

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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): **May 28, 2020**

Charles & Colvard, Ltd.

(Exact name of registrant as specified in its charter)

North Carolina
(State or other jurisdiction of
incorporation)

000-23329
(Commission File
Number)

56-1928817
(I.R.S. Employer
Identification No.)

170 Southport Drive
Morrisville, North Carolina
(Address of principal executive offices)

27560
(Zip Code)

(919) 468-0399
(Registrant's telephone number, including area code)

N/A
(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, no par value per share	CTHR	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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.

Departure of President and Chief Executive Officer and Member of the Board of Directors

On May 28, 2020, Suzanne Miglucchi resigned as the President and Chief Executive Officer of Charles & Colvard, Ltd. (the “Company”) and as a member of the Company’s Board of Directors (the “Board”), effective June 1, 2020. In connection with her resignation, Ms. Miglucchi entered into a Separation of Employment Agreement (the “Separation Agreement”), dated May 28, 2020. The terms of the Separation Agreement provide that Ms. Miglucchi has the right to revoke the Separation Agreement until June 4, 2020.

Under the Separation Agreement, Ms. Miglucchi is entitled to receive severance in an amount equal to one year of her current base annual salary (less applicable taxes and withholdings), payable in bi-weekly installment payments in accordance with the Company’s regular payroll schedule in exchange for a standard release of employment claims. The Company will also pay COBRA premiums for coverage of Ms. Miglucchi and her eligible dependents for one year if Ms. Miglucchi timely and properly elects continuation coverage. The Company agreed that the restrictions on 130,000 shares of restricted stock previously granted to Ms. Miglucchi will lapse as of June 1, 2020 and that 330,991 vested stock options previously granted to Ms. Miglucchi will be exercisable as set forth in the applicable option agreement, except that such stock options shall be exercisable through June 1, 2022. The Separation Agreement also contains such confidentiality provisions and other terms and conditions as are usual and customary for agreements of this type. All of Ms. Miglucchi’s obligations under her employment agreement with the Company, dated December 1, 2015 as amended on April 9, 2020, regarding non-competition, non-solicitation, confidentiality, proprietary information and publications will continue.

Appointment of President and Chief Executive Officer and Member of the Board of Directors

On May 28, 2020, the Board appointed Don O’Connell, age 54, as its President and Chief Executive Officer and a member of the Board of Directors, effective as of June 1, 2020.

Mr. O’Connell served most recently as Charles & Colvard’s Chief Operating Officer and Senior Vice President, Supply Chain, joining the Company in 2016. In this role, Mr. O’Connell managed all functional areas of distribution, operations, and global supply chain, including responsibility for gemstone procurement and faceting, jewelry production, merchandising, product development and customer experience. Prior to joining Charles & Colvard, Mr. O’Connell served as Executive Vice President Operations & Global Jewelry Business Solutions at OFT Investment & Management Group, a fine jewelry solutions and services group from February 2012 to March 2016. Prior to his employment with OFT Investment Management Group, he spent seven years with the Richline Group, LLC, a wholly owned subsidiary of Berkshire Hathaway, as Vice President, Operations & Procurement, both Foreign & Domestic, and served on Richline’s executive steering committee and acquisition team. Prior to that, Mr. O’Connell was Vice President, Operations at Aurafin’s gem group divisions in Taramac, FL and La Paz, Bolivia as well as Vice President, Jewelry Manufacturing & Contracting with OCON Enterprise.

While serving as President and Chief Executive Officer, Mr. O’Connell will not receive compensation for his service as a member of the Board. Mr. O’Connell entered into an amended and restated employment agreement with the Company, effective as of June 1, 2020 (the “Employment Agreement”) with a term of one year that renews automatically on an annual basis. Under the terms of the Employment Agreement, Mr. O’Connell will receive an annual base salary of \$335,000. Mr. O’Connell also will be entitled to receive such benefits as are made available to the Company’s other similarly-situated executive employees, including, but not limited to, life, medical, and disability insurance, as well as retirement benefits.

In addition, Mr. O’Connell will receive, on the effective date of the Employment Agreement, a stock option to purchase 350,000 shares of the Company’s common stock. The award will vest over a two-year period, with 50% of the option award vesting on the grant date and an additional 25% of the option award vesting on each of the following two anniversaries of the grant date provided Mr. O’Connell remains continuously employed by the Company through each anniversary. Mr. O’Connell is also entitled to a monthly housing allowance of up to \$1,700 per month as long as his primary residence remains outside of North Carolina and an annual aggregate amount of \$15,000 per year for the costs of travel to such primary residence.

Pursuant to the Employment Agreement, if Mr. O’Connell’s employment is terminated by the Company without cause (as defined in the Employment Agreement) Mr. O’Connell will continue to receive his base salary at the time of termination for a period of one year from such termination (the “Termination Compensation”), so long as he complies with certain covenants in the Employment Agreement. If the Company experiences a change of control (as defined in the Employment Agreement), Mr. O’Connell may voluntarily terminate his employment for good reason (as defined in the Employment Agreement) within six months after such change of control and be entitled to the Termination Compensation. During his employment with the Company and for a period of one year following termination of his employment, Mr. O’Connell is prohibited from competing with the Company or attempting to solicit its customers or employees.

The foregoing descriptions of the Separation Agreement and the Employment Agreement do not purport to be complete and are qualified in their entirety by reference to the Separation Agreement and the Employment Agreement, copies of which are filed as Exhibits 10.1 and 10.2, respectively, to this report and incorporated herein by reference. A copy of the press release announcing Mr. O’Connell’s appointment as the Company’s President and Chief Executive Officer and as a member of the Board and Ms. Miglucci’s resignation as the Company’s President and Chief Executive Officer and as a member of the Board is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description of Document
10.1	Separation of Employment Agreement, dated as of May 28, 2020, by and between Charles & Colvard, Ltd. and Suzanne Miglucci
10.2	Employment Agreement, dated as of May 28, 2020, by and between Charles & Colvard, Ltd. and Don O’Connell
99.1	Press Release dated May 29, 2020

SIGNATURE

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.

Charles & Colvard, Ltd.

May 28, 2020

By: /s/ Clint J. Pete

Clint J. Pete

Chief Financial Officer

SEPARATION OF EMPLOYMENT AGREEMENT

This **SEPARATION OF EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into by Suzanne Miglucci (“Employee”) and Charles & Colvard, Ltd. (the “Company”).

Employee was employed by the Company as its President and Chief Executive Officer pursuant to an employment agreement between Employee and the Company dated December 1, 2015, as amended by the Amendment to 2015 Employment Agreement dated April 9, 2020 (the “Employment Agreement”). The employment relationship between the Company and Employee terminated as of the Effective Resignation Date defined herein.

The Company is willing to provide Employee the severance benefits described herein in exchange for her entering into this Agreement, and the parties desire to terminate their employment relationship on mutually agreeable terms and avoid all litigation relating to the employment relationship and its termination.

Employee represents that she has carefully read this entire Agreement, understands its consequences, and voluntarily enters into it.

In consideration of the above and the mutual promises set forth below, Employee and the Company agree as follows:

1. **RESIGNATION.** Employee tenders, and the Company accepts, Employee’s voluntary resignation from all positions with the Company and its affiliates, including as a member of the Board of Directors, such voluntary resignation to be effective June 1, 2020 (“Effective Resignation Date”).

By signing this Agreement, Employee represents that she has been fully paid for all time worked and received all salary and all other amounts of any kind due to her from the Company with the sole exception of (a) her final paycheck for work during her final payroll period and for any accrued but unused vacation/paid time off, which will be paid on the next regularly scheduled payroll date following the Effective Resignation Date, (b) any previously submitted, but not yet paid, expense reimbursements or any expense reimbursements submitted within 10 days of the date of this Agreement and consistent with the terms of Company policy for such reimbursements, (c) the payments payable under this Agreement, and (d) any accrued and vested benefits payable pursuant to the Company’s employee benefit plans.

As of the Effective Resignation Date, the Employment Agreement shall terminate and neither party shall have any further obligations thereunder except that Employee specifically acknowledges and agrees that her obligations under paragraphs 8 (Definitions), 9 (Covenant Not to Compete), 10 (Confidentiality), 11 (Proprietary Information) and 21 (Publication) of the Employment Agreement shall continue after the termination of that Employment Agreement in accordance with their terms, and the Company specifically acknowledges and agrees that its obligations under paragraph 13 (Indemnification) shall survive the termination of the Employment Agreement and Employee’s employment by the Company.

