

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): **October 25, 2023**

**PHUNWARE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**001-37862**

(Commission File Number)

**30-1205798**

(IRS Employer Identification No.)

**1002 West Avenue, Austin, Texas**

(Address of principal executive offices)

**78701**

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(512) 693-4199**

(Former name or former address, if changed since last report)

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 \$0.0001 per share	PHUN	The NASDAQ Capital Market
Warrants to purchase one share of Common Stock	PHUNW	The NASDAQ Capital Market

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

**Russell Buyse Separation Agreement**

On October 25, 2023, Phunware, Inc. (the "Company") entered into a Confidential Separation, Consulting and General Release Agreement (the "Separation Agreement") with Russell Buyse, the Company's Chief Executive Officer. The Separation Agreement provides that Mr. Buyse's employment with the Company terminated effective October 25, 2023 (the "Separation Date"). The Company and Mr. Buyse have agreed that from the period of the Separation Date and continuing through November 10, 2023 (the "Services Period"), Mr. Buyse will serve as a consultant to the Company. The Separation Agreement provides for a mutual general release, which excludes certain specified types of claims. Mr. Buyse also agreed to certain restrictive covenants, including confidentiality, non-compete and non-solicitation provisions.

Also, effective October 26, 2023, Mr. Buyse resigned as a member of our Board of Directors (the "Board"). Mr. Buyse's resignation from the Board is not due to any disagreement with the Company, its management, the Board or any committee thereof, or with respect to any matter relating to the Company's operations, policies or practices.

As compensation for his service as a consultant during the Services Period, Mr. Buyse will receive aggregate gross cash compensation of \$40,000, less applicable withholdings, of which \$10,000 is payable on each of October 31, 2023, November 15, 2023, November 30, 2023 and December 15, 2023. The Company will also reimburse Mr. Buyse for continuation coverage under the Company's group health plan in accordance with COBRA through March 31, 2024.

At the commencement of his employment with the Company, Mr. Buyse was granted an award of 1,470,588 restricted stock units pursuant to the Company's 2022 Inducement Plan (the "Grant"). The Grant was originally made on January 4, 2023, in which one-third of the grant would have vested on December 28, 2023 and one-twelfth of the grant would have vested quarterly in equal installments beginning on March 31, 2024, with the final vesting date occurring on December 28, 2025. As additional compensation under the Separation Agreement, the Company modified the vesting schedule with respect to a portion of the unvested restricted stock units under the Grant, such that 500,000 restricted stock units vested on October 25, 2023 and 500,000 restricted stock units will vest on November 30, 2023. The balance, 470,588 unvested restricted stock units, will terminate in accordance with the Company's 2022 Inducement Plan.

**Michael Snavelly Employment Agreement**

On October 25, 2023, the Board appointed the Company's Chief Revenue Officer, Mr. Michael Snavelly, age 55, as Chief Executive Officer. In connection therewith, the Company entered into a Confidential Executive Employment Agreement (the "Employment Agreement") with Mr. Snavelly to serve as Chief Executive Officer of the Company effective the same date. The Employment Agreement has an indefinite term, subject to termination by either party. The Company or Mr. Snavelly may terminate the Employment Agreement at any time with or without cause, provided that Mr. Snavelly shall provide at least thirty (30) days' written notice to the Company if without good reason. The Employment Agreement includes non-competition and non-solicitation covenants applicable during and for the 24-month period following Mr. Snavelly's employment.

The Employment Agreement provides for an annual base salary of \$350,000, a sign-on bonus of \$10,000, and a target annual cash bonus to be between 50% and 200% of the base salary, with the actual award value to be determined by the Company or the board of directors of the Company in its sole discretion based on factors including the strength of Mr. Snavelly's performance and the performance of the Company.

Furthermore, the Company will provide Mr. Snavelly an additional grant of 900,000 restricted stock units from the Company's 2018 Equity Incentive Plan within five (5) business days following the execution of the Employment Agreement, such that 500,000 restricted stock units will vest on the date of grant, 200,000 restricted stock units will vest on November 30, 2023 and 20,000 restricted stock units will vest on January 12, 2024. In addition, subject to availability under the Company's 2018 Equity Incentive Plan, the Company agreed to make an

additional separate grant of 750,000 restricted stock units on or before January 31, 2024, which will vest on a monthly pro rata percentage basis, with such vesting to commence on March 31, 2024 and to continue thereafter on the last day of each calendar month to and including October 31, 2026. The restricted stock units granted to Mr. Snavelly will be subject to a separate award agreement, which will outline the specifics of such grant, including but not limited to, forfeiture for cause provisions, the Company's buyback rights and other restrictions and terms. In connection with Mr. Snavelly initially accepting employment with the Company as Chief Revenue Officer, which commenced on September 12, 2023, Mr. Snavelly is to be granted 600,000 restricted stock units. These restricted stock units will vest February 23, 2024 and in the discretion of the Company's Board or Compensation Committee, such restricted stock unit award may either be granted under the Company's 2018 Equity Incentive Plan or may be issued as a non-plan inducement award, as described in Nasdaq Listing Rule 5635(c)(4).

The Employment Agreement further provides that, if Mr. Snavelly's employment is terminated by the Company without "cause" or by Mr. Snavelly for "good reason," subject to his execution of a release of claims in favor of the Company, he will receive a severance payment of nine (9) months' of his then-current base salary, certain other accrued benefits and certain partial accelerated vesting related restricted stock unit awards outstanding. In the event Mr. Snavelly's employment is terminated by the Company without "cause" or by Mr. Snavelly for "good reason," in connection with a change in control, subject to his execution of a release of claims in favor of the Company, he will receive a severance payment of nine (9) months' of his then-current base salary, certain other accrued benefits and immediate vesting of 100% of the then outstanding restricted stock unit awards.

Pursuant to the terms of the Employment Agreement, Mr. Snavelly will serve as a member of the Board, for which he will not receive any additional compensation.

As noted above, Mr. Snavelly was employed to serve as our Chief Revenue Officer on September 12, 2023. The employment agreement entered into on September 5, 2023 with Mr. Snavelly in connection with his acceptance of employment to serve as our Chief Revenue Officer was terminated upon the execution of his Employment Agreement to serve as Chief Executive Officer. Reference is made to Mr Snavelly's biographical information, which was previously disclosed on the Company's Current Report on Form 8-K filed with the SEC on September 8, 2023, and is incorporated herein by reference.

The foregoing is only a summary of the material terms of the Separation Agreement and the Employment Agreement and does not purport to be a complete descriptions of the rights and obligations of the parties thereunder. Furthermore, the foregoing is qualified in its entirety by reference to the Separation Agreement and Employment Agreement, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

#### **Kathy Tan Mayor Resignation from the Board**

On October 26, 2023, Kathy Tan Mayor notified the Company of her voluntary resignation from the Board and Audit, Compensation and Nominating and Corporate Governance Committees of the Board, effective immediately. Ms. Mayor served as Chairperson of the Compensation Committee. Ms. Mayor's resignation is not due to any disagreement with the Company, its management, the Board or any committee thereof, or with respect to any matter relating to the Company's operations, policies or practices. As a result of Ms. Mayor's resignation, the Board appointed Ryan Costello to the Audit Committee and Nominating and Corporate Governance Committees and Rahul Mewawalla to the Compensation Committee. Mr. Costello will serve as chairperson of the Compensation Committee.

#### **Item 5.08 Shareholder Director Nominations.**

On October 23, 2023, the Company filed a Current Report on Form 8-K (the "Prior 8-K") announcing the record date of its 2023 Annual Stockholders Meeting. Item 5.08 of the Prior 8-K incorrectly stated that the Board approved the record date as the close of business on October 26, 2019. The Board approved the record date as the close of business on October 26, 2023.

**Item 7.01 Regulation FD Disclosure.**

A copy of the press release issued by the Company on October 26, 2023 announcing the appointment of Mr. Snavelly as Chief Executive Officer is attached as Exhibit 99.1 and is incorporated herein by reference. The information furnished pursuant to this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or subject to the liabilities of that Section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. The information furnished and in the accompanying exhibit shall not be incorporated by reference into any filing with the Securities and Exchange Commission made by the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<i>Exhibit No.</i>	<i>Exhibit Title</i>
10.1	<a href="#">Confidential Separation, Consulting and General Release Agreement by and between Phunware, Inc. and Russell Buyse dated October 25, 2023</a>
10.2	<a href="#">Confidential Employment Agreement by and between Phunware, Inc. and Mike Snavelly dated October 25, 2023</a>
99.1*	<a href="#">Press Release dated October 26, 2023 titled "Phunware Provides Corporate Update"</a>
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

\* Furnished herewith

**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.

Dated: October 26, 2023

**Phunware, Inc.**

By: /s/ Troy Reisner  
Troy Reisner  
Chief Financial Officer

**CONFIDENTIAL SEPARATION, CONSULTING AND  
GENERAL RELEASE AGREEMENT**

This **CONFIDENTIAL SEPARATION, CONSULTING AND GENERAL RELEASE AGREEMENT**, dated as of October 25, 2023 (this "**Agreement**"), by and between Phunware, Inc., a Delaware corporation (the "**Company**") and Russell Buyse ("**Executive**"). The Company and Executive are referred to herein collectively from time to time as the "**Parties**" and individually as a "**Party**."

**RECITALS**

**WHEREAS**, Executive entered into an employment agreement with the Company on November 11, 2022 (the "**Existing Employment Agreement**");

**WHEREAS**, the Company and Executive agreed that Executive's employment with the Company would terminate on or about the date hereof;

**WHEREAS**, from and after the date hereof until November 10, 2023, Executive has agreed to provide consulting services to the Company; and

**WHEREAS**, the Parties desire to enter into other agreements relating to the Employment Agreement and the termination of Executive's employment with the Company as set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, intending to be legally bound, the Parties hereby agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are incorporated into and made a part of this Agreement for all purposes.
2. **Separation From Employment**. Executive's employment with the Company will terminate effective October 25, 2023 (the "**Separation Date**").
3. **Board Resignation**. Effective as of the Separation Date (or other date which is mutually agreed upon in writing by the Parties), Executive hereby freely and voluntarily resigns from his position as a director of the Company and member of the Board and agrees to sign any instruments and documents requested by the Company and/or the Board that are necessary to memorialize his resignation from the Board.
4. **Consultant; Services Period Duties**. Between the Separation Date and continuing through November 10, 2023 (the "**Services Period**"):
  - (a) Executive agrees to perform such duties and responsibilities that may be requested of or assigned to Executive by the Company, the Board or any other executive officer of the Company from time to time to ensure an orderly transition of his duties and responsibilities and knowledge with respect to the business and operations of the Company to the Board, Executive's successor, the Chief Financial Officer and General Counsel of the Company, other executive officers of the Company and/or any other persons designated by the Company or the Board or any member thereof;

- (b) Executive agrees to perform the following obligations (in each case to the extent each such obligation has not been performed by Executive to the reasonable satisfaction of the Company and the Board prior to the end of the Services Period):
- (i) complete and deliver to the Company and the Board a written retrospective about where the Company has been as an organization and where the opportunities are for the Company in the future;
  - (ii) complete and deliver to the Company and the Board a list of all material third party points of contact relating to the Company and its business, products, services, customers, clients, partners, suppliers, investors, lenders and vendors, including name, contact information and brief descriptions of their relationships and other involvement with the Company;
  - (iii) complete and deliver to the Company and the Board a list of prospective customers, clients, investors, lenders, and vendors which Executive has met or otherwise communicated with since January 2023 and any prospective investors, lenders and vendors which Executive deems advisable for the Company to engage in the future;
  - (iv) complete and deliver to the Company and the Board a written report regarding Executive's activities relating to transition and consulting efforts, existing transactions, financial and accounting matters, lenders and investors so that the Board and the Company's executive officers can review and provide feedback, questions, and recommendations to Executive;
  - (v) meet with the Company and the Board (and, if elected by the Company, outside counsel) to discuss matters relating to pending litigation and arbitration matters involving the Company, and potential litigation and arbitration matters which are expected to involve the Company (if any);
  - (vi) confirm in writing to the Company and the Board that (A) Executive has retained and shall retain all of Executive's emails relating to the Company, and (B) Executive has not erased any such emails, nor have reason to believe any such emails have been erased; and
  - (vii) complete and deliver to the Company a Separation Certificate, in form and substance reasonably satisfactory to the Company, on the date of this Agreement (the "**Separation Certificate**").
- (c) Executive agrees to provide certain services to the Company as a Consultant to the Company, solely in the status of an independent contractor (it being acknowledged and agreed that the employment relationship between the Company and Executive will terminate as of the Separation Date, and Executive's designation and performance of services as a Consultant to the Company during the Services Period does not and will not create an employment relationship between the Company and Executive).
- (d) Executive will provide the following services as a Consultant to the Company, if, as and when requested by the Company, the Chief Executive Officer of the

Company, Executive's successor, the Chief Financial Officer of the Company, the General Counsel of the Company or the Board or any member or committee thereof, during the Services Period (collectively, the "Services"):

- (i) Executive will (A) provide assistance, consultation, and cooperation to the Company and its personnel, including the Chief Executive Officer, the Chief Financial Officer, the General Counsel and the Controller of the Company, Executive's successor and the Board, in connection with any matters arising out of or during Executive's prior service as an officer of the Company, and the transition of Executive's duties and responsibilities and knowledge to the Company and its personnel, including the Chief Executive Officer and the General Counsel of the Company and Executive's successor, and (B) answer questions and provide information relating to the performance of his duties and responsibilities as they existed and exist during the term of his employment with the Company;
  - (ii) Executive will provide full cooperation to the Company and its personnel, including the Chief Executive Officer, the Chief Financial Officer and the General Counsel of the Company and Executive's successor, the General Counsel of the Company and the Board, and outside counsel to the Company regarding any actual or potential litigation, arbitration, investigations, claims, controversies, or other legal proceedings brought by or against the Company or its affiliates in which Executive was or is directly or indirectly involved or with respect to which Executive had or has knowledge of any particular facts or circumstances giving rise to any related Claims, including, but not limited to, making himself available on reasonable prior written notice at locations requested by the Company to discuss issues relating to such Claims, for interviews and other communications with the Company and its executive officers and counsel acting on behalf of the Company or the Board or any member thereof in connection with any such matter and appearing without subpoena for deposition or to give testimony in any hearing, trial, or arbitration or other legal proceeding at the request of the Company;
  - (iii) Executive will provide support for the Company's investor relations, public relations and fundraising efforts as may be reasonably requested by the Company or the Board; and
  - (iv) Executive will provide other services to the Company which are mutually agreed upon by Executive and the Company or the Board.
- (e) The Parties anticipate that Executive will provide Services as a Consultant to the Company on average of up to forty (40) hours per week (provided however that, the Company may elect to utilize Consultant for less than that amount); and Executive will provide Services on such dates and at such times as may be reasonably requested by the Company.
- (f) Executive will be compensated by the Company for providing Services pursuant to Section 6(a) below, unless otherwise agreed in writing between the Company and Executive. Notwithstanding the foregoing, the Company may, in its sole discretion, elect to terminate further provision of Services by Executive under this Agreement at any time upon providing written notice to Executive; provided, however, that the Company's obligation to compensate Executive will continue in



accordance with Section 6(a) following such termination of Services, except as otherwise provided in Section 19 with respect to an Executive Default.

