Hayden’s employment with the Company is terminated for any reason, he will be entitled to (i) his annual base salary through the termination date, (ii) any accrued unused paid time off, (iii) any vested benefit due and owing under any employee benefit plan and (iv) any unreimbursed business expenses. If Mr. Hayden’s employment is terminated by the Company without Cause or by Mr. Hayden for Good Reason (as such terms are defined in the Employment Agreement), he will also be entitled to receive his base salary for a period of six months and continued participation in the Company’s group health insurance benefits for a period of six months.

There is no family relationship between Mr. Hayden and any director or executive officer of the Company. There are no transactions between Mr. Hayden and the Company that would be required to be reported under Item 404(a) of Regulation S-K of the Securities Exchange Act of 1934, as amended.

The foregoing summary of the material terms of the Employment Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full and complete terms of the Employment Agreement, a copy of which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

#### **Item 8.01. Other Events.**

On January 23, 2023, the Company issued a press release announcing recently implemented cost efficiency measures, enhanced sales initiatives and leadership appointments. A copy of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

#### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

The Company hereby files the following exhibits:

10.1#	<a href="#">Employment Agreement by and between Agrify Corporation and Timothy Hayden, dated as of July 25, 2022.</a>
99.1	<a href="#">Press Release of Agrify Corporation dated January 23, 2023</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

# Management contract or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AGRIFY CORPORATION**

Date: January 24, 2023

By: /s/ Raymond N. Chang  
Raymond N. Chang  
Chief Executive Officer

**EMPLOYMENT AGREEMENT**

EMPLOYMENT AGREEMENT (this “Agreement”), dated as of July 25, 2022, between Agrify Corporation (the “Company”) and Timothy Hayden (“Executive,” together with the Company, the “Parties” and, each, a “Party”).

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, on the basis of the foregoing premises and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Employment; Title; Duties and Location. The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, on the terms and subject to the conditions set forth herein. During the Employment Period (as defined in Section 2 below), Executive shall serve the Company as Senior Vice President of Corporate Development and shall report exclusively and directly to the Chief Executive Officer of the Company. Executive shall perform the duties consistent with Executive’s title and position and such other duties commensurate with such position and title as shall be specified or designated by the Company from time to time. The principal place of Executive’s employment may change after one year of the date of this agreement. Reasonable relocation expenses shall be reimbursed by the Company. Executive may be required to travel on Company business during the Term.

2. Term.

2.1 Term. Executive’s employment hereunder shall commence on July 25, 2022 (the “Commencement Date”) and shall continue for a one-year period thereafter (the “Initial Term”), subject to earlier termination exclusively as provided for in Section 6 below, and subject to extension as provided in the following sentence. Following the Initial Term, provided Executive’s employment has not previously been terminated, Executive’s employment hereunder shall automatically be extended for successive one-year periods (each a “Renewal Term”), subject to earlier termination exclusively as provided for in Section 6 below. For the purposes of this Agreement, the “Term” at any given time shall mean the Initial Term as it may have been extended by one or more Renewal Terms as of such time (without regard to whether Executive’s employment is terminated prior to the end of such Term), and the “Employment Period” means the period of Executive’s employment hereunder (regardless of whether such period ends prior to the end of the Term and regardless of the reason for Executive’s termination of employment hereunder).

3. Compensation. During the Employment Period only (unless otherwise expressly provided for herein), Executive shall be entitled to the following compensation and benefits.

3.1 Salary. Executive shall receive a base salary (the “Base Salary”) payable in substantially equal installments in accordance with the Company’s normal payroll practices and procedures in effect from time to time and subject to applicable withholdings and deductions. Executive’s starting Base Salary shall be at the annual rate of \$225,000.

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3.2 Discretionary Bonus. Executive shall be eligible to receive a discretionary performance-based bonus of up to \$75,000 (a “Discretionary Bonus”) with respect to each fiscal year of the Company (a “Fiscal Year”) based on the mutually agreed upon goals that will be set by the Compensation Committee (the “Compensation Committee”) of the Company’s Board of Directors (the “Board”) in consultation with the Company’s Chief Executive Officer. Based on achieving the agreed upon goals, the targeted annual cash bonus shall be paid in installments of up to \$18,750 in conjunction with any other company quarterly bonus payments. Such bonus payments will be paid no later than 60 days from the close of the quarter to which the bonus is applicable. The Directors may from time to time elect to pay any additional bonuses based on performance that exceeds the mutually agreed upon goals. To be eligible for a Discretionary Bonus, Executive must be employed by the Company at the time such Bonus is paid.

3.3 Restricted Stock Units. Subject to the terms of the Company’s 2022 Omnibus Equity Incentive Plan (the “Plan”), Executive shall be issued following the Commencement Date 75,000 restricted stock units pursuant to the Plan, subject to approval by the Compensation Committee of the Company’s Board of Directors. In addition, the Compensation Committee may, in its sole discretion and in consultation with the Company’s Chief Executive Officer, grant additional restricted stock to Executive during the Employment Period.

3.4 Benefits. Executive shall have the right to receive or participate in all employee benefit programs and perquisites established from time to time by the Company on a basis that is no less favorable than such programs and perquisites are provided by the Company to the Company’s other executives, subject to the eligibility requirements and other terms of such programs and perquisites, and subject to the Company’s right to amend, terminate or take other action with respect to any such programs and perquisites.

3.5 Vacation and Other Paid Time Off. Executive shall be entitled to four (4) weeks of paid vacation, as well as sick days and any other paid time off, each year in accordance with then current Company policy.

3.6 Required Taxes and Withholdings. The Company shall withhold from any payments made to Executive (including, without limitation, those made under this Agreement) all federal, state, local or other taxes and withholdings as shall be required pursuant to any law or governmental regulation or ruling.

4. Exclusivity and Best Efforts. During the Employment Period, Executive shall (i) in all respects conform to and comply with the lawful directions and instructions given to Executive by the Company; (ii) subject to the proviso below, devote Executive’s entire business time, energy and skill to Executive’s services under this Agreement; (iii) use Executive’s best efforts to promote and serve the interests of the Company and to perform Executive’s duties and obligations hereunder in a diligent, trustworthy, businesslike, efficient and lawful manner; (iv) comply with all applicable laws and regulations, as well as the policies and practices established by the Company from time to time and made applicable to its employees generally or senior executives; (v) not engage in any other business, profession or occupation for compensation or otherwise, except as provided below in this Section 4; and (vi) not engage in any activity that, directly or indirectly, impairs or conflicts with the performance of Executive’s obligations and duties to the Company, provided, however, that the foregoing shall not prevent the Executive from managing Executive’s personal affairs and passive personal investments, serving on the board of directors (or comparable body) of any third-party corporate entity that is not providing Competing Services (as defined in Section 10.3(f) below) and Executive obtains prior Company consent (which consent will not be unreasonably withheld), and participating in charitable, civic, educational, professional or community affairs, so long as, in the aggregate, any such activities do not unreasonably interfere or conflict with the Executive’s duties hereunder or create a potential business or fiduciary conflict with the Company, as reasonably determined by the Company.

5. Reimbursement for Expenses. Executive is authorized to incur reasonable expenses in the discharge of the services to be performed hereunder in accordance with the Company's expense reimbursement policies, as the same may be modified by the Company from time to time in its sole and complete discretion (the "Reimbursement Policies"). Subject to the provisions of Section 18.2 below (Section 409A Compliance), the Company shall reimburse Executive for all such proper expenses upon presentation by Executive of itemized accounts of such expenditures in accordance with the terms of the Reimbursement Policies.