2. SEVERANCE BENEFITS.

A. Severance Pay. The Company will pay Employee severance pay in an amount equal to one year of her current annual salary of Two Hundred Seventy-Seven Thousand, Nine Hundred Thirty-Eight and 00/100 Dollars (\$277,938.00) (less applicable taxes and withholdings), payable in substantially equal installments. The installments will be paid on the same payroll schedule that was applicable to Employee immediately prior to her separation from service, provided that no further severance shall be paid if Employee executes but later revokes this Agreement in accordance with paragraph 5 below.

B. COBRA Premium Assistance. If Employee timely and properly elects continuation coverage under the Company's group health plan pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), then the Company will pay the COBRA premiums for coverage for her and her eligible dependents during the 12-month period immediately following the Effective Resignation Date.

Payment under this subparagraph 2B shall be made on a monthly basis, but in no event later than the last day of the calendar year following the year in which the expenses were incurred. Under no circumstances will Employee be entitled to a cash payment or other benefit in lieu of the payment of the actual COBRA premium cost. The amount of expenses eligible for payment during any calendar year shall not be affected by the amount of expenses eligible for payment in any other calendar year.

Nothing in this Agreement shall constitute a guarantee of COBRA continuation coverage or benefits. Employee shall be solely responsible for all obligations in electing COBRA continuation coverage and taking all steps necessary to qualify for such coverage.

D. Prior Equity Grants. The vested stock options previously granted by Company to Employee under the Charles & Colvard, Ltd. 2008 Stock Incentive Plan, as amended representing 330,991 shares of Company common stock shall be exercisable as set forth in the applicable option agreement, except that such options shall be exercisable through June 1, 2022. Employee understands that, as a result of such extension, any options not exercised by Employee with 90 days of the Effective Resignation Date may no longer qualify as incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended. Company has also agreed to waive the forfeiture of 130,000 shares of restricted stock granted under the Charles & Colvard, Ltd. 2018 Stock Incentive Plan and the restrictions on such restricted stock shall lapse effective as of the Effective Resignation Date.

The severance and other benefits afforded under this Agreement are in lieu of any other compensation or benefits, excluding accrued but unused vacation/paid time off (PTO) and vested retirement benefits, to which Employee otherwise might be entitled, and payment of the severance and other benefits is conditioned upon Employee's compliance with the terms of this Agreement and all surviving terms of the Employment Agreement (including but not limited to paragraphs 8, 9, 10, 11 and 21).

3. RELEASE.

A. In consideration of the benefits conferred by this Agreement, **EMPLOYEE (ON BEHALF OF HERSELF AND HER ASSIGNS, HEIRS AND OTHER REPRESENTATIVES) RELEASES THE COMPANY AND ITS RELATED PARTIES (DEFINED BELOW) (“RELEASEES”) FROM ALL CLAIMS AND WAIVES ALL RIGHTS KNOWN OR UNKNOWN, SHE MAY HAVE OR CLAIM TO HAVE AGAINST THE COMPANY, ITS PREDECESSORS, SUBSIDIARIES OR AFFILIATES** relating to her employment with the Company and separation therefrom arising before the execution of the Agreement to the fullest extent permitted by law, including but not limited to claims:

(i) for discrimination, harassment or retaliation arising under federal, state or local laws prohibiting age (including but not limited to claims under the Age Discrimination in Employment Act of 1967 (“ADEA”), as amended), sex, national origin, race, religion, disability, veteran status or other protected class discrimination, harassment or retaliation for protected activity;

(ii) for compensation and benefits (including but not limited to claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), Fair Labor Standards Act of 1938 (“FLSA”), Family and Medical Leave Act of 1993 (“FMLA”), all as amended, and similar federal, state, and local laws) and claims under any other Company policy, plan or program, including the Charles & Colvard, Ltd. 2008 Stock Incentive Plan and the incentive plans and programs thereunder;

(iii) under federal, state or local law of any nature whatsoever (including but not limited to constitutional, statutory, tort, express or implied contract or other common law); and

(iv) for attorneys’ fees.

Provided, however, the release of claims set forth in this Agreement does NOT:

(v) apply to claims for workers’ compensation benefits, vested retirement benefits or unemployment benefits filed with the applicable state agencies or where otherwise prohibited by law;

(vi) bar a challenge under the Older Workers Benefit Protection Act of 1990 (OWBPA) to the enforceability of the waiver and release of ADEA claims set forth in this Agreement; or

(vii) prohibit Employee from filing a charge with or participating in an investigation by the U.S. Equal Employment Opportunity Commission, Securities and Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA) or other self-regulatory or governmental agency with jurisdiction concerning the terms, conditions and privileges of employment or jurisdiction over the Company’s business or assisting with an investigation conducted internally by the Company; provided, however, that by signing this Agreement, Employee waives the right to, and shall not seek or accept, any monetary or other relief of any nature whatsoever in connection with any such charges, investigations or proceedings except as follows: This Agreement does not limit Employee’s right to receive an award for information provided to the SEC, FINRA, or any other securities regulatory agency or authority.

B. Employee will not sue the Releasees on any matters relating to her employment or separation therefrom arising before the execution of this Agreement (with the sole exception of claims and challenges set forth in subparagraph A (v) through (vii) above), or join as a party with others who may sue on any such claims, or opt-in to an action brought by others asserting such claims, and in the event that Employee is made a member of any class asserting such claims without her knowledge or consent, Employee shall opt out of such action at the first opportunity.

C. The Releasees which Employee is releasing by signing this Agreement include: the Company and its predecessors, successors, and assigns and its and/or their past, present and future owners, parents, subsidiaries, affiliates, predecessors, successors, assigns, officers, directors, employees, employee benefit plans (together with all plan administrators, trustees, fiduciaries and insurers) and agents.

4. COMPANY INFORMATION AND PROPERTY.

A. Employee shall not at any time after her employment terminates disclose, use or aid third parties in obtaining or using any confidential or proprietary Company information nor access or attempt to access any Company computer systems, networks or any resources or data that resides thereon.

Confidential or proprietary information is information relating to the Company or any aspect of its business which is not generally available to the public, the Company's competitors, or other third parties, or ascertainable through common sense or general business or technical knowledge; however, nothing in this paragraph or in this Agreement or in the agreements referenced in subparagraph C below is intended, nor shall be construed, to (i) prohibit Employee from any communications to, or participation in any investigation or proceeding conducted by, any governmental agency referenced in paragraph 3, (ii) interfere with, restrain, or prevent Employee communications regarding wages, hours, or other terms and conditions of employment, or (iii) prevent Employee from otherwise engaging in any legally protected activity. Moreover, notwithstanding the foregoing or any other provision in this Agreement, Employee cannot be held criminally or civilly liable under any federal or state trade secret law if she discloses a trade secret (iv) to federal, state, or local government officials, to her attorneys, or in a sealed court document, for the purpose of reporting or investigating a suspected violation of the law, or (v) to her attorneys or in a sealed court document in connection with a lawsuit for retaliation by an employer for reporting a suspected violation of the law.

B. All records, files or other materials maintained by or under the control, custody or possession of the Company or its agents in their capacity as such shall be and remain the Company's property and Employee shall return all such property. By signing this Agreement, Employee represents that:

(i) Employee shall return all the Company property including but not limited to jewelry loaned on memo; credit cards; keys; cell phone; air card; access cards; thumb drive(s), laptop(s), personal digital devices and all other computer hardware and software; records, files, documents, manuals, and other documents in whatever form they exist, whether electronic, hard copy or otherwise and all copies, notes or summaries thereof;

(ii) Employee has turned over all Company passwords or access codes currently known to her which she created received, or obtained in connection with her employment;

(iii) Employee has not deleted any emails, files or other information from any Company computer or device prior to her return of the property;

(iv) Employee shall make all good faith efforts to permanently delete any Company information that may reside on her personal computer(s), other devices or accounts and, if requested by the Company, has submitted all personal computers, phones and other devices which she used for Company business, and has identified all personal accounts on which Company information has been placed and related passwords, to a third party vendor, as may be designated by the Company, for inspection and removal of any Company-related information; and

(v) Employee will make all good faith efforts to cooperate with all reasonable requests made by the Company concerning winding up her work and transferring that work to those individuals designated.

C. Nothing in this Agreement shall relieve Employee from any obligations under any other previously executed confidentiality, proprietary information or secrecy agreements. All such agreements shall continue to be in full force and effect upon the execution of this Agreement subject to the clarification set forth in subparagraph A above.

