

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## PALATIN TECHNOLOGIES INC

**Form: 8-K**

**Date Filed: 2019-06-26**

Corporate Issuer CIK: 911216

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): June 24, 2019

**Palatin Technologies, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-15543**  
(Commission  
File Number)

**95-4078884**  
(IRS employer  
identification number)

**4B Cedar Brook Drive, Cranbury, NJ**  
(Address of principal executive offices)

**08512**  
(Zip Code)

Registrant's telephone number, including area code: **(609) 495-2200**

**Not Applicable**

(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 (see General Instruction A.2. below):

- 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))

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

If an emerging growth company, indicate by checkmark 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.

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
<b>Common Stock</b>	<b>PTN</b>	<b>NYSE American</b>

**Item 1.01 Entry into a Material Definitive Agreement.**

On June 24, 2019, our Board of Directors, upon the recommendation of the Compensation Committee of the Board of Directors, approved new employment agreements with Carl Spana, Ph.D., as our Chief Executive Officer and President and Stephen T. Wills as our Executive Vice President of Operations, Chief Financial Officer and Chief Operating Officer.

The employment agreements (the "Employment Agreements"), which are effective July 1, 2019 and expire June 30, 2022, provide for a base annual salary of \$600,000 for Spana and \$550,000 for Wills, and provide cash performance bonuses based upon achievement of performance objectives. The agreements provide that options and restricted share units granted to the named executive officers accelerate upon termination of employment except for voluntary resignation by the officer or termination for cause. In the event of retirement, termination by the officer for good reason, or termination by the Company other than for cause, options outstanding immediately prior to July 1, 2019 may be exercised until the earlier of twenty-four months following termination or expiration of the option term, and options granted on or after July 1, 2019 may be exercised until expiration of the option term.

The Employment Agreements further provide for twenty-four months severance pay for Spana and eighteen months severance pay for Wills in the event of termination at the election of the Board of Directors, termination by the officer for good reason, or termination by the officer for good reason or at the election of the Board of Directors following a change in control. Health insurance premiums are paid for the period of severance pay.

The Employment Agreements supersede and replace the employment agreements, dated as of July 1, 2016, by and between the Company and each of Spana and Wills.

The foregoing description of the Employment Agreements with Spana and Wills are not complete and are qualified in their entirety by referral to the full text of such documents, a copy of each of which is filed with this Current Report.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits:

[10.1](#) Employment Agreement, effective as of July 1, 2019, between Carl Spana and Palatin Technologies, Inc.

[10.2](#) Employment Agreement, effective as of July 1, 2019, between Stephen T. Wills and Palatin Technologies, Inc.

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**SIGNATURES**

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

PALATIN TECHNOLOGIES, INC.

Date: June 26, 2019

By: /s/ Stephen T. Wills

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Stephen T. Wills, CPA, MST  
Executive Vice President, Chief Financial Officer and  
Chief Operating Officer

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**EXHIBIT INDEX**

- 10.1 Employment Agreement, effective as of July 1, 2019, between Carl Spana and Palatin Technologies, Inc.
  - 10.2 Employment Agreement, effective as of July 1, 2019, between Stephen T. Wills and Palatin Technologies, Inc.
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**EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (the "Agreement"), effective as of this 1st day of July, 2019, is entered into by Palatin Technologies, Inc., a Delaware corporation with its principal place of business at 4B Cedar Brook Drive, Cranbury, NJ, 08512 (the "Company"), and Carl Spana ("Employee").

The Company desires to continue employing the Employee, and the Employee desires to continue to be employed by the Company. In consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties agree that the following terms of this Employment Agreement shall supersede in all respects any prior agreements governing employment between the parties:

~~1.0~~ **Term of Employment.** The Company hereby agrees to continue employing the Employee, and the Employee hereby accepts the continuation of employment with the Company, upon the terms set forth in this Agreement, for the period commencing on July 1, 2019 (the "Commencement Date") and ending on June 30, 2022 unless sooner terminated in accordance with the provisions of Section 4 (the "Employment Period").

**2.0 Position Title & Capacity.**

- 2.1 The Employee shall serve as Chief Executive Officer and President, with responsibilities consistent with this position and as the Company's Board of Directors (the "Board") may determine from time to time, with powers and duties as may be determined, from time to time, by the Board, consistent with the Employee's position. The Employee shall report to the Company's Board of Directors. The Employee shall be based at the Company's corporate headquarters, which is based in Cranbury, New Jersey. The Employee shall also be available for travel at such times and to such places as may be reasonably necessary in connection with the performance of his duties hereunder.
- 2.2 The Employee may serve as an employee director on the Board as determined and approved by the Board during the Employment Period and for no additional compensation; however, upon termination of employment for any reason, the Employee will no longer serve as a member of the Company's Board of Directors and will take any and all actions necessary to effectuate such resignation as may be reasonably requested by the Company.
- 2.3 The Employee hereby accepts such employment and agrees to undertake the duties and responsibilities inherent in such position and such other duties and responsibilities as the Board shall from time to time reasonably assign to him. The Employee agrees to devote substantially all of his business time, attention and energies to the business and interests of the Company during the Employment Period. The Employee agrees to abide by the rules, regulations, instructions, personnel practices and policies of the Company and any changes therein which may be adopted from time to time by the Company. The Employee acknowledges receipt of copies of all such rules and policies committed to writing as of the date of this Agreement.
- 2.4 The Employee specifically covenants, warrants and represents to the Company that he has the full, complete and entire right and authority to enter into this Agreement, that he has no agreement, duty, commitment or responsibility of any kind or nature whatsoever with any corporation, partnership, firm, company, joint venture or other entity or other person which would conflict in any manner whatsoever with any of his duties, obligations or responsibilities to the Company pursuant to this Agreement, that he is not in possession of any document or other tangible property of any corporation, partnership, firm, company, joint venture or other entity or other person of a confidential or proprietary nature which would conflict in any manner whatsoever with any of his duties, obligations or responsibilities to the Company pursuant to his Agreement, and that he is fully ready, willing and able to perform each and all of his duties, obligations and responsibilities to the Company pursuant to this Agreement.

3.0 **Compensation and Benefits.** During the Employment Period, unless sooner terminated in accordance with the provisions of Section 4, the Employee shall receive the following compensation and benefits:

3.1 **Salary.** The Company shall pay the Employee, in equal semi-monthly installments or otherwise in accordance with the Company's standard payroll policies as such policies may exist from time to time, an annual base salary of \$600,000. Such salary shall be subject to review, as determined by the Company's Compensation Committee and approved by the Board, on an annual basis, but the Board shall not decrease the Employee's annual base salary at any such annual review.