6. Termination.

6.1 Death. Executive's employment shall immediately and automatically be terminated upon Executive's death.

6.2 Disability. The Company may, subject to applicable law, terminate Executive's employment due to a Disability by providing written notice of such termination and its effective date to Executive. For purposes of this Agreement, "Disability" means a "disability" that entitles Executive to benefits under the applicable Company long-term disability plan covering Executive and, in the absence of such a plan, that Executive shall have been unable, due to physical or mental incapacity, to substantially perform Executive's duties and responsibilities hereunder for 180 days out of any 365-day period or for 120 consecutive days. In the event of any question as to the existence, extent, or potentiality of Executive's Disability upon which the Company and Executive cannot agree, such question shall be resolved by a qualified, independent physician mutually agreed to by the Company and Executive, the cost of such examination to be paid by the Company. If the Company and Executive are unable to agree on the selection of such an independent physician, each shall appoint a physician and those two physicians shall select a third physician who shall make the determination of whether Executive has a Disability. The written medical opinion of such physician shall be conclusive and binding upon each of the Parties as to whether a Disability exists and the date when such Disability arose. This section shall be interpreted and applied to comply with the provisions of the Americans with Disabilities Act (to the extent applicable) and any applicable state or local laws. Until such termination, Executive shall continue to receive his compensation and benefits hereunder, reduced by any benefits payable to him under any Company-provided disability insurance policy or plan applicable to him.

### 6.3 For Cause by the Company.

(a) The Company may terminate Executive's employment for Cause, at any time, by the Chief Executive Officer by providing written notice reasonably describing the nature of such Cause. For purposes of this Agreement, the term "Cause" means (i) the willful and continual failure by Executive to perform in any material respect the duties or obligations of his employment with the Company or to carry out the reasonable and lawful directives of the Chief Executive Officer (which directives are consistent with Executive's position); *provided* such failure remains uncured (if capable of being cured) for a period of thirty (30) days after written notice describing the same is given to Executive; (ii) Executive's indictment for any crime which constitutes a felony or indictment for any crime involving fraud, misappropriation or embezzlement (other than any such crime involving the Company or any of its affiliates); (iii) any act of fraud, misappropriation or embezzlement involving the Company or any of its affiliates; (iv) any breach by Executive of the provisions of his Confidentiality Agreement (as defined below) or a material breach or violation of this Agreement or any Company policy then in effect which remains uncured (if capable of being cured) for a period of thirty (30) days after written notice describing the same is given to Executive; or (v) any attempt by the Executive to improperly secure any personal profit in connection with the business of the Company or any of its affiliates.

6.4 Resignation by Executive for Good Reason. Executive may resign Executive's employment hereunder for Good Reason, at any time, provided that Executive provides the Company with ten (10) days' prior written notice of such resignation and such notice is given within thirty (30) days of when Good Reason first arises. For the purpose of this Agreement, "Good Reason" means (i) a material and substantial diminution in Executive's duties, authority, or responsibilities that would be inconsistent with Executive's position (other than while Executive is temporarily physically or mentally incapacitated, as permitted under Section 6.2 above or as required by applicable law), (ii) a material failure by the Company to pay Executive's compensation as provided for herein, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith; (iii) a change in the location of Executive's principal place of performance from more than fifty (50) miles from the location specified in Section 1 above; or (iv) other material breach by the Company of a material provision of this Agreement or any other agreement between the Company and Executive; provided (x) Executive has provided the Company with written notice reasonably detailing the grounds giving rise to Good Reason within thirty (30) days of the occurrence thereof or, if later, within thirty (30) days of the date upon which Executive first becomes aware of such grounds, and (y) the Company fails to cure such grounds within thirty (30) days after delivery to it of such written notice. Executive's date of termination in the event Executive resigns his employment for Good Reason shall be the effective date of Executive's notice of resignation for Good Reason, except that Company may waive all or any part of the above-referenced 10-day notice period or of the 30-day cure period, in which event Executive's date of termination shall be the last day of such notice or cure period that has not been waived or, if the entire notice or cure period has been waived, the date that Executive provided notice of the event giving rise to Good Reason or of his resignation for Good Reason. For the avoidance of doubt, Executive's exclusive remedy against the Company in the event the Company materially breaches this Agreement is to invoke the provisions of this Section 6.4 and Section 7 below.



6.5 Without Cause or Without Good Reason. The Company may terminate Executive's employment, without Cause, at any time, with or without prior notice, in its sole and complete discretion, by providing written notice of such termination and its effective date to Executive. Likewise, Executive may terminate Executive's employment without Good Reason upon at least thirty (30) days prior written notice to the Company. Termination of Executive's employment without Cause by the Company or without Good Reason by Executive shall not include termination of Executive's employment due to Executive's death or Disability or upon expiration of the Term as provided for in Section 2.1 above.

6.6 Resignation from Other Positions. Upon termination of Executive's employment for any reason, Executive shall, upon request of the Company, immediately be deemed to have resigned from all boards, offices and appointments held by Executive in or on behalf of the Company. In furtherance hereof, upon Executive's termination of employment, Executive, at the direction of the Chief Executive Officer, shall immediately submit to the Company letter(s) of resignation for any such boards, offices, and appointments. If Executive fails to tender such letter(s) of resignation, then the governing body or person with respect to such boards, offices and appointments will be empowered to remove Executive from such boards, offices, and appointments.

## 7. Effect of Termination of Employment.

7.1 Generally. In the event Executive's employment with the Company terminates, Executive shall have no right to receive any compensation, benefits or any other payments or remuneration of any kind from the Company, except as otherwise provided by this Section 7, in Section 13 below, in any separate written agreement between Executive and the Company or as may be required by law. In the event Executive's employment with the Company is terminated for any reason, Executive shall receive the following (collectively, the "Accrued Obligations"): (i) Executive's Base Salary through and including the effective date of Executive's termination of employment (the "Termination Date"), which shall be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (ii) payment for accrued unused vacation time, subject to the Company's then current vacation policy, which shall also be paid on the first regularly scheduled payroll date of the Company following the Termination Date or on or before any earlier date as required by applicable law; (iii) payment of any vested benefit due and owing under any employee benefit plan, policy or program pursuant to the terms of such plan, policy or program; and (iv) payment for unreimbursed business expenses subject to, and in accordance with, the terms of Section 5 above, which payment shall be made within 30 days after Executive submits the applicable supporting documentation to the Company, and in any event no later than on or before the last day of Executive's taxable year following the year in which the expense was incurred.

7.2 Severance Benefits. In the event that Executive's employment is terminated (i) by the Company pursuant to Section 6.5 above (without Cause), (ii) by Executive pursuant to Section 6.4 hereof (Good Reason), or (iii) by the Company without Cause, or by Executive for Good Reason, upon the occurrence of, or within thirty (30) days prior to, or within six (6) months following, the effective date of a Change of Control (as defined in Section 10.3(f) below), in addition to the Accrued Obligations, Executive shall be entitled to receive severance benefits (the "Severance Benefits"), subject to and in accordance with the terms of this Section 7.2.

(a) Benefits. The Severance Benefits shall consist of the payments and benefits provided by this Section 7.2(a).