5. RIGHT TO REVIEW AND REVOKE. The Company delivered this Agreement to Employee on May 25, 2020 by email delivery and desires that she have adequate time and opportunity to review and understand the consequences of entering into it. Accordingly, the Company advises her to consult with her attorney prior to executing it and that she has twenty-one (21) days within which to consider it. In the event that Employee does not return an executed copy of this Agreement to Clint Pete at Charles & Colvard, Ltd., 170 Southport Drive, Morrisville, North Carolina 27560 by no later than the twenty-second (22nd) calendar day after receiving it, this Agreement and the obligations of the Company herein shall become null and void. Employee may revoke this Agreement during the seven (7) day period immediately following her execution of it. The Agreement will not become effective or enforceable until the revocation period has expired. To revoke the Agreement, a written notice of revocation must be delivered to Clint Pete at the above address.

6. MUTUAL NONDISPARAGEMENT.

A. Employee represents and warrants that since receiving this Agreement, she (i) has not made, and going forward will not make, disparaging, defaming or derogatory remarks about the Company or its products, services, business practices, directors, officers, managers or employees to third parties; nor (ii) taken, and going forward will not take, any action that may impair the relations between the Company and its vendors, customers, employees, or agents or that may be detrimental to or interfere with, the Company or its business. Nothing in this section nor in this Agreement is intended, nor shall be construed, to prohibit Employee from any communications to, or participation in any investigation or proceeding conducted by, any governmental agency referenced in paragraph 3A, or with complying with terms of a lawfully issued subpoena or sworn testimony in litigation.

B. Members of the Company's Board of Directors and its executive officers shall not make any disparaging, defaming or derogatory remarks about Employee to third parties. Further, the Company hereby agrees to instruct its current and future management employees to comply with the same restrictions. Nothing in this section nor in this Agreement is intended, nor shall be construed, to prohibit these individuals from any communications to, or participation in any investigation or proceeding conducted by, any governmental agency referenced in paragraph 3A, or with complying with terms of a lawfully issued subpoena or sworn testimony in litigation.

7. COOPERATION. The parties agree that certain matters in which Employee has been involved during her employment may necessitate her cooperation with the Company in the future. Accordingly, to the extent reasonably requested by the Company, Employee shall cooperate with the Company in connection with such matters. The parties shall use all good faith efforts to ensure that the timing and amount of services hereunder will not conflict with Employee's other time commitments, and the parties agree that Employee shall be permitted to perform such services remotely.

8. INJUNCTIVE RELIEF. Because of the unique nature of the confidential information, Employee understands and agrees that the Company will suffer irreparable harm in the event that Employee fails to comply with any of Employee's obligations under paragraph 4 of this Agreement and that monetary damages will be inadequate to compensate the Company for such breach. Accordingly, Employee agrees that the Company will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of paragraph 4 of this Agreement.

9. OTHER. Except as expressly provided in this Agreement, (a) this Agreement supersedes all other understandings and agreements, oral or written, between the parties and constitutes the sole agreement between the parties with respect to its subject matter, (b) no representations, inducements, promises or agreements, oral or written, have been made by any party or by anyone acting on behalf of any party, which are not embodied in this Agreement, and (c) no agreement, statement or promise not contained in the Agreement shall be valid or binding on the parties. No change or modification of this Agreement shall be valid or binding on the parties unless such change or modification is in writing and is signed by the parties. Employee's or the Company's waiver of any breach of a provision of this Agreement shall not waive any subsequent breach by the other party. If a court of competent jurisdiction holds that any provision or sub-part thereof contained in this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in this Agreement.

This Agreement is intended to avoid all litigation relating to Employee's employment with the Company and her separation therefrom; therefore, it is not to be construed as the Company's admission of any liability to her, liability which the Company denies.

This Agreement shall apply to, be binding upon and inure to the benefit of the parties' successors, assigns, heirs and other representatives and be governed by North Carolina law (without regard to its conflicts of laws provisions) and the applicable provisions of federal law, including but not limited to ADEA.

10. SECTION 409A OF THE INTERNAL REVENUE CODE.

(a) Parties' Intent. The parties intend that the provisions of this Agreement comply with Section 409A of the Code and the regulations thereunder (collectively, "Section 409A") and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Employee to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of Employee, use its reasonable business efforts to in good faith reform such provision to comply with Code Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to Employee and the Company of the applicable provision shall be maintained, and the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which Employee participates to bring it in compliance with Section 409A.

(b) Separation from Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement relating to the payment of any amounts or benefits upon or following a termination of employment unless such termination also constitutes a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment," "separation from service" or like terms shall mean Separation from Service.

(c) Separate Payments. Each installment payment required under this Agreement shall be considered a separate payment for purposes of Section 409A.

(d) Delayed Distribution to Key Employees. If the Company determines in accordance with Sections 409A and 416(i) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, in the Company's sole discretion, that Employee is a Key Employee of the Company on the date Employee's employment with the Company terminates and that a delay in benefits provided under this Agreement is necessary to comply with Code Section 409A(A)(2)(B)(i), then any severance payments and any continuation of benefits or reimbursement of benefit costs provided by this Agreement, and not otherwise exempt from Section 409A, shall be delayed for a period of six (6) months following the date of termination of Employee's employment (the "409A Delay Period"). In such event, any severance payments and the cost of any continuation of benefits provided under this Agreement that would otherwise be due and payable to Employee during the 409A Delay Period shall be paid to Employee in a lump sum cash amount in the month following the end of the 409A Delay Period. For purposes of this Agreement, "Key Employee" shall mean an employee who, on an Identification Date ("Identification Date" shall mean each December 31) is a key employee as defined in Section 416(i) of the Code without regard to paragraph (5) thereof. If Employee is identified as a Key Employee on an Identification Date, then Employee shall be considered a Key Employee for purposes of this Agreement during the period beginning on the first April 1 following the Identification Date and ending on the following March 31.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year written below.

EMPLOYEE REPRESENTS THAT SHE HAS CAREFULLY READ THE ENTIRE AGREEMENT, UNDERSTANDS ITS CONSEQUENCES, AND VOLUNTARILY ENTERS INTO IT.

/s/ Suzanne Miglucci 5/28/2020
Suzanne Miglucci Date

CHARLES & COLVARD, LTD.

/s/ Clint Pete 5/28/2020
Clint Pete Date
Title: Chief Financial Officer

CHARLES & COLVARD

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AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “Agreement”) is effective as of the 1ST day of June, 2020 (the “Effective Date”) by and between Charles & Colvard, Ltd. (the “Company”) and Don O’Connell (the “Employee”).

WITNESSETH

The Executive has heretofore been employed by the Company as its Chief Operating Officer and Senior Vice President, Supply Chain pursuant to the terms of an Employment Agreement dated May 23, 2017, as amended April 9, 2020 (the “COO Employment Agreement”). The Company desires to continue the employment of the Executive and promote him to the position of President and the Executive desires to continue to be employed by the Company and accept the promotion. In recognition of the services previously rendered and to be rendered in the future to the Company, it is deemed necessary and advisable to amend and restate the COO Employment Agreement to reflect updated terms as set forth in this Agreement; and

WHEREAS, the Board of Directors of the Company (the “Board”) has authorized the Company to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree that:

1. Employment. The Company hereby employs Employee, and Employee hereby accepts such employment, on the terms and conditions set forth in this Agreement. The parties agree that this Agreement amends and replaces the COO Employment Agreement in full.
 2. Term of Employment. Unless earlier terminated as provided herein, the initial term of this Agreement shall commence on the Effective Date and shall continue until the one-year anniversary of the Effective Date (the “Initial Term”). After the Initial Term, this Agreement shall automatically renew for successive additional one-year terms on the same terms and conditions set forth herein, unless: (i) earlier terminated or amended as provided herein or (ii) either party gives written notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or any renewal term of this Agreement. The Initial Term of this Agreement and all applicable renewals thereof are collectively referred to herein as the “Term.”
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CHARLES & COLVARD

THE ORIGINAL CREATED NOISSANITE

3. Position and Duties. Employee shall serve as the President and Chief Executive Officer of the Company and upon his appointment to these officer positions, the Board of Directors of the Company shall appoint him as a member of the Board of Directors. Employee shall faithfully and to the best of his ability perform all duties of the Company related to his position with the Company, including, but not limited to, all duties set forth in this Agreement and/or in the Bylaws of the Company related to the position that he holds, as well as all duties that are reasonably assigned to him by the Board or its designees. Employee agrees to devote his entire working time, attention, energy, and skills to the Company in furtherance of the Company's best interests, while so employed; *provided* that Employee may, to the extent not otherwise prohibited by this Agreement, (A) engage in such activities as permitted in writing by the Company and (B) devote such amount of time as does not interfere or compete with the performance of the Employee's duties under this Agreement to any one or more of the following activities: (i) investing the Employee's personal assets in such manner as will not require services to be rendered by the Employee in the operation of the affairs of the companies in which investments are made; or (ii) engaging in charitable and professional organization activities, including serving on the Boards of Directors of charitable and professional organizations. Employee shall comply with all reasonable Company policies, standards, rules, and regulations (the "Company Policies") and all applicable government laws, rules, and regulations that are now or hereafter in effect. Employee acknowledges receipt of copies of all written Company Policies that are in effect as of the date of this Agreement.