- (g) Except as otherwise approved in writing by the Chief Executive Officer of the Company or the Chairperson of the Board:
- (i) Executive will, with respect to the Services, provide Services only to the extent requested in writing by, and shall report solely to and engage only with, the Chief Executive Officer, the Chief Financial Officer and/or the General Counsel of the Company (the "**Specified Company Officers**");
  - (ii) Executive may access and use IT services provided by the Company, including Slack or any other internal messaging system of or utilized by the Company, and may have and use a Company email address, in performing the Services;
  - (iii) Executive will not communicate, orally or in writing, directly or indirectly, with any Phunware officer or other employee in connection with performing the Services or about any product, service, strategy, transaction, or other matter of or with respect to the Company or any other Company Party, other than the Specified Company Officers;
  - (iv) Executive will comply with all policies and procedures of the Company relating to insider trading-related restrictions and social media-related activities, in each case which are applicable to former officers and/or directors of the Company and/or agents and/or independent contractors of the Company, in each case as determined by the Company and specified in writing to Executive; and
  - (v) Executive will remove all references from his social media and other accounts, and will no longer identify or otherwise reference himself in any manner and for any reason as, the existing Chief Executive Officer of the Company.
- (h) The Company will reimburse Executive for any reasonable, documented and travel and other out-of-pocket fees, costs and expenses (including attorneys' fees) which are pre-approved in writing by a Specified Company Officer and which Executive pays or incurs from, as a result of or in connection with Executive providing the Services provided under this Agreement.

#### 5. **Separation Payments and Benefits.**

- (a) On the Separation Date, the Company will pay or provide to Executive any accrued but unpaid base salary through the Separation Date (which will be paid on the next regularly scheduled pay date), any accrued vested but unpaid benefits to which Executive may be entitled under the Company's employee benefit plans, policies, and arrangements through the Separation Date (paid or provided in accordance with and subject to the terms of such plans, policies and arrangements), and any unpaid reasonable and necessary business expenses incurred by Executive during Executive's employment in the performance of his duties and responsibilities to the Company prior to the Separation Date and otherwise timely and properly submitted by Executive to the Company for reimbursement in accordance with the applicable plans, policies, or arrangements.

- (b) Executive acknowledges and agrees that he has been granted a total of 1,470,588 restricted stock units of the Company's common stock as a result of grants to Executive by the Company in 2023 (the "**Executive RSUs**"), pursuant to the Equity Agreements, but his interests in these shares of Company common stock have not vested on or prior to the date hereof. The Parties acknowledge and agree that, from and after the date hereof, (i) the Equity Agreements are hereby amended as provided in Section 6(b) of this Agreement and (ii) except as expressly provided in the Equity Agreements (as amended by Section 6(b) of this Agreement) and Section 7(b) of this Agreement, Executive does not have and shall not have or be entitled to, and shall not initiate or pursue any Claims for, any rights or interests with respect to any restricted stock units, stock options, compensatory equity or equity-based award or incentive of or from, or any other equity ownership interest in, the Company or its affiliates.
  - (c) Executive acknowledges and agrees that, except as expressly set forth in Sections 6 and 7 of this Agreement or as required by applicable law, Executive does not have and shall not have or be entitled to, and shall not initiate or pursue any Claims for, any bonus (including, without limitation, with respect to the Company's fiscal year 2022 or 2023 performance), severance, benefits or other compensation of any kind or nature from the Company or its affiliates.
- 6 . **Consideration.** Additionally, in consideration for and contingent on Executive (i) timely executing, delivering and performing his obligations under this Agreement (and not subsequently revoking this Agreement), (ii) complying with all of his other obligations under this Agreement, and (iii) providing consulting services to the Company during the Services Period as Consultant:
- (a) The Company shall pay Executive the total gross amount equal to Forty Thousand and No/100 Dollars (\$40,000.00) as provided below, less income and payroll tax withholdings and other authorized deductions:
    - (i) Ten Thousand and No/100 Dollars (\$10,000.00) will be paid to Executive on October 31, 2023.
    - (ii) Ten Thousand and No/100 Dollars (\$10,000.00) will be paid to Executive on November 15, 2023;
    - (iii) Ten Thousand and No/100 Dollars (\$10,000.00) will be paid to Executive on November 30, 2023; and
    - (iv) Ten Thousand and No/100 Dollars (\$10,000.00) will be paid to Executive on December 15, 2023.
  - (b) The Executive RSUs shall vest as follows:
    - (i) 500,000 restricted stock units will vest on October 25, 2023; and
    - (ii) 500,000 restricted stock units will vest on November 30, 2023.
  - (c) Subject to Executive's timely election of continuation coverage under the Company's group health plan (including medical, dental, and vision plans) in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the Company shall pay or reimburse the full amount of Executive's

COBRA premiums for such coverage through March 31, 2024, in a manner intended to avoid any excise tax under Section 4980D of the Internal Revenue Code of 1986, as amended, and subject to the eligibility requirements and other terms and conditions of such coverage.

- (d) Other than the payments and transfers described in this Section 6 and the payment or other satisfaction of any accrued obligations as stated in Section 6(a), Executive shall not obtain or receive, nor shall he be entitled to obtain or receive, any other salary, wages, bonuses, commissions, incentives, compensation, payments, benefits, or other remuneration related to his employment with the Company or any of its subsidiaries or his separation from employment with the Company or any of its subsidiaries. Executive acknowledges and agrees that the consideration set forth in this Agreement, including in this Section 6, constitutes good and valuable consideration for his promises and covenants in this Agreement and his compliance with its terms.

7. **Executive Releases of Claims; Excluded Claims; Related Matters.**

- (a) As consideration for the Company's obligations under this Agreement, Executive hereby agrees that he will sign this Agreement containing the releases of Claims by Executive and the other Executive Parties and other representations and agreements in this Section 7 which are effective from and after the date hereof.
- (b) Executive, on behalf of himself and each other Executive Party, hereby fully, irrevocably, and unconditionally releases, waives and discharges the Company and each other Company Party of, from, and for any and all Claims which any Executive Party now has, may now or in the future have, or has ever had, directly or indirectly, against the Company or any other Company Party ("**Executive Released Claims**").
- (c) Without limiting the generality of the foregoing, except as otherwise prohibited by applicable law, the Executive Released Claims include without limitation:
  - (i) any and all Claims arising from or relating to Executive's employment with, or termination, separation or resignation from, the Company or any of its subsidiaries and any agreement, instrument, or other document to which Executive and the Company was or is a party relating to Executive's employment, (including, without limitation, the Employment Agreement), and any and all Claims arising from or relating to or Executive's service as an or officer or employee of the Company or Executive's service as a director of the Company, or any policy, practice, decision, report, agreement, instrument, document, conduct, act, or omission of or by the Company or any other Company Party prior to the date hereof;
  - (ii) any and all Claims arising from or relating to any other compensation, benefit, or benefit plan associated with Executive's employment with the Company, including, but not limited to, compensation, benefits, and benefit plans governed by the Employee Retirement Income Security Act of 1974 ("**ERISA**");
  - (iii) any and all Claims arising under the law of any jurisdiction, including, but not limited to, wrongful discharge of employment; constructive discharge

from employment; termination in violation of public policy; discrimination; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion;

- (iv) any and all Claims arising from or under or relating to any violation of any applicable U.S. Federal, state, or municipal law;
  - (v) any and all Claims for attorneys' fees, costs and expenses; and
  - (vi) any and all Claims for any other transaction, occurrence, act, or omission concerning or arising from either Executive's employment with the Company or the termination, resignation or expiration of Executive's employment with the Company.
- (d) Notwithstanding anything contained herein to the contrary, the Executive Released Claims do not include (and Executive does not release, waive or discharge) any of the following Claims ("**Executive Excluded Claims**"):
- (i) Claims of Executive for breach by the Company of this Agreement or any Executive - Company Agreement;
  - (ii) Claims of Executive relating to rights to receive shares of common stock of the Company from vested RSUs under any Equity Agreements;
  - (iii) Claims of Executive for and rights to (A) defense and indemnification for third-party Claims against Executive arising out of his service as an officer or employee of the Company as and to the extent provided to Executive under the Company's Amended and Restated Certificate of Incorporation, the Company's Amended and Restated Bylaws, and/or the Delaware General Corporation Law, or (B) defense and coverage under any director and officer liability insurance policy of the Company the provisions of which are applicable to Executive;
  - (iv) Claims of Executive for unpaid or unreimbursed business expenses of Executive to which Executive is entitled to receive payment or reimbursement under the expense reimbursement policy of the Company;
  - (v) Claims of Executive for worker's compensation insurance coverage or unemployment insurance coverage; or
  - (vi) Claims of Executive the release or waiver of which is or are prohibited by applicable law.
- (e) As an express condition to Executive's eligibility for or entitlement to the receipt and retention of any or all of the consideration specified in Section 6 from the Company, on November 6, 2023, Executive shall also execute and deliver to the Company the Supplemental Release Agreement, attached and incorporated as

**Exhibit A** to this Agreement (the "**Supplemental Release Agreement**"). The Supplemental Release Agreement shall by its terms be effective with respect to Executive on and as of November 10, 2023. Executive acknowledges and agrees that if Executive fails to execute and deliver the Supplemental Release Agreement on such date, Executive forfeits any eligibility for or entitlement to receive or retain any funds or other assets paid or to be paid, issued or to be issued, or transferred or to be transferred, by the Company to Executive under Section 6 (collectively, "**Services Period Consideration**") and Executive shall immediately return to the Company all of the Services Period Consideration previously paid, issued, transferred or otherwise delivered to Executive under Section 6. If Executive fails to do so, the Company may initiate and pursue any Claims to recover any and all of the Services Period Consideration from Executive and any other Executive Party in any court of competent jurisdiction or arbitration, together with all attorneys' fees, costs and expenses paid or incurred by the Company arising from, as a result of or in connection with any of the foregoing.

- (f) Executive covenants and agrees that Executive shall not and shall not permit any other person or entity to (and Executive hereby waives and discharges any and all rights which Executive has or may have to) request, file, initiate or pursue any suit, action, arbitration, or other proceeding for or on behalf of Executive or any other Executive Party, for any legal, equitable, or other relief on, for or relating to any Executive Released Claims.
- (g) Except as permitted by subsection (m) below, Executive represents and warrants to the Company on the date hereof and on the Separation Date that he has not requested, filed or initiated, and to the fullest extent permitted under applicable law, Executive covenants and agrees that Executive will not request, file or initiate, or cause to be requested, filed, initiated or pursued on his behalf, any complaint, charge, Claim, suit, action, or other proceeding against the Company before any local, state, or federal court or governmental agency or authority relating to Executive's employment or resignation, termination or separation from employment with the Company (each, an "**Employment Proceeding**"). Except as and to the extent required by applicable law, Executive covenants and agrees to not participate voluntarily in any Employment Proceeding, and Executive hereby waives any rights he now has, may now or in the future have, or has had to benefit in any manner from any relief (whether monetary or otherwise) from or arising out of any Employment Proceeding.
- (h) Executive further represents and warrants to the Company on the date hereof and on the last day of the Services Period that:
  - (i) the certifications of Executive contained in the Separation Certificate are true and correct on and as of the date hereof;
  - (ii) Executive has had the opportunity to disclose, and Executive has so disclosed in writing, to the Company all material matters relating to Executive's terms and conditions of employment with the Company, his termination and separation from employment with the Company, and the business and affairs of the Company and its affiliates;
  - (iii) Executive is not aware of any Claim by Executive or any other Executive Party against the Company or any other Company Party, other than the Executive Released Claims;

- (iv) no suit, action, arbitration, Claim, or other proceeding has been filed, initiated, or commenced by or on behalf of Executive or any other Executive Party against the Company or any other Company Party; and
- (v) Executive is not aware of any facts or circumstances that would establish or support any Claim or allegation that Executive, or the Company or any other Company Party engaged in acts or conduct that Executive believes could violate any U.S. Federal or state law or regulation (including U.S. Federal securities laws or regulations), or any order or legal requirement of any court or other governmental agency or authority, except for those facts and circumstances which have been disclosed by Executive in writing to the Company.
- (i) Executive further represents and warrants to the Company on the date hereof and on the Separation Date, and Executive acknowledges and agrees with the Company, that (i) Executive has not been and is not on the date hereof a party to any agreement or arrangement with the Company or any of its affiliates, other than the Employment Agreement and the Executive - Company Agreements and (ii) any other agreement or arrangement that was or may have been or been purported to be or is in effect between Executive and the Company was or is null and void, was or has been terminated in writing or was or is paid and performed in full (as applicable), or is otherwise hereby merged with and into this Agreement, except as otherwise expressly provided herein.
- (j) Executive further acknowledges and agrees that nothing in this Section 7 supersedes, eliminates, amends, modifies, waives, removes, or limits any other agreements or obligations of Executive set forth in this Agreement or any Executive - Company Agreement.
- (k) Executive hereby further acknowledges and agrees that Executive is knowingly and voluntarily waiving and releasing Executive's rights and Claims only in exchange for consideration (something of value) in addition to anything of value to which Executive is already entitled.
- (l) Notwithstanding any term or provision herein or in the Employment Agreement or any other agreement to the contrary, Executive acknowledges and agrees that, prior to the Separation Date, (i) the Company may terminate Executive's employment immediately for Cause (as defined in the Employment Agreement) under the Employment Agreement if the Company determines that Cause exists; (ii) the Company will not terminate Executive's employment without Cause under the Employment Agreement; and (iii) Executive will not resign or attempt to resign from his employment under the Employment Agreement for any reason on or after the date hereof.
- (m) Nothing in this Agreement will prohibit, restrict, or limit any communication by any Party permitted by any applicable law, including the National Labor Relations Act, or otherwise prohibit, restrict, or limit the exercise or enforcement of any of Employee's rights under Section 7 of the National Labor Relations Act. Further, both Parties acknowledge that this Agreement does not limit either Party's right, where applicable, to file or participate in an investigative proceeding of or administrative claim with any federal, state or local governmental agency or authority, including (but not limited to) the Equal Employment Opportunity Commission, the Texas Workforce Commission, the United States Securities and

Exchange Commission, or National Labor Relations Board. To the extent permitted by law, Executive agrees that if such an administrative claim is made, Executive shall not be entitled to recover any individual monetary relief or other individual remedies.

