

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

CHARLES & COLVARD LTD

CIK: **1015155** | IRS No.: **561928817** | State of Incorporation: **NC** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **000-23329** | Film No.: **071295875**
SIC: **3910** Jewelry, silverware & plated ware

Mailing Address

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**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

December 4, 2007 (Date of earliest event reported)

Commission file number: 0-23329

Charles & Colvard, Ltd.

(Exact name of registrant as specified in its charter)

North Carolina
(State or other jurisdiction of
incorporation or organization)

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

300 Perimeter Park Drive, Suite A
Morrisville, North Carolina 27560
(Address of principal executive offices) (Zip code)

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

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))
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Item 1.01 Entry Into A Material Definitive Agreement.

On December 4, the Board of Directors (the “Board”) of Charles & Colvard, Ltd. (the “Company”) approved a form of indemnification agreement (each, an “Indemnification Agreement”) and authorized the Company to enter into a separate Indemnification Agreement with each member of the Board. Effective as of December 4, 2007, the Company entered into an Indemnification Agreement with each of Robert S. Thomas, Lisa A. Gavales, Laura C. Kendall, Lynn L. Lane, Robert A. Leggett, III, Frederick A. Russ, and Geraldine L. Sedlar (each, an “Indemnitee”). The Company expects to enter into one or more additional Indemnification Agreements with future directors of the Company.

The Company’s Amended and Restated Bylaws (the “Bylaws”) provide for indemnification to the fullest extent permitted by law and the North Carolina Business Corporation Act, which permit contracts such as the Indemnification Agreements. Each Indemnification Agreement provides contractual assurances that the indemnities promised by the Bylaws will continue to be available to the Indemnitee and includes provisions establishing procedures for determining and enforcing indemnification rights.

The foregoing summary of the Indemnification Agreements is qualified in its entirety by reference to the form of Indemnification Agreement included as Exhibit 10.109 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit 10.109 Charles & Colvard, Ltd. Form of Indemnification Agreement

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.

By:

/s/ James R. Braun

James R. Braun

Vice President of Finance & Chief Financial Officer

Date: December 10, 2007

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit Description</u>
Exhibit 10.109	Charles & Colvard, Ltd. Form of Indemnification Agreement.

INDEMNIFICATION AGREEMENT

AGREEMENT, effective as of _____ between Charles & Colvard, Ltd., a North Carolina corporation (the “Company”), and _____ (the “Indemnitee”).

WHEREAS, it is essential that the Company attract and maintain responsible, qualified directors and officers; and

WHEREAS, the Indemnitee is a director and/or officer of the Company; and

WHEREAS, the Amended and Restated Bylaws of the Company (the “Bylaws”), subject to certain conditions, provide that any person who at any time serves or has served as a director or officer of the Company or of any wholly owned subsidiary of the Company shall have the right to be indemnified and held harmless by the Company to the fullest extent from time to time permitted by law against all liabilities and litigation expenses in the event a claim shall be made or threatened against that person in, or that person is made or threatened to be made a party to, any proceeding arising out of that person’s status as such or that person’s activities in any such capacity; and

WHEREAS, the Bylaws and the North Carolina Business Corporation Act, by their nonexclusive nature, allow for contracts between the Company and its directors and officers with respect to indemnification, which may include, without limitation, provisions for recovery of reasonable costs, expenses and attorney fees and provisions establishing reasonable procedures for determining and enforcing indemnification rights.

WHEREAS, in order to induce Indemnitee to continue to serve as a director and/or officer of the Company and in part to provide Indemnitee with specific contractual assurance that the protection promised by the Bylaws will be available to the Indemnitee (regardless of, among other things, any amendment to or revocation of the Bylaws or any change in the composition of the Company’s Board of Directors (the “Board”) or any acquisition transaction involving the Company), the Company wishes to provide in this Agreement for the indemnification of and the advancement of expenses to the Indemnitee to the fullest extent permitted by law and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of Indemnitee under the Company’s directors’ and officers’ liability insurance policies.