4. Compensation and Benefits. During the Term, Employee shall receive compensation and benefits for the services performed for the Company under this Agreement as follows:

(a) Base Salary. Employee shall receive a base salary of Three Hundred Thirty-Five Thousand and 00/100 Dollars (\$335,000), payable in regular and equal installments in accordance with the Company's regular payroll schedule and practices ("Base Salary").

(b) Employee Benefits. Employee shall be entitled to receive those benefits that are made available to the other similarly-situated executive employees of the Company, including, but not limited to, life, medical, and disability insurance, as well as retirement benefits (collectively, the "Employee Benefits"), in accordance with the terms and conditions of the applicable plan documents, provided that Employee meets the eligibility requirements thereof. The Company reserves the right to reduce, eliminate, or change such Employee Benefits, in its sole discretion, subject to any applicable legal and regulatory requirements.

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(c) Equity Compensation Award. The Company confirms that the incentive stock option (“ISO”) for the right to purchase up to 100,000 shares of the Company’s common stock under the Charles & Colvard, Ltd. 2008 Stock Incentive Plan, as amended, at an option exercise price of \$0.88 granted to Employee in accordance with the terms of the COO Employment Agreement on May 23, 2017 are fully vested as of the date hereof. The Compensation Committee of the Board has approved an additional ISO granting Employee the right to purchase up to 350,000 shares of the Company’s common stock under the the Charles & Colvard, Ltd. 2018 Stock Incentive Plan (the “2018 Plan”), at an option exercise price equal to the closing price of the common stock on the Effective Date contingent upon Employee’s execution of this Agreement; provided that such option shall be granted as a nonqualified stock option (“NSO”) to the extent it does not qualify for ISO treatment on the Effective Date (the ISO award, together with any required NSO, the “Equity Grant”). This Equity Grant shall vest in accordance with the following vesting schedule: 50% of the Equity Grant (175,000 option shares) shall vest on the Effective Date and an additional 25% of the ISO award (87,500 option shares each) shall vest on each of the following two anniversaries of the Effective Date provided Employee remains continuously employed with the Company (or other affiliated company) through each such vesting date. The Equity Grant shall be contingent upon Employee’s execution of a standard Employee Incentive Stock Option Agreement in substantially the form attached as *Exhibit A* to this Agreement and, if needed, a standard Employee Nonqualified Stock Option Agreement substantially in the form attached as Exhibit B to this Agreement and the Equity Grant shall in all respects be subject to and governed by the provisions of the 2018 Plan and the Employee Incentive Option Agreement and, if needed, the Employee Nonqualified Option Agreement.

(d) Reimbursement of Expenses. The Company shall reimburse Employee for all reasonable out-of-pocket expenses incurred by Employee that specifically and directly relate to the performance by Employee of the services under this Agreement, provided that Employee complies with the Company Policies for reimbursement that are now or hereafter in effect. Each such expense shall be submitted for reimbursement after they are incurred.

(e) Paid Time Off. On a calendar year basis, Employee will: (i) earn paid time off (“PTO”) in accordance with the Company’s PTO policy, and (ii) receive six (6) days of paid personal leave on January 1. In accordance with the Company Policies, all PTO that is earned by Employee shall be used or carried over to the extent permitted and all paid personal leave that is received by Employee shall be used or forfeited. Upon the termination of the Employee’s employment by the Company, all earned and unused PTO shall be paid and all unused paid personal leave shall be forfeited in accordance with the terms of the Company Policies.

(f) Annual Bonus. Employee shall be eligible to receive an annual bonus (the “Annual Bonus”) under a bonus plan as approved by the Compensation Committee of the Company’s Board of Directors. All Annual Bonus payments will be subject to the terms, conditions, and eligibility requirements of the applicable bonus plan as it may exist from time to time, which may provide that the Annual Bonus is payable in the sole and absolute discretion of the Company. The Annual Bonus shall be provided in a manner such that entitlement to and payment of the Annual Bonus is exempt from or compliant with Internal Revenue Code Section 409A.

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(g) Housing and Travel. Company shall provide Employee a monthly housing allowance of up to \$1700 per month as long as Employee's primary residence remains outside of North Carolina. In addition, for so long Employee's primary residence remains outside of North Carolina, the Company shall reimburse Employee for the costs of travel to such primary residence up to an annual aggregate amount of \$15,000 per year. Employee agrees and acknowledges that to the extent that Company's tax advisors determines that these housing and travel are taxable compensation benefits that they shall be subject to applicable tax withholding requirements by Company.

5. Withholding. The Company may withhold from any payments or benefits under this Agreement, including, but not limited to, any payments under Paragraphs 4(a), (c), (d), (e), (f) and (g) of this Agreement, all federal, state, or local taxes or other amounts, as may be required pursuant to applicable law, government regulation, or ruling.

6. Termination. This Agreement and Employee's employment by the Company shall or may be terminated as follows:

(a) Expiration of the Term. This Agreement and Employee's employment by the Company shall terminate upon the expiration of the Term.

(b) Death of Employee. This Agreement and Employee's employment by the Company shall terminate upon the death of Employee ("Death").

(c) Discontinuance. The Company, immediately and without notice, may terminate this Agreement and Employee's employment by the Company upon the liquidation, dissolution, or discontinuance of business by the Company in any manner or the filing of any petition by or against the Company under any federal or state bankruptcy or insolvency laws, provided that such petition is not dismissed within sixty (60) days after filing ("Discontinuance").

(d) Termination by the Company for Just Cause. The Company, immediately and without notice, may terminate this Agreement and Employee's employment by the Company at any time for Just Cause. Termination for "Just Cause" shall include termination for Employee's: dishonesty; gross incompetence; willful misconduct; breach of fiduciary duty owed to the Company, including any failure to disclose a material conflict of interest; failure to perform his duties as required by this Agreement or to achieve the reasonable objectives mutually agreed upon by Employee and the Board or its designees; material violation of any law (other than traffic violations or similar offenses); material failure to comply with Company Policies, including policies prohibiting harassment, discrimination, and retaliation, or any other reasonable directives of the Board or its designees; conviction of a felony of any nature or of a misdemeanor involving moral turpitude; use of illegal drugs or other illegal substance, or use of alcohol in a manner that materially interferes with the performance of Employee's duties under this Agreement; adverse action or omission, without the consent or approval of the Company or not in accordance with performing Employee's duties hereunder, that would be required to be disclosed pursuant to public securities laws, even though such laws may not then apply to the Company, that would limit the ability of the Company or any affiliated entity to sell securities under any federal or state law, or that would disqualify the Company or any affiliated entity from any exemption otherwise available to it; disability; or material breach of any provision of this Agreement, including provisions concerning confidentiality, proprietary information, and restrictive covenants. For purposes of this subsection, the term "disability" means the inability of Employee, because of the condition of his physical, mental, or emotional health, to satisfactorily perform the duties of his employment hereunder, with or without a reasonable accommodation, for a continuous three-month period.

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(e) Termination by the Company Without Cause. The Company may terminate this Agreement and Employee's employment by the Company other than for "Just Cause," as described in Paragraph 6(d) above, and other than upon "Discontinuance," as described in Paragraph 6(c) above, at any time for any reason by providing written notice to Employee, which termination shall be effective immediately ("Without Cause"). For the avoidance of doubt, a notice by the Company that the Term of this Agreement shall not be automatically renewed as provided in Paragraph 2 of this Agreement shall constitute a termination by the Company Without Cause.