8. **Intellectual Property.**

- (a) Executive acknowledges and agrees that all "**Intellectual Property**," including, but not limited to, strategies, methods, processes, techniques, marketing, plans, merchandising schemes, themes, layouts, mechanicals, trade secrets, copyrights, trademarks, patents, ideas, plans, specifications, and other material or work product that Executive has created, developed, or assembled in connection with his employment with the Company or during his employment with the Company are and shall remain the sole and exclusive property of the Company, and shall be for the sole and exclusive use of the Company and its affiliates or subsidiaries, and any copyrights and copyrighted material shall be vested in the Company and may be transferred to its affiliates or subsidiaries at the Company's sole discretion.
- (b) Executive will provide a full written description to the Company on or prior to the Separation Date of, holds in trust and will hold in trust for the sole right and benefit of the Company, and hereby assigns and transfers to the Company, any and all of his right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Executive solely or jointly conceived or developed or reduced to practice, or caused to be conceived or developed or reduced to practice, during the period of his employment with the Company to and including the Separation Date (collectively, "**Inventions**"). Executive further acknowledges and agrees that (i) all original works of authorship made by Executive (solely or jointly with others) within the scope of and during the period of his employment with the Company to and including the Separation Date and which were or are protectable by copyright were and are "works made for hire" as defined in the United States Copyright Act, as amended, and (ii) the decision of whether or not to commercialize or market any Invention is within the Company's sole discretion and for the Company's sole benefit and that no royalty or other payment or interest will be due to Executive as a result of the Company's efforts to commercialize or market any such Invention.
- (c) Attached hereto as Schedule A is a true, correct and complete list and description of all inventions, original works of authorship, developments, improvements and trade secrets that were made by Executive during the period of his employment with the Company to and including the Separation Date, relating to the Company's business, products, processes, services or research and development, which are owned in whole or in part by Executive ("**Prior Inventions**").
- (d) If, at any time in the course of Executive's employment with the Company, Executive incorporated into a Company business, which product, process or service any Prior Invention, Executive shall be deemed to have granted to the Company, and Executive hereby grants to the Company, a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, transferable, sub licensable, worldwide license to reproduce, make derivative works of, distribute, perform, display, import, make, have made, modify, use, sell, offer to sell, and exploit in any other

way each and any such Prior Invention as part of or in connection with such business, product, process or service, and to practice any method related thereto.

- (e) Executive will provide to the Company all written records in his possession or control of or relating to any Intellectual Property, including any Inventions on or before the Separation Date.
- (f) Executive will assist the Company to secure the Company's rights and interests in any Intellectual Property, including any Inventions, including, but not limited to, the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments that the Company deems necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Intellectual Property, including Inventions.
- (g) Executive acknowledges and agrees that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any Invention that Executive developed entirely on his own time without using the Company's equipment, supplies, facilities, trade secret information or Confidential Information prior to the date of his employment with the Company (each, an "**Other Invention**"), except for those Other Inventions that either (i) relate at the time of conception or reduction to practice of such Other Invention to the Company's business, or actual or demonstrably anticipated research or development of the Company or (ii) result from any work that Executive performed for the Company. Executive will advise the Company promptly in writing of any Invention that Executive believes constitutes an Other Invention. Executive agrees that he has not incorporated, or permitted to be incorporated, any Other Invention owned by Executive or in which Executive has any interest into a Company business, product, process or service. Notwithstanding the foregoing sentence, if, in the course of Executive's employment with the Company, Executive did incorporate into a Company business, product, process or service any Other Invention owned by Executive or in which Executive has any interest, Executive is deemed to have granted to the Company, and Executive hereby grants to the Company, a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, transferable, sub licensable, worldwide license to reproduce, make derivative works of, distribute, perform, display, import, make, have made, modify, use, sell, offer to sell, and exploit in any other way such Other Invention as part of or in connection with such business, product, process or service, and to practice any method related thereto.
- (h) Executive acknowledges and agrees that as a result of and during the term of his employment with the Company, Executive has gained access to the Company's Trade Secret information and Executive has not used and will not use the Company's Trade Secret information, alone or as a partner, officer, director, employee or stockholder of any entity, to directly or indirectly:
  - (i) engage in any business activity that is in competition with the products or services being developed, manufactured or sold by the Company;
  - (ii) engage in any activity that involves providing audit review or other consulting or advisory services for any person or entity that is in



competition with the products or services being developed, manufactured or sold by the Company; or

- (iii) solicit, interfere with, accept business from, hire, or endeavor to entice away any client, customer, partner or vendor, of the Company in its or their respective contractual or other relationship with the Company.
  - (i) Executive will maintain the strict confidentiality of, and will not directly or indirectly disclose to any other person or entity, any of the Company's Trade Secret information, without the prior written consent of the Company.
  - (j) Executive will hold all such Trade Secret information in trust for the sole benefit of the Company, and Executive has not and will not:
    - (i) take with Executive, without the prior written consent of the Company, any of the Company's Trade Secret information; or
    - (ii) reconstruct any such Trade Secret Information or similar information from some other source associated with the Company.
  - (k) For purposes of this Agreement, "**Trade Secret**" means all information relating to the business or affairs of the Company or any of its subsidiaries and affiliates, including any formula, pattern, compilation, program, device, method, technique, or process, that (A) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Trade Secrets includes, without limitation, all of the Company's technical information, designs, drawings, processes, systems, procedures, methods, formulae, test data, specifications, sketches, plans (engineering, architectural or otherwise), apparatus, know-how, improvements, non-public price lists or pricing information, financial data, analyses, profit margins, historical data regarding client preferences, data gathered by the Company regarding prospective customers and clients, the Company's methodologies for responding to RFPs, business and financial methods or practices, business plans, operating margins, marketing, merchandising and selling techniques and information, customer information, details of customer agreements, expansion strategies, operating strategies, sources of supply, and employee compensation and benefit plans.
9. **Non-Competition.** From the date of this Agreement and continuing until October 25, 2024, Executive shall not, directly or indirectly, in any manner or capacity, either on his own behalf or on behalf of any other person or entity, own any interest in, manage, control, participate in or with, consult with, render services for, permit his name to be used, provide financing to, or in any other manner engage in any business or enterprise anywhere in the United States that is engaged in any business or business activities that the Company or any of its present or future parent companies, subsidiaries, or affiliates (collectively, the "**Company Group**") at any time engaged in by the Company Group or any member thereof or in which the Company Group or any member thereof proposes to engage at the time of this Agreement. This restriction shall not apply to passive ownership by Executive of less than two percent (2%) of the outstanding shares of capital stock of a publicly held entity or less than five percent (5%) of the equity interests of any privately held entity. For purposes of this Agreement, the term "participate" includes any direct or indirect interest in any enterprise, whether as an

officer, director, employee, partner, sole proprietor, agent, contractor, representative, seller, franchisor, franchisee, independent contractor, creditor, owner, or in any other capacity.

10. **Non-Solicitation.** From the date of this Agreement and continuing until October 25, 2024, Executive shall not, directly or indirectly, either on his own behalf or on behalf of any other person or entity (other than the Company), without the prior written consent of the Company: (a) encourage, induce, solicit, or attempt to encourage, induce, or solicit any director, officer or other employee of the Company Group to leave their employment with the Company Group, (b) hire or employ or otherwise engage, for employment at or with any other entity, any person who is or was within the prior twelve (12) months a director or an officer or other employee of the Company Group, or (c) call on, solicit, or service any customer, client, partner, supplier, licensor, or other key business relation of the Company Group to (i) divert any business from the Company Group or (ii) cease or limit doing business with the Company Group.
11. **Non-Disclosure of Confidential Information.**
- (a) Executive shall not use, retain, disclose, or otherwise appropriate any Confidential Information (as defined below) of the Company Group at any time. Executive acknowledges and agrees that he was provided (and provided access to) Confidential Information in his capacity as Chief Executive Officer of the Company and may continue to be provided access to Confidential Information as a Consultant.
  - (b) Confidential Information means any and all of the Company Group's confidential, proprietary, and/or trade secret information (whether or not specifically identified as confidential) in any form or medium, including, but not limited to: (i) internal business information of the Company Group, including information relating to the Company's financial condition, debt and equity funding and fundraising efforts, intellectual property, customer transactions, and any other strategic plans and practices, operations, business, accounting, financial or marketing plans, practices or programs, training practices and programs, salaries, bonuses, incentive plans, and other compensation and benefits information and accounting and business methods, (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, the Company Group, its customers, and its confidential, proprietary and/or trade secret information, (iii) any confidential, proprietary, and/or trade secret information of any third party that the Company Group has a duty to maintain confidentiality of, or use only for certain limited purposes, (iv) industry research compiled by, or on behalf of, the Company Group, including identities of potential target companies, management teams, and transaction sources identified by, or on behalf of, the Company Group, (v) compilations of data and analyses, processes, methods, track and performance records, data and databases relating thereto, and (vi) any confidential or proprietary information included within the Intellectual Property of the Company Group and updates of any of the foregoing.
  - (c) Executive is hereby provided notice that under the Defend Trade Secrets Act, no person will be held criminally or civilly liable under federal or state trade secret law for the disclosure of a trade secret made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law, or

made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

- (d) Nothing in this Section 11, or in this Agreement generally, will or is intended to prohibit any communication by any Party with any government agency or authority, including (without limitation) the Equal Employment Opportunity Commission, the Texas Workforce Commission, the United States Securities and Exchange Commission, or the National Labor Relations Board with respect to any possible violation by the Company or any affiliate of the Company of any laws, rules, or regulations.
12. **Non-Disparagement of the Company Group.** Executive shall not, at any time, take any action through any medium or in any forum to directly or indirectly disparage, defame or interfere with, or make any derogatory or negative statements about, the Company Group or any other Company Party or the Company Group's business, customers, clients, partners or suppliers with respect to the Company, on or about any matter or in any manner whatsoever, including, but not limited to, any of their respective products or practices, business reputation, abilities, actions, or otherwise. This non-disparagement provision includes, without limitation, email, electronic media, social media, and any other postings to the Internet. Nothing in this Section 12 shall prevent Executive from complying with the lawful orders or processes of any court or governmental agency or authority with competent jurisdiction or regulatory authority over the Company or any other Company Party, including the obligation to testify truthfully in any legal proceeding. Further, nothing in this Section 12, or in this Agreement generally, shall prohibit, restrict, or limit Executive's exercise or enforcement of any of his rights under Section 7 of the National Labor Relations Act.
13. **Scope of Covenants.** Executive acknowledges and agrees that the restrictive covenants set forth in Sections 9-12 of this Agreement and in any other Executive – Company Agreement are reasonable and necessary for the protection and maintenance of the Company and its affiliates and to protect the Confidential Information and goodwill and business relationships and interests of the Company Group and the other Company Parties and that, without such protection, the customer and client relationships and competitive advantage of the Company Group would be materially and adversely affected. Executive further acknowledges and agrees that he has received good and valuable consideration in exchange for these restrictions and that these restrictions shall not impose an undue hardship on Executive, since he has knowledge and skills which may be used in industries other than those in which the Company Group conducts business.
14. **Equitable and Other Relief.** Executive acknowledges and agrees that money damages would be both incalculable and an insufficient remedy for a breach by Executive of any of the restrictive covenants set forth in Sections 8-12 of this Agreement and in any other Executive - Company Agreement, and that any such breach would cause the Company irreparable harm. Accordingly, notwithstanding the arbitration obligations of the Parties below, and in addition to any other rights and remedies the Company may have at law or in equity, the Company shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance, in connection with Executive's breach of any of the provisions set forth in Sections 9-12 above from a court of competent jurisdiction. In addition to the rights and remedies the Company may have at law or in equity, any such violation by Executive shall entitle the Company to be excused from all of its then remaining obligations under Section 6 hereof, and no action taken by the Company under this Section 14 shall affect the enforceability

of the releases provided by Executive pursuant to Section 7 or any other term or provision of this Agreement. Executive further agrees that the applicable period of time of the restrictive covenants in Sections 9-10 shall be further extended by the same period(s) of time during which Executive is in breach of such covenant. In the event any arbitrator court determines that the time and scope contained in any restrictive covenant set forth in this Agreement is overly broad or unreasonable, the court or arbitrator will reform such restrictive covenant to the extent necessary to make such provision reasonable. Executive further acknowledges and agrees that each and any restrictive covenant which is contained in any Executive - Company Agreement shall be and remain enforceable against Executive and in full force and effect in accordance with its respective terms and shall supplement (and not limit or restrict) any restrictive covenant which is contained in this Agreement.