NOW, THEREFORE, in consideration of the premises and of the Indemnitee continuing to serve the Company directly or, at its request, another enterprise, and intending to be legally bound hereby, the parties hereto do hereby covenant and agree as follows:

1. CERTAIN DEFINITIONS

(a) “Change of Control” means if after the date hereof (i) a report on Schedule 13D shall be filed with the Securities and Exchange Commission pursuant to Section 13(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) disclosing that any person, other than the Company or any employee benefit plan sponsored by the Company, is the beneficial owner (as the term is defined in Rule 13d-3 under the Exchange Act) directly or indirectly, of twenty percent or more of the total voting power represented by the Company’s then outstanding Voting Securities (calculated as provided in paragraph (d) of Rule 13d-3 under the Exchange Act in the case of rights to acquire Voting Securities); or (ii) any person, other than the Company or any employee benefit plan sponsored by the Company, shall purchase shares pursuant to a tender offer or exchange offer to acquire any Voting Securities of the Company (or securities convertible into such Voting Securities) for cash, securities or any other consideration, provided that after consummation of the offer, the person in question is the beneficial owner, directly or indirectly, of twenty percent or more of the total voting power represented by the Company’s then outstanding Voting Securities (all as calculated under clause (i)); or (iii) the shareholders of the Company shall approve (A) any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation (other than a merger of the Company in which holders of the shares of common stock of the Company, no par value per share (the “Common Shares”) immediately prior to the merger have the same proportionate ownership of Common Shares of the surviving corporation immediately after the merger as immediately before), or pursuant to which Common Shares of the Company would be converted into cash, securities or other property, or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all the assets of the Company; or (iv) there shall have been a change in the composition of the Board at any time during any consecutive twenty-four month period such that “continuing directors” cease for any reason to constitute at least a majority of the Board. For purposes of this clause, “continuing directors” means those members of the Board who either were directors at the beginning of such consecutive twenty-four month period or were elected by or on the nomination or recommendation of at least a majority of the then-existing Board. So long as there has not been a Change in Control within the meaning of clause (iv), the Board may adopt by a majority vote of the “continuing directors” a resolution to the effect that a prior Change of Control within the meaning of clauses (i) or (ii) is no longer applicable for the purposes of future Expenses in connection with future Proceedings to which this Agreement relates.

(b) “Expenses” mean expenses of every kind incurred in connection with a Proceeding, including counsel fees. Expenses shall include, without limitation, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone and fax charges, postage, delivery service charges, costs associated with procurement of surety bonds or loans or other costs associated with the stay of a judgment, penalty or fine, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in a Proceeding.

(c) “Independent Counsel” means a lawyer or law firm that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or the Indemnitee in any matter, or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine Indemnitee’s rights under this Agreement. Independent Counsel may be, but need not be, a member(s) of the bar of the State of North Carolina.

(d) “Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Company, including all appeals therefrom. A “Proceeding” may be instituted by another party, or by or in the right of the Company, or by the Indemnitee. The term “Proceeding” shall also include any preliminary inquiry or investigation that the Indemnitee in good faith believes might lead to the institution of a “Proceeding.”

(e) “Reviewing Party” means any appropriate person or body consisting of (i) a member or members of the Board; (ii) any other person or body duly appointed by the Board who is not a party to the particular Proceeding for which the Indemnitee is seeking indemnification; or (iii) Independent Counsel.

(f) “Voting Securities” means any securities of the Company that vote generally in the election of directors.

2. **TERM OF AGREEMENT:** This Agreement shall continue until and terminate upon the later of (i) the tenth anniversary after the date that the Indemnitee shall have ceased to serve as a director or officer of the Company (or in any other capacity in respect of which he or she has rights of indemnification hereunder); or (ii) the final termination of all pending Proceedings in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder, including any Proceeding commenced by the Indemnitee to enforce the Indemnitee’s rights under this Agreement.

3. **RIGHT TO INDEMNIFICATION AND ADVANCE; HOW DETERMINED IF UNSUCCESSFUL.**

(a) Right to Indemnification. Subject to Subsection (c) below, in the event the Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Proceeding arising out of Indemnitee’s present or former status as a director or officer of the Company, or Indemnitee having served at the request of the Company as a director, officer, employee, trustee, agent or fiduciary of another corporation, joint venture, employee benefit plan, trust or other enterprise, the Company shall indemnify the Indemnitee to the fullest extent permitted by law in effect on the date hereof (and to such greater extent as applicable law may hereafter permit) against the obligation to pay any and all Expenses, judgments, settlements, penalties, or fines (including any interest assessed, and

including any excise tax assessed with respect to an employee benefit plan) incurred on account of or with respect to such Proceeding. To the extent not previously paid by Expense Advance under subsection (b) below, such indemnification shall be made as soon as practicable after determination that Indemnitee is entitled thereto, but in any event no later than sixty (60) days after such determination. This Agreement shall be effective as well with respect to any such Proceedings that relate to acts or omissions occurring or allegedly occurring prior to the execution of this Agreement, and regardless of whether the Company may have been incorporated in a different jurisdiction at the time of such acts or omissions.