3.2 **Cash Performance Bonus.** The Employee will be included in the Company's annual bonus compensation program based on a June 30<sup>th</sup> year end in an amount to be decided by the Company's Compensation Committee and approved by the Board, payable no later than September 30<sup>th</sup> of each year during the Employment Period. The annual incentive bonus target shall be set by the Compensation Committee, but shall be no less than sixty percent (60%) of annual base salary and will be based on specific performance objectives as predetermined by the Compensation Committee, with the Compensation Committee determining the June 30<sup>th</sup> year end percent achievement of performance objectives. The Compensation Committee may recommend a discretionary additional amount based on performance.

3.3 **Stock Options.** As additional compensation for services rendered, the Company has granted to the Employee the right and option to purchase shares of the Company's Common Stock and in the future may grant additional options to purchase shares of the Company's Common Stock to the Employee in accordance with the terms of the Company's stock plan then in effect. Notwithstanding any option certificate or agreement to the contrary, the following provisions apply to all options granted to the Employee either prior to or after the Commencement Date:

(a) All such options that are not vested as of the Date of Termination (as defined in Section 6) shall immediately vest and become fully exercisable as of the Date of Termination, except in the case of termination: (i) for Cause (as defined in Section 6) or (ii) at the election of the Employee for any reason other than pursuant to Section 4.1 or for Good Reason pursuant to Section 4.4 or 4.5. Notwithstanding the foregoing if upon a Change in Control as defined in Section 6.5 (c) or (d), any of the options are terminated in connection with the Change in Control, then all such options that are not vested as of the date of the Change in Control shall immediately vest and become fully exercisable immediately prior to the Change in Control; and

(b) All of such options that are vested as of the Date of Termination and that were outstanding immediately prior to the Commencement Date shall expire on the first to occur of: (i) 24 months following the Employee's retirement; (ii) 24 months following the Employee's Date of Termination other than (A) for Cause (as defined in Section 6), or (B) termination at the election of the Employee pursuant to Section 4.6; (iii) the expiration date of the option as set forth in the applicable option certificate or agreement; or (iv) as otherwise provided in the applicable option plan in the event of the dissolution or liquidation of the Company, or a merger, reorganization or consolidation in which the Company is not the surviving corporation. For purposes of this subsection, "retirement" requires that the Employee not render services of any nature for any entity as a regular employee, and not render services of any nature for any entity for more than an average of twenty (20) hours per week as a consultant or term employee. All of such options that were granted on or after the Commencement Date shall expire on the expiration date of the option as set forth in the applicable option certificate or agreement in the event the Employee's employment terminates other than (A) for Cause (as defined in Section 6), or (B) at the election of the Employee pursuant to Section 4.6.

Nothing in this Section 3.3 shall apply to or affect any equity award that is not either an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") or a non-qualified stock option.

3.4 **Restricted Share Units.** As additional compensation for services rendered, the Company has granted to the Employee restricted share units for the issuance of the Company's Common Stock and in the future may grant additional restricted share units for the issuance of the Company's Common Stock to the Employee in accordance with the terms of the Company's stock plan then in effect. Notwithstanding any restricted share unit certificate or agreement to the contrary, all restricted share units granted to the Employee either prior to or after the Commencement Date that are not vested as of the Date of Termination (as defined in Section 6) shall immediately vest as of the Date of Termination, except in the case of termination: (a) for Cause (as defined in Section 6) or (b) at the election of the Employee for any reason other than pursuant to Section 4.1 or for Good Reason pursuant to Section 4.4 or 4.5. To the extent that vesting of any such restricted shares units otherwise would have been contingent upon the achievement of performance objectives, vesting of such restricted share units pursuant to this Section 3.4 shall be (i) at the "target" level, regardless of achievement of performance objectives, in the case of termination pursuant to Section 4.3 or 4.5; or (ii) based upon actual achievement of performance objectives as determined after the end of the applicable performance period, in the case of termination under any other circumstances entitling the Employee to accelerated vesting pursuant to this Section 3.4. Notwithstanding the foregoing, if upon a Change in Control as defined in Section 6.5 (c) or (d), any of the restricted share units are terminated in connection with the Change in Control, then all such restricted share units that are not vested as of the date of the Change in Control shall vest as of the date of the Change in Control.

- 3.5 **Fringe-Benefits.** The Employee shall be entitled to participate in all benefit programs that the Company establishes and makes available to its employees, if any, to the extent that the Employee's position, tenure, salary, age, health and other qualifications make him eligible to participate. The Employee shall also be entitled to holidays and annual vacation leave in accordance with the Company's policy as it exists from time to time.
- 3.6 **Reimbursement of Expenses.** The Company shall reimburse the Employee for all reasonable travel, entertainment and other expenses incurred or paid by the Employee in connection with, or related to, the performance of his duties, responsibilities or services under this Agreement, upon presentation by the Employee of documentation, expense statements, vouchers and/or such other supporting information as the Company may request, provided however, that the amount available for such travel, entertainment and other expenses may be fixed in advance by the Board.
- 3.7 **Insurance.** The Employee will be covered under the Company's Directors' and Officers' liability insurance to the same extent the Company's directors and other officers are covered.
- 4.0 **Employment Termination.** The employment of the Employee by the Company pursuant to this Agreement shall terminate upon the occurrence of any of the following:
- 4.1 Expiration of the Employment Period in accordance with Section 1, unless the Company and Employee agree to extend the Agreement term or otherwise continue Employee's employment on mutually agreeable terms.
- 4.2 At the election of the Company, for Cause (as defined in Section 6), immediately upon written notice by the Company to the Employee, which notice of termination shall have been approved by a majority of the Board.
- 4.3 Immediately upon the death or determination of Disability (as defined in Section 6) of the Employee.
- 4.4 At the election of the Employee, for Good Reason (as defined in Section 6), immediately upon written notice of not less than sixty (60) days prior to termination by the Employee to the Company.
- 4.5 At the election of the Company upon or within twelve (12) months following a Change in Control (as defined in Section 6), or at the election of the Employee for Good Reason (as defined in Section 6) upon or within twelve (12) months following a Change in Control (as defined in Section 6), immediately upon written notice of termination.
- 4.6 At the election of either party, upon written notice of termination.
- 5.0 **Effect of Termination.**
- 5.1 **Compensation & Benefits.**
- (a) As referenced in this section, compensation following the Employee's termination shall be in the form of severance. Severance will be based on the employee's base salary in effect as of the employee's last day of employment (without regard to any reduction that constitutes Good Reason) and will be paid in one lump-sum amount.
- (b) Severance is not considered compensation for purposes of employee and employer matching contributions under the 401(k) plan.
- (c) As referenced in this section, upon termination of the Employee's employment with the Company, medical and dental benefits will be available to the Employee, at his election, solely pursuant to the provisions of COBRA with the Company paying the full cost of COBRA coverage for a period up to 24 months if employment is terminated for any reason except an Employee resignation without Good Reason (as defined in Section 6) and a Company discharge for Cause (as defined in Section 6). If the Employee is discharged for Cause or the Employee resigns without Good Reason, the Employee will be required to remit the COBRA cost (102% of total benefit cost) of coverage.
- (d) Upon termination of the Employee's employment with the Company, apart from the Employee's election under COBRA to continue medical and dental benefits (as described in Section 5.1(c)), the Employee will cease to be eligible for participation in the Company's health and welfare insurance and any other fringe benefit programs that pursuant to their contracts or Company policy require an active employee status.