(i) Executive shall receive payment of an amount (the "Severance Pay") equal to 6 months of Executive's Base Salary immediately prior to the Termination Date. The Severance Pay shall be paid over the course of a six (6) month period in the form of salary continuation pursuant to the terms and conditions of Section 3.1 above, commencing within ninety (90) days following the Termination Date on the first regularly scheduled payroll date of the Company that is practicable after the effective date of the Separation Agreement (defined in Section 7.2(b) below) (the "Severance Period"), *except* that, if the Separation Agreement may be executed and/or revoked in a calendar year following the calendar year in which the Termination Date occurs, the Severance Pay shall commence on the first regularly scheduled payroll date of the Company in the calendar year in which the consideration or, if applicable, release revocation period ends to the extent necessary to comply with Section 409A (as defined in Section 18.2 below). The first such payment shall include payment for any payroll dates between the Termination Date and the date of such payment.

(ii) For a period of six (6) months following the Termination Date until such time, if any, as Executive is eligible for group health insurance benefits from another employer, Executive shall be eligible to continue to participate in the Company's group health insurance benefits on the same terms and conditions as then applicable to current employees, *except* that, if Executive is not permitted to continue to participate in any such health insurance plans for any portion of the Severance Period as a result of the terms of such plans or applicable law and Executive elects to continue his or his dependents' health insurance benefits pursuant to COBRA, the Company will pay or reimburse Executive for the portion of the COBRA premium that is equal to the insurance premium the Company would pay if Executive was then an active employee of the Company. Following the Severance Period, should Executive elect to continue his or his dependents' health insurance benefits, Executive shall be responsible for the entire cost thereof. If the Company is unable to provide the benefit provided above in this paragraph without violating applicable health care discrimination laws, the Company shall pay Executive a gross amount equal to what the Company's cost would have been to provide such benefit.

(iii) Notwithstanding the foregoing, the aggregate amount described in this Section 7.2(a) shall be reduced by the present value of any other cash severance or termination benefits payable to Executive under any other plans, programs, or arrangement of the Company, subject to compliance with Section 409A.

(iv) For the avoidance of doubt, Executive's sole and exclusive remedy upon a termination for which Executive is eligible for Severance Benefits under this Section 7.2 shall be the receipt of the Severance Benefits.

(b) Separation Agreement and Other Conditions for Severance Benefits. Provision of the Severance Benefits is conditioned on

(i) Executive's continued compliance in all material respects with Executive's continuing obligations to the Company, including, without limitation, the terms of this Agreement and of the Confidentiality Agreement (defined in Section 9 below) that survive termination of Executive's employment with the Company, and (ii) Executive signing (without revoking if such right is provided under applicable law) a separation agreement and release in a form of that provided to Executive by the Company on or about the Termination Date (the "Separation Agreement"). Executive must so execute the Separation Agreement within 60 days following the Termination Date (or such shorter time as may be set forth in the Separation Agreement).

8. Notice of Termination. In the event Executive elects to terminate Executive's employment hereunder by resigning with or without Good Reason under Sections 6.4 or 6.5 above, Executive shall provide the Company with the applicable prior written notice of termination required by such Sections (the "Notice Period"). The Company may, in its discretion, waive all or any portion of such Notice Period. The Company may require that, during the Notice Period, or part or parts thereof, Executive does not do any of the following: (i) enter the Company's premises; (ii) undertake any work for any third party whether paid or unpaid and whether as an employee or otherwise; (iii) have any contact or communication with any client, customer or supplier of the Company; or (iv) have any contact or communication with any employee, officer, director, agent or consultant of the Company. Additionally, during the Notice Period, or any part or parts thereof, the Company may require Executive to do any of the following: (i) perform special projects or perform duties not within Executive's normal duties (provided such duties are commensurate with Executive's position and title) or perform some but not all of Executive's normal duties; and (ii) keep the Company informed of Executive's whereabouts so that Executive can be contacted if the need arises for Executive to perform any duties provided by clause (i) of this sentence. The Company retains the right to terminate Executive's employment under Section 6.3 above during the Notice Period.

9. Confidentiality, Restrictive Covenant, Intellectual Property, Return of Company Property and Non-Disparagement. Company and Executive have entered into the Company's current standard Invention Assignment, Restrictive Covenants, and Confidentiality Agreement (the "Confidentiality Agreement"), a copy of which is annexed hereto as Exhibit A. The terms of the Confidentiality Agreement are hereby incorporated by reference into this Agreement, except that, to the extent there is an irreconcilable conflict between the terms of this Agreement and those of the Confidentiality Agreement, the terms of this Agreement shall govern. Executive's execution and compliance with the terms of the Confidentiality Agreement is a material term of this Agreement, upon which Executive's employment and continued employment with the Company is conditioned.

10. Confidentiality, Non-Solicitation and Non-Competition.

10.1 Representations and Acknowledgements. For purposes of Sections 10-13 and 15 hereof, the term "Company" shall refer to not only the Company, but also, jointly and severally, any entity, directly or indirectly, through one or more intermediaries, controlled by, in control of, or under common control with, the Company (collectively, "Company Affiliates"). Executive acknowledges and agrees that: (i) among the most valuable and indispensable assets of the Company are its Confidential Information (defined below) and close relationships with its Customers (defined below) and Suppliers (defined below, which includes, without limitation, employees), which the Company has devoted and continues to devote a substantial amount of time, money and other resources to develop; (ii) in connection with Executive's employment with the Company, Executive will be exposed to and acquire the Company's Confidential Information and develop, at the Company's expense and support, special and close relationships with the Company's Customers and Suppliers; (iii) the Company's Confidential Information and close Customer and Supplier relationships must be protected; (iv) this Section 10 is a material provision of this Agreement and the Company would not engage Executive hereunder but for the promises and acknowledgements that Executive makes in this Section 10; (v) to the extent required by law, the covenants in this Agreement contain reasonable limitations as to time, geographical area and scope of activities to be restricted and that such covenants do not impose a greater restraint on Executive than is necessary to protect the Company's Confidential Information, close Customer and Supplier relationships and other legitimate business interests; (vi) Executive's compliance with such covenants will not inhibit Executive from earning a living or from working in Executive's chosen profession; and (vii) any breach of such covenants will result in the Company being placed at an unfair competitive disadvantage and cause the Company serious and irreparable harm to its business.

## 10.2 Confidential Information.

(a) Protection of Confidential Information. During the Employment Period and at all times thereafter, Executive will not, except to the extent necessary to perform Executive's duties hereunder or as required by law, directly or indirectly, use or disclose to any third person, without the prior written consent of the Company, any Confidential Information (defined 10.2(b) below) of the Company. If it is necessary for Executive to use or disclose Confidential Information so as to comply with any law, rule, regulations, court order, subpoena or other governmental mandate or investigation, Executive shall give prompt written notice to the Company of such requirement (to the extent legally permissible), disclose no more information than is so required, and cooperate with any attempts by the Company to obtain a protective order or similar treatment. In the event that the Company is bound by a confidentiality agreement or understanding with a customer, vendor, supplier or other party regarding the confidential information of such customer, vendor, supplier or other party, which is more restrictive than specified above in this Section 10.2, and of which Executive has notice or is aware, Executive shall adhere to the provisions of such other confidentiality agreement, in addition to those of this Section 10.2. Executive shall exercise reasonable care to protect all Confidential Information. Executive will immediately give notice to the Company of any unauthorized use or disclosure of Confidential Information. Executive hereby represents and warrants that it shall assist the Company in remedying any such unauthorized use or disclosure of Confidential Information.

