

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, 2022 (June 22, 2022)

SHIFT TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

001-38839

(Commission File Number)

82-5325852

(I.R.S. Employer
Identification No.)

290 Division Street, Suite 400, San Francisco, CA

(Address of principal executive offices)

94103

(Zip Code)

Registrant's telephone number, including area code: **(855) 575-6739**

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 240a-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 240.13a-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.0001 per share	SFT	Nasdaq Capital Market

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

Emerging growth company

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

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

Foy Amended and Restated Retention Bonus Agreement

On June 22, 2022, Shift Technologies, Inc. (the “Company”) entered into an Amended and Restated Retention Bonus Agreement with Sean Foy, Chief Operating Officer of the Company (the “Amended and Restated Retention Agreement”). Pursuant to the Amended and Restated Retention Agreement (which replaces and supersedes in its entirety that certain retention bonus agreement between Mr. Foy and the Company dated January 7, 2022), Mr. Foy will be eligible to receive a cash award of \$2,000,000 to be paid in two installments, subject to continued employment with the Company as a full-time employee in good standing through the applicable payment date and executing a release agreement in favor of the Company, with the first installment equal to \$400,000 to be paid no later than the first payroll date that occurs after the release effective date applicable to such payment, and the second installment equal to \$1,600,000 to be paid no later than the first payroll date that occurs after the release effective date applicable to such payment. If (i) Mr. Foy resigns from his position for any reason, (ii) Mr. Foy’s employment with the Company is terminated due to death or disability (as defined under the Company’s long-term disability plan and/or policy applicable to the Employee, as may be modified or implemented from time to time), or (iii) the Company terminates Mr. Foy’s employment for “Cause” (as defined in the Amended and Restated Retention Agreement), in each case, at any time prior to November 19, 2023, Mr. Foy will no longer be eligible to receive any unpaid installments of the cash award. In addition, if the Company terminates Mr. Foy’s employment without Cause prior to July 19, 2023, Mr. Foy will no longer be eligible to receive any unpaid installments of the cash award. If the Company terminates Mr. Foy’s employment without Cause after July 19, 2023 but prior to November 19, 2023, then, subject to Mr. Foy executing a release agreement in favor of the Company, Mr. Foy shall receive a prorated payment of any unpaid portion of the second installment of the cash award.

The foregoing description of the Amended and Restated Retention Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed hereto as Exhibit 10.1 and is incorporated herein by reference.

Shein Retention Bonus Agreement

On June 22, 2022, the Company entered into a Retention Bonus Agreement with Oded Shein, Chief Financial Officer of the Company (the “Retention Agreement”). Pursuant to the Retention Agreement, Mr. Shein will be eligible to receive a cash award of \$400,000 subject to his continued employment with the Company as a full-time employee in good standing through November 15, 2022 and his execution of a release agreement in favor of the Company. If (i) Mr. Shein resigns from his position for any reason, (ii) Mr. Shein’s employment with the Company is terminated due to death or disability (as defined under the Company’s long-term disability plan and/or policy applicable to the Employee, as may be modified or implemented from time to time), or (iii) the Company terminates Mr. Shein’s employment for “Cause” (as defined in the Retention Agreement), in each case, at any time prior to November 15, 2022, Mr. Shein will no longer be eligible to receive the cash award. In addition, if the Company terminates Mr. Shein’s employment without “Cause” prior to November 15, 2022, Mr. Shein will receive the unpaid cash award, subject to Mr. Shein executing a release agreement in favor of the Company.

The foregoing description of the Retention Agreement is not complete and is qualified in its entirety by reference to the full text of such agreement, a copy of which is filed hereto as Exhibit 10.2 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

Exhibit Number	Description
10.1	Amended and Restated Retention Bonus Agreement, dated as of June 22, 2022, by and between Shift Technologies, Inc. and Sean Foy.
10.2	Retention Bonus Agreement, dated as of June 22, 2022, by and between Shift Technologies, Inc. and Oded Shein.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

SHIFT TECHNOLOGIES, INC.

Dated: June 24, 2022

/s/ George Arison

Name: George Arison

Title: Chief Executive Officer and Chairman

SHIFT TECHNOLOGIES, INC.