5.2 **Termination By The Company or at Election of the Employee (other than for Good Reason).**

- (a) If the Employee elects to terminate his employment for any reason other than for Good Reason pursuant to Section 4.4 or 4.5, no severance and/or benefits shall be paid, and the Employee shall be entitled only to receive payment of his earned but unpaid salary, and accrued vacation, as of his last day of actual employment by the Company, which amounts shall be paid within ten (10) days after the Date of Termination;
- (b) If the Company elects to terminate the Employee (other than for Cause) pursuant to Section 4.6, or if the Employee's employment terminates upon the expiration of this Agreement pursuant to Section 4.1, the Company shall pay to the Employee twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c));
- (c) If the Company terminates the Employee for Cause pursuant to Section 4.2, no severance and/or benefits shall be paid, and the Employee shall be entitled only to receive payment of his earned but unpaid salary, and accrued vacation, as of the Date of Termination. Employee may elect COBRA medical and dental benefits, in which case the Employee will be required to remit the COBRA cost (102% of total benefit cost) of coverage.

5.3 **Termination By Employee Election For Good Reason.** If the Employee terminates employment at his election for Good Reason pursuant to Section 4.4, other than as provided for in Section 5.4, the Company shall pay to the Employee twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c)).

5.4 **Termination Following a Change in Control.** If the Company terminates the employment relationship upon or following a Change In Control pursuant to Section 4.5, or if the Employee terminates employment at his election for Good Reason upon or following a Change in Control pursuant to Section 4.5:

- (a) The Company shall pay to the Employee his annual salary in effect at that time in a lump sum amount, calculated at two (2.0) times such annual salary, within sixty (60) days after the Date of Termination, plus medical/dental care benefits (as described in Section 5.1(c)); and
- (b) For a six (6) month period after the Date of Termination, the Company shall reimburse the Employee for reasonable fees and expenses actually incurred by him for outplacement services in an amount, not to exceed \$25,000, mutually agreed upon by and between the Employee and the Company, promptly, within ten days, receipt by the Company of satisfactory evidence of payment of such fees and expenses, but in no event no later than March 15 of the year following the year in which the expenses were actually incurred.

5.5 **Termination by Reason of the Employee's Death or Disability.** If, prior to the expiration of the Employment Period, the Employee's employment is terminated by the Employee's death or Disability pursuant to Section 4.3, the Company shall pay to the Employee, or in the case of the Employee's death, to the estate of the Employee, twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c)).

5.6 **Withholding and Deductions, 409A.**

- (a) All payments hereunder shall be subject to withholding and to such other deductions as shall at the time of such payment be required pursuant to any income tax or other law, whether of the United States or any other jurisdiction, and, in the case of payments to the executors or administrators to the Employee's estate, the delivery to the Company of all necessary tax waivers and other documents.
- (b) Notwithstanding anything in this Agreement to the contrary, in the event it shall be determined that any payment or distribution by the Company or any of its affiliated companies to or for the benefit of the Employee (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (a "Payment") would be an excess parachute payment within the meaning of section 280G of the Code (such excess only, an "Excess Payment"), then the Employee shall forfeit the Excess Payments to the extent the after-tax value to the Employee of the Payments as reduced by such forfeiture would be greater than the after-tax value to the Employee of the Payments absent such forfeiture. The forfeiture of Excess Payments, if applicable, shall be applied by: first reducing the cash severance described in Section 5.4(a) hereof, then to cancellation of accelerated vesting of performance-based equity awards (based on the reverse order of the date of grant), then to cancellation of accelerated vesting of other equity awards (based on the reverse order of the date of grant), and then to any other Payments on a pro-rata basis. All determinations required to be made under this Section 5.6(b), and the assumptions to be used in arriving at such determination, shall be made by a major accounting firm with expertise in such matters designated by the Company and reasonably acceptable to the Employee (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Employee within 15 business days of the receipt of notice from the Employee that there has been (or that there is likely to be) a Payment, or such earlier time as is requested by the Company. In connection with making determinations under this Section 5.6(b), the Accounting Firm shall take into account the value of any reasonable compensation for services to be rendered by the Employee before or after the change in control, including any noncompetition provisions that may apply to the Employee (whether set forth in this Agreement or otherwise), and the Company shall cooperate in the valuation of any such services, including any noncompetition provisions. Any determination by the Accounting Firm in good faith shall be binding upon the Company and the Employee. All fees and expenses of the Accounting Firm for services performed pursuant to this Section 5.6(b) shall be borne solely by the Company.

- (c) As provided herein, the Company shall pay the full cost of the Employee's COBRA premiums under this Section 5.
- (d) The payments and benefits provided for in Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement are intended to constitute a short-term deferral pursuant to Treas. Reg. § 1.409A-1(b)(4) and thus not "nonqualified deferred compensation" subject to Section 409A of the Code. If the payments and benefits provided for in Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement are deemed to provide for the payment of non-qualified deferred compensation benefits in connection with a separation of service under Section 409A(2)(a)(i) of the Code, the following interpretations apply to Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c): (i) Any termination of the Employee's employment triggering payment of benefits under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Employee's employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by Employee to the Company at the time the Employee's employment terminates), any benefits payable under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h). For purposes of clarification, this Section 5.6(d) shall not cause any forfeiture of benefits on the Employee's part, but shall only act as a delay until such time as a "separation from service" occurs; (ii) If the Employee is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of his death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the Employee's death, the Company shall pay the Employee in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid to the Employee prior to that date under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement; (iii) It is intended that each installment of the payments and benefits provided under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code; (iv) Neither the Company nor the Employee shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code; and (v) to the extent that the period between the Date of Termination and the date upon which payment is required to be made or commence begins in one calendar year and ends in a second calendar year, payment will be made or commence in the second calendar year.

5.7 **Release of Claims.** The Employee's entitlement to severance, payment of COBRA premiums, and accelerated vesting of options, restricted share units and other equity incentive awards, is contingent upon the Employee's execution, within 21 days after the Date of Termination (or such longer period as required by applicable law), and non-revocation of a general release of claims in a form prepared by the Company and presented to the Employee upon termination of his employment hereunder, as well as the Employee's compliance with the provisions of Section 7 hereof.

5.8 **No Requirement to Mitigate.** The Employee shall not be required to mitigate the amount of any payment provided for in this Section 5 by seeking other employment or otherwise.