(b) Confidential Information Defined. For purposes of this Agreement, "Confidential Information" means all information of a confidential or proprietary nature regarding the Company, its business or properties that the Company has furnished or furnishes to Executive, whether before or after the date of this Agreement, or is or becomes available to Executive by virtue of Executive's employment with the Company, whether tangible or intangible, and in whatever form or medium provided, as well as all such information generated by Executive that, in each case, has not been published or disclosed to, and is not otherwise known to, the public. Confidential Information includes, without limitation, customer lists, customer requirements and specifications, designs, financial data, sales figures, costs and pricing figures, marketing and other business plans, product development, marketing concepts, personnel matters (including employee skills and compensation), drawings, specifications, instructions, methods, processes, techniques, computer software or data of any sort developed or compiled by the Company, formulae or any other information relating to the Company's services, products, sales, technology, research data, software and all other know-how, trade secrets or proprietary information, or any copies, elaborations, modifications and adaptations thereof. For the avoidance of doubt, Executive acknowledges and agrees that Confidential Information protected under this Agreement includes information regarding pay, bonuses, benefits, and perquisites offered to or received by employees of the Company, as well as non-public information regarding the unique and special skills of specific employees and how such skills are valuable and integral to the Company's operations. Notwithstanding the foregoing, Confidential Information shall not include any information (i) that is generally known to the industry or the public other than as a result of Executive's breach of this covenant; (ii) that is made available to Executive by a third party without that party's breach of any confidentiality obligation; or (iii) which was developed by Executive outside or independent of Executive's performance of Executive's obligation to render services on behalf of the Company.

(c) Immunity for Certain Limited Disclosures. Executive acknowledges that Executive has been notified in accordance with the federal Uniform Trade Secrets Act (18 U.S. Code § 1833(b)(1)) that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(d) Permitted Disclosures. Executive also acknowledges that nothing in this Agreement shall be construed to prohibit Executive from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

### 10.3 Non-Interference, Non-Competition and Non-Diversion.

(a) No Interference with Customers. Executive agrees that, during the Restricted Period (defined in Section 10.3(f) below), regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly (defined below), actually or attempt to, (i) solicit, induce, or cause any Customer to terminate, reduce or refrain from renewing or extending its contractual or other business relationship with the Company; (ii) solicit, induce or cause any Customer to become a customer of or enter into any contractual or other relationship with Executive or any other person or entity for Competing Services (as defined in Section 10.3(f) below); and/or (iii) offer or provide to any Customer any Competing Services.

(b) No Interference with Employees and Other Suppliers. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment hereunder is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to: (i) solicit, induce, or cause any Supplier of the Company to terminate, reduce or refrain from renewing or extending such person's or entity's business or employment relationship with the Company; (ii) solicit, induce or cause any employee of the Company to engage in Competing Services; or (iii) employ or otherwise engage as an employee, independent contractor or consultant (1) any employee of the Company or (2) any person who was employed by the Company within the then prior six-month period.

(c) Non-Diversion. Executive agrees that, during the Restricted Period, regardless of whether, or on what basis, Executive's employment is terminated or any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, be employed or engaged as an independent contractor or otherwise by any person or entity that, during the Employment Period, was an actual or potential Customer of Company to perform services the same or similar to those Executive provided to Company and/or the Company provided or offered to provide to such actual or potential Customer.

(d) Non-Competition. During the Employment Period and thereafter, for the Restricted Period, regardless of any claim that Executive may have against the Company under this Agreement or otherwise, Executive shall not, directly or indirectly, actually or attempt to, engage in the business of providing Competing Services within the Territory (as defined in Section 10.3(f) below).

(e) Notice to Subsequent Employers. Upon commencing any engagement as a service provider (whether as an employee, independent contractor or otherwise) during the Restricted Period, Executive shall expressly advise each new employer and each other new recipient of Executive's services (each, a "Service Recipient") of Executive's continuing obligations to the Company under this Agreement and, in particular, this Section 10. Further, Executive hereby consents to the Company providing such notification to each such Service Recipient.

(f) Definitions. For the purposes of this Agreement, the following terms shall have the following meaning.

(i) "Change of Control" means (A) the acquisition by a third party (or more than one party acting as a group) of securities of the Company representing more than sixty-six percent (66%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction; (B) a merger, consolidation or similar transaction following which the stockholders of the Company immediately prior thereto do not own at least sixty-six percent (66%) of the combined outstanding voting power of the surviving entity (or that entity's parent) in such merger, consolidation or similar transaction; or (C) the sale or other disposition of all or substantially all of the assets of the Company.

(ii) "Competing Services" means products or services that are the same, similar, or otherwise in competition with the products and services of the Company with which Executive was involved or about which Executive acquired Confidential Information.

(iii) "Customer" means any company or individual: (i) who purchased products or services from the Company whom Executive contacted or served during the Employment Period, for whom Executive supervised contact or service during the Employment Period or about whom Executive acquired Confidential Information; and/or (ii) who was a potential customer of the Company within the one year immediately preceding the Termination Date and (A) about whom Executive acquired Confidential Information or (B) who contacted Executive, whom Executive contacted, or for whom Executive supervised contact regarding the potential purchase of products or services of the Company.

(iv) “directly or indirectly” as it relates to an activity taken by Executive includes any activity taken directly by Executive or indirectly on Executive’s behalf, including any activity taken in conjunction with any other person or entity, and including any activity taken by Executive as an employee, agent, consultant, independent contractor, officer, director, principal, shareholder, equity holder, partner, member, joint venturer, lender, investor or otherwise, except that nothing in this Agreement shall prohibit Executive from being a passive holder, for investment purposes only, of not more than two percent (2%) of the outstanding stock of any company listed on a national securities exchange, or actively traded in a national over-the-counter market.

(v) “Restricted Period” means the Employment Period and for a period thereafter equaling the greater of (A) one year and (B) the duration of any Severance Period, except that such period shall be extended for any period therein during which Executive was in violation of any provision of this Section 10.3.

(vi) “Supplier” means any supplier of goods, services, funding, leads or prospects to the Company, including as an employee, independent contractor or in any other capacity.

(vii) “Territory” means any state in which the Company is doing business or in which it is contemplating to do business pursuant to a then current business plan.