(f) Termination by Employee for Good Reason. Employee may terminate this Agreement and his employment by the Company for "Good Reason" (as defined herein), provided that: (i) Employee provides the Company with written notice of the Good Reason within ninety (90) days of the initial actions or inactions of the Company giving rise to Good Reason; (ii) the Company does not cure such conditions within sixty (60) days of such notice (the "Cure Period"); (iii) Employee terminates his employment under this Agreement within thirty (30) days of the expiration of the Cure Period; and (iv) the Company has not, prior to Employee giving notice of Good Reason, provided Employee with notice of termination or of non-renewal under this Agreement.

"Good Reason" shall mean the occurrence of any of the following events within six (6) months following a Change of Control (as defined herein) and without Employee's consent: (i) a material diminishment in Employee's responsibilities from those he had immediately prior to the Change of Control; (ii) a material reduction in Employee's base salary; (iii) Employee's place of employment is relocated more than fifty (50) miles from the location where Employee worked immediately prior to the Change of Control; or (iv) a material breach of this Agreement by the Company.

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A "Change of Control" shall be deemed to have occurred if: (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Securities Exchange Act of 1934) together with its affiliates, excluding employee benefit plans of the Company, becomes, directly or indirectly, the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934) of securities or ownership interests of the Company, representing 51% or more of the combined voting power of the Company's then outstanding securities or ownership interests; or (ii) during the then existing term of the Agreement, as a result of a tender offer or exchange offer for the purchase of securities or ownership interests of the Company (other than such an offer by the Company for its own securities), or as a result of a proxy contest, merger, consolidation or sale of assets, or as a result of any combination of the foregoing, individuals who at the beginning of any year period during such term constitute the Company Board, plus new directors whose election by the Company's shareholders is approved by a vote of at least two-thirds of the outstanding voting shares of the Company, cease for any reason during such year period to constitute at least two-thirds of the members of such Board; or (iii) the shareholders of the Company approve a merger or consolidation of the Company with any other corporation or entity regardless of which entity is the survivor, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) at least 60% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation which entity continues to be the sole or majority owner of the Company; or (iv) any event which the Company's Board of Directors determines should constitute a Change of Control. Notwithstanding anything in this Agreement to the contrary, in no event shall any of the following occurrences constitute a "Change of Control": (i) the Company's making any assignment for the benefit of its creditors or consenting to the appointment of a receiver or commencing any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under state or federal bankruptcy laws or (ii) any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under state or federal bankruptcy laws being commenced against the Company, or a receiver or trustee being appointed for the Company or a substantial part of its property.

(g) Termination by Employee Without Good Reason. Employee may terminate this Agreement and his employment by the Company for reasons other than Good Reason thirty (30) days after written notice of Employee's resignation is received by the Company ("Resignation").

(h) Obligations of the Company Upon Termination.

i. Upon the termination of this Agreement: (A) pursuant to the expiration of the Term, under Paragraph 6(a) of this Agreement, following Employee's notice of non-renewal pursuant to Paragraph 2 of this Agreement; (B) pursuant to Paragraph 6(b) of this Agreement ("Death"); (C) by the Company pursuant to Paragraph 6(c) of this Agreement ("Discontinuance") or Paragraph 6(d) of this Agreement ("Just Cause"); (D) by Employee pursuant to Paragraph 6(g) of this Agreement ("Resignation"); or (E) for any reason other than those set forth in Paragraph 6(h)(ii); the Company shall have no further obligation hereunder other than the payment of all compensation and other benefits payable to Employee through the date of such termination.

ii. Upon the termination of this Agreement (and subject to Employee's execution of a release under Paragraph 7 of this Agreement and compliance with his obligations under Paragraphs 8, 9, 10, and 11 of this Agreement): (A) by Employee pursuant to Paragraph 6(f) of this Agreement ("Good Reason"); (B) by the Company pursuant to Paragraph 6(e) of this Agreement ("Without Cause"); or (C) pursuant to the expiration of the Term, under Paragraph 6(a) of this Agreement, following the Company's notice of non-renewal pursuant to Paragraph 2 of this Agreement; the Company shall pay Employee an amount equal to twelve (12) months of his then current base salary (less all applicable deductions), payable over twelve consecutive months in equal installment payments paid in accordance with the Company's regular payroll schedule, beginning on the first regular payroll date occurring on or after the date on which the release of claims required by Paragraph 7 of this Agreement becomes effective and non-revocable.

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iii. Notwithstanding the terms of the Company's equity compensation plans and applicable award agreements, upon the occurrence of a Change of Control or a termination of this Agreement by the Company pursuant to Paragraph 6(e) of this Agreement that occurs within six months immediately prior to a Change of Control (and subject to Employee's execution of a release under Paragraph 7 of this Agreement and compliance with his obligations under Paragraphs 8, 9, 10, and 11 of this Agreement): (A) all of Employee's outstanding unvested time-based equity awards shall become fully vested and any restrictions thereon shall lapse and (B) all of Employee's outstanding unvested performance-based equity awards shall be deemed achieved at target levels with respect to performance goals or other vesting criteria.

iv. Notwithstanding any provision in this Agreement to the contrary, any payment conditioned upon the release required by Paragraph 7 shall be made, or commence, as applicable, within ninety (90) days of the termination of Employee's employment. To the extent that any payment due under this Paragraph 6 is not exempt from Section 409A, such amount shall be paid in a lump sum no later than seventy-four (74) days following the Employee's termination of employment.

7. Release of Claims. Notwithstanding any provision of this Agreement to the contrary, the Company's obligation to provide any severance payment under Paragraph 6(h)(ii) of this Agreement is conditioned upon Employee's execution of an enforceable release of any and all claims arising before the date that he signs the release, in a form which is reasonable and which is satisfactory to the Company (satisfaction of the Company is not to be unreasonably withheld), and his compliance with the provisions of Paragraphs 8, 9, 10, and 11 of this Agreement. If Employee fails to execute such a release or fails to comply with such terms of this Agreement, then the Company's obligation to make any payments to him ceases on the effective termination date. The release of claims shall be provided to Employee within seven (7) days of the termination of his employment, and Employee must execute it within the time period specified in the release (which shall not be longer than forty-five (45) days from the date upon which he receives it). Such release shall not be effective until any applicable revocation period has expired.

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8. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Confidential Information” shall mean: (i) any and all non-public or otherwise confidential proprietary knowledge, material, or information of the Company, including any and all knowledge, material, or information that is designated as Confidential Information by the Company and any and all confidential knowledge, material, or information that becomes generally known to the public as a result of a disclosure by Employee, or any other person or entity who is obligated to treat such knowledge, material, or information confidentially, and (ii) any and all non-public or otherwise confidential proprietary knowledge, material, or information of others who disclose that knowledge, material, or information to the Company, including any and all knowledge, material, or information designated as Confidential Information by the Company, or those others and any and all confidential knowledge, material, or information that becomes generally known to the public as a result of a disclosure by Employee, or any other person or entity who is obligation to treat such knowledge, material, or information confidentially. Confidential Information includes, but is not limited to, the following types of knowledge, material, or information (whether or not reduced to writing): trade secrets; concepts; designs; discoveries; ideas; know-how; processes; techniques; Inventions (as defined herein); drawings; specifications; models; data; software in various stages of development; source and object code; documentation; diagrams; flow charts; research; procedures; marketing

(b) not limited, devices, processes, computer programs and related source code and object code, mask works, and methods, together with any improvements thereon or thereto, and development techniques, materials, plans, and information; business methods, procedures, and policies; current and prospective customers names and lists and other information related to current and prospective customers; prices, including price lists, policies, and formulas; profit margins, data, and formulas; financial information; training

(c) a mask work and whether or not reduced to practice, including, but derivative works made therefrom, and know-how, descriptions, sketches, drawings, or other knowledge, manuals and methodologies; and employee files and information.

(d) “Inventions” shall mean ideas, concepts, techniques, inventions, discoveries, and works of authorship, whether or not patentable or protectable by copyright or as information, or material related thereto.

(e) “Intellectual Property Rights” shall mean all patent, trademark, and copyright rights, moral rights, rights of attribution or integrity, trade secret rights, or other proprietary or intellectual property rights.

(f) “Competing Business” shall mean any corporation, partnership, person, or other entity that is primarily engaged in researching, developing, manufacturing, marketing, distributing, or selling any product, service, or technology that is competitive with any part of the Company’s Business. For the avoidance of doubt, a retail business which researches, develops, manufactures, markets, distributes and/or sells a wide variety of products, and revenue from its fashion jewelry is less than 20% of its total revenue is not a Competing Business.