6.0 **Definitions.** For purposes of this Agreement the following definitions apply:

6.1 **"Cause"** shall mean the occurrence of any of the following circumstances:

- (a) (i) the Employee's material breach of, or habitual neglect or failure to perform the material duties which he is required to perform under, the terms of this Agreement; (ii) the Employee's material failure to follow the reasonable directives or policies established by or at the direction of the Board; or (iii) the Employee's engaging in conduct that is materially detrimental to the interests of the Company such that the Company sustains a material loss or injury as a result thereof, provided that the breach or failure of performance by the Employee under subparagraphs (i) through (iii) hereof is not cured, to the extent cure is possible, within ten (10) days of the delivery to the Employee of written notice thereof;
- (b) the willful breach by the Employee of Section 7 of this Agreement or any provision of any confidentiality, invention and non-disclosure, non-competition or similar agreement between the Employee and the Company; or
- (c) the conviction of the Employee of, or the entry of a pleading of guilty or nolo contendere by the Employee to, any crime involving moral turpitude or any felony.

- 6.2 **“Date of Termination”** shall mean the Employee’s last day of actual employment by the Company (or its successor) for any reason including death or Disability.
- 6.3 **“Disability”** shall mean the inability of the Employee, by reason of illness, accident or other physical or mental disability, for a period of 120 days, whether or not consecutive, during any 360-day period, to perform the services contemplated under this Agreement. A determination of disability shall be made by a physician satisfactory to both the Employee and the Company; provided, however, that if the Employee and the Company do not agree on a physician, the Employee and the Company shall each select a physician and these two together shall select a third physician, whose determination as to disability shall be binding on all parties.
- 6.4 **“Good Reason”** shall mean the occurrence of any of the following circumstances, and the Company’s failure to cure such circumstances within thirty (30) days of the delivery to the Company of written notice by the Employee of such circumstances; provided that the Employee gives notice to the Company of the existence of the event or condition constituting Good Reason within thirty (30) days after such event or condition initially occurs or exists, and the Employee terminates his employment within one hundred and twenty (120) days after the initial occurrence of the event or condition constituting Good Reason:
- (a) any material adverse change in the Employee’s duties, authority or responsibilities as described in Section 2.1 hereof which causes the Employee’s position with the Company to become of significantly less responsibility or assignment of duties and responsibilities inconsistent with the Employee’s position;
  - (b) a material reduction in the Employee’s salary as in effect on the Commencement Date or as the same may be increased from time to time;
  - (c) the failure of the Company to continue in effect any material compensation or benefit plan in which the Employee participates as in effect on the Commencement Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan, or the failure by the Company to continue the Employee’s participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Employee’s participation relative to other participants, as in effect on the Commencement Date;
  - (d) any material adverse change in the Employee’s compensation resulting from (i) the failure by the Company to continue to provide the Employee with benefits substantially similar to those enjoyed by the Employee under any of the Company’s health and welfare insurance, retirement and other fringe-benefit plans insurance, in which the Employee was participating as in effect on the Commencement Date, (ii) the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits, or (iii) the failure by the Company to provide the Employee with the number of paid vacation days to which he is entitled in accordance with the Company’s normal vacation policy in effect on the Commencement Date or in accordance with any agreement between the Employee and the Company existing at that time; or
  - (e) the relocation of the Employee to a location which is a material distance from Cranbury, New Jersey.
  - (f) For purposes of this Agreement, “Good Reason” shall be interpreted in a manner, and limited to the extent necessary, so that it will not cause adverse tax consequences for either party with respect to Section 409A of the Code, and any successor statute, regulation and guidance thereto.
- 6.5 **“Change in Control”** shall mean the occurrence of any of the following events:
- (a) any “person,” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, or any corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportion as their ownership of stock of the Company) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities;
  - (b) the date the individuals who, during any twelve month period, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director during the twelve month period whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board;
  - (c) a merger or consolidation of the Company approved by the stockholders of the Company with any other corporation, other than (i) 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 by being converted into voting securities of the surviving entity) 50% or more of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (ii) a merger or consolidation effected to implement a re-capitalization of the Company (or similar transaction) in which no “person” (as defined in Section 6.4(a)) acquires more than 50% of the combined voting power of the Company’s then outstanding securities; or
  - (d) a sale of all or substantially all of the assets of the Company.

7.0 **Restrictive Covenants.**

- (a) For the purposes of this Agreement:
- (i) “**Competing Products**” means any products or processes of any person or organization other than the Company in existence or under development, which are substantially the same, may be substituted for, or applied to substantially the same end use as the products or processes that the Company is developing or has developed or commercialized during the time of the Employee’s employment with the Company.
  - (ii) “**Competing Organization**” means any person or organization engaged in, or with definitive plans to become engaged in, research or development, production, distribution, marketing or selling of a Competing Product.
- (b) The Employee acknowledges that he has, on or prior to the date of the Agreement, executed and delivered to the Company an Employee Agreement on Confidentiality, Intellectual Property, Debarment Certification and Conflict of Interest (the “Confidentiality Agreement”) and the Employee hereby affirms and ratifies his obligations thereunder; and the Employee agrees that after termination by the Company for Cause pursuant to Section 4.2 (except in the case where such termination occurs within 12 months following a Change in Control), by the Employee pursuant to Section 4.6, or by either party upon expiration of the Employment Period, he will not render services of any nature, directly or indirectly, to any Competing Organization in connection with any Competing Product within any geographical territory as the Company and such Competing Organization are or would be in actual competition, for a period of twenty-four (24) months, commencing on the Date of Termination.
- (c) The Employee agrees that he will not, during the Employment Period and for a period of nine (9) months commencing on the Date of Termination, directly or indirectly employ, solicit for employment, or advise or recommend to any other person that they employ or solicit for employment, any person whom he knows to be an employee of the Company or any parent, subsidiary or affiliate of the Company.
- (d) In the event a court of competent jurisdiction should find any provision in this Section 7 to be unfair or unreasonable, such finding shall not render such provision unenforceable, but, rather, this provision shall be modified as to subject matter, time and geographic area so as to render the entire section valid and enforceable.

8.0 **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon either: (a) personal delivery; or (b) three (3) days following deposit with the United States Postal Service for delivery by registered or certified mail, postage prepaid, or one (1) day following deposit with a reputable overnight courier service, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 8.

9.0 **Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

10.0 **Entire Agreement.** This Agreement, together with the Confidentiality Agreement, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement, including the Employment Agreement between the Company and the Employee dated as of July 1, 2016.

11.0 **Amendment.** This Agreement may be amended or modified only by a written instrument executed by both the Company and the Employee. Any such amendment shall comply with the requirements of Section 409A of the Code, if applicable.

12.0 **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of New Jersey, without regard to its principles of conflict of laws.

13.0 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Employee are unique and personal and shall not be assigned by him.