(b) Expense Advance. In connection with any such Proceeding, if so requested by the Indemnitee, the Company shall advance, within ten (10) business days of such request, any and all reasonable Expenses to the Indemnitee (an "Expense Advance"), subject to Subsection (c) below. The secretary shall promptly forward notice of such request to all directors. Within 10 days after forwarding of the request, any disinterested director may call a meeting of all disinterested directors to review the reasonableness of the Expenses so requested. No advance shall be made if a majority of disinterested directors affirmatively determines that an item or items of Expenses are unreasonable in amount, but any remaining Expenses shall be advanced. An Expense Advance shall be made without awaiting the results of the Proceeding giving rise to the Expenses or the outcome of any further Proceeding to determine the Indemnitee's right to indemnification hereunder, and without making any preliminary determination as to the Indemnitee's state of mind at the time of the activities in question. Notwithstanding the foregoing, the Company shall not be obligated to indemnify under this Section 3 a person made a party to a Proceeding if (i) the Indemnitee is not successful within the meaning of Section 6 and (ii) the appropriate Reviewing Party specified in subsection (e) below shall have affirmatively determined (in a written opinion in any case in which Independent Counsel referred to in Section 4 hereof is involved, a copy of which shall be delivered to the Indemnitee) that the Indemnitee's activities in question were at the time taken known or believed by him to be clearly in conflict with the best interests of the Company.

(c) Reimbursement by Indemnitee. The obligation of the Company promptly to make an Expense Advance(s) pursuant to subsection (b) above shall be enforceable by the Indemnitee in summary judicial proceedings; but shall be subject, however, to the condition subsequent that if, when and to the extent the Reviewing Party may subsequently determine that the Indemnitee's activities were at the time taken known or believed by him to be clearly in conflict with the best interests of the Company, then the Company shall be entitled to be reimbursed by the Indemnitee for all such amounts theretofore advanced. The obligation of the Indemnitee to make such reimbursement shall be unsecured and without interest. The Indemnitee hereby undertakes so to reimburse the Company, the receipt of which unsecured and interest free undertaking is hereby accepted by the Company as the sole condition of advancing the Indemnitee's Expenses pursuant to subsection (b) above. If the Indemnitee has commenced legal or arbitration proceedings to secure a determination that the Indemnitee should be indemnified hereunder, the Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final determination is made by the court or the arbitrators, as the case may be, that the Indemnitee's activities were at the time taken known or believed by him to be clearly in conflict with the best interests of the Company.

(d) Proceedings Initiated by Indemnitee. Notwithstanding anything in this Agreement to the contrary, prior to any Change in Control (other than one approved in advance by a majority of the Board who were elected by the shareholders prior to the Change of Control), the Indemnitee shall not have any right to indemnification or Expense Advance pursuant to this Agreement in connection with any Proceeding initiated by the Indemnitee unless the Board has authorized or consented to the initiation of such Proceeding or where the primary purpose of the Proceeding is to enforce the Indemnitee's rights under this Agreement.

(e) Reviewing Party. If there has not been a Change in Control, the Reviewing Party shall be as determined by the Board, either in the specific case or under procedures adopted by the Board. If there has been a Change in Control (other than one approved in advance by a majority of the Board who were elected by the shareholders prior to such Change in Control), the Reviewing Party shall be the Independent Counsel referred to in Section 4.