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(g) “Company’s Business” shall mean the development, manufacture, marketing, distribution, or sale of, including research directed to, any product, service, or technology involving Moissanite or other lab-created gemstones (together “Lab-Created Gemstones”) in the jewelry or gemstone industry. As of the date of this Agreement, Company’s Business includes, but is not limited to: (i) marketing and distributing Lab-Created Gemstone jewelry and Lab-Created Gemstones, and (ii) fabricating (including wafering, pre-forming, and faceting), marketing, and distributing Lab-Created Gemstones to the gem and jewelry industry. Employee understands that during Employee’s employment with the Company, the Company’s Business may expand or change, and Employee agrees that any such expansions or changes shall expand or contract the definition of the Company’s Business and Employee’s obligations under this Agreement accordingly.

(h) “Territory” shall mean the following severable geographic areas: (i) throughout the world, (ii) within any country in which the Company, or a Competing Business is engaged in business; (iii) within any country in which the Company is engaged in business, (iv) within the United States, (v) within any state, including the District of Columbia, in which the Company or a Competing Business is engaged in business, (vi) within any state, including the District of Columbia, in which the Company is engaged in business, (vii) within a 100 mile radius of Employee’s principal place of employment or work for the Company, (viii) the state of North Carolina, and (ix) within a 100 mile radius of the Company’s corporate headquarters.

9. Covenant Not to Compete. As a result of Employee’s employment by the Company: (i) Employee will have access to trade secrets and Confidential Information of the Company, including, but not limited to, valuable information about its intellectual property, business operations and methods, and the persons with which it does business in various locations throughout the world, that is not generally known to or readily ascertainable by a Competing Business, (ii) Employee will develop relationships with the Company’s customers and others with which the Company does business, and these relationships are among the Company’s most important assets, (iii) Employee will receive specialized knowledge of and specialized training in the Company’s Business, and (iv) Employee will gain such knowledge of the Company’s Business that, during the course of Employee’s employment with the Company and for a period of one year following the termination thereof, Employee could not perform services for a Competing Business without inevitably disclosing the Company’s trade secrets and Confidential Information to that Competing Business. Accordingly, Employee agrees to the following:

(a) While employed by the Company, Employee will not, without the express written consent of an authorized representative of the Company: (i) perform services (as an employee, independent contractor, officer, director, or otherwise) within the Territory for any Competing Business, (ii) engage in any activities (or assist others to engage in any activities) within the Territory that compete with the Company’s Business, (iii) own or beneficially own an equity interest in a Competing Business, (iv) request, induce, or solicit (or assist others to request, induce, or solicit) any customers, prospective customers, or suppliers of the Company to curtail or cancel their business with the Company, or to do business within the scope of the Company’s Business with a Competing Business, (v) request, induce, or solicit (or assist others to request, induce, or solicit) for the benefit of any Competing Business any employee or independent contractor of the Company to terminate his or her employment or independent contractor relationship with the Company, or (vi) employ (or assist others to employ) for the benefit of any Competing Business any person who has been employed by the Company within the last year of Employee’s employment with the Company.

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(b) For a period of one year following the termination of Employee's employment with the Company, Employee will not, without the express written consent of an authorized representative of the Company: (i) perform services (as an employee, independent contractor, officer, director, or otherwise), within the Territory for any Competing Business, that are the same or similar to any services that Employee performed for the Company or that otherwise utilize skills, knowledge, and/or business contacts and relationships that Employee utilized while providing services to the Company, (ii) engage in any activities (or assist others to engage in any activities) within the Territory that compete with the Company's Business, (iii) own or beneficially own an equity interest in a Competing Business, (iv) request, induce, or solicit (or assist others to request, induce, or solicit) any customers, prospective customers, or suppliers of the Company, which were customers, prospective customers, or suppliers of the Company during the last year of Employee's employment with the Company, to curtail or cancel their business with the Company, or to do business within the scope of the Company's Business with a Competing Business, (v) request, induce, or solicit (or assist others to request, induce, or solicit) any customers, prospective customers, or suppliers of the Company with which Employee worked or had business contact during the last year of Employee's employment with the Company to curtail or cancel their business with the Company, or to do business within the scope of the Company's Business with a Competing Business, (vi) request, induce, or solicit (or assist others to request, induce, or solicit) any employee or independent contractor of the Company to terminate his or her employment or independent relationship with the Company, (vii) request, induce, or solicit (or assist others to request, induce, or solicit) any person who has been employed by the Company within the last year of Employee's employment by the Company or thereafter to be employed with a Competing Business, or (viii) employ or engage as a contractor (or assist others to employ or engage as a contractor) any person who has been employed by the Company within the last year of Employee's employment by the Company or thereafter. These obligations will continue for the specified period regardless of whether the termination of Employee's employment was voluntary or involuntary or with or without cause, and the specified period shall be tolled and shall not run during any time in which Employee fails to abide by these obligations.

(c) As an exception to the above restrictions, Employee may own passive investments in Competing Businesses, (including, but not limited to, indirect investments through mutual funds), provided that the securities of the Competing Business are publicly traded and Employee does not own or control more than two percent of the outstanding voting rights or equity of the Competing Business.

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10. Confidentiality.

(a) All documents or other records, paper or electronic, that, in any way, constitute, contain, incorporate, or reflect any Confidential Information and all proprietary rights therein, including Intellectual Property Rights, shall belong exclusively to the Company, and Employee agrees to promptly deliver to the Company, upon request or upon termination of Employee's employment with the Company, all copies of such materials and Confidential Information in Employee's possession, custody, or control, as well as all other property of the Company in Employee's possession, custody, or control. Likewise, Employee agrees to promptly deliver to the Company, upon request or upon termination of Employee's employment with the Company, all copies of all documents or other records that, in any way, constitute, contain, incorporate, or reflect any Confidential Information of others that was disclosed or provided to Employee during the Term that is in Employee's possession, custody, or control.

(b) Employee agrees, during the Term and thereafter: (i) to hold in confidence and treat with strict confidentiality all Confidential Information, (ii) not to directly or indirectly reveal, report, publish, disclose, or transfer any Confidential Information to any person or entity, and (iii) not to utilize any Confidential Information for any purpose, other than in the course and scope of Employees work for the Company. If Employee is required to disclose Confidential Information pursuant to a court order or subpoena or such disclosure is necessary to comply with applicable law, the undersigned shall: (i) promptly notify the Company before any such disclosure is made and provide the Company with reasonable and ample time within which to object to or oppose any such disclosure, (ii) at the Company's request and expense take all reasonably necessary steps to defend against such disclosure, including defending against the enforcement of the court order, subpoena, or other applicable law, and (iii) permit the Company to participate with counsel of its choice in any related proceedings.

11. Proprietary Information.

(a) Employee agrees that any Inventions created, conceived, developed, or reduced to practice, in whole or in part, by Employee, either solely or in conjunction with others, during or after the Term that arise in any way from the use of or reliance on any Confidential Information or any of the Company's equipment, facilities, supplies, trade secret information, or time, that relate to the Company's Business or the Company's demonstrably anticipated business, research, or development, or that result from any work performed by Employee for, on behalf of, or at the direction of the Company, shall belong exclusively to the Company and shall be deemed part of the Confidential Information for purposes of this Agreement, whether or not fixed in a tangible medium of expression. Employee agrees that all rights, title, and interest in and to all such Inventions, including, but not limited to, Intellectual Property Rights shall vest and reside in, and shall be the exclusive property of, the Company. Without limiting the foregoing, Employee agrees that any and all such Inventions shall be deemed to be "works made for hire" and that the Company shall be deemed the sole and exclusive owner thereof. In the event and to the extent that any such Inventions are determined not to constitute "works made for hire" or that, by operation of law or otherwise, any right, title, or interest in or to the Inventions, including, but not limited to, any Intellectual Property Rights, vests not in the Company, but, rather, in Employee, Employee hereby: (i) irrevocably and unconditionally assigns and transfers to the Company all rights, title, and interest in and to any such Inventions, including, but not limited to, all Intellectual Property Rights and (ii) forever waives and agrees never to assert all such rights, title, and interest.