## 11. Intellectual Property.

11.1 The Company’s Proprietary Rights. Executive acknowledges and agrees that all Intellectual Property (defined below) created, made or conceived by Executive (solely or jointly) during Executive’s employment by the Company (regardless of whether such Intellectual Property was created, conceived or produced during Executive’s regular work hours or at any other time) that relates to the actual or anticipated businesses of the Company or results from or is suggested by any work performed by employees or independent contractors for or on behalf of the Company (“Company Intellectual Property”) shall be deemed “work for hire” and shall be and remain the sole and exclusive property of the Company for any and all purposes and uses whatsoever as soon as Executive conceives or develops such Company Intellectual Property, and Executive hereby agrees that its assigns, executors, heirs, administrators or personal representatives shall have no right, title or interest of any kind or nature therein or thereto, or in or to any results and proceeds therefrom. If for any reason such Company Intellectual Property is not deemed to be “work-for-hire,” then Executive hereby irrevocably and unconditionally assigns all rights, title, and interest in such Company Intellectual Property to the Company and agrees that the Company is under no further obligation, monetary or otherwise, to Executive for such assignment. Executive also hereby waives all claims to any moral rights or other special rights (“Moral Rights”), including, without limitation, all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights,” “artist’s rights,” “droit moral” or the like, that Executive may have or may accrue in any Company Intellectual Property. To the extent that any such Moral Rights cannot be assigned under applicable law, Executive hereby ratifies and consents to any action that may be taken with respect to such Moral Rights by or on behalf of the Company and waives and agrees not to enforce any and all such rights, including, without limitation, any limitation on subsequent modification, to the extent permitted under applicable law. Executive shall promptly disclose in writing to the Company the existence of any and all Company Intellectual Property. As used in this Agreement, “Intellectual Property” shall mean and include any ideas, inventions (whether or not patentable), designs, improvements, discoveries, innovations, patents, patent applications, trademarks, service marks, trade dress, trade names, trade secrets, works of authorship, copyrights, copyrightable works, films, audio and video tapes, other audio and visual works of any kind, scripts, sketches, models, formulas, tests, analyses, software, firmware, computer processes, computer and other applications, creations and properties, Confidential Information and any other patents, inventions or works of creative authorship.

11.2 Waiver. In the event that Executive owns or claims any rights to Company Intellectual Property that cannot be assigned to the Company, Executive irrevocably waives all claims and the enforcement of all such rights against the Company, and their respective officers directors, assigns and licensees, and agrees, at the Company's request and expense, to consent to and join in any action to enforce the Company's interests in such Company Intellectual Property. As to any rights to Company Intellectual Property that cannot be assigned to the Company or waived by Executive, Executive irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to license and sublicense, to reproduce, create derivative works, distribute, publicly perform and publicly display by all means now known or later developed, any and all such Company Intellectual Property.

11.3 Cooperation Regarding Intellectual Property. Executive agrees to assist the Company, and to take all reasonable steps, with securing patents, registering copyrights and trademarks, and obtaining any other forms of protection for the Company Intellectual Property in the United States and elsewhere. In particular, at the Company's expense (except as noted in clause (i) below), Executive shall forthwith upon request of the Company execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and take all such other action as the Company may reasonably request in order (i) to vest in the Company all of Executive's right, title, and interest in and to such Company Intellectual Property, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances ("Liens") (and Executive agrees to take such action, at Executive's expense, as is necessary to remove all such Liens) and (ii), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefor in any and all countries in such name as the Company shall determine. In the event that Executive is unable or unavailable or shall refuse to sign any lawful or necessary documents required in order for the Company to apply for and obtain any copyright or patent with respect to any work performed by Executive in the course of his employment with the Company (including applications or renewals, extensions, divisions or continuations), Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Executive's agents and attorneys-in-fact to act for and in Executive's behalf, and in Executive's place and stead, to execute and file any such applications or documents and to do all other lawfully permitted acts to further the prosecution and issuance of copyrights and patents with respect to such Company Intellectual Property with the same legal force and effect as if executed or undertaken by Executive.



11.4 No infringement. Executive represents and warrants to the Company that all Intellectual Property Executive delivers to the Company shall be original and shall not infringe upon or violate any patent, copyright, or proprietary right of any person or third party.

11.5 License to Prior Invention. If Executive in the course of Executive's employment for the Company incorporates into a Company product Intellectual Property that Executive has, alone or jointly with others, conceived, developed or reduced to practice prior to the commencement of Executive's employment with the Company in which Executive has a property right (each, a "Prior Invention"), Executive hereby grants to the Company a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license (with the full right to sublicense) to make, have made, modify, use and sell such Prior Invention. Executive hereby represents and warrants that all Prior Inventions have been listed by Executive on Exhibit B hereto or, if no such list is attached, that there are no Prior Inventions. Executive will not incorporate any Intellectual Property owned by any third party into any Company Intellectual Property without the Company's prior written permission.

11.6 Severability. To the extent this Agreement is required to be construed in accordance with laws of any state which precludes as a requirement in an employee agreement the assignment of certain classes of inventions made by an employee, this Section 11 will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes.

12. Non-Disparagement. Executive agrees not to, knowingly and intentionally, make any disparaging remark or send any disparaging communication on any date which is reasonably expected to result in, or does result in, damage to (i) the reputation of the Company on such date or (ii) the reputation of (A) the business, officers and directors of the Company on such date or (B) the employees of the Company on the date of this Agreement but only for so long as an employee remains an employee of the Company. The Company agrees not to, knowingly and intentionally, make any disparaging remarks or send any disparaging communications by press release or other formal communication or take any other action, directly or indirectly, with respect to Executive which is reasonably expected to result in, or does result in, damage to Executive's reputation (it being understood that comments or actions by an individual will not be treated as comments or actions by the Company unless such individual is an officer or director of the Company or otherwise has both the authority to act, and is acting, on behalf of the Company with respect to such comments or actions). This Section does not apply to (i) truthful statements made in connection with legal proceedings, governmental and regulatory investigations, and actions; (ii) any other truthful statement or disclosure required by law; or (iii) business-related intra-Company communications or to the Company's communications with its shareholders, investors, auditors and/or legal advisors.

13. Cooperation. During and after the Employment Period, Executive shall assist and cooperate with the Company in connection with the defense or prosecution of any claim that may be made against or by the Company, or in connection with any ongoing or future investigation or dispute or claim of any kind involving the Company, including any proceeding before any arbitral, administrative, judicial, legislative, or other body or agency, including testifying in any proceeding to the extent such claims, investigations or proceedings relate to services performed or required to be performed by Executive, pertinent knowledge possessed by Executive, or any act or omission by Executive. Executive will also perform all acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this paragraph. The Company will reimburse Executive for reasonable expenses Executive incurs in fulfilling Executive's obligations under this Section 13. Notwithstanding the foregoing, this Section shall not be applicable to any claim by the Company against Executive or by Executive against the Company.

14. Company Property. Executive agrees that all Confidential Information, trade secrets, drawings, designs, reports, computer programs or data, books, handbooks, manuals, files (electronic or otherwise), computerized storage media, papers, memoranda, letters, notes, photographs, facsimile, software, computers, smart phones and other documents (electronic or otherwise), materials and equipment of any kind that Executive has acquired or will acquire during the course of Executive's employment with the Company are and remain the property of the Company. Upon termination of employment with the Company, or sooner if requested by the Company, Executive agrees to return all such documents, materials, and records to the Company and not to make or take copies of the same without the prior written consent of the Company. With regard to such documents, materials and records in electronic form, Executive shall first provide a copy to Company, and then irretrievably delete such electronic information from her electronic devices and accounts, including but not limited to computers, phones, personal email accounts, cloud storage accounts, and removable storage media. Executive agrees to provide the Company access to Executive's system as reasonably requested to verify that the necessary copying and/or deletion is completed. Executive acknowledges and agrees that any property situated on the Company's premises and owned by the Company, including disks and other storage media, filing cabinets, and other work areas, is subject to inspection by personnel of the Company at any time with or without notice. Executive acknowledges and agrees that Executive has no expectation of privacy with respect to the Company's telecommunications, networking, or information processing systems (including, without limitation, files, e-mail messages and voice messages) and that Executive's activity and any files or messages on or using any of those systems may be monitored at any time without notice. Notwithstanding anything in this Agreement to the contrary, (x) Executive's personal property, general industry knowledge, awards, and personal memoirs do not constitute trade secrets or Confidential Information, and are and shall remain Executive's sole and exclusive property, and (y) Executive shall be entitled to retain, following Executive's termination of employment, information showing Executive's compensation or relating to reimbursement of business expenses incurred by Executive, and copies of this Agreement and any Company benefit programs in which Executive participated; provided, however, that Executive acknowledges and agrees that Executive shall not disclose the documents referenced in this clause (y) except to Executive's representatives who have a need to know such information.