15. **Confidentiality**. Executive, on behalf of himself and each other Executive Party, agrees that he shall not comment on or discuss his employment with the Company or the circumstances of the separation of his employment with the Company or the existence, preparation, negotiation, execution or delivery of this Agreement with any other person or entity, other than his spouse, his attorney, and/or his financial and tax advisors, each of whom or which shall agree to keep all of this information confidential. Notwithstanding the foregoing, Executive may identify himself as a "Consultant" to the Company, orally or in writing, to any employee of the Company and to any other person or entity for so long as Section 5 of this Agreement is in effect. Executive further acknowledges and agrees that he shall maintain in the strictest confidence the existence and terms and provisions of this Agreement and each Executive - Company Agreement. Nothing in this Agreement or this confidentiality provision shall preclude, prohibit, or otherwise limit in any way Executive's rights and abilities to contact, communicate with, report unlawful conduct to, or provide documentation to any applicable federal, state, or local governmental agency or authority for investigation or participate in any whistleblower program administered by such agencies. Further, nothing in this Section 15, or in this Agreement generally, shall prohibit, restrict, or limit Executive's exercise or enforcement of any of his rights under Section 7 of the National Labor Relations Act.
16. **Additional Acknowledgments**. Executive acknowledges that: (a) he has read and understands the terms of this Agreement and its effect; (b) he has had the opportunity to consult with an attorney prior to executing this Agreement, and has been advised to do so; and (c) he has signed this Agreement voluntarily and knowingly in exchange for his receipt of the consideration described herein, which he acknowledges as adequate and more than he is already entitled to receive.
17. **Non-Disparagement of Executive**.
- (a) The Company agrees that it will not, and the Company will otherwise instruct each person who is an officer or a director (for so long as such person is an officer or director) of the Company not to, at any time, take any action through any medium or in any forum to directly or indirectly disparage or otherwise defame, or interfere with, or make derogatory or negative statements about, Executive. This non-disparagement provision includes, without limitation, email, electronic media, and any postings to the Internet. Nothing set forth in this Section 17 shall prevent the Company from complying with the lawful orders or processes of any court or government agency or authority with competent jurisdiction or regulatory authority over the Company, including the obligation to testify truthfully in any legal proceeding.

- (b) The Company acknowledges and agrees that money damages would be both incalculable and an insufficient remedy for a breach by the Company of the restrictive covenants set forth in this Section 17, and that any such breach would cause Executive irreparable harm. Accordingly, in addition to any other rights and remedies Executive may have at law or in equity, Executive shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance, in connection with the Company's breach of any of the provisions set forth in this Section 17.

18. **Return of Property.**

- (a) Executive agrees that, except as otherwise agreed in writing with the Company in order for Executive to provide services as a Consultant to the Company during the Services Period, Executive will, on or before the Separation Date, return all Company assets and property and Confidential Information issued to or created or obtained by him or otherwise in his possession or control, including all equipment and documents and any copies thereof, in any form whatsoever, including computer hardware, computer files, laptop computers, cellular telephones, credit cards, keys, badges, electronic records and files, and any other property belonging to any member of the Company Group in Executive's possession or control at any location (whether on the Company's premises, at Executive's home residence, or any other offsite location). Except as otherwise agreed upon in writing with the Company in order for Executive to provide Services as a Consultant to the Company, Executive shall not access or use any Company office or Company assets or property after the Separation Date. Notwithstanding the foregoing, Executive may keep and retain as his own property the following assets or property of the Company previously provided to Executive by the Company: laptop computer, following appropriate removal of confidential information, intellectual property and other information and data of or about the Company and its affiliates by Company IT personnel, which Executive will confirm and certify in writing to the Company has been completed.
- (b) Executive further agrees to return or provide to the Company, on or before the Separation Date, all usernames, passwords, credentials, access rights, dual verification codes, answers to verification questions, and all other log-in information necessary to access any Company computers, phones, documents, databases, networks, or other information, and a list of any documents that Executive has created or of which Executive is aware are password-protected, and the passwords necessary to access such documents.
- (c) Executive also agrees that on November 10, 2023 he will return or provide to the Company, and from and after November 10, 2023 Executive will not access (or have access to) or use, any and all Company property and any and all Confidential Information issued to him or otherwise in his possession or control for purposes of providing services to the Company as a Consultant, if any.

19. **Default; Remedies.**

- (a) If any Executive Default shall occur and be continuing, the Company may, in addition to exercising any other rights and remedies granted or otherwise available to the Company under this Agreement, any Executive - Company Agreement, applicable law or otherwise, upon five (5) business days' prior written notice to Executive, cease making any payments or transferring any property to Executive under Section 6 hereof and terminate in whole or in part Section 4 hereof.
- (b) Executive acknowledges and agrees that the occurrence and during the continuance of an Executive Default and the exercise by the Company of any rights or remedies in connection therewith will not limit or affect any of Executive's other obligations under this Agreement or any Executive - Company Agreement or any releases of any Claims by Executive or any other Executive Party under this Agreement, or any other rights or remedies or benefits of or conferred upon the Company and its affiliates in this Agreement or any Executive - Company Agreement.
- (c) If any Company Default shall occur and be continuing, Executive may, in addition to exercising any other rights and remedies granted or otherwise available to Executive under this Agreement, any Executive - Company Agreement, applicable law or otherwise, upon prior written notice to the Company, cease providing Services to the Company under Section 4 hereof.
- (d) The Company acknowledges and agrees that the occurrence and during the continuance of a Company Default and the exercise by Executive of any rights or remedies in connection therewith will not limit or affect any of the Company's other obligations under this Agreement or any Executive - Company Agreement or any releases of any Claims by the Company under this Agreement, or any other rights or remedies or benefits of or conferred upon Executive in this Agreement or any Executive - Company Agreement.

20. **Tax Liability.** The Company makes no representations to Executive or any other Executive Party as to the taxability of any of the consideration and other amounts offered, paid or transferred herein, and Executive understands and agrees that to the extent any tax liability may now or hereafter become due because of the payment of the sums pursuant to this Agreement, such liability shall be his sole responsibility. Executive, on behalf of himself and each other Executive Party, agrees to pay any taxes, penalties, or interest that may be determined to be due and payable, including federal, state, and local taxes which are required by law to be paid with respect to the consideration and any other amounts paid or payable, or transferred or transferable, to him as described herein. Executive agrees to indemnify and hold the Company Group harmless from and against any interest, taxes, or penalties assessed against any member of the Company Group by any taxing authority or other governmental agency or authority as a result of the non-payment of taxes by Executive on any consideration and other amounts paid or payable, transferred or transferable, to Executive under the terms of this Agreement.

21. **Section 409A.** It is the intent of the Parties that this Agreement and all payments, transfers and benefits referenced herein shall be made in full compliance with Section 409A of the Internal Revenue Code of 1986 ("**Section 409A**"), as amended, and to the maximum extent possible this Agreement shall be interpreted and construed in accordance therewith and modified accordingly if necessary. If any payment, transfer or

benefit required under this Agreement cannot be provided or made at the time specified herein without incurring excise taxes or penalties under 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such excise taxes or penalties will not be imposed. In no event whatsoever will the Company Group or their respective officers, directors, employees, or agents be liable for any additional tax, interest, or penalties that may be imposed on Executive by Section 409A or damages for failing to comply with Section 409A.

22. **Non-Admission.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by either Party of wrongdoing or evidence of any liability or unlawful conduct of any kind or of any duty owed by either Party to any other person or entity.
23. **No Rehire.** Except as otherwise agreed in writing with the Company for Executive to provide services as a Consultant to the Company after the Separation Date, as of the Separation Date, Executive acknowledges and agrees that the Company has no obligation whatsoever to reinstate or retain Executive as an employee, consultant, advisor, officer, director, Board member, or independent contractor in the future. Executive further acknowledges and agrees that Executive will not have any employee, consultant, advisor, officer, director, Board member, or independent contractor relationship with the Company, except to the extent provided in this Agreement or otherwise agreed in writing by the Company.
24. **Withholding.** The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local, or foreign withholding or other payroll taxes or charges that the Company is required to withhold.
25. **Right of Offset.** The Company or its affiliates may offset any payment to be made under this Agreement by any amount that Executive owes to the Company or its subsidiaries under this Agreement or any other agreement at the time such payment would otherwise be made.
26. **No Waiver.** No waiver of any Party of any breach of or default by the other Party under this Agreement shall be deemed to constitute a waiver of any later or other breach or default or as a waiver of any other provision of this Agreement.
27. **Severability.** If any term or provision of this Agreement, or portion of it, is held by any court of competent jurisdiction to be illegal, invalid, or unenforceable in such jurisdiction, the remainder of such term or provision is not thereby affected and will be given full effect, without regard to the invalid portion. It is the intention of the Parties that, if any court construes any term or provision of this Agreement, or any portion of it, to be illegal, void or unenforceable because of the duration of such provision or the area matter covered thereby, such court shall reduce the duration, area, or matter of such term or provision, and, in its reduced form, such term or provision shall then be enforceable and shall be enforced.
28. **Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Company and the Company Group. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, Executive. The rights and obligations of Executive under this Agreement and any Executive - Company Agreement may not be assigned or otherwise transferred, directly or indirectly, or assigned by

Executive to any other person or entity without the prior express written consent of the Company.

29. **Acceptance Period.** Executive shall have twenty-one (21) calendar days from Executive's date of receipt via email from the Company of the initial draft of this Agreement within which to consider the terms of this Agreement and, if he chooses to do so, sign and accept same. If Executive has not returned an executed Agreement to the Company within such 21-day consideration period, the offer and all consideration and other terms and provisions under this Agreement will be deemed withdrawn and of no force and effect. Executive agrees that any modifications, material or otherwise, made to this Agreement do not restart the running of or otherwise affect such 21-day consideration period. Further, Executive may revoke this Agreement by providing written notice of revocation of this Agreement to the Company within seven (7) days following the date Executive signs it. Executive agrees that Executive will not receive the benefits provided by this Agreement if Executive revokes this Agreement. Executive also acknowledges and agrees that if the Company has not received Executive's written notice of revocation of this Agreement prior to the expiration of the above referenced seven (7) day period, then Executive will have forever waived Executive's right to revoke this Agreement, and this Agreement shall thereafter be and remain enforceable and in full force and effect in accordance with its terms.
30. **Entire Agreement.**
- (a) This Agreement and the Executive - Company Agreements (as amended by this Agreement) and the Supplemental Release Agreement, shall constitute the entire agreement between the Parties and this Agreement expressly supersedes all prior negotiations, understandings, and agreements, whether oral or written, with respect to the subject matter hereof, except as otherwise expressly provided herein. The Parties agree that this Agreement expresses a full and complete settlement, regardless of the adequacy or inadequacy of the amounts paid, that it is intended to avoid litigation, and that it is to be final and complete.
  - (b) The Parties agree that there is absolutely no agreement or reservation not clearly expressed herein, that the consideration paid, issued or transferred herein is all that Executive is ever to receive for all Claims for benefits, damages, liquidated damages, losses, costs, fees, attorneys' fees and other expenses, or otherwise, and that the execution and delivery of this Agreement is with the full knowledge that this Agreement waives and releases all possible Claims which Executive or any other Executive Party has or may have against the Company or any other Company Party.
  - (c) This Agreement hereby merges all other agreements, arrangements, representations and understandings which exist or may exist between Executive and the Company, whether oral or written, on the date hereof, except for the Executive - Company Agreements which shall remain in full force and effect in accordance with their respective terms, except as otherwise expressly provided herein.
  - (a) Executive acknowledges and agrees that no other promises or agreements have been made offered by the Company or any other Company Party to Executive or any other Executive Party for or with respect to this Agreement or any term or provision hereof (other than those which are expressly described herein), and no such other promises or agreements will be binding between Executive and the



Company unless they are set forth in writing and signed by Executive and the Company.

31. **Amendments.** This Agreement may not be amended, modified, supplemented or waived, except by in a written instrument signed by each Party and specifically referencing this Agreement.
32. **Mandatory Arbitration.** Except as permitted in Section 14 above, in the event of any controversy, dispute, claim, question or disagreement arising from or relating to this Agreement or the breach thereof ("**Dispute**"), the Parties agree that such Dispute shall be finally settled by arbitration administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules propagated thereby. Notwithstanding the foregoing and as permitted in Section 14 above, the Company reserves the right to seek a temporary restraining order, preliminary or permanent injunction or other similar equitable relief with respect to Executive's breach or threatened breach of the restrictive covenants set forth in Sections 8-12 of this Agreement in any court of competent jurisdiction or through AAA. The place of arbitration of Disputes shall be Austin, Texas, and the arbitration shall be conducted by a sole arbitrator (the "**Arbitrator**"). Judgment on the award rendered by such Arbitrator may be entered in any court having jurisdiction. The Arbitrator's decision shall be final and binding on the parties hereto. Prior to the date of final judgment by the Arbitrator, each party shall bear its own costs, fees and expenses relating to such arbitration, as well as an equal share of the arbitrator's fees and administrative fees of arbitration. After the final judgment by the Arbitrator, the prevailing party shall be entitled to reimbursement by the other party of the prevailing party's costs and expenses, including reasonable attorney's fees, and the Arbitrator's fees and administrative fees of arbitration.
33. **Indemnification; D&O Insurance.** The Company agrees that Executive shall continue to be entitled to defense and indemnification and directors and officers insurance coverage for third-party Claims against Executive arising out of his service as a director, officer or employee of the Company, as and to the extent provided to Executive under any applicable Executive - Company Agreement, the Company's Amended and Restated Certificate of Incorporation, the Company's Amended and Restated Bylaws, and/or the Delaware General Corporation Law, and under any director and officer liability insurance policy of the Company which is applicable to Executive.
34. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Texas without regard to conflict of laws principles thereof that would result in the application of any other law.
35. **Specific Performance.** In the event of a breach of any term or provision of this Agreement, either Party may institute an action specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach.
36. **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, taken together, constitute the same Agreement. A signature made on a faxed or electronically mailed copy of this Agreement or a signature transmitted by facsimile or by electronic mail in PDF shall have the same effect as the original signature.
37. **Voluntary Execution.** The Parties, intending to be legally bound, apply their signatures voluntarily and with full understanding of the contents of this Agreement and after having had ample time to review and study this Agreement with the assistance of legal counsel.

38. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

- (a) "**Claim**" means any debts, obligations, claims, rights, liabilities, damages, losses, demands, actions, contracts, causes of action, suits, fees (including, without limitation, attorneys' fees), costs and expenses of any and every kind or nature, whether known or unknown, asserted or unasserted, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, or direct or indirect, whether in law or in equity.
- (b) "**Company Default**" means any of the following:
  - (i) the failure of the Company to pay any amount or transfer any asset (as applicable) to Executive as and when required under Section 6(a) or Section 7 of this Agreement and such failure continues unremedied for five (5) business days following written notice thereof from Executive to the Company;
  - (ii) any representation and warranty made by the Company under this Agreement shall have been incorrect when made or deemed made; or
  - (iii) the failure of the Company to perform or observe any other covenant, obligation or other agreement of the Company contained in this Agreement or any Executive - Company Agreement and such failure continues unremedied for a period of five (5) business days following written notice thereof from Executive to the Company.
- (c) "**Company Party**" means the Company and each of its subsidiaries and affiliates, and each and all of its and their respective past, present, and future directors, Board members, Board committees, officers, employees, shareholders, partners, investors, insurers, trustees, administrators, successors, heirs, assigns, consultants, attorneys, agents, and other representatives.
- (d) "**Employment Agreement**" means the Employment Agreement, dated November 11, 2022, between Executive and the Company.
- (e) "**Equity Agreement**" means all existing restricted stock unit grant-related agreements between Executive and the Company which are in effect as of the date of this Agreement.
- (f) "**Executive - Company Agreement**" means each Equity Agreement and the Indemnification Agreement, dated as of December 28, 2022, between the Company and Executive.
- (g) "**Executive Default**" means any of the following:
  - (i) any representation and warranty made by Executive under this Agreement shall have been incorrect when made or deemed made; or
  - (ii) the failure of Executive to perform or observe any other covenant, condition, obligation or other agreement of Executive contained in this Agreement or any Executive - Company Agreement and such failure

continues unremedied for a period of five (5) business days following written notice thereof from the Company to Executive.

- (h) "**Executive Party**" means Executive and each and all of his family members, administrators, heirs, executors, estates, agents, representatives, entities, successors and assigns.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto hereby execute this Agreement as of the date first above written.

**RUSSELL BUYSE**

**PHUNWARE, INC.**

By: /s/ Russell Buyse By: /s/ Ryan Costello  
Name: Russell Buyse Name: Ryan Costello  
Title: \_\_\_\_\_ Title: Chairman of the Board  
Date: October 25, 2023 Date: October 25, 2023

*Signature Page to Confidential Separation, Consulting and General Release Agreement*

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**SCHEDULE A**  
**PRIOR INVENTIONS**

None

**EXHIBIT A**  
**SUPPLEMENTAL RELEASE AGREEMENT**

Separation / Transition Agreement - R. Buyse.v4

## CONFIDENTIAL EXECUTIVE EMPLOYMENT AGREEMENT

This **CONFIDENTIAL EXECUTIVE EMPLOYMENT AGREEMENT** dated as of October 25, 2023 (this "**Agreement**") is entered into by and between **Mike Snavelly** ("**Executive**") and **Phunware, Inc.**, a Delaware corporation (the "**Company**"). **Executive** and the **Company** are referred to herein individually as a "**Party**" and, collectively, as the "**Parties**."

**WHEREAS**, the **Company** desires to employ the **Executive** on the terms and subject to the conditions set forth in this **Agreement**, and the **Executive** has agreed to be so employed;

**WHEREAS**, the **Company** provides platforms, products and services relating to mobile devices, applications, blockchain and digital assets to and for customers, including (without limitation) software, digital products, solutions, data, and services to engage, manage, and monetize customers' mobile application audiences, utilizing unique and specialized methods, techniques, strategies, solutions, confidential and trade secrets information, intellectual property, data, training, tools, and other resources, which it has developed and in which it has invested substantial time and money (the "**Company Business**");

**WHEREAS**, the **Company** will provide to **Executive**, in the course and scope of **Executive**'s employment with the **Company** and in the performance of **Executive**'s duties and responsibilities for the **Company**, highly confidential, sensitive, and proprietary information, as well as intellectual property and trade secrets, belonging to the **Company**, regarding, among other things, the **Company** and its personnel and contractors, methods and strategies of production and service, finances and other financial information, clients, customers, suppliers, vendors, business partners, and business plans and strategies and that such access will be subject to the terms and conditions of this **Agreement**; and

**WHEREAS**, the **Executive** understands that execution of this **Agreement** is a condition precedent to commencing and continuing employment with the **Company**, to being paid compensation and provided other benefits under this **Agreement**, and to receiving any Confidential Information (as defined herein) belonging to the **Company**, as well as to receiving other valuable and specialized training;

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants, terms, conditions, and agreements set forth in this **Agreement**, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the **Parties**, the **Parties**, voluntarily and knowingly intending to be legally bound, agree as follows:

### 1. **Employment.**

1.1 **Title and Duties.** Subject to the terms and conditions set forth in this **Agreement**, **Executive**'s employment hereunder shall be effective as of October 25, 2023. The **Executive** will be employed in the position of Chief Executive Officer (CEO), with his principal places of employment being his personal residence in Austin, Texas or in other location(s) and the **Company**'s principal office in Austin, Texas (as determined and allocated by **Executive** from time to time in consultation with the **Company**'s Board of Directors (the "**Board**"), subject to required business travel in connection with the **Company**'s investors, service providers, customers and new sales opportunities and other sales-related duties and responsibilities. As CEO, **Executive** will report to, be supervised by, and receive instructions and directives from, the **Board**. **Executive** will perform such duties and responsibilities as are customary in **Executive**'s position and in addition will perform such duties and responsibilities as are customary in the position of chief revenue officer / head of sales of the **Company**, including: (a) lead and manage the **Company** sales teams (direct, channel and integration) and its processes; (b) drive adoption of the **Company**'s Location Based Services (LBS) platform and other products and services in

target markets; (c) advocate for the customer brand and consumer experience, cost and revenue benefits and Company solution ROIs; (d) manage the Company direct sales process through needs identification, relationship-building, proposals, contracts and renewals with customers, and growing the customer base; (e) drive adoption of the Company's products and services in hospitality, healthcare, and other vertical markets; (f) collaborate with Company marketing team on lead generation and sales enablement materials; and (g) collaborate with the Company products team on the right capabilities to solve crucial customer problems or as otherwise directed by the Board. Except for absences or leave permitted or excused under the Company's policies and procedures or under applicable law, Executive will, throughout Executive's employment, devote Executive's full working time, attention, and skill set to Executive's duties and responsibilities to the Company and will perform Executive's duties and responsibilities to the Company diligently and faithfully, and to the best of Executive's ability, in furtherance of the business affairs and activities of the Company. All outside business opportunities must be presented to and approved by the Board prior to Executive engaging in or undertaking such opportunities. The Parties acknowledge that Executive has informed the Company that he currently owns a limited liability company membership interest in ATXRandom LLC, a privately held company, which company is not directly or indirectly a competitor of the Company and manages investments and other business endeavors that are not competitive, directly or indirectly, with the Company Business. The Company consents to Executive continuing his duties and responsibilities relating to his membership interest in such company during his employment with the Company, provided that such duties and responsibilities do not interfere with the timely performance of his duties and responsibilities to and for the Company (as reasonably determined by the Company).

1.2 **Service on the Board.** During Executive's employment with the Company, Executive will serve as a member of the Board, subject to the Company's Amended and Restated Bylaws as amended and in effect from time to time (the "**Bylaws**") and Nominating & Corporate Governance Committee charter and other corporate governance-related charters, policies, guidelines and other directives, each as amended and in effect from time to time ("**Corporate Governance Guidelines**") and subject to Board and/or shareholder initial or continued approval. Upon the termination or expiration of Executive's employment with the Company for any reason, Executive will be removed from the Board and will be relieved of all related Board responsibilities immediately. Either the Board or Executive may terminate Executive's membership and service on the Board at any time, subject to the Company's Bylaws and Corporate Governance Guidelines.

1.3 **Policies and Procedures.** The employment relationship between the Company and Executive is governed by, and Executive will at all times be subject to, comply with, observe, and carry out: (i) this Agreement; (ii) the Company's rules, regulations, policies and codes of ethics and/or conduct applicable to its executive officers generally and in effect from time to time, including any employee handbooks provided to Executive in writing (including via website or other electronic access); and (iii) such other written rules, regulations, policies, codes of ethics and/or conduct, directions, and restrictions as the Company or the Board may from time to time establish, approve and disseminate to employees or officers of the Company generally, including any employee handbooks. The Parties acknowledge and agree that terms and provisions of this Agreement shall govern and control if and to the extent any conflicts exist between any terms or provisions of this Agreement and any Company rules, regulations, policies, plans, programs, procedures, codes of ethics and/or conduct, directions, instructions, orders and/or restrictions, including any employee handbooks.

## 2. **Compensation.**

2.1 **Base Salary.** During Executive's employment with the Company, the Company will pay Executive a base salary of Twenty-Nine Thousand One Hundred Sixty-Six



and 66/100 Dollars (\$29,166.66) per month, which annualizes to Three Hundred and Fifty Thousand Dollars and No/100 Dollars (\$350,000.00), less applicable and authorized taxes, deductions and withholdings, and payable in accordance with the Company's regular payroll practices. In this Agreement, Executive's "**Base Salary**" means the base salary amount stated this Section and modified from time to time in the Company's or the Board's sole discretion.

2.2 **Sign-On Bonus.** On November 15, 2023, the Company will pay Executive a cash bonus of Ten Thousand and No/100 Dollars (\$10,000.00), less applicable and authorized taxes, deductions and withholdings, as a sign-on bonus.

2.3 **Annual Discretionary Bonus.** During each calendar year of Executive's employment with the Company, and in addition to any other compensation payable to Executive hereunder, Executive is eligible to receive an annual discretionary bonus starting in 2024, which is targeted, but not guaranteed, to be between fifty percent (50%) and two hundred percent (200%) of Executive's Base Salary ("**Bonus**"). Executive's Bonus, if any, for any particular calendar year will be awarded, determined, calculated and paid in the Company's or the Board's sole discretion, subject to the Company's financial condition, and based on Executive's and the Company's achievement of certain individual and/or financial performance objectives, goals, benchmarks, targets and/or other milestones established by the Company or the Board for the Company and Executive. Executive's eligibility for and receipt of the Bonus for any particular calendar year is governed by, in accordance with, and subject to applicable plans, policies, and procedures, if any, for the Bonus at issue, which the Company or the Board may establish, approve, implement, modify, or amend from time to time. Any Bonus paid to Executive will be subject to applicable and authorized taxes, deductions, and withholdings. If Executive is employed by the Company on the last date of any time period for which financial performance of the Company is measured to determine a Bonus amount (if any), Executive shall be entitled to receive the applicable Bonus, even if Executive is not employed by the Company on the date payment of any Bonus at issue is made unless the end of Executive's employment is due to a termination for Cause or Executive's resignation without Good Reason, and provided further that Executive timely executes and does not revoke a separation and general release agreement.

#### 2.4 **Restricted Stock Units.**

- (i) As an inducement for Executive to accept employment with the Company and enter into this Agreement, the Company will provide to Executive:
  - (A) an initial grant in the amount of 1,500,000 restricted stock units in the Company ("**RSUs**") within five (5) business days following the date of execution of this Agreement, which grant will have the following vesting schedule: (1) 500,000 RSUs will vest on the grant date, (2) 200,000 RSUs will vest on November 30, 2023, (3) 200,000 RSUs will vest on January 12, 2024 and (4) 600,000 RSUs will vest on February 23, 2024; and
  - (B) subject to RSUs being duly authorized and available for grants under the Incentive Plan (defined below), as determined by the Company, a separate grant in the amount of 750,000 RSUs on or before January 31, 2024, which grant will vest on a monthly pro rata percentage basis (1/30 of such grant amount each month), with such vesting to commence on March 31, 2024 and to continue thereafter on the last day of each calendar month to and including October 31, 2026.

- (ii) Each grant of RSUs to Executive described in Section 2.4 clause (i) (collectively, the “**Initial RSU Award**”) will be subject to a separate award agreement, which will outline the specifics of such grant, including, but not limited to, the vesting schedule therefor, to the extent not specified herein. The RSU award agreement for such grants will contain provisions regarding forfeiture for cause, Company buyback rights, and other restrictions and terms applicable to RSU grants for other members of the Company’s senior executives. In the discretion of the Board or its Compensation Committee, the Initial RSU Award may either be granted under the Company’s Equity Incentive Plan, as amended (the “**Incentive Plan**”), or may be issued as a non-plan inducement award, as described in Nasdaq Listing Rule 5635(c)(4).
- (iii) Executive will also be eligible to receive additional grants of RSUs awarded, determined and made in the Company’s or the Board’s sole discretion, subject to the Company’s financial condition, and based on Executive’s and the Company’s achievement of certain individual and/or financial performance objectives, goals, benchmarks, targets and/or other milestones established by the Company or the Board for the Company and Executive. Executive’s eligibility for and receipt of any RSU grant is governed by, in accordance with, and subject to, applicable plans, policies, and procedures, if any, for the RSU grant at issue, which the Company or the Board may establish, approve, implement, modify, or amend from time to time.

2.5 **Paid Time Off.** During Executive’s employment with the Company, Executive is eligible for paid time off (“**PTO**”) commensurate with Executive’s position and in no case less than what is established for other Company executive officers, provided that Executive is not eligible to, and will not, be paid any amount for accrued, unused PTO upon termination for any reason. Further, any unused PTO does not carry over from year to year during Executive’s employment. Executive may request to take and schedule any PTO pursuant to and in accordance with Company policies, plans, and procedures applicable to the same, subject to the business needs of the Company and provided that Executive otherwise complies with this Agreement and performs all of his job duties and responsibilities as CRO adequately and satisfactorily.