(f) Arbitration Following Change of Control. If there has been a Change in Control and any dispute arises under this Agreement, the parties agree that at the Indemnitee's option such dispute shall be resolved by binding arbitration proceedings in accordance with the rules of the American Arbitration Association and the results of such proceedings shall be conclusive on both parties and shall not be subject to judicial interference or review on any ground whatsoever, including without limitation any claim that the Company was wrongfully induced to enter into this Agreement to arbitrate such a dispute. The Company shall pay the cost of any arbitration proceedings under this Agreement. The Indemnitee shall be entitled to advancement of his Expenses in connection with such proceedings and, notwithstanding anything to the contrary in subsection (c) above, the Indemnitee shall be obligated to reimburse the Company for his Expenses in connection with such arbitration proceedings only if it is finally and specifically determined by the arbitrators that the Indemnitee's position in initiating the arbitration was frivolous and completely without merit. The arbitrators shall have the authority to award Expenses (including, for clarification, counsel fees)

4. INDEPENDENT COUNSEL.

(a) Selection Following Change of Control. The Company agrees that if there is a Change in Control of the Company (other than a Change of Control which has been approved in advance by a majority of the Board who were elected by the shareholders prior to such Change in Control), then with respect to all matters thereafter arising concerning the rights of the Indemnitee to indemnity payments and Expense Advances under the Bylaws, this Agreement or any other agreement, bylaw or provision of the Company's Restated Articles of Incorporation (the "Charter") now or hereafter in effect relating to indemnification, the Company shall (unless otherwise agreed by the Indemnitee) seek legal advice exclusively from Independent Counsel selected by the Indemnitee and approved by the Company (in accordance with Subsection (b) below). Such counsel, among other things, shall render its written opinion to the Company and to the Indemnitee as to whether the Indemnitee is entitled to be indemnified under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel and fully to indemnify the Independent Counsel against any and all reasonable expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or the Independent Counsel's engagement pursuant hereto.

(b) **Objection to Selection.** Following written notice by the Indemnitee to the Company of the initial selection of Independent Counsel by the Indemnitee the Company may within fourteen (14) days deliver to the Indemnitee a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel selected does not satisfy the definition of Independent Counsel in subsection 1(c) and the objection shall set forth with particularity the factual basis for such assertion. Absent a proper and timely objection, the person, persons or firm selected shall act as Independent Counsel. If such written objection is made, the Indemnitee may select alternate Independent Counsel in the same manner as the initial selection. If the Company objects to the alternate selection within fourteen (14) days of written notice thereof, the Indemnitee may either seek a judicial determination that such objections were inappropriate or else the Indemnitee may direct that the Company select Independent Counsel by lot from among those firms that have a North Carolina office comprised of more than 25 attorneys and have a rating of "AV" or better in the then current Martindale-Hubbell Law Directory. Such selection by lot shall be made by the principal financial officer of the Company in the presence of the Indemnitee (and the Indemnitee's legal counsel, or either or neither of them as the Indemnitee may elect). Such law firms shall be contacted in the order of their selection, requesting each firm to accept engagement to make the determination required, until one of such firms accepts such engagement.

5. INDEMNIFICATION FOR ENFORCEMENT EXPENSES. The Company shall indemnify the Indemnitee against any and all Expenses (including attorneys' fees) and, if requested by the Indemnitee, shall (within ten (10) business days of such request) advance such Expenses to the Indemnitee, which are incurred by the Indemnitee in connection with any Proceeding initiated by the Indemnitee for: (i) indemnification or advancement of Expenses by the Company under the North Carolina Business Corporation Act (the "NCBCA"), the Bylaws, the Charter, this Agreement, or any other agreement or Company bylaw, Charter provision, vote of shareholders or resolution of the Board now or hereafter in effect relating to indemnification; or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company. The Indemnitee shall reasonably cooperate with the person, persons or entity making the determination with respect to the Indemnitee's entitlement to indemnification under this Agreement. Any out-of-pocket expenses incurred by the Indemnitee in so cooperating shall be borne by the Company (irrespective of the determination as to the Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold the Indemnitee harmless therefrom.

6. SUCCESS; PARTIAL INDEMNITY, ETC. Notwithstanding any other provision of this Agreement, to the extent that the Indemnitee has been successful on the merits or otherwise in defense of any or all claims made against him in a Proceeding or in defense of any issue or matter therein, including dismissal without prejudice, the Indemnitee shall be indemnified against all Expenses incurred in connection therewith. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses, judgments, settlements, penalties or fines paid as a result of a Proceeding but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion thereof to which it is determined the Indemnitee is entitled.