**14.0 Waiver of Breach.**

14.1 **Waiver by the Company.** No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion. No waiver by the Company shall be valid unless in writing signed by an authorized officer of the Company and approved by a majority of the Board.

14.2 **Waiver by the Employee.** No delay or omission by the Employee in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Employee on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion. No waiver by the Employee shall be valid unless in a writing signed by the Employee.

**15.0 Miscellaneous.**

15.1 The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.

15.2 In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

16.0 **Survival.** The provisions of Sections 3.3, 5, 6, 7 and 8 shall survive the termination of this Agreement.

17.0 **Timing of Reimbursements.** All reimbursements made by the Company pursuant to this Agreement will be made within 30 days from the date the Employee submits documentation of the expenses. Employee will submit documentation substantiating expenses within 30 days from the date the expenses are incurred.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as an instrument under seal effective as of the day and year set forth above.

**PALATIN TECHNOLOGIES, INC.**

/s/ Stephen T. Wills

Name: Stephen T. Wills

Title: Executive V.P., Chief Financial Officer and Chief  
Operating Officer

Date: June 26, 2019

**EMPLOYEE**

/s/ Carl Spana

Name: Carl Spana

Title: Chief Executive Officer and President

Date: June 26, 2019

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement"), effective as of this 1st day of July, 2019, is entered into by Palatin Technologies, Inc., a Delaware corporation with its principal place of business at 4B Cedar Brook Drive, Cranbury, NJ, 08512 (the "Company"), and Stephen T. Wills ("Employee").

The Company desires to continue employing the Employee, and the Employee desires to continue to be employed by the Company. In consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties agree that the following terms of this Employment Agreement shall supersede in all respects any prior agreements governing employment between the parties:

**1.0 Term of Employment.** The Company hereby agrees to continue employing the Employee, and the Employee hereby accepts the continuation of employment with the Company, upon the terms set forth in this Agreement, for the period commencing on July 1, 2019 (the "Commencement Date") and ending on June 30, 2022 unless sooner terminated in accordance with the provisions of Section 4 (the "Employment Period").

**2.0 Position Title & Capacity.**

- 2.1 The Employee shall serve as Chief Financial Officer and Chief Operating Officer, with responsibilities consistent with this position and as the Company's Board of Directors (the "Board") may determine from time to time, with powers and duties as may be determined, from time to time, by the Board, consistent with the Employee's position. The Employee shall report to the Company's Board of Directors. The Employee shall be based at the Company's corporate headquarters, which is based in Cranbury, New Jersey. The Employee shall also be available for travel at such times and to such places as may be reasonably necessary in connection with the performance of his duties hereunder.
- 2.2 The Employee may serve as an employee director on the Board as determined and approved by the Board during the Employment Period and for no additional compensation; however, upon termination of employment for any reason, the Employee will no longer serve as a member of the Company's Board of Directors and will take any and all actions necessary to effectuate such resignation as may be reasonably requested by the Company.
- 2.3 The Employee hereby accepts such employment and agrees to undertake the duties and responsibilities inherent in such position and such other duties and responsibilities as the Board shall from time to time reasonably assign to him. The Employee agrees to devote substantially all of his business time, attention and energies to the business and interests of the Company during the Employment Period. The Employee agrees to abide by the rules, regulations, instructions, personnel practices and policies of the Company and any changes therein which may be adopted from time to time by the Company. The Employee acknowledges receipt of copies of all such rules and policies committed to writing as of the date of this Agreement.
- 2.4 The Employee specifically covenants, warrants and represents to the Company that he has the full, complete and entire right and authority to enter into this Agreement, that he has no agreement, duty, commitment or responsibility of any kind or nature whatsoever with any corporation, partnership, firm, company, joint venture or other entity or other person which would conflict in any manner whatsoever with any of his duties, obligations or responsibilities to the Company pursuant to this Agreement, that he is not in possession of any document or other tangible property of any corporation, partnership, firm, company, joint venture or other entity or other person of a confidential or proprietary nature which would conflict in any manner whatsoever with any of his duties, obligations or responsibilities to the Company pursuant to his Agreement, and that he is fully ready, willing and able to perform each and all of his duties, obligations and responsibilities to the Company pursuant to this Agreement.

3.0 **Compensation and Benefits.** During the Employment Period, unless sooner terminated in accordance with the provisions of Section 4, the Employee shall receive the following compensation and benefits:

3.1 **Salary.** The Company shall pay the Employee, in equal semi-monthly installments or otherwise in accordance with the Company's standard payroll policies as such policies may exist from time to time, an annual base salary of \$550,000. Such salary shall be subject to review, as determined by the Company's Compensation Committee and approved by the Board, on an annual basis, but the Board shall not decrease the Employee's annual base salary at any such annual review.

3.2 **Cash Performance Bonus.** The Employee will be included in the Company's annual bonus compensation program based on a June 30<sup>th</sup> year end in an amount to be decided by the Company's Compensation Committee and approved by the Board, payable no later than September 30<sup>th</sup> of each year during the Employment Period. The annual incentive bonus target shall be set by the Compensation Committee, but shall be no less than sixty percent (60%) of annual base salary and will be based on specific performance objectives as predetermined by the Compensation Committee, with the Compensation Committee determining the June 30<sup>th</sup> year end percent achievement of performance objectives. The Compensation Committee may recommend a discretionary additional amount based on performance.

3.3 **Stock Options.** As additional compensation for services rendered, the Company has granted to the Employee the right and option to purchase shares of the Company's Common Stock and in the future may grant additional options to purchase shares of the Company's Common Stock to the Employee in accordance with the terms of the Company's stock plan then in effect. Notwithstanding any option certificate or agreement to the contrary, the following provisions apply to all options granted to the Employee either prior to or after the Commencement Date:

(a) All such options that are not vested as of the Date of Termination (as defined in Section 6) shall immediately vest and become fully exercisable as of the Date of Termination, except in the case of termination: (i) for Cause (as defined in Section 6) or (ii) at the election of the Employee for any reason other than pursuant to Section 4.1 or for Good Reason pursuant to Section 4.4 or 4.5. Notwithstanding the foregoing if upon a Change in Control as defined in Section 6.5 (c) or (d), any of the options are terminated in connection with the Change in Control, then all such options that are not vested as of the date of the Change in Control shall immediately vest and become fully exercisable immediately prior to the Change in Control; and

(b) All of such options that are vested as of the Date of Termination and that were outstanding immediately prior to the Commencement Date shall expire on the first to occur of: (i) 24 months following the Employee's retirement; (ii) 24 months following the Employee's Date of Termination other than (A) for Cause (as defined in Section 6), or (B) termination at the election of the Employee pursuant to Section 4.6; (iii) the expiration date of the option as set forth in the applicable option certificate or agreement; or (iv) as otherwise provided in the applicable option plan in the event of the dissolution or liquidation of the Company, or a merger, reorganization or consolidation in which the Company is not the surviving corporation. For purposes of this subsection, "retirement" requires that the Employee not render services of any nature for any entity as a regular employee, and not render services of any nature for any entity for more than an average of twenty (20) hours per week as a consultant or term employee. All of such options that were granted on or after the Commencement Date shall expire on the expiration date of the option as set forth in the applicable option certificate or agreement in the event the Employee's employment terminates other than (A) for Cause (as defined in Section 6), or (B) at the election of the Employee pursuant to Section 4.6.