2.6 **Fringe Benefits and Perquisites.** During Executive’s employment with the Company, Executive is entitled to certain fringe benefits or perquisites to the extent the Company provides similar fringe benefits or perquisites (or both) to other Company executive officers. Executive’s eligibility and actual participation in such fringe benefits and perquisites will be governed by, in accordance with, and subject to all applicable plans, policies, and procedures which the Company may establish, approve, implement, modify, or amend from time to time for the fringe benefit(s) or perquisite(s) at issue.

2.7 **General Benefits.** During Executive’s employment with the Company, Executive is eligible to participate in the Company’s employee benefits program(s), including health and dental insurance, for which other Company executive officers are generally eligible to participate. The Company may change or terminate the benefits it offers to its executive officers from time to time, and this Agreement does not restrict, limit, or preclude Company’s right to make such changes or terminate such benefits, except that in no case will other Company executive officers be offered benefits greater than those which may be offered to Executive. Executive’s eligibility and actual participation in such benefits will be governed by, in accordance with, and subject to all applicable plans, policies, and procedures which the

Company may establish, approve, implement, modify, or amend from time to time for the benefit(s) at issue.

2.8 **Business Expenses.** During Executive's employment with the Company, Executive is eligible to seek reimbursement for all reasonable and necessary business expenses incurred by Executive in the course and scope of Executive's performance of his duties and responsibilities to the Company under this Agreement, provided that such expenses are consistent with the Company's policies, plans, and procedures in effect from time to time with respect to the same. Executive agrees that any reimbursement for reasonable and necessary business expenses is subject to and must be properly and timely submitted in accordance with the Company's policies, plans, and procedures with respect to reporting, documentation, and payment of such business expenses.

### 3. **Employment; Termination.**

3.1 **At-Will Employment.** Subject to the terms and conditions set forth in this Agreement, Executive is and will be employed by the Company on an at-will basis, meaning that either Executive or the Company may terminate the employment relationship for any reason. The Parties acknowledge and agree that nothing in this Agreement will be interpreted or construed to alter this at-will employment relationship or to confer on Executive any right with respect to continued employment by the Company for any specified duration. Executive further acknowledges and agrees that this Section 3 outlines the Parties' rights upon different instances or types of terminations of Executive's employment, but it does not limit the reasons or circumstances under which Executive's employment may be terminated by either Party or otherwise alter or modify the at-will employment relationship.

3.2 **Termination by the Company.** The Company may terminate this Agreement and Executive's employment with the Company at any time with or without Cause by delivery of written notice of such termination to Executive. For purposes of this Section 3.2, "**Cause**" means (i) Executive's breach of any of Executive's contractual obligations under any agreement with the Company, including this Agreement; (ii) Executive's failure or refusal to perform Executive's duties or responsibilities to the Company; (iii) Executive's failure or refusal to comply with the Company's material policies or procedures or the Company's or the Board's lawful directives; (iv) Executive's act(s), statement(s), omission(s), or other conduct constituting employment discrimination, retaliation, harassment, or other violations of Company equal employment opportunity (EEO) policies or procedures; (v) Executive's commission or conviction of, or plea of guilty or nolo contendere to, (x) a felony or (y) any crime which is, or could reasonably be expected to be, injurious or harmful to the Company or its business reputation; (vi) Executive's fraud, embezzlement, bribery, theft, dishonesty or other misconduct that is, or could reasonably be expected to be, injurious or harmful to the Company or its business reputation; (vii) Executive's unauthorized use, misappropriation, breach of fiduciary duties, destruction or diversion of any tangible or intangible asset, business opportunity, or property of the Company (including, without limitation, your unauthorized use or disclosure of the Company's confidential or proprietary information, trade secrets, or intellectual property); or (viii) Executive's use of illegal drugs, or abuse of alcohol or prescription drugs, in a manner that impairs Executive's ability to perform Executive's duties or responsibilities to the Company; provided that, solely with respect clauses (i), (ii), and (iii) above, Executive's breach of any provision of this Agreement, failure or refusal to abide by the Company's material policies or procedures, or failure or refusal to perform Executive's duties or responsibilities for the Company, which is curable, shall not be deemed "Cause" for termination before the end of the Term, unless the Company first gives Executive written notice of its intention to terminate for "Cause" pursuant to clause (i), (ii), or (iii) and the grounds for such termination, and Executive fails or refuses to cure such Cause within ten (10) business days following receipt of such notice.

**3.3 Termination by Executive.** Executive may terminate this Agreement and Executive's employment with the Company at any time with or without Good Reason. In the event Executive desires to resign Executive's employment with the Company without Good Reason, Executive will provide at least thirty (30) calendar days' advance written notice to the Company of Executive's resignation, which the Company may, in its sole discretion, accept earlier than the full notice period with or without further compensation to Executive. For purposes of this Section 3.3, "**Good Reason**" means the occurrence of any of the following without Executive's prior written consent: (i) a material reduction in Executive's Base Salary as in effect immediately prior to such reduction (other than an across-the-board reduction, in whatever amount or percentage, approved by the Company or Board that applies on similar terms to other Company officers); (ii) a material reduction in Executive's authority, reporting relationship or material duties or responsibilities; (iii) a material breach by the Company of any material provision of any agreement between the Company and Executive, including this Agreement; or (iv) a requirement that Executive move his principal place of employment with the Company by more than 25 miles. Notwithstanding the foregoing, in order for Executive to resign for Good Reason, Executive must (1) provide written notice to the Company within thirty (30) calendar days after the first occurrence of the event giving rise to Good Reason setting forth the basis for Executive's resignation, (2) allow the Company at least thirty (30) calendar days from receipt of such written notice to cure such event or, if applicable, provide Executive with an explanation that the acts or events claimed to constitute Good Reason did not occur or otherwise do not constitute Good Reason as described in this Agreement, and (3) if such event is not reasonably cured within such period, resign not later than seven (7) calendar days after the expiration of the cure period by a written notice which shall state that Executive is exercising the right to terminate for Good Reason.

**3.4 Rights Upon Resignation for Good Reason or Termination Without Cause.**

- (i) If the Company terminates Executive's employment without Cause at any time, or if Executive resigns for Good Reason, and in each case, such termination or resignation occurs outside the Change in Control Period, Executive is entitled to: (a) Executive's Accrued Benefits (as defined below); (b) only if Executive executes, delivers, and does not revoke, a general release and waiver of all claims in favor of the Company in or substantially in a form acceptable to the Company within sixty (60) days following such termination or such resignation of Executive from employment with the Company, continuing severance pay at a rate equal to Executive's then-current monthly Base Salary for nine (9) months in accordance with the Company's normal payroll policies; and (c) partial immediate vesting as to Executive's then unvested Initial RSU Award, as follows:
  - (A) if such termination or resignation occurs during the period beginning on the twelve (12) month anniversary of the date of this Agreement (the "**Year 1 end date**") and ending on twelve (12) month anniversary of the Year 1 end date (such date, the "**Year 2 end date**"), immediate vesting of RSUs in an amount equal to the remaining amount of unvested RSUs constituting part of Executive's then unvested Initial RSU Award which are scheduled to vest hereunder during the period from the Year 1 end date to the Year 2 end date; and

- (B) if such termination or resignation occurs during the period beginning on the Year 2 end date and ending on the twelve (12) month anniversary of the Year 2 end date, immediate vesting of RSUs in an amount equal to 50% of the remaining amount of unvested RSUs constituting part of Executive's then unvested Initial RSU Award which scheduled to vest hereunder during the period from the Year 2 end date to the final vesting date of the Initial RSU Award hereunder.
- (ii) If the Company terminates Executive's employment without Cause at any time, or if Executive resigns for Good Reason, and in each case, such termination or resignation occurs during the Change in Control Period, Executive is entitled to: (a) Executive's Accrued Benefits; and (b) only if Executive executes, delivers, and does not revoke, a general release and waiver of all claims in favor of the Company in or substantially in a form acceptable to the Company within sixty (60) days following such termination or such resignation of Executive from employment with the Company:
  - (A) continuing severance pay at a rate equal to Executive's then-current monthly Base Salary for nine (9) months in accordance with the Company's normal payroll policies; and
  - (B) immediate vesting as to 100% of Executive's then unvested Initial RSU Award.
- (iii) In the event of a Change in Control, unless the Initial RSU Award is to be assumed by the acquiring or successor entity (or parent thereof) or new restricted stock units or equity incentives of comparable value are to be issued in exchange therefore (as determined by the Company in its sole discretion), Executive is entitled to immediate vesting as to 100% of Executive's then unvested Initial RSU Award, which vesting will occur on the date of or on a date or dates before the closing of such Change in Control as determined by the Company in its sole discretion, provided that Executive does not resign from employment with the Company and Executive is not terminated for Cause by the Company, in either case on or prior to the date of the Closing of such Change in Control or such determined vesting date or dates, as applicable.
- (iv) For purposes of this Agreement:
  - (A) **"Change in Control"** has the same meaning assigned to such term in the Incentive Plan.
  - (B) **"Change in Control Period"** means the period beginning three (3) months prior to the Closing and ending on the twelve (12) month anniversary of the Closing.
  - (C) **"Closing"** means the closing of the first transaction constituting a Change in Control that occurs on or following the Effective Date.

**3.5 Rights Upon All Other Instances of Termination, Resignation or Separation from Employment.** If the Company terminates Executive's employment with Cause at any time or if the Executive resigns or otherwise terminates or leaves Executive's

employment with the Company at any time for any reason (other than Good Reason), Executive is entitled only to Executive's Accrued Benefits. For purposes of Section 3.4 and this Section 3.5, "**Accrued Benefits**" means (i) Executive's unpaid Base Salary, if any, through the date of termination, resignation or separation; (ii) reimbursement for Executive's documented, reasonable and necessary business expenses incurred but unpaid, if any, through the date of termination, provided that Executive properly and timely submits such expenses in accordance with and pursuant to the Company's policies, plans, and procedures pertaining to the same; and (iii) any other amounts or benefits to which Executive is entitled on termination under applicable law, Company policy or plan, or other agreement to which Executive is a party with the Company.

**3.6 Resignation of All Other Positions Upon Any Instance of Termination or Separation from Employment.** If the Company terminates Executive's employment at any time for any reason or if the Executive resigns or otherwise terminates or leaves Executive's employment with the Company at any time for any reason, Executive shall be deemed to have resigned or been terminated, effective on the date of termination, resignation or separation of or from employment, from all positions that Executive holds as an officer or member of the Board (or any committee thereof) of the Company or its parent, subsidiaries, divisions, or affiliates.

#### **4. Return of Company Property and Access to Company Information.**

**4.1 Return of Property.** Promptly upon the end of Executive's employment with the Company for any reason, or promptly at any other time the Company may from time to time request, Executive will return to the Company all memoranda, notes, communications, correspondence, statements, plans, records, reports, printouts, accounts, software, source code, and other documents and data (and copies thereof) relating to, containing, or constituting Confidential Information (as defined below) or Company Business then in Executive's possession, custody, or control, including on any cloud-based storage services or facilities, cell phones, portable electronic storage devices, or computers. Further, promptly upon the end of Executive's employment with the Company for any reason, or promptly at any other time the Company may from time to time request, Executive will return to the Company all other property belonging to the Company (including, but not limited to, laptop computers, desktop computers, phones, tablets, keys, key fobs or cards, bank account information and/or company credit cards (whether electronically stored or otherwise), company vehicles, hard drives, portable electronic storage devices, and any other hard copy and electronically created or stored documents and information, such as Word documents, .pdfs, Excel spreadsheets, .jpgs, .tiffs, .psts, and/or other images or pictures, contacts, and emails) that is then in Executive's possession, custody, or control, including on any cloud-based storage services or facilities, cell phones, portable electronic storage devices, or computers. The foregoing shall not require Executive to purge any of the foregoing data from servers or electronic mail systems maintained by third parties, provided that Executive must take all steps necessary to permanently delete such information from his own possession, custody or control.

**4.2 Return of Access.** Executive further agrees, upon the end of Executive's employment with the Company for any reason, or promptly at any other time the Company may from time to time request, to return and relinquish all usernames, passwords, credentials, access rights, dual verification codes, answers to verification questions, and all other log-in information necessary to access any Company documents, databases, networks, or other information.

**5. Confidentiality of Agreement.** Executive and the Company will keep the terms, negotiation, and existence of this Agreement STRICTLY AND COMPLETELY CONFIDENTIAL and will not communicate or otherwise disclose to any employee or contractor of the Company (past, present, or future), or to a member of the general public, the terms, negotiation, or existence of this Agreement; provided, however, that (1) each Party may make

disclosures to his/her/its tax/financial advisors, auditors, spouse/partner, attorneys, and insurance providers, or other professionals as necessary to receive appropriate advice as applicable to that Party; (2) the Parties may reveal the terms and amount of this Agreement if compelled by court order or applicable law to do so upon reasonable notice to the other Party (if such notice is permitted by applicable law) to allow an opportunity to object to and/or seek protection from such disclosure; (3) the Company may otherwise make disclosures as reasonably necessary for the conduct of the Company's operations and business and/or to implement the terms of this Agreement; and, (4) Executive must, and the Company may, disclose the existence of Executive's restrictive covenants and post-employment obligations under this Agreement or any other agreement or Company policy to Executive's future actual or prospective employers, if any. Executive acknowledges that the Company may have an obligation to file or disclose this Agreement to governmental agencies or other regulatory bodies outside the context of litigation, which the Company may do without Executive's permission or consent. Unless specifically and expressly allowed by this Section, if asked about this Agreement, Executive's and the Company's response will be that Executive and/or the Company do not care to discuss such matters. Nothing in this Section, or in the Agreement generally, will or is intended to prohibit any communication by any Party with any federal or state government agency, including (without limitation) the Equal Employment Opportunity Commission, the Texas Workforce Commission, the National Labor Relations Board, or the United States Securities and Exchange Commission, with respect to any possible violation by the Company or any affiliate of the Company of any laws, rules, or regulations.