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(b) Employee agrees to promptly and fully disclose in writing to the Board of Directors of the Company: (i) any Invention created, conceived, developed or reduced to practice by Employee, either solely or in conjunction with others, during the Term and (ii) any such Invention created, conceived, developed, or reduced to practice after the Term that belongs exclusively to the Company pursuant to the provisions of Paragraph 11(a) of this Agreement. For the avoidance of doubt, in no event shall any provision of this Agreement, including without limitation Paragraph 11(b), provide or be construed to provide Employee or any other party with any license or other right or authority to create, conceive, develop, or reduce to practice, after the Term, any Invention in which the Company has an ownership interest, without the prior written consent of the Company.

(c) Employee agrees to assist the Company, at the Company's expense, either during or subsequent to the Term, to obtain and enforce for the Company's own benefit, in any country, Intellectual Property Rights in connection with any and all Inventions created, conceived, developed, or reduced to practice by Employee (in whole or in part) that belong or have been assigned to the Company pursuant to the provisions of Paragraph 11(a) of this Agreement. Upon request, either during or subsequent to the Term, Employee will execute all applications, assignments, instruments, and papers and perform all acts that the Company or its counsel may reasonably deem necessary or desirable to obtain, maintain, or enforce any Intellectual Property Rights in connection with any such Inventions or to otherwise protect the interests of the Company in those Inventions.

12. Acknowledgements, Representations, and Warranties.

(a) Employee acknowledges that the Company has a strict policy against using proprietary information belonging to any other person or entity without the express permission of the owner of that information.

(b) Employee represents and warrants to the Company that Employee's performance under this Agreement and as an employee of the Company does not and will not breach any non-competition, non-solicitation, or confidentiality agreement to which Employee is a party. Employee represents and warrants to the Company that Employee has not entered into, and agrees not to enter into, any agreement that conflicts with or violates this Agreement.

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(c) Employee represents and warrants to the Company that Employee has not brought and shall not bring to the Company, or use in the performance of Employee's responsibilities for the Company, any materials or documents of a former employer that are not generally available to the public or that did not belong to Employee prior to Employee's employment with the Company, unless Employee has obtained written authorization from the former employer or other owner for their possession and use and provided the Company with a copy thereof.

13. Indemnification. The Employee will be eligible for indemnification to the fullest extent authorized under the Company's Articles of Incorporation and By-Laws (as applicable) and will be eligible for coverage under the Company's Director's & Officer's liability insurance policy as approved by the Board, subject to the terms and conditions contained therein.

14. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein and supersedes any prior agreements or understandings between them, whether written or oral, related to compensation, including without limitation the COO Employment Agreement.

15. Waiver. The failure of either party to insist, in any one or more instance, upon performance of the terms and conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right granted hereunder or of the future performance of any such term or condition.

16. Notices. Any notice to be given under this Agreement shall be deemed sufficient if addressed in writing and delivered personally, by telefax with receipt acknowledged, or by registered or certified U.S. mail to the following:

For the Company:
Chairman of the Board of Directors
Charles & Colvard, Ltd.
170 Southport Drive
Morrisville, North Carolina 27560
Fax: (919) 468-0486

For Employee:
Don O'Connell
c/o Charles & Colvard, Ltd.
170 Southport Drive
Morrisville, North Carolina 27560

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17. Severability. In the event that any provision of any paragraph of this Agreement shall be deemed to be invalid or unenforceable for any reason whatsoever, it is agreed such invalidity or unenforceability shall not affect any other provision of such paragraph or of this Agreement, and the remaining terms, covenants, restrictions or provisions in such paragraph and in this Agreement shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision as to make it valid, reasonable, and enforceable. In the event that a court determines that the length of time, the geographic area, or the activities prohibited under this Agreement are too restrictive to be enforceable, the court may reduce the scope of the restriction to the extent necessary to make the restriction enforceable.

18. Amendment. This Agreement may be amended only by an agreement in writing signed by each of the parties hereto.

19. Restrictive Covenants Are Reasonable. The market for the Company's services and the Company's Business is highly specialized and highly competitive such that other companies and business entities compete with the Company in various locations throughout the world. The provisions set forth in this Agreement: (i) are reasonably necessary to protect the Company's legitimate business interests, (ii) are reasonable as to the time, territory, and scope of activities that are restricted, (iii) do not interfere with Employee's ability to earn a comparable living or secure employment in the field of Employee's choice, (iv) do not interfere and are not inconsistent with public policy or the public interest, and (v) are described with sufficient accuracy and definiteness to enable Employee to understand the scope of the restrictions on Employee.

20. Injunctive Relief. Because of the unique nature of the Confidential Information, Employee understands and agrees that the Company will suffer irreparable harm in the event that Employee fails to comply with any of Employee's obligations under Paragraphs 8, 9, 10, or 11 of this Agreement and that monetary damages will be inadequate to compensate the Company for such breach. Accordingly, Employee agrees that the Company will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of Paragraphs 8, 9, 10, or 11 of this Agreement.

21. Publication. Employee hereby authorizes the Company to provide a copy of this Agreement to any and all of Employee's future employers and to notify any and all such future employers that the Company intends to exercise its legal rights arising out of or in connection with this Agreement and/or any breach or any inducement of a breach hereof.

22. Survival. Employee agrees that: (i) Employee's employment with the Company is contingent upon Employee's execution of this Agreement, which is a material inducement to the Company to offer employment and the compensation and benefits hereunder to Employee and to provide Confidential Information to Employee, and (ii) Paragraphs 8, 9, 10, and 11 of this Agreement shall survive any termination for any reason whatsoever of Employee's employment with the Company.

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23. Governing Law. This Agreement shall be construed, interpreted, and governed in accordance with the laws of the state of North Carolina, without regard to the conflicts of laws principles thereof. The state and federal courts in North Carolina shall be the exclusive venues for the adjudication of all disputes arising out of this Agreement, and the parties consent to the exercise of personal jurisdiction over them in any such adjudication and hereby waive any and all objections and defenses to the exercise of such personal jurisdiction.

24. Benefit. This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by and against the Company, its successors and assigns, and Employee, his heirs, beneficiaries, and legal representatives. The Company may assign this Agreement or any rights hereunder, or delegate any obligations hereunder, without the consent of Employee. Employee shall not assign this Agreement or delegate Employee's obligations hereunder. Employee's right to receive payments under this Agreement shall not be subject to alienation, anticipation, commutation, sale, assignment, encumbrance, setoff, charge, pledge, offset or hypothecation or to execution, levy, attachment, or similar process or assignment by operation of law, and any attempt, voluntary or involuntary, to effect any such action shall be null, void and of no effect.

25. Attorneys' Fees. The Company shall reimburse Employee up to Five Thousand Dollars (\$5,000.00) of legal fees and expenses he incurs for legal review and negotiation of this Agreement on his behalf with such reimbursement to be made within ten (10) days of Employee's submission to the Company of such documentation of his payment of such fees and expenses as the Company may require and in no event later than June 30, 2017.

26. Compliance with Section 409A.

(a) Parties' Intent. The parties intend that the payments and benefits to which Employee may become entitled in connection with Employee's employment under this Agreement will be exempt from or comply with Section 409A of the Code and the regulations and other guidance promulgated thereunder (collectively, "Section 409A") and all provisions of this Agreement shall be construed in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A. All severance payments hereunder are intended to qualify as short-term deferrals meeting the requirements of Treasury Regulation Section 1.409A-1(b)(4) or as involuntary severance payments satisfying the requirements of Treasury Regulation Section 1.409A-1(b)(9)(iii) and this Agreement shall be construed in accordance with such intent. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Employee to incur any additional tax or interest under Section 409A, the Company shall, upon the specific request of Employee, use its reasonable business efforts to in good faith reform such provision to comply with Code Section 409A; provided, that to the maximum extent practicable, the original intent and economic benefit to Employee and the Company of the applicable provision shall be maintained, and the Company shall have no obligation to make any changes that could create any additional economic cost or loss of benefit to the Company. The Company shall timely use its reasonable business efforts to amend any plan or program in which Employee participates to bring it in compliance with Section 409A.

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(b) Separation from Service. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement relating to the payment of any amounts or benefits upon or following a termination of employment unless such termination also constitutes a "Separation from Service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment," "separation from service" or like terms shall mean Separation from Service.

(c) Separate Payments. Each installment payment required under this Agreement shall be considered a separate payment for purposes of Section 409A.