Nothing in this Section 3.3 shall apply to or affect any equity award that is not either an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") or a non-qualified stock option.

3.4 **Restricted Share Units.** As additional compensation for services rendered, the Company has granted to the Employee restricted share units for the issuance of the Company's Common Stock and in the future may grant additional restricted share units for the issuance of the Company's Common Stock to the Employee in accordance with the terms of the Company's stock plan then in effect. Notwithstanding any restricted share unit certificate or agreement to the contrary, all restricted share units granted to the Employee either prior to or after the Commencement Date that are not vested as of the Date of Termination (as defined in Section 6) shall immediately vest as of the Date of Termination, except in the case of termination: (a) for Cause (as defined in Section 6) or (b) at the election of the Employee for any reason other than pursuant to Section 4.1 or for Good Reason pursuant to Section 4.4 or 4.5. To the extent that vesting of any such restricted shares units otherwise would have been contingent upon the achievement of performance objectives, vesting of such restricted share units pursuant to this Section 3.4 shall be (i) at the "target" level, regardless of achievement of performance objectives, in the case of termination pursuant to Section 4.3 or 4.5; or (ii) based upon actual achievement of performance objectives as determined after the end of the applicable performance period, in the case of termination under any other circumstances entitling the Employee to accelerated vesting pursuant to this Section 3.4. Notwithstanding the foregoing, if upon a Change in Control as defined in Section 6.5 (c) or (d), any of the restricted share units are terminated in connection with the Change in Control, then all such restricted share units that are not vested as of the date of the Change in Control shall vest as of the date of the Change in Control.



- 3.5 **Fringe-Benefits.** The Employee shall be entitled to participate in all benefit programs that the Company establishes and makes available to its employees, if any, to the extent that the Employee's position, tenure, salary, age, health and other qualifications make him eligible to participate. The Employee shall also be entitled to holidays and annual vacation leave in accordance with the Company's policy as it exists from time to time.
- 3.6 **Reimbursement of Expenses.** The Company shall reimburse the Employee for all reasonable travel, entertainment and other expenses incurred or paid by the Employee in connection with, or related to, the performance of his duties, responsibilities or services under this Agreement, upon presentation by the Employee of documentation, expense statements, vouchers and/or such other supporting information as the Company may request, provided however, that the amount available for such travel, entertainment and other expenses may be fixed in advance by the Board.
- 3.7 **Insurance.** The Employee will be covered under the Company's Directors' and Officers' liability insurance to the same extent the Company's directors and other officers are covered.
- 4.0 **Employment Termination.** The employment of the Employee by the Company pursuant to this Agreement shall terminate upon the occurrence of any of the following:
- 4.1 Expiration of the Employment Period in accordance with Section 1, unless the Company and Employee agree to extend the Agreement term or otherwise continue Employee's employment on mutually agreeable terms.
- 4.2 At the election of the Company, for Cause (as defined in Section 6), immediately upon written notice by the Company to the Employee, which notice of termination shall have been approved by a majority of the Board.
- 4.3 Immediately upon the death or determination of Disability (as defined in Section 6) of the Employee.
- 4.4 At the election of the Employee, for Good Reason (as defined in Section 6), immediately upon written notice of not less than sixty (60) days prior to termination by the Employee to the Company.
- 4.5 At the election of the Company upon or within twelve (12) months following a Change in Control (as defined in Section 6), or at the election of the Employee for Good Reason (as defined in Section 6) upon or within twelve (12) months following a Change in Control (as defined in Section 6), immediately upon written notice of termination.
- 4.6 At the election of either party, upon written notice of termination.
- 5.0 **Effect of Termination.**
- 5.1 **Compensation & Benefits.**
- (a) As referenced in this section, compensation following the Employee's termination shall be in the form of severance. Severance will be based on the employee's base salary in effect as of the employee's last day of employment (without regard to any reduction that constitutes Good Reason) and will be paid in one lump-sum amount.
- (b) Severance is not considered compensation for purposes of employee and employer matching contributions under the 401(k) plan.
- (c) As referenced in this section, upon termination of the Employee's employment with the Company, medical and dental benefits will be available to the Employee, at his election, solely pursuant to the provisions of COBRA with the Company paying the full cost of COBRA coverage for a period up to 24 months if employment is terminated for any reason except an Employee resignation without Good Reason (as defined in Section 6) and a Company discharge for Cause (as defined in Section 6). If the Employee is discharged for Cause or the Employee resigns without Good Reason, the Employee will be required to remit the COBRA cost (102% of total benefit cost) of coverage.
- (d) Upon termination of the Employee's employment with the Company, apart from the Employee's election under COBRA to continue medical and dental benefits (as described in Section 5.1(c)), the Employee will cease to be eligible for participation in the Company's health and welfare insurance and any other fringe benefit programs that pursuant to their contracts or Company policy require an active employee status.

5.2 **Termination By The Company or at Election of the Employee (other than for Good Reason)**.

- (a) If the Employee elects to terminate his employment for any reason other than for Good Reason pursuant to Section 4.4 or 4.5, no severance and/or benefits shall be paid, and the Employee shall be entitled only to receive payment of his earned but unpaid salary, and accrued vacation, as of his last day of actual employment by the Company, which amounts shall be paid within ten (10) days after the Date of Termination;
- (b) If the Company elects to terminate the Employee (other than for Cause) pursuant to Section 4.6, or if the Employee's employment terminates upon the expiration of this Agreement pursuant to Section 4.1, the Company shall pay to the Employee twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c));
- (c) If the Company terminates the Employee for Cause pursuant to Section 4.2, no severance and/or benefits shall be paid, and the Employee shall be entitled only to receive payment of his earned but unpaid salary, and accrued vacation, as of the Date of Termination. Employee may elect COBRA medical and dental benefits, in which case the Employee will be required to remit the COBRA cost (102% of total benefit cost) of coverage.

5.3 **Termination By Employee Election For Good Reason**. If the Employee terminates employment at his election for Good Reason pursuant to Section 4.4, other than as provided for in Section 5.4, the Company shall pay to the Employee twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c)).