## 6. **Confidential Information.**

6.1 **Definition of Confidential Information.** Executive understands and agrees that non-public information developed by, accessed by, or disclosed to Executive in the performance of Executive's duties for the Company or related to Company's business, including, without limitation, information relating to the Company; the Company Business or any portion thereof; the Company's employees or contractors; its parent, subsidiaries, divisions, and affiliates; its methods, strategies, techniques, processes, and tools of production and service; its client, customer or business partner rosters and lists, including as part of any compilation or list of business contacts in a computer, phone, cloud-based storage facility or service, or other electronic device; the identity, contact information, location, quality, preferences, requirements, pricing for, amounts of and methods of calculating bids or estimates for, sales to and sales volume of, and other assessments and analyses for or of its former, current, and prospective customers, clients, suppliers, vendors, and business partners; its computer networks, systems, accounts, and databases; its products, services, agreements, software, source code, data, protocols, digital assets, investments, and its digital tools and resources utilized in its production and services for any of its former, current, or prospective customers or clients; its intellectual property; its processes, techniques, technologies, and technological and other developments; its marketing and branding strategies, methods, solutions, and techniques; its business plans and strategies; its income, revenue, sales, profits and losses, costs, expenses, general ledgers, and other financial information; its specialized training, methods, or techniques used in the Company Business; and any other non-public business or technical information, intellectual property, or trade secret of the Company and its parent, subsidiaries, divisions, and affiliates, or any collections or compilations of the same, (collectively, "**Confidential Information**") is proprietary and confidential and represents a valuable, special and unique asset of the Company and/or its parent, subsidiaries, divisions, and affiliates, the disclosure of which would cause continuing and irreparable injury to the Company and/or its parent, subsidiaries, divisions, and affiliates.

6.2 **Inclusions and Future Information.** The Company and Executive agree that Confidential Information includes past, current, updated and future documents or information of the Company: (i) provided to Executive by the Company or the Board before the

Effective Date or before the first day of Executive's employment with the Company; (ii) provided to Executive by the Company after the Effective Date or after the first day of Executive's employment with the Company; (iii) created by Executive, in whole or in part; (iv) used by Executive for the purpose of performing Executive duties for the Company or making decisions relating to the Company Business or any portion thereof; (v) that is otherwise marked or identified as confidential or proprietary; or (vi) that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

6.3 **Exclusions.** Confidential Information does not include documents or information that is or becomes generally available to and known by the public at the time of disclosure to Executive, provided that such disclosure is through no direct or indirect fault of Executive or person(s) acting on Executive's behalf.

6.4 **Nondisclosure of Confidential Information.** Executive understands and acknowledges that the Company and its parent, subsidiaries, divisions, and affiliates would not provide or disclose the Confidential Information to Executive, even in connection with Executive employment by the Company, without Executive's agreement not to use or disclose in any manner, at any time, for any purpose other than the performance of Executive's duties and responsibilities to and in the best interests of the Company and its parent, subsidiaries, divisions, and affiliates, any of the Confidential Information. Accordingly, Executive will not use or disclose any of the Confidential Information in any manner, at any time (whether during employment or after termination of employment) and/or for any purpose, other than the performance of Executive's duties and responsibilities to and in the best interest of the Company and its parent, subsidiaries, divisions, and affiliates.

6.5 **Notice of Immunity.** Notwithstanding the foregoing, Executive will 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. If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding, if Executive and/or Executive's attorney (x) files any document containing the trade secret under seal; and, (y) does not disclose the trade secret, except pursuant to court order.

6.6 **Permitted Communications.** Nothing in this Section, or in the Agreement generally, will or is intended to prohibit any communication by any Party permitted by any applicable law, including the National Labor Relations Act, or any communication by any Party with any federal or state government agency, including (without limitation) the Equal Employment Opportunity Commission, the National Labor Relations Board, or the United States Securities and Exchange Commission, with respect to any possible violation by the Company or any affiliate of the Company of any laws, rules, or regulations.

## 7. **Inventions, Copyrights, Patents, and Other Intellectual Property.**

7.1 **Prior Intellectual Property.** Executive represents and warrants to the Company that there are no inventions, developments, discoveries, improvements, ideas, concepts, original works of authorship, or trade secrets that (i) were created or made by Executive before his engagement with the Company, (ii) belong to Executive, (iii) relate to the Company Business or any portion thereof, products, services, or research and development, and (iv) are not assigned to the Company hereunder (collectively, "**Prior Inventions**"). Executive agrees that Executive will not incorporate, or permit to be incorporated, any Prior Invention



owned by Executive or in which Executive has any right, title or interest into a Company product, process, or service without the Company's prior written consent. Notwithstanding the foregoing sentence, if, in the course of Executive's employment with the Company, Executive incorporates into a Company product, process, or service a Prior Invention owned by Executive or in which Executive has any right, title or interest, then Executive hereby grants to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license to make, have made, modify, use, and sell that Prior Invention as part of or in connection with the Company product, process, or service, and to practice any method related thereto.

**7.2 Assignment of Intellectual Property.** Effective as of Executive's first day of employment with the Company, Executive agrees that any inventions, developments, discoveries, improvements, ideas, concepts, original works of authorship, and trade secrets relating to the Company Business or any portion thereof, including without limitation information of a technical or business nature such as ideas, discoveries, designs, inventions, improvements, trade secrets, know-how, software, writings and other works of authorship; computer programs; digital assets; protocols; applications; financial figures; and employee, contractor, vendor, supplier, business partner, client, customer rosters/lists and related data, which relate in any manner to the actual or anticipated business of the Company or the actual or anticipated areas of research and development of the Company and its parent, subsidiaries, divisions, and affiliates, whether or not protectable by patent or copyright, that have been originated, developed or reduced to practice by Executive alone or jointly with others during Executive's employment with the Company is the property of and belong exclusively to the Company and any right, title or interest Executive has or may have in any of the foregoing is and are, and from and after the date hereof shall be, hereby assigned and transferred by Executive to the Company. Executive will promptly and fully disclose to the Company the origination or development by Executive of any such material and will provide the Company with any information that it may reasonably request about such material. Either during or subsequent to Executive's employment with the Company, upon the request and at the expense of the Company or its nominee, and for no remuneration other than or in addition to that due Executive under this Agreement, but at no expense to Executive, Executive will execute, acknowledge, and deliver to the Company or its attorneys any and all assignments and other instruments which, in the judgment of the Company or its attorneys, may be necessary or desirable to evidence and otherwise provide for any assignment or transfer herein, and to secure or maintain for the benefit of the Company any adequate patent, copyright, trademark, and other property rights in the United States and foreign countries with respect to any such inventions, developments, discoveries, improvements, ideas, concepts, original works of authorship or trade secrets contemplated by this Agreement.

## **8. Noncompetition, Nonsolicitation, and Nondisparagement.**

**8.1 Company's Provision and Disclosure of Its Confidential Information, Trade Secrets, and Specialized Training to Executive.** The Company places a high value on maintaining the confidentiality and value of the Confidential Information, its goodwill, and its customer, client, business partner and other business relationships, as described in this Agreement. The Company promises that, upon and after Executive's and during Executive's employment with the Company, it will disclose or make available to Executive its Confidential Information, including its trade secrets, and will provide Executive specialized training concerning the Company Business. The Confidential Information and specialized training provided to Executive will be as necessary for Executive to perform Executive's duties and responsibilities to the Company.

**8.2 Covenant Not to Solicit, Hire or Encourage Company Employees, Contractors, Business Partners, Suppliers, or Vendors.** In exchange for the Company's agreement to disclose and disclosure of the Confidential Information, including trade secrets, to

Executive and the Company's agreement to provide and provision of specialized training to Executive, except where the Company provides its prior written consent, Executive will not, for a period of two (2) years after the date on which Executive's employment ends for any reason ("**Restricted Period**"), directly or indirectly induce, solicit, recruit, or encourage any Company employee to leave his or her employment with the Company, any contractor of the Company to cease providing services to or for the Company, or any business partner, supplier or vendor of the Company to cease doing business with the Company, to the extent Executive had a business relationship with or Confidential Information about the employee, contractor, business partner, vendor, or supplier at any time during Executive's employment with the Company. Executive further agrees that Executive will not, during the Restricted Period, directly or indirectly hire, cause to be hired, or participate in the recruitment or hire of, by any person or entity, any employee or contractor of the Company who then is employed by or contracted with the Company or who was employed by or contracted with Company during the six (6) month period prior to Executive's termination, resignation, or separation of employment from the Company to the extent Executive had a business relationship with or Confidential Information about such employee or contractor. The foregoing shall not prohibit the use of general solicitations of employment not directed at an employee or contractor of the Company, nor the hiring of any such person responding to a generalized solicitation.

**8.3 Covenant Not to Solicit Clients and Customers.** In exchange for the Company's agreement to disclose and disclosure of the Confidential Information, including trade secrets, to Executive and the Company's agreement to provide and provision of specialized training to Executive, Executive will not, during the Restricted Period, directly or indirectly (a) solicit, call-on, conduct business with, provide, sell or license products or services to, or otherwise provide assistance to any of the Company's now or hereafter existing or prospective clients, customers or partners on the date hereof to and up to and including the date on which Executive's employment with the Company ends or (b) solicit, induce or encourage any such clients, customers or partners of the Company to cease doing business with the Company.

**8.4 Covenant Not to Compete.** In exchange for the Company's agreement to disclose and disclosure of the Confidential Information, including trade secrets, to Executive and the Company's agreement to provide and provision of specialized training to Executive, Executive will not, during the Restricted Period, directly or indirectly own, manage, operate, control, be employed by, perform services for, provide assistance to, consult with, solicit business for, participate in, or otherwise be connected with the ownership, management, operation, or control of, any person or entity who or which directly or indirectly competes with the Company or is otherwise directly or indirectly engaged in or competitive with the Company or any part of the Company Business, within the United States.

**8.5 Nondisparagement.** The Parties acknowledge and agree that the business reputation and goodwill of the Company and its former, current, and prospective clients, customers, officers, directors, employees, members, partners, managers, owners, agents, and representatives are valuable assets which are critical to the Company's goodwill and business relationships and to the continued growth, sustainability and success of the Company. Accordingly, during Executive's employment with the Company and during the Restricted Period, neither Party will make negative statements or comments, orally or in writing, about or relating to or which otherwise disparage or are disparaging to the other Party or the Company Business; any former, current, or prospective Company clients, customers or partners; or any of its or their respective former, current, or prospective officers, directors, employees, members, partners, managers, owners, agents, or representatives, or their respective products or services. Notwithstanding the restrictions imposed in this paragraph, a Party does not violate the terms of this Section by making any truthful statement about the other Party required to be given pursuant to a subpoena or other compulsory legal process or requirement in a court or arbitration proceeding, and provided that such Party otherwise complies with this Agreement.

8.6 **Reasonableness.** In signing this Agreement, Executive represents and warrants to and agrees with the Company that Executive has carefully read and considered all of the terms and conditions of this Agreement, including, without limitation, the covenants and restraints imposed under this Section. Executive acknowledges and agrees that these covenants and restraints are necessary and appropriate for the reasonable and proper protection of the Company, the Company Business and its Confidential Information, including its trade secrets, and that each and every one of these covenants and restraints is reasonable, and that each of these covenants and restraints, individually or in the aggregate, do not and would not prevent Executive from obtaining other suitable employment during the period in which Executive is bound by such covenants and restraints. Executive further acknowledges and agrees that each of these covenants and restraints has a unique, special, substantial, and immeasurable value to the Company and that Executive has sufficient assets and skills to provide a livelihood while such covenants and restraints remain in force. Executive further acknowledges and agrees that the Company and/or its parent, subsidiaries, divisions, and affiliates have the right to enforce all of Executive's obligations to that individual or entity under this Agreement, including, without limitation, those obligations set forth in this Section and under Sections 4 through 7 of this Agreement.

8.7 **Tolling Provision and Reformation.** The Parties acknowledge and agree that the period for each of the covenants and restraints set forth in this Section will be tolled on a day-for-day basis for each day during which Executive participates in any activity in violation of any such covenant or restraint as determined by a court of competent jurisdiction, as well as for each day during which a matter is pending in any court for the purpose of enforcing any of the covenants and restraints set forth in this Section, provided that such covenants and restraints are determined by a court of competent jurisdiction to be enforceable in whole or in part or as reformed. In the event any court determines that the time and scope of any covenant, restraint or other provision set forth in this Section is overly broad or unreasonable, the Parties agree to reform, or to have the court reform, such provision to the extent necessary to make such covenant, restraint or other provision reasonable.

9 . **Cooperation.** Upon the receipt of reasonable notice from the Company or its representatives (including its outside counsel), Executive agrees that for a period of six (6) months after Executive's employment ends for any reason, Executive will respond and provide information with regard to matters in which Executive has knowledge as a result of Executive's employment with the Company and otherwise cooperate with the Company and its representatives to the extent necessary to transition Executive's duties and responsibilities to the Company to Executive's replacement, provided that Executive will not be expected to dedicate more than ten (10) hours per week to such post-employment cooperation pertaining to transition of his duties and if such cooperation requires more than a customarily reasonable amount of Executive's time, the Company will pay Executive a reasonable per diem or hourly rate that is agreed upon in good faith by Executive and the Company (such agreement not to be unreasonably withheld). Additionally, at the Company's cost and expense, upon the receipt of reasonable notice from the Company or its representatives (including its outside counsel), Executive agrees that for a period of one (1) year after Executive's employment ends for any reason, Executive will respond and provide reasonable assistance to and otherwise cooperate with the Company and its directors, officers and representatives (including its outside counsel) in defense of or other action with respect to all claims that have been or may be made against the Company and all other proceedings to which the Company is or may be subject, and will assist the Company in the prosecution of all claims that have been or may be made by the Company, to the extent that such claims or proceedings existed, arose or otherwise relate to any period prior to or during Executive's employment with the Company. Upon presentation of appropriate documentation, the Company will pay or reimburse Executive for all reasonable out-of-pocket expenses incurred by Executive in complying with this Section in accordance with the Company's expense reimbursement policy as in effect from time to time.

10. **Indemnification.** During Executive's employment with the Company, Executive is entitled to indemnification pursuant to, in accordance with, and governed by the Company's Amended and Restated Bylaws and pursuant to an indemnification agreement between the Company and Executive, in form and substance substantially identical to such agreements entered into by the Company with other senior executives of the Company.