15. Injunctive Relief and Other Remedies. Executive acknowledges that a breach of Sections 10 through 13 of this Agreement will result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary and/or permanent injunction, without the necessity of posting a bond or of proving irreparable harm or injury as a result of such breach or threatened breach of Sections 10 through 13, restraining Executive from engaging in activities prohibited by Sections 10 through 13 and such other relief as may be required specifically to enforce any of the provisions in Sections 10 through 13. Executive further agrees that, if Executive breaches any of the provisions in Sections 10 through 13 of this Agreement, to the extent permitted by law, Executive shall (i) forfeit Executive's right to receive the balance of any compensation and/or benefits due Executive under this Agreement; (ii) pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive as the result of any action or transaction constituting a breach of any provision thereof; and (iii) pay over to the Company all costs and expenses incurred by the Company resulting from Executive's breach (including, without limitation, reasonable attorneys' fees and expenses in dealing with Executive's breach or any suits or actions with regard thereto) and for all damages (compensatory, along with punitive) that may be awarded in connection therewith. The provisions of this section shall not limit any other remedies available to the Company as a result of a breach of the provisions of this Agreement or otherwise. Additionally, each of the covenants and restrictions to which Executive is subject under this Agreement, including, without limitation those in Section 10 above, shall each be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action by Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants and restrictions.

16. Representations Regarding Prior Work and Legal Obligations.

16.1 Executive represents and warrants that Executive has no agreement or other legal obligation with any prior employer, or any other person or entity, that restricts Executive's ability to accept employment with the Company. Executive further represents and warrants that Executive is not a party to any agreement (including, without limitation, a non-competition, non-solicitation, no hire or similar agreement) and has no other legal obligation that restricts in any way Executive's ability to perform Executive's duties and satisfy Executive's other obligations to the Company, including, without limitation, those under this Agreement.

16.2 Executive represents and acknowledges that Executive has been instructed by the Company that at no time should Executive divulge to or use for the benefit of the Company or any Company Affiliates any trade secret or confidential or proprietary information of any previous employer or entity with which Executive was affiliated or of any other third-party. Executive expressly represents and warrants that Executive has not divulged or used any such information for the benefit of the Company or Company Affiliates and will not do so.

16.3 Executive represents and agrees that the Executive has not and will not misappropriate any intellectual property belonging to any other person or entity.

16.4 Executive acknowledges that the Company is basing important business decisions on these representations, agreements and warranties, and Executive affirms that all of the statements included herein are true. Executive agrees that Executive shall defend, indemnify and hold the Company harmless from any liability, expense (including attorneys' fees) or claim by any person in any way arising out of, relating to, or in connection with a breach and/or the falsity of any of the representations, agreements and warranties made by Executive in this Section 16.

17. Indemnification and Liability Insurance. The Company shall indemnify Executive to the fullest extent permitted by law, in effect at the time of the subject act or omission, and shall advance to Executive reasonable attorneys' fees and expenses as such fees and expenses are incurred (subject to an undertaking from Executive to repay such advances if it shall be finally determined by a judicial decision which is not subject to further appeal that Executive was not entitled to the reimbursement of such fees and expenses), and Executive will be entitled to the protection of any insurance policies that the Company may elect to maintain generally for the benefit of its directors and officers against all costs, charges and expenses incurred or sustained by Executive in connection with any action, suit or proceeding brought by a third-party to which Executive may be made a party by reason of Executive's being or having been a director, officer or employee of the Company or any of its affiliates, or Executive's serving or having served any other enterprise as a director, officer or employee at the request of the Company (other than any dispute, claim or controversy arising under or relating to this Agreement), provided that he acted within the scope of his duties as a director, officer or employee of the Company. The Company covenants to maintain during Executive's employment for the benefit of Executive (in his capacity as an officer and director of the Company) Directors and Officers Insurance providing benefits to Executive no less favorable, taken as a whole, than the benefits provided to the other similarly situated employees of the Company by the Directors and Officers Insurance maintained by the Company on the date hereof; provided, however, that the Company may elect to terminate Directors and Officers Insurance for all officers and directors, including Executive, if the Company determines in good faith that such insurance is not available or is available only at unreasonable expense.

18. Miscellaneous Provisions.

18.1 IRCA Compliance. This Agreement, and Executive's employment with the Company, is conditioned on Executive's establishing Executive's identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA).

18.2 Section 409A Compliance. Unless otherwise expressly provided, any payment of compensation by Company to Executive, whether pursuant to this Agreement or otherwise, shall be made no later than the 15<sup>th</sup> day of the third month (*i.e.*, 2<sup>1/2</sup> months) after the later of the end of the calendar year or the Company's fiscal year in which Executive's right to such payment vests (*i.e.*, is not subject to a "substantial risk of forfeiture") for purposes of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A"). For purposes of this Agreement, termination of employment shall be deemed to occur only upon "separation from service" as such term is defined under Section 409A. Each payment and each installment of any severance payments provided for under this Agreement shall be treated as a separate payment for purposes of application of Section 409A. To the extent any amounts payable by the Company to the Executive constitute "nonqualified deferred compensation" (within the meaning of Section 409A) such payments are intended to comply with the requirements of Section 409A and shall be interpreted in accordance therewith. Neither party individually or in combination may accelerate, offset or assign any such deferred payment, except in compliance with Section 409A. No amount shall be paid prior to the earliest date on which it is permitted to be paid under Section 409A, including a six (6) month delay of termination payments made to specified employees of a public company, to the extent then applicable. Executive shall have no discretion with respect to the timing of payments except as permitted under Section 409A. Any Section 409A payments which are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in such following calendar year as necessary to comply with Section 409A. All expense reimbursement or in-kind benefits subject to Section 409A provided under this Agreement or, unless otherwise specified in writing, under any Company program or policy, shall be subject to the following rules: (i) the amount of expenses eligible for reimbursement or in-kind benefits provided during one calendar year may not affect the benefits provided during any other year; (ii) reimbursements shall be paid no later than the end of the calendar year following the year in which Executive incurs such expenses, and Executive shall take all actions necessary to claim all such reimbursements on a timely basis to permit the Company to make all such reimbursement payments prior to the end of said period, and (iii) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, no amendment may be made to this Agreement if it would cause the Agreement or any payment hereunder not to be in compliance with Code Section 409A.

18.3 Assignability and Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the heirs, executors, administrators, successors, and legal representatives of Executive, and shall inure to the benefit of and be binding upon the Company, the Company Affiliates and their successors and assigns, but the obligations of Executive are personal services and may not be delegated or assigned. Executive shall not be entitled to assign, transfer, pledge, encumber, hypothecate or otherwise dispose of this Agreement, or any of Executive's rights and obligations hereunder, and any such attempted delegation or disposition shall be null and void and without effect. This Agreement may be assigned by the Company to a person or entity that is an affiliate or a successor in interest to substantially all of the business operations of the Company. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or successor person or entity.