(d) Delayed Distribution to Key Employees. If the Company determines in accordance with Sections 409A and 416(i) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, in the Company's sole discretion, that Employee is a Key Employee of the Company on the date Employee's employment with the Company terminates and that a delay in benefits provided under this Agreement is necessary to comply with Code Section 409A(A)(2)(B)(i), then any severance payments and any continuation of benefits or reimbursement of benefit costs provided by this Agreement, and not otherwise exempt from Section 409A, shall be delayed for a period of six (6) months following the date of termination of Employee's employment (the "409A Delay Period"). In such event, any severance payments and the cost of any continuation of benefits provided under this Agreement that would otherwise be due and payable to Employee during the 409A Delay Period shall be paid to Employee in a lump sum cash amount in the month following the end of the 409A Delay Period. For purposes of this Agreement, "Key Employee" shall mean an employee who, on an Identification Date ("Identification Date" shall mean each December 31) is a key employee as defined in Section 416(i) of the Code without regard to paragraph (5) thereof. If Employee is identified as a Key Employee on an Identification Date, then Employee shall be considered a Key Employee for purposes of this Agreement during the period beginning on the first April 1 following the Identification Date and ending on the following March 31.

a. Reimbursement. To the extent that any right to reimbursement of expenses or payment of any benefit in-kind under this Agreement constitutes nonqualified deferred compensation (within the meaning of Section 409A), (i) any such expense reimbursement shall be made by the Company no later than the last day of the taxable year following the taxable year in which such expense was incurred by the Employee, (ii) the right to reimbursement on in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (iii) the amount of expenses eligible for reimbursement or in-kind benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CHARLES & COLVARD, LTD.

By: /s/ Neal Goldman

Neal Goldman

Chairman of the Board of Directors

EMPLOYEE

/s/ Don O'Connell

Don O'Connell

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Exhibit A

Form of Employee Incentive Stock Option Agreement

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Exhibit B

Form of Employee Nonqualified Stock Option Agreement



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CHARLES & COLVARD APPOINTS DON O'CONNELL AS PRESIDENT AND CHIEF EXECUTIVE OFFICER

FOR IMMEDIATE RELEASE

RESEARCH TRIANGLE PARK, N.C. – May 29, 2020 – Charles & Colvard, Ltd. (Nasdaq: CTHR), (the “Company”), the original and leading worldwide source of created moissanite, announced today that its Board of Directors appointed Don O’Connell to the position of President and Chief Executive Officer, effective June 1, 2020. He will also join the Company’s Board of Directors.

Mr. O’Connell, who most recently served as Chief Operating Officer and Senior Vice President, Supply Chain of Charles & Colvard, succeeds Suzanne Miglucci, who resigned as President and CEO and as a member of the Board of Directors, effective June 1, 2020.

Neal Goldman, Chairman of the Board of Directors of Charles & Colvard, said, “Even in these changing times, we believe the market opportunity continues to exist for our gemstones and jewelry, which offer exceptional quality and value, balanced with environmental and social responsibility. The Company has made significant progress over the past several years, growing Online Channels sales, expanding margins, achieving profitability, and maintaining a healthy balance sheet. We want to thank Suzanne for her visionary and strategic contributions, including pivoting to an e-commerce driven business, establishing a respected direct-to-consumer brand, building sophisticated digital marketing capabilities, and raising capital to fund future investments.”

“Given the current challenging economic and retail industry circumstances, we are pleased to have a seamless transition in leadership. Don has broad operational expertise, substantial industry knowledge and strong supply chain and brick-and-mortar relationships. As we transition through the COVID-19 crisis and adapt to the new operating environment, we believe Don’s proven operational ability to deliver efficiency and cost savings while managing the product development and merchandising teams to deliver premium quality jewelry and assortments to our customers will enable us to navigate the necessary changes ahead. Don has been the catalyst for the creation of our luxury award-winning Signature Collection, which represents a growing part of Charles & Colvard’s success. We will continue building on our strengths and capabilities in expanding brand awareness, engaging with customers, delivering a distinctive product and providing an outstanding buying experience,” Mr. Goldman concluded.

About Don O’Connell

Don O’Connell served most recently as Charles & Colvard's Chief Operating Officer and Senior Vice President, Supply Chain, joining the Company in 2016. In this role, Mr. O’Connell managed all functional areas of distribution, operations, and global supply chain, including responsibility for gemstone procurement and faceting, jewelry production, merchandising, product development and customer experience. A highly accomplished jewelry manufacturing, supply chain and distribution executive, he has delivered positive and sustainable results for over 25 years with several organizations in the jewelry industry. Prior to joining Charles & Colvard, Mr. O’Connell served as Executive Vice President Operations & Global Jewelry Business Solutions at OFT Investment & Management Group, a fine jewelry solutions and services group. He spent seven years with the Richline Group, LLC, a wholly owned subsidiary of Berkshire Hathaway, as Vice President, Operations & Procurement, both Foreign & Domestic, and served on Richline’s executive steering committee and acquisition team. Prior to that, Mr. O’Connell was Vice President, Operations at Aurafin's gem group divisions in Taramac, FL and La Paz, Bolivia as well as Vice President, Jewelry Manufacturing & Contracting with OCON Enterprise.

About Charles & Colvard, Ltd.

Charles & Colvard, Ltd. (Nasdaq: CTHR) believes luxury can be beautiful and conscientious. As an e-commerce driven business, the Company brings revolutionary gemstones and jewelry to market through the use of innovative technology and direct-to-consumer engagement. Charles & Colvard is the original pioneer of lab-created moissanite, a rare gemstone formed from silicon carbide. Consumers seek Charles & Colvard fashion, bridal and fine jewelry because of its exceptional quality, incredible value and shared beliefs in environmental and social responsibility. Charles & Colvard was founded in 1995 and is based in North Carolina’s Research Triangle. For more information, please visit <https://www.charlesandcolvard.com/>.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Statements expressing expectations regarding our future and projections relating to our products, sales, revenues, and earnings are typical of such statements and are made under the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, statements about our plans, objectives, representations, and contentions and are not historical facts and typically are identified by use of terms such as “may,” “will,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “continue,” and similar words, although some forward-looking statements are expressed differently.

All forward-looking statements are subject to the risks and uncertainties inherent in predicting the future. You should be aware that although the forward-looking statements included herein represent management's current judgment and expectations, our actual results may differ materially from those projected, stated, or implied in these forward-looking statements as a result of many factors including, but not limited to, the impact of the COVID-19 pandemic and related global economic condition on our business; financial condition and results from operations; our dependence on increased consumer acceptance, growth of sales of our products, and operational execution of our strategic initiatives; the impact of the execution of our business plans on our liquidity; general economic and market conditions, including the current economic environment; intense competition in the worldwide gemstone and jewelry industry; the financial difficulties or insolvency of one or more of our major customers and their willingness and ability to market our products; certain risks due to our international operations, distribution channels and vendors; our ability to fulfill orders on a timely basis; dependence on a limited number of distributor and retail partners in our Traditional segment; dependence on our exclusive supply agreement with Cree, Inc. for the supply of our silicon carbide crystals for the foreseeable future; inaccuracies in assumptions, estimates and data we use to calculate certain of our key operating metrics; our ability to maintain compliance with The Nasdaq Stock Market's continued listing requirements; quality control challenges from time to time that can result in lost revenue and harm to our brands and reputation; the potential impact of seasonality on our business; the impact of natural disasters and other events beyond our control on our operations; our anticipated PPP Loan, pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, may not be forgiven or may be subject to challenges and investigations regarding qualification for the loan; the pricing of precious metals, which is beyond our control; our current customers' potential perception of us as a competitor in the finished jewelry business; the impact of significant changes in e-commerce opportunities, technology, or models; the risk of a failure of our information technology infrastructure or a failure to protect confidential information against security breaches; our ability to protect our intellectual property; the potential adverse impact of negative or inaccurate information on social media; the failure to evaluate, implement, and integrate strategic opportunities; possible adverse effects of governmental regulation and oversight; and the impact of anti-takeover provisions included in our charter documents, in addition to the other risks and uncertainties described in our filings with the SEC, including our Annual Report on Form 10-K for the fiscal year ended June 30, 2019 and subsequent reports filed with the SEC. Forward-looking statements speak only as of the date they are made. We undertake no obligation to update or revise such statements to reflect new circumstances or unanticipated events as they occur except as required by the federal securities laws, and you are urged to review and consider disclosures that we make in the reports that we file with the SEC that discuss other factors relevant to our business.

Contacts:

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Source: Charles & Colvard, Ltd.