5.4 **Termination Following a Change In Control**. If the Company terminates the employment relationship upon or following a Change In Control pursuant to Section 4.5, or if the Employee terminates employment at his election for Good Reason upon or following a Change in Control pursuant to Section 4.5:

- (a) The Company shall pay to the Employee his annual salary in effect at that time in a lump sum amount, calculated at two (2.0) times such annual salary, within sixty (60) days after the Date of Termination, plus medical/dental care benefits (as described in Section 5.1(c)); and
- (b) For a six (6) month period after the Date of Termination, the Company shall reimburse the Employee for reasonable fees and expenses actually incurred by him for outplacement services in an amount, not to exceed \$25,000, mutually agreed upon by and between the Employee and the Company, promptly, within ten days, receipt by the Company of satisfactory evidence of payment of such fees and expenses, but in no event no later than March 15 of the year following the year in which the expenses were actually incurred.

5.5 **Termination by Reason of the Employee's Death or Disability**. If, prior to the expiration of the Employment Period, the Employee's employment is terminated by the Employee's death or Disability pursuant to Section 4.3, the Company shall pay to the Employee, or in the case of the Employee's death, to the estate of the Employee, twenty-four (24) months of his salary in effect on the Date of Termination in one-lump sum amount within sixty (60) days after the Date of Termination, plus medical and dental benefits (as described in Section 5.1(c)).

5.6 **Withholding and Deductions, 409A.**

- (a) All payments hereunder shall be subject to withholding and to such other deductions as shall at the time of such payment be required pursuant to any income tax or other law, whether of the United States or any other jurisdiction, and, in the case of payments to the executors or administrators to the Employee's estate, the delivery to the Company of all necessary tax waivers and other documents.
- (b) Notwithstanding anything in this Agreement to the contrary, in the event it shall be determined that any payment or distribution by the Company or any of its affiliated companies to or for the benefit of the Employee (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (a "Payment") would be an excess parachute payment within the meaning of section 280G of the Code (such excess only, an "Excess Payment"), then the Employee shall forfeit the Excess Payments to the extent the after-tax value to the Employee of the Payments as reduced by such forfeiture would be greater than the after-tax value to the Employee of the Payments absent such forfeiture. The forfeiture of Excess Payments, if applicable, shall be applied by: first reducing the cash severance described in Section 5.4(a) hereof, then to cancellation of accelerated vesting of performance-based equity awards (based on the reverse order of the date of grant), then to cancellation of accelerated vesting of other equity awards (based on the reverse order of the date of grant), and then to any other Payments on a pro-rata basis. All determinations required to be made under this Section 5.6(b), and the assumptions to be used in arriving at such determination, shall be made by a major accounting firm with expertise in such matters designated by the Company and reasonably acceptable to the Employee (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Employee within 15 business days of the receipt of notice from the Employee that there has been (or that there is likely to be) a Payment, or such earlier time as is requested by the Company. In connection with making determinations under this Section 5.6(b), the Accounting Firm shall take into account the value of any reasonable compensation for services to be rendered by the Employee before or after the change in control, including any noncompetition provisions that may apply to the Employee (whether set forth in this Agreement or otherwise), and the Company shall cooperate in the valuation of any such services, including any noncompetition provisions. Any determination by the Accounting Firm in good faith shall be binding upon the Company and the Employee. All fees and expenses of the Accounting Firm for services performed pursuant to this Section 5.6(b) shall be borne solely by the Company.
- (c) As provided herein, the Company shall pay the full cost of the Employee's COBRA premiums under this Section 5.
- (d) The payments and benefits provided for in Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement are intended to constitute a short-term deferral pursuant to Treas. Reg. § 1.409A-1(b)(4) and thus not "nonqualified deferred compensation" subject to Section 409A of the Code. If the payments and benefits provided for in Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement are deemed to provide for the payment of non-qualified deferred compensation benefits in connection with a separation of service under Section 409A(2)(a)(i) of the Code, the following interpretations apply to Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c): (i) Any termination of the Employee's employment triggering payment of benefits under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Employee's employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by Employee to the Company at the time the Employee's employment terminates), any benefits payable under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h). For purposes of clarification, this Section 5.6(d) shall not cause any forfeiture of benefits on the Employee's part, but shall only act as a delay until such time as a "separation from service" occurs; (ii) If the Employee is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of his death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the Employee's death, the Company shall pay the Employee in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid to the Employee prior to that date under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement; (iii) It is intended that each installment of the payments and benefits provided under Sections 5.2(b), 5.3, 5.4, 5.5, 5.6(b) and 5.6(c) of this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code; (iv) Neither the Company nor the Employee shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code; and (v) to the extent that the period between the Date of Termination and the date upon which payment is required to be made or commence begins in one calendar year and ends in a second calendar year, payment will be made or commence in the second calendar year.

5.7 **Release of Claims.** The Employee's entitlement to severance, payment of COBRA premiums, and accelerated vesting of options, restricted share units and other equity incentive awards, is contingent upon the Employee's execution, within 21 days after the Date of Termination (or such longer period as required by applicable law), and non-revocation of a general release of claims in a form prepared by the Company and presented to the Employee upon termination of his employment hereunder, as well as the Employee's compliance with the provisions of Section 7 hereof.

5.8 **No Requirement to Mitigate.** The Employee shall not be required to mitigate the amount of any payment provided for in this Section 5 by seeking other employment or otherwise.

6.0 **Definitions.** For purposes of this Agreement the following definitions apply:

6.1 **"Cause"** shall mean the occurrence of any of the following circumstances:

- (a) (i) the Employee's material breach of, or habitual neglect or failure to perform the material duties which he is required to perform under, the terms of this Agreement; (ii) the Employee's material failure to follow the reasonable directives or policies established by or at the direction of the Board; or (iii) the Employee's engaging in conduct that is materially detrimental to the interests of the Company such that the Company sustains a material loss or injury as a result thereof, provided that the breach or failure of performance by the Employee under subparagraphs (i) through (iii) hereof is not cured, to the extent cure is possible, within ten (10) days of the delivery to the Employee of written notice thereof;
- (b) the willful breach by the Employee of Section 7 of this Agreement or any provision of any confidentiality, invention and non-disclosure, non-competition or similar agreement between the Employee and the Company; or
- (c) the conviction of the Employee of, or the entry of a pleading of guilty or nolo contendere by the Employee to, any crime involving moral turpitude or any felony.

6.2 **"Date of Termination"** shall mean the Employee's last day of actual employment by the Company (or its successor) for any reason including death or Disability.

6.3 **"Disability"** shall mean the inability of the Employee, by reason of illness, accident or other physical or mental disability, for a period of 120 days, whether or not consecutive, during any 360-day period, to perform the services contemplated under this Agreement. A determination of disability shall be made by a physician satisfactory to both the Employee and the Company; provided, however, that if the Employee and the Company do not agree on a physician, the Employee and the Company shall each select a physician and these two together shall select a third physician, whose determination as to disability shall be binding on all parties.