18.4 Right of Set-Off. To the extent permitted by applicable law, the Company may at any time offset against any amounts owed to Executive hereunder or otherwise due or to become due to Executive, or anyone claiming through or under Executive, any debt or debts due or to become due from Executive to the Company.

18.5 Severability and Blue Penciling. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect. However, if any court determines that any covenant in this Agreement, is unenforceable because the duration, geographic scope or restricted activities thereof are overly broad, then such provision or part thereof shall be modified by reducing the overly broad duration, geographic scope or restricted activities by the minimum amount so as to make the covenant, in its modified form, enforceable.

18.6 Choice of Law and Forum; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Michigan, without regard to its conflict-of-law principles. The Parties agree that any dispute concerning or arising out of this Agreement or Executive's employment hereunder (or termination thereof) shall be litigated exclusively in an appropriate state or federal court in or closest to Suffolk County, Massachusetts and hereby consent, and waive any objection, to the jurisdiction of any such court. In the event a litigation or other legal proceeding is commenced to resolve any such dispute, the prevailing party in such litigation or proceeding shall be entitled to recover from the non-prevailing party all of its costs, charges, disbursements and fees (including reasonable attorneys' fees) incurred in connection with such litigation or proceeding and the underlying dispute.

18.7 Mutual Waiver of Jury Trial. Executive and the Company each hereby waive the right to trial by jury in any action or proceeding, regardless of the subject matter, between them, including, without limitation, any action or proceeding based upon, arising out of, or in any way relating to this Agreement and all matters concerning Executive's employment with the Company (or the termination thereof). Executive and the Company further agree that either of them may file a copy of this Agreement with any court as written evidence of the knowing, voluntary, and bargained agreement between Executive and the Company to irrevocably waive trial by jury, and that any dispute or controversy whatsoever between Executive and the Company shall instead be tried in a court of competent jurisdiction by a judge sitting without a jury.

18.8 Notices.

(a) Any notice or other communication under this Agreement shall be in writing and shall be delivered by hand, email, facsimile or mailed by overnight courier or by registered or certified mail, postage prepaid:

(i) If to Executive, to Executive's address on the books and records of the Company.

(ii) If to the Company, to 76 Treble Cove Rd., Bldg. 3, Billerica, MA 01862, or at such other mailing address, email address or facsimile number as it may have furnished in writing to Executive.

(b) Any notice so addressed shall be deemed to be given: if delivered by hand or email, on the date of such delivery; if by facsimile, on the date of such delivery if receipt on such day is confirmed and, if not so confirmed, on the next business day; if mailed by overnight courier, on the first business day following the date of such mailing; and if mailed by registered or certified mail, on the third business day after the date of such mailing.

18.9 Survival of Terms. All provisions of this Agreement that, either expressly or impliedly, contain obligations that extend beyond termination of Executive's employment hereunder, including without limitation Sections 10-15 and 18 hereof, shall survive the termination of this Agreement and of Executive's employment hereunder for any reason.

18.10 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that both of them have participated in drafting this Agreement; therefore, any general rule of construction that any ambiguity shall be construed against the drafter shall not apply to this Agreement. In this Agreement, unless the context otherwise requires, the masculine, feminine and neuter genders and the singular and the plural include one another.

18.11 Further Assurances. The Parties will execute and deliver such further documents and instruments and will take all other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

18.12 Voluntary and Knowing Execution of Agreement. Executive acknowledges that (i) Executive has had the opportunity to consult an attorney regarding the terms and conditions of this Agreement before executing it, (ii) Executive fully understands the terms of this Agreement including, without limitation, the significance and consequences of the post-employment restrictive covenants in Section 10 above, and (iii) Executive is executing this Agreement voluntarily, knowingly and willingly and without duress.

18.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning the subject matter hereof, and it supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements regarding such subject matter. Each Party acknowledges and agrees that such Party is not relying on, and may not rely on, any oral or written representation of any kind that is not set forth in writing in this Agreement.

18.14 Waivers and Amendments. This Agreement may be altered, amended, modified, superseded or cancelled, and the terms hereof may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party alleged to have waived compliance. Any such signature of the Company must be by an authorized signatory for the Company. No delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

18.15 Counterparts. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies, electronically scanned copies and other facsimiles of this Agreement (including such signed counterparts) may be used in lieu of the originals for any purpose.

*[The remainder of this page is intentionally blank; signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

/s/ Timothy Hayden

**TIMOTHY HAYDEN**

**AGRIFY CORPORATION**

By: /s/ Raymond Chang

Name: Raymond Chang

Title: Chief Executive Officer

*[Signature page to Employment Agreement]*

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EXHIBIT A

INVENTION ASSIGNMENT, RESTRICTIVE COVENANTS, AND  
CONFIDENTIALITY AGREEMENT

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**EXHIBIT B**

**LIST OF PRIOR INVENTIONS AND ORIGINAL WORKS OF AUTHORSHIP**

Title	Date	Identifying Number or Brief Description
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## **Agrify Announces Strategic Plan to Foster Sustainable Long-Term Growth**

*Cost Efficiency Measures, Enhanced Sales Initiatives, and Leadership Appointments Designed to Provide Responsible and Compelling Path Forward*

BILLERICA, Mass., Jan. 23, 2023 (GLOBE NEWSWIRE) -- Agrify Corporation (Nasdaq:AGFY) (“Agrify” or the “Company”), a leading provider of innovative cultivation and extraction solutions for the cannabis industry, today announced it is actively taking steps to better align its resources and growth plan with the current operating environment, measures that the Company believes could put it in a position to be cash flow positive by the end of 2023.

Agrify, which offers both domestic and international customers one of the most comprehensive portfolios of cultivation and extraction solutions, has responded to the turbulence facing the entire cannabis industry by developing and instituting a plan to provide stability during the market downturn as well as a sustainable path forward. The plan primarily consists of reducing certain costs and leveraging various cost synergies to achieve new operational efficiencies, growing the top-line revenue through targeted sales efforts in the most attractive channels, and assembling the best leadership and talent in the industry.

### **Cost Efficiency Measures, Synergies, and Consolidated Buying Power**

Agrify has identified several cost improvement measures that it believes will significantly reduce its cash burn, help to improve margins, and increase the likelihood that it will be cash flow positive by the end of the year.

The Company is in the process of benefitting from various cost synergies, many of which are largely attributable to the four extraction brands it acquired in 2021 and 2022. Agrify has reduced its manufacturing and production costs through more effective supplier agreements, volume discounts driven by increased purchasing power, and less of a reliance on contract manufacturers. Additionally, the Company implemented a new enterprise resource planning (“ERP”) system toward the end of 2022 and now has better visibility into its supply chain and inventory needs, allowing those needs to be better aligned with near-term revenue expectations. Agrify has also been able to simplify its organizational structure and embark on a strategic consolidation of its offices and facilities.

Agrify believes that these improvements could result in up to \$7 million in cost savings during 2023, and the Company anticipates that it may be able to accrue more savings as the year progresses.

### **Enhanced Sales and Growth Initiatives**

Agrify’s diversified mix of products and services gives the Company flexibility to adjust its sales approach to capitalize on the market opportunities or sales channels that are most attractive at a given point in time.

The Company is currently focused on growing its cultivation business by helping its existing Agrify Total Turn-Key Solution (“Agrify TTK Solution”) customers bring their facilities online, driving additional sales through its Rapid Deployment Pack (“RDP”) program, and making a concerted effort to successfully capture market share in the academic and pharmaceutical research verticals.