11. **Injunctive Relief.** Notwithstanding the requirements of and Parties' obligations in Section 16 (Arbitration) below, Executive acknowledges and agrees that Executive's breach or threatened breach of any of the provisions of Sections 4 through 8 of this Agreement would result in irreparable injury to the Company for which monetary damages would not provide an adequate remedy and that the amount of such damages would be difficult to determine. Therefore, if Executive breaches or threatens to breach any provision of Sections 4 through 8 of this Agreement, the Company and/or its parent, subsidiaries, divisions, and affiliates have the right and remedy to seek specific performance or other injunctive relief, in a court of competent jurisdiction located in or with jurisdiction over Travis County, Texas, in addition to any other available legal or equitable remedies. This Section 11 does not limit any rights or remedies which the Company and/or its parent, subsidiaries, divisions, and affiliates may have to pursue other appropriate proceedings or actions for the amount of any actual or other available damages suffered by the Company and/or its parent, subsidiaries, divisions, and affiliates caused by any failure, refusal, or neglect of Executive to perform Executive's obligations under this Agreement, together with any and all costs and expenses incurred by the Company and/or its parent, subsidiaries, divisions, and affiliates, including reasonable attorneys' fees, in seeking such relief. The Parties acknowledge and agree that the remedies provided in this Section, and in this Agreement generally, are deemed cumulative and the exercise of one does not preclude the exercise of any other remedy at law or in equity for the same event or any other event.

12. **Waiver of Breach.** Any waiver by the Company of a breach of any provision of this Agreement will not operate as or constitute a waiver of any of the terms of the Agreement with regard to any subsequent breach.

13. **Fair Competition.** The Parties acknowledge and agree that the Company has its own confidential information, intellectual property, and trade secrets relating to the Company Business, and will provide Executive with this information during Executive's employment with the Company. The Company specifically instructs Executive not to bring, disclose, or use, and Executive will not bring, disclose, or use, in any fashion, any confidential information, intellectual property, trade secrets, proprietary information, data or technology, or client or customer information belonging to any third party or prior employer, to, at or for the Company. Executive will ensure that all such information or documents which may have been in Executive's possession, including those that might be at Executive's residence or storage unit(s), in Executive's vehicle(s), or on any personal computer(s), cell phone(s), portable storage devices, cloud storage facilities or services, or hard drives, are returned and/or deleted in accordance with any policy of or agreement with any third party or prior employer. The Company does not authorize Executive to, and Executive will not, use or disclose any such information to the Company or any of its executive officers or contractors. Executive further represents and warrants to and agrees with the Company that Executive's employment with the Company and/or the performance of Executive's duties and responsibilities to the Company does not and will not violate any agreement to which Executive is a party and, to the extent permitted by such agreements and/or applicable law, that Executive has disclosed to the Company any agreements relating to prior employment that may affect Executive's ability to perform any of Executive's duties and responsibilities to the Company or that may limit the manner in which Executive may be employed, including any noncompetition agreements, nonsolicitation agreements, confidentiality, and nondisclosure agreements with any other employer or third party. Executive acknowledges and agrees that if Executive does not disclose the existence of such agreements or restrictive covenants to the Company, Executive represents and warrants to

and agrees with the Company that no such agreements or restrictive covenants exist. Executive acknowledges and agrees that, in entering this Agreement and employing Executive pursuant to the terms herein, the Company is relying and will continue to rely on the promises, duties, representations, and assurances in this Section.

14. **Governing Law.** This Agreement and all issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement are governed by, and construed in accordance with, the laws of the State of Texas, without giving effect to any choice of law or conflict of law rules or provisions that could cause the applications of the laws of any jurisdiction other than the State of Texas.

15. **Arbitration.** Except as required and specified in Section 11 (Injunctive Relief) above, any dispute, controversy, or claim arising out of or related to this Agreement or any breach of this Agreement shall be submitted to and decided by binding arbitration. Arbitration shall be administered exclusively in Austin, Texas, before and in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association before a single arbitrator, provided that the Parties may seek injunctive or equitable relief from a court of competent jurisdiction pursuant to Section 11 of this Agreement; and provided further, that in the event there are claims that cannot be subject to mandatory arbitration under Section 11 of this Agreement or otherwise as a matter of law, the Parties agree to submit such claims to the exclusive jurisdiction of the state and federal courts of Texas, located in Austin, Texas, and **AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL**. The arbitration proceedings will be confidential. The arbitrator's award will be final and binding upon all Parties and judgment upon the award may be entered in any court of competent jurisdiction in any state of the United States. Each Party will bear its own costs and expenses (including attorneys' fees and costs) incurred in connection with any such arbitration proceeding. For purposes of any actions or proceedings ancillary to the arbitration referenced above (including, but not limited to, proceedings seeking injunctive or other equitable relief pursuant to Section 11 of this Agreement or to enforce an arbitration award), the Parties agree to submit to the exclusive jurisdiction of the state and federal courts of Texas located in Austin, Texas, and **AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL**.

16. **Entire Agreement; No Reliance.** This Agreement is the entire agreement of the Parties with regard to Executive's employment with the Company and all other agreements and understandings, whether written or oral, if made prior to this Agreement between the Company and Executive, are merged with and into this Agreement so that the provisions of any such prior agreement(s) or understanding(s) are void and of no further force and effect, except for any separate award agreement entered into by and between the Company and Executive with respect to Executive's restrictive stock units, and the terms of any other agreements and/or Company policies in force with regard to Executive's post-employment obligations (including any confidentiality or nondisclosure agreements and other restrictive covenants). No person or entity has any authority to make any representation or promise for or on behalf of any Party not set forth in this Agreement. The Parties agree that, in executing this Agreement, they do not and have not relied on any document, representation or statement, whether written or oral, other than those specifically set forth or specifically referenced in this Agreement. Neither Party is relying upon a legal duty, even if one might exist, on the part of the other Party (or such Party's directors, officers, agents, representatives, or attorneys) to disclose any information in connection with the preparation, negotiation, execution or delivery or performance of this Agreement, except as otherwise expressly provided herein. The Parties expressly acknowledge and agree that no lack of information on the part of either Party is a ground for challenging this Agreement. The recitals to this Agreement are incorporated into and made a part of this Agreement for all purposes.

17. **No Modification, Amendment or Waiver.** No term, provision or condition of this or Agreement may be modified, amended or waived in any respect except by a writing executed by both of the Parties.

18. **Survival.** The Company's rights and remedies under this Agreement, including (without limitation) in Sections 4 through 9, shall survive Executive's employment with the Company.

19. **Successor and Assigns.** This Agreement is personal to each of the Parties. Except as provided in this Section, no Party may assign or delegate any rights or obligations under this Agreement without first obtaining the written consent of the other Party, provided that the Company may assign this Agreement to any successor of or to the Company or to all or substantially all of the business and/or assets of the Company. As used in this Agreement, the "Company" shall include the Company and any successor to the Company or its business and/or assets, which assumes and agrees to perform the duties and obligations of the Company under this Agreement by agreement, operation of law or otherwise.

20. **Effective Date; Existing Employment Agreement.**

20.1 The "**Effective Date**" of this Agreement is October 25, 2023, and the first day of Executive's employment will be on October 25, 2023; provided, however, that any obligations under this Agreement relating to the protection of the Company's Confidential Information shall be effective as of the first date that the Company or the Board shared any Confidential Information with Executive.

20.2 The Confidential Executive Employment Agreement, dated as of September 5, 2023, between the Company and Executive, is hereby terminated in all respects, effective as of the date of execution and delivery of this Agreement by the Parties.

21. **Counterparts; Electronic Signature.** The Parties may execute this Agreement in one or more counterparts, all of which together shall constitute but one agreement. Either Party may execute this Agreement by facsimile or electronic signature, and the other Party is entitled to rely upon such facsimile or electronic signature as conclusive evidence that this Agreement has been duly executed by such Party.

22. **Severability.** If any provision or clause of this Agreement, or portion of it, is held by any court or other tribunal of competent jurisdiction to be illegal, invalid, or unenforceable in such jurisdiction, the remainder of such provision or clause is not thereby affected and will be given full effect, without regard to the invalid portion. It is the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion of it, to be illegal, void or unenforceable because of the duration of such provision or the area matter covered thereby, such court shall reduce the duration, area, or matter of such provision, and, in its reduced form, such provision shall then be enforceable and shall be enforced.

23. **Tax Matters.**

**23.1 Tax Advice.** The Company has made no warranty or representation to Executive with respect to the income tax consequences of the transactions contemplated by this Agreement, and Executive is in no manner relying on the Company or its representatives for an assessment of such tax consequences. Executive is advised to consult with his own tax advisor.

**23.2 Withholding.** The Company will withhold from any and all amounts payable under this Agreement or otherwise such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

**23.3 Section 409A Compliance.** This Agreement is construed and interpreted to the maximum extent possible in a manner to avoid any adverse tax consequences to Executive under Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"). However, notwithstanding any other provision of this Agreement, if at any time the Company determines that this Agreement may be subject to Section 409A, the Company shall have the right, in its sole discretion, to adopt such amendments to this Agreement or take such other actions (including amendments and actions with retroactive effect) as the Company determines are necessary or appropriate for this Agreement to be exempt from the application of Section 409A or to comply with the requirements of Section 409A. Notwithstanding any other provision of this Agreement, the Company is not liable for any tax imposed on the Employee under the Code.

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**[SIGNATURE PAGE TO FOLLOW]**

**EXECUTIVE'S SIGNATURE BELOW MEANS THAT EXECUTIVE HAS READ AND UNDERSTANDS THIS AGREEMENT AND AGREES AND CONSENTS TO ALL THE TERMS AND CONDITIONS CONTAINED HEREIN KNOWINGLY AND VOLUNTARILY, AND SPECIFICALLY AND EXPRESSLY INTENDS TO BE BOUND BY THE SAME.**

**EXECUTIVE:**

**Mike Snavely**

/s/ Mike Snavely  
(Signature)

Mike Snavely  
(Printed Name)

October 25, 2023  
(Date)

**COMPANY:**

**Phunware, Inc.**

/s/ Ryan Costello  
(Signature)

Ryan Costello  
(Printed Name)

October 25, 2023  
(Date)



## Phunware Provides Corporate Update

**AUSTIN, TX, October 26, 2023 (ORIGINAL: GLOBE NEWSWIRE) –Phunware, Inc. (NASDAQ: PHUN) (the “Company”)**, the pioneer of patented Location Based SaaS solutions that offer the only fully integrated [enterprise cloud platform](#) for mobile that enables brands to engage, manage and monetize anyone anywhere, announced today changes in its senior management in support of implementing an expanded vision for the Company.

### Senior Management Change

The Board of Directors has appointed the Company’s Chief Revenue Officer, Mike Snavely, as Phunware’s new CEO, effective today. Mike brings 20+ years of leadership experience at technology companies, having previously led the Software business at Phunware and several other technology companies such as Sonic Foundry, Mutual Mobile and Bazaarvoice. Former CEO Russ Buyse has moved into a consulting role with the Company. Separately, Board Member Kathy Tan Mayor has elected to resign from the Board, effective today.

### Expanded Corporate Vision

The Company is augmenting its revenue model to encompass new ways of directly and indirectly monetizing its portfolio of patents and other IP and economic interests in other IP; this includes AI as part of its product offerings, in addition to strengthening and leveraging its software distribution network with channel, distribution and integration partners such as Cox Business and Siemens Connect. Phunware is also evaluating the evolving business and regulatory landscapes to determine the appropriate evolution and expansion of its digital asset ecosystem for contextual engagement. The Company’s Board of Directors believes now is the ideal time for the Company to expand its corporate vision and make management changes to capitalize on the market opportunities ahead. In the coming weeks, Phunware expects to publish details on how it will work to achieve this vision.

“We thank Russ for his many contributions to Phunware and are pleased to have him continue helping Phunware as a consultant,” said Board Chairman Ryan Costello. “As the Company takes the next steps to realize our expanded vision, we are glad to have Mike at the helm. Mike understands Phunware, appreciates the Company’s history, unique position and potential, and has a proven track record of successfully activating technology sales & marketing strategies. Mike led our Software sales teams several years ago, delivering north of \$25 million in annual recurring revenue, and went on to help other businesses in IoT and AI do the same. Since rejoining the Company, he has been instrumental in tackling our most important priority, delivering sales and profitable growth across a number of products and deal types.”

Phunware CEO Mike Snavely added: “I’m delighted to lead Phunware into the next chapter of its corporate evolution and maximize the potential of our scalable SaaS and other product offerings. We intend to build on our base of world-class customers and expand access to and usage of Phunware’s technology and intellectual property portfolios across direct customers and partner companies. We also intend to reignite our digital assets ecosystem strategy within the

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confines of applicable laws and regulations. With an expanded corporate vision in front of us, we are excited to hit the ground running on these fronts.”

### **Q3 2023 Earnings Call**

Phunware intends to hold its quarterly earnings call in November 2023, prior to the 10-Q filing deadline. Additional details to join the earnings call will be disseminated via press release in advance of the event.

### **Safe Harbor Clause and Forward-Looking Statements**

This press release includes forward-looking statements. All statements other than statements of historical facts contained in this press release, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “expose,” “intend,” “may,” “might,” “opportunity,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

### **About Phunware**

Everything You Need to Succeed on Mobile — Transforming Digital Human Experience

Phunware, Inc. (NASDAQ: PHUN), the pioneer of Location Based SaaS that offers the only fully integrated enterprise cloud platform for mobile that enables brands to engage, manage and monetize anyone anywhere. Phunware’s Software Development Kits (SDKs) include location-based services, mobile engagement, content management, messaging, advertising, loyalty (PhunCoin & PhunToken) and analytics, as well as a mobile application framework of pre-integrated iOS and Android software modules for building in-house or channel-based mobile application and vertical solutions. Phunware helps the world’s most respected brands create category-defining mobile experiences, with approximately one billion active devices touching its platform each month when operating at scale. For more information about how Phunware is transforming the way consumers and brands interact with mobile in the virtual and physical worlds, visit <https://phunware.com> and follow @phunware on all social media platforms.

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