7. **BURDEN OF PROOF.** In connection with any determination by the Reviewing Party or otherwise as to whether the Indemnitee is entitled to be indemnified hereunder, the person or persons or entity or body making such determination shall presume that the Indemnitee is entitled to indemnification under this Agreement and the burden of overcoming such presumption shall be on the Company. The termination of any Proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the Indemnitee's activities were at the time taken known or believed by him to be clearly in conflict with the best interests of the Company, or that a court has determined that indemnification is not permitted. In addition, neither the failure of the Reviewing Party to have made a determination as to the Indemnitee's state of mind, nor an actual determination by the Reviewing Party that the Indemnitee had a state of mind prior to the commencement of arbitration (if applicable) or legal proceedings to secure a determination that the Indemnitee should be indemnified under this Agreement and applicable law, shall be a defense to the Indemnitee's claim or create a presumption of any kind. The knowledge and/or actions, or failure to act, of any director, officer, agent, fiduciary or employee of the Company shall not be imputed to the Indemnitee for purposes of determining the right to indemnification under this Agreement.

8. **NONEXCLUSIVITY, ETC.** The rights of the Indemnitee hereunder shall be in addition to any other rights the Indemnitee may have under the Bylaws, the Charter, the NCBCA, any other agreement, a vote of shareholders or a resolution of the Board or otherwise. To the extent that a change in the NCBCA (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the Bylaws, the Charter and this Agreement, it is the intent of the parties that the Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change.

9. **CONTRIBUTION.** In the event the indemnification provided for in Section 3 of this Agreement is unavailable to the Indemnitee in connection with any Proceeding under any Federal law, the Company, in lieu of indemnifying the Indemnitee, shall contribute to the Expenses incurred by the Indemnitee in such proportion as deemed fair and reasonable by the Reviewing Party, in light of all the circumstances of the Proceeding giving rise to such Expenses, in order to reflect (i) the relative benefits received by the Company and the Indemnitee as a result of the event(s) and/or transaction(s) giving rise to such Proceeding; and (ii) the relative fault of each.

10. **LIABILITY INSURANCE.** To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, the Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any Company director or officer.

11. **PERIOD OF LIMITATIONS.** No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against the Indemnitee, the

Indemnitee' s spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

12. **PROCEDURES VALID.** The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Agreement that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination is made that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration

13. **AMENDMENTS, ETC.** No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the waiving party.

14. **SUBROGATION.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute an appropriate document in favor of the Company to secure such rights.

15. **NO DUPLICATION OF PAYMENTS.** The Company shall not be liable under this Agreement to make any payment in connection with any Proceeding to the extent the Indemnitee has otherwise actually received payment (under any insurance policy, the Charter, the Bylaws or otherwise) of the amounts otherwise indemnifiable hereunder.

16. **BINDING EFFECT, ETC.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns (including any direct or indirect successor by purchase, merger or consolidation or otherwise to all or substantially all of the business and/or assets of the Company), spouses, heirs, executors and personal and legal representatives. This Agreement shall continue in effect regardless of whether the Indemnitee continues to serve as a director or officer of the Company or of any other entity at the Company' s request. In the event of his demise, this Agreement shall be enforceable by the Indemnitee' s legal representatives as fully as if the Indemnitee had survived.

17. **SEVERABILITY; HEADINGS; PRONOUNS.** The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable in any respect, and the validity and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired and shall remain enforceable to the fullest extent permitted by law. The headings of the Sections of this Agreement are inserted for convenience only and shall

not be deemed to constitute part of this Agreement or to affect the construction thereof. The masculine pronoun wherever used in this Agreement includes the corresponding feminine pronoun.

18. **NOTICE OF PROCEEDINGS; NOTICES.** The Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter that may be subject to indemnification or advancement of Expenses covered hereunder. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (i) upon delivery if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) on the third business day after mailing if mailed by certified or registered mail with postage prepaid, and addressed as follows: If to the Indemnitee, as shown after the Indemnitee's signature below; and if to the Company, to Corporate Secretary, Charles & Colvard, Ltd., 300 Perimeter Park Drive, Suite A, Morrisville, North Carolina 27560 or such other address as may have been furnished in writing to the Indemnitee by the Company or to the Company by the Indemnitee, as the case may be.

19. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed in such state without giving effect to the principles of conflicts of laws.

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

CHARLES & COLVARD, LTD.

By: _____

Name:

Title:

INDEMNITEE