The Company expects to have several more customer cultivation facilities coming online in 2023, including some highly anticipated Agrify TTK Solution customer sites. Once these new Agrify TTK Solution facilities are fully operational, the underlying business model for this program, which includes high-margin recurring revenue streams, should be instrumental in creating substantial long-term value for the Company’s shareholders.

Despite the attractive returns the Company expects from its existing Agrify TTK Solution customers, Agrify will temporarily wait to pursue new opportunities that require construction financing until the market stabilizes, as those engagements are capital intensive upfront with a deferred payback period. This should significantly reduce the cash burn of the Company. In the interim, the Company expects to shift its resources to pursue other more appealing growth initiatives such as the RDP program and the academic and pharmaceutical research verticals.

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Agrify's RDP program was established to make it easier for a broader range of customers, both domestically and abroad, to access Agrify's award-winning cultivation technology. Featuring Agrify's flagship Vertical Farming Units ("VFUs") in a prepackaged, self-contained, and quick-to-deploy format, the thoughtfully designed and engineered RDPs offer an accelerated path to production, cash flow, and profitability for customers. By removing certain barriers and points of friction with the RDPs, Agrify is able to provide customers who have properly equipped facilities best-in-class cultivation capabilities in potentially as little as 90 days. Once installed, the modular nature of the RDPs allows for seamless expansion opportunities, enabling customers the flexibility to grow and scale.

In addition to the general expansion of the RDP program, the Company is looking to further introduce its fully integrated cultivation solution into the historically underserved academic and pharmaceutical research channels. In the past, progress in these channels had been stifled by stringent government restrictions, but the recent directive by the Biden administration to review the classification of cannabis under federal law and Congress' enactment of the Medical Marijuana and Cannabidiol Research Expansion Act have opened up a potentially lucrative opportunity to support these budding verticals, which are aiding both the advancement and acceptance of cannabis. This has led to an influx of educational programs and research grants related to cannabis. In 2023, Agrify hopes to be able to begin serving the needs of an increasing number of universities, research institutions, and pharmaceutical companies as they look to push the boundaries within the field of cannabis science and bring higher quality products to the market.

The Company's extraction business, which consists of Precision Extraction Solutions, PurePressure, Lab Society, and Cascade Sciences with leading products across hydrocarbon, ethanol, solventless, post-processing, and lab equipment, has also made certain adjustments to meet the shift in the market toward small licenses as compared to larger vertical licenses. In the past two years, many licenses awarded were smaller and limited licenses focused on social equity and diversity, including within states such as Illinois, New York, Connecticut, Virginia, and Massachusetts. Agrify has streamlined its expansive extraction product portfolio to better support its sales efforts in 2023 and has also continued to innovate with several new products scheduled to launch this year. Additionally, the Company has amassed an extensive customer database it intends to leverage for compelling cross-selling and upselling opportunities.

### **Leadership Appointments**

Agrify has promoted Rachel Soulsby to Vice President of Marketing, Sheryl Elliott to Vice President of Human Resources, Caitlin Moakley Bricker to Chief of Staff, and Makenna Thompson to Director of Customer Experience. These well-deserved promotions reflect the Company's continued commitment to diversity and offering career advancement opportunities for its highly talented and accomplished professionals.

Ms. Soulsby, Ms. Elliott, Ms. Moakley Bricker, and Ms. Thompson have already added substantial value to the Company across each of their respective areas of focus, and they are all expected to have an even greater impact on the future of Agrify now that they have assumed more prominent and integral roles.

Lastly, as previously announced, Timothy Oakes, Agrify's Chief Financial Officer, recently notified the Company of his intent to resign to pursue other opportunities. Mr. Oakes has agreed to continue in his current position until the end of February and is expected to support the organization during this transitional period. A search for Mr. Oakes' successor is well underway.

### **Management Commentary**

"Over the past few years, Agrify has fortified its position as one of the leading solution providers in the cannabis industry, offering customers a full suite of highly compelling products and services across cultivation and extraction," said Raymond Chang, Chairman and Chief Executive Officer of Agrify. "However, like many organizations in our industry and within the broader business landscape, we continue to encounter various headwinds that have necessitated significant adjustments to our short-term operating plan. Consequently, we have taken steps to create more stability during these uncertain times by better aligning our resources with the most attractive growth opportunities currently at our disposal, optimizing our sales strategy, and ensuring we have the right team in place to execute on our goals."

Mr. Chang continued, “As we forge ahead, we are confident in our collective ability to withstand these challenging circumstances and pursue a more suitable path for growth. We believe the plan we are carrying out will enable us to become cash flow positive by the end of the year and support the creation of greater value for our shareholders, customers, and employees. While some of the dynamics in the current macro environment have undoubtedly impeded progress for all, we believe the cannabis industry continues to offer substantial long-term upside, with robust global growth expected in the coming years. We have worked diligently to establish ourselves as a leading brand across cultivation and extraction, and we remain undeterred in our quest to become the world’s most innovative end-to-end solution provider in the cannabis industry, offering a comprehensive ecosystem of products and services to help our customers succeed at any stage of growth.”

### **About Agrify (Nasdaq:AGFY)**

Agrify is a leading provider of innovative cultivation and extraction solutions for the cannabis industry, bringing data, science, and technology to the forefront of the market. Our proprietary micro-environment-controlled Vertical Farming Units (VFUs) enable cultivators to produce the highest quality products with unmatched consistency, yield, and ROI at scale. Our comprehensive extraction product line, which includes hydrocarbon, ethanol, solventless, post-processing, and lab equipment, empowers producers to maximize the quantity and quality of extract required for premium concentrates. For more information, please visit Agrify at <http://www.agrify.com>.

### **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 concerning Agrify and other matters. All statements contained in this press release that do not relate to matters of historical fact should be considered forward-looking statements including, without limitation, statements regarding Agrify’s potential to be cash flow positive by the end of 2023, the expected effect of cost improvement measures on cash burn and margins, the expected operational savings to be realized as a result of cost efficiency measures and the ERP system, Agrify’s ability to adjust its sales approach to capitalize on changing market opportunities, the timing of Agrify TTK Solution facilities coming online and the expected revenue and margins to be realized from those facilities, the effect on Agrify’s cash burn of temporarily waiting to pursue additional Agrify TTK Solution opportunities, the potential benefits of Agrify’s RDP program and the timing thereof, Agrify’s ability to expand in the university, pharmaceutical, and research markets, Agrify’s ability to launch new extraction products this year and the timing thereof, the expected long-term growth of the cannabis industry, and Agrify’s ability to deliver solutions and services, including the development of new solutions. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “targets,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. The forward-looking statements in this press release are only predictions. Agrify has based these forward-looking statements largely on its current expectations and projections about future events and financial trends that it believes may affect its business, financial condition and results of operations. Forward-looking statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. You should carefully consider the risks and uncertainties that affect our business, including those described in our filings with the Securities and Exchange Commission (“SEC”), including under the caption “Risk Factors” in our Annual Report on Form 10-K filed for the year ended December 31, 2021 with the SEC, which can be obtained on the SEC website at [www.sec.gov](http://www.sec.gov). These forward-looking statements speak only as of the date of this communication. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements, whether as a result of any new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our public announcements and filings with the SEC.

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