6.4 **"Good Reason"** shall mean the occurrence of any of the following circumstances, and the Company's failure to cure such circumstances within thirty (30) days of the delivery to the Company of written notice by the Employee of such circumstances; provided that the Employee gives notice to the Company of the existence of the event or condition constituting Good Reason within thirty (30) days after such event or condition initially occurs or exists, and the Employee terminates his employment within one hundred and twenty (120) days after the initial occurrence of the event or condition constituting Good Reason:

- (a) any material adverse change in the Employee's duties, authority or responsibilities as described in Section 2.1 hereof which causes the Employee's position with the Company to become of significantly less responsibility or assignment of duties and responsibilities inconsistent with the Employee's position;
- (b) a material reduction in the Employee's salary as in effect on the Commencement Date or as the same may be increased from time to time;
- (c) the failure of the Company to continue in effect any material compensation or benefit plan in which the Employee participates as in effect on the Commencement Date, unless an equitable arrangement (embodied in an ongoing substitute or alternative plan) has been made with respect to such plan, or the failure by the Company to continue the Employee's participation therein (or in such substitute or alternative plan) on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Employee's participation relative to other participants, as in effect on the Commencement Date;
- (d) any material adverse change in the Employee's compensation resulting from (i) the failure by the Company to continue to provide the Employee with benefits substantially similar to those enjoyed by the Employee under any of the Company's health and welfare insurance, retirement and other fringe-benefit plans insurance, in which the Employee was participating as in effect on the Commencement Date, (ii) the taking of any action by the Company which would directly or indirectly materially reduce any of such benefits, or (iii) the failure by the Company to provide the Employee with the number of paid vacation days to which he is entitled in accordance with the Company's normal vacation policy in effect on the Commencement Date or in accordance with any agreement between the Employee and the Company existing at that time; or
- (e) the relocation of the Employee to a location which is a material distance from Cranbury, New Jersey.
- (f) For purposes of this Agreement, "Good Reason" shall be interpreted in a manner, and limited to the extent necessary, so that it will not cause adverse tax consequences for either party with respect to Section 409A of the Code, and any successor statute, regulation and guidance thereto.

6.5 **"Change in Control"** shall mean the occurrence of any of the following events:

- (a) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (other than the Company, any trustee or other fiduciary holding securities under an employee benefit plan of the Company, or any corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportion as their ownership of stock of the Company) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities;
- (b) the date the individuals who, during any twelve month period, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director during the twelve month period whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Exchange Act) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board;
- (c) a merger or consolidation of the Company approved by the stockholders of the Company with any other corporation, other than (i) 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 by being converted into voting securities of the surviving entity) 50% or more of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or (ii) a merger or consolidation effected to implement a re-capitalization of the Company (or similar transaction) in which no "person" (as defined in Section 6.4(a)) acquires more than 50% of the combined voting power of the Company's then outstanding securities; or
- (d) a sale of all or substantially all of the assets of the Company.

## 7.0 **Restrictive Covenants.**

- (a) For the purposes of this Agreement:
  - (i) **"Competing Products"** means any products or processes of any person or organization other than the Company in existence or under development, which are substantially the same, may be substituted for, or applied to substantially the same end use as the products or processes that the Company is developing or has developed or commercialized during the time of the Employee's employment with the Company.
  - (ii) **"Competing Organization"** means any person or organization engaged in, or with definitive plans to become engaged in, research or development, production, distribution, marketing or selling of a Competing Product.
- (b) The Employee acknowledges that he has, on or prior to the date of the Agreement, executed and delivered to the Company an Employee Agreement on Confidentiality, Intellectual Property, Debarment Certification and Conflict of Interest (the "Confidentiality Agreement") and the Employee hereby affirms and ratifies his obligations thereunder; and the Employee agrees that after termination by the Company for Cause pursuant to Section 4.2 (except in the case where such termination occurs within 12 months following a Change in Control), by the Employee pursuant to Section 4.6, or by either party upon expiration of the Employment Period, he will not render services of any nature, directly or indirectly, to any Competing Organization in connection with any Competing Product within any geographical territory as the Company and such Competing Organization are or would be in actual competition, for a period of twenty-four (24) months, commencing on the Date of Termination.
- (c) The Employee agrees that he will not, during the Employment Period and for a period of nine (9) months commencing on the Date of Termination, directly or indirectly employ, solicit for employment, or advise or recommend to any other person that they employ or solicit for employment, any person whom he knows to be an employee of the Company or any parent, subsidiary or affiliate of the Company.
- (d) In the event a court of competent jurisdiction should find any provision in this Section 7 to be unfair or unreasonable, such finding shall not render such provision unenforceable, but, rather, this provision shall be modified as to subject matter, time and geographic area so as to render the entire section valid and enforceable.

- 8.0 **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon either: (a) personal delivery; or (b) three (3) days following deposit with the United States Postal Service for delivery by registered or certified mail, postage prepaid, or one (1) day following deposit with a reputable overnight courier service, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 8.
- 9.0 **Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.
- 10.0 **Entire Agreement.** This Agreement, together with the Confidentiality Agreement, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement, including the Employment Agreement between the Company and the Employee dated as of July 1, 2016.
- 11.0 **Amendment.** This Agreement may be amended or modified only by a written instrument executed by both the Company and the Employee. Any such amendment shall comply with the requirements of Section 409A of the Code, if applicable.
- 12.0 **Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of New Jersey, without regard to its principles of conflict of laws.
- 13.0 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business; provided, however, that the obligations of the Employee are unique and personal and shall not be assigned by him.
- 14.0 **Waiver of Breach.**
- 14.1 **Waiver by the Company.** No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion. No waiver by the Company shall be valid unless in writing signed by an authorized officer of the Company and approved by a majority of the Board.
- 14.2 **Waiver by the Employee.** No delay or omission by the Employee in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Employee on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion. No waiver by the Employee shall be valid unless in a writing signed by the Employee.
- 15.0 **Miscellaneous.**
- 15.1 The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement.
- 15.2 In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 16.0 **Survival.** The provisions of Sections 3.3, 5, 6, 7 and 8 shall survive the termination of this Agreement.
- 17.0 **Timing of Reimbursements.** All reimbursements made by the Company pursuant to this Agreement will be made within 30 days from the date the Employee submits documentation of the expenses. Employee will submit documentation substantiating expenses within 30 days from the date the expenses are incurred.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as an instrument under seal effective as of the day and year set forth above.

**PALATIN TECHNOLOGIES, INC.**

/s/ Carl Spana

Name: Carl Spana

Title: Chief Executive Officer and President

Date: June 26, 2019

**EMPLOYEE**

/s/ Stephen T. Wills

Name: Stephen T. Wills

Title: Executive V.P., Chief Financial Office and Chief  
Operating Officer

Date: June 26, 2019