AMENDED AND RESTATED RETENTION BONUS AGREEMENT

THIS AMENDED AND RESTATED RETENTION BONUS AGREEMENT (this "Agreement"), dated June 22, 2022 (the "Restatement Date"), between Shift Technologies, Inc. (the "Company") and Sean Foy (the "Employee"), is made to retain the Employee in recognition of his value to the Company in meeting its financial and strategic business objectives by providing the Employee with the opportunity to earn a retention bonus. This Agreement is an amendment and restatement of that certain retention bonus agreement dated January 7, 2022 between the Company and the Employee (the "Original Agreement"), and replaces and supersedes the Original Agreement in its entirety. For the avoidance of doubt, the term "Company" herein shall include any successor entity thereto or any affiliate thereof. In consideration of the mutual promises made herein, and the Employee's continued employment by the Company in accordance with the terms below, the Employee and the Company agree as follows:

1. **Retention Bonus.** Subject to the terms and provisions below, the Company shall pay to the Employee a total amount of \$2,000,000 in two installments, with (i) the first installment of \$400,000 subject to continued employment with the Company as a full-time employee in good standing from January 7, 2022 (the "Effective Date") through November 15, 2022 (the "First Retention Bonus"), and (ii) the second installment of \$1,600,000 subject to the Employee's continued employment with the Company as a full-time employee in good standing from the Effective Date through November 19, 2023 (the "Second Retention Bonus"). Each installment payment amount payable to the Employee in accordance with the preceding sentence is referred to herein as a "Retention Bonus," and the period from the Effective Date through November 19, 2023 is referred to herein as the "Retention Period."

2. **Additional Conditions to Receipt.** In addition to remaining actively employed by the Company as provided above (or as otherwise provided under Section 4), the Employee must also comply with the following conditions to receive any Retention Bonuses:

a. *Release.* Each Retention Bonus payable under this Agreement shall be subject to the Employee (or if applicable, the Employee's estate) executing, delivering and not revoking a general release of claims against the Company (and its agents, parents, subsidiaries, successors and assigns) substantially in the form prescribed by the Company (a "Release"). With respect to the First Retention Bonus, the Employee agrees to execute a Release as soon as practicable on or after November 15, 2022 (or the Employee's termination date if the Employee's employment is terminated as provided under the first sentence of Section 4), but no later than 30 days following such date. With respect to the Second Retention Bonus, the Employee agrees to execute a Release as soon as practicable on or after November 19, 2023 (or the Employee's termination date if the Employee's employment is terminated as provided under Section 4), but no later than 30 days following such date. Each applicable Release will become effective on the eighth (8th) calendar day after the Employee signs and delivers it, provided the Employee does not timely revoke such Release (the "Release Effective Date").

b. *Performance of Duties.* The Employee agrees to perform the Employee's regular duties and/or such other responsibilities as may be required by the Company in good faith. The Employee must perform the Employee's duties at a satisfactory level (such performance to be determined in the discretion of the Board of Directors of the Company and the Chief Executive Officer of the Company) and continue to comply with all of the Company's policies, codes of conduct and directives (as may be modified or implemented from time to time).

c. *Certain Terminations of Employment.* If: (i) the Employee resigns from his position of employment with the Company for any reason (or provides notice to the Company of his intent to resign from his position of employment with the Company for any reason), (ii) the Employee's employment with the Company is terminated due to death or disability (as defined under the Company's long-term disability plan and/or policy applicable to the Employee, as may be modified or implemented from time to time), or (iii) the Company terminates the Employee's employment for Cause (as defined below) (or provides notice to the Employee of its intent to terminate his employment with the Company for Cause), in each case, at any time prior to the end of the Retention Period, the Employee's opportunity to receive any unpaid Retention Bonus(es) hereunder shall automatically terminate and be forfeited.

d. *Compliance with Applicable Laws.* The Employee shall at all times comply with laws and regulations applicable to the Employee's actions on behalf of the Company.

e. *Confidentiality of Company Information.* The Employee shall not, at any time during or after employment with the Company, make any unauthorized disclosure of any confidential business or proprietary information or trade secrets of the Company, or make any use thereof, except as required for the Employee to carry out the Employee's job responsibilities with the Company.

f. *Confidentiality of Agreement.* The Employee hereby agrees that the Employee will keep the terms of this Agreement confidential, and will not, except as required by law, disclose such terms to any person other than the Employee's immediate family or legal, tax or financial advisors (who must also keep the terms of this Agreement confidential). Notwithstanding the foregoing, the Company will not discharge or in any manner discriminate against employees who inquire about, discuss, or disclose their own pay or compensation with another Company employee or applicant.

3. Payment of Retention Bonus. Subject to the requirements of Section 2 above, each Retention Bonus (if any) shall be payable as soon as administratively practicable after the Release Effective Date applicable to such Retention Bonus, but no later than the first regularly scheduled payroll date following such date; provided, however, that to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended, and the corresponding regulations and guidance promulgated thereunder (the "Code"), if the period between the date of the applicable payment triggering event and the deadline for execution of the Release set forth in Section 2 spans two calendar years, such Retention Bonus shall not be paid until the second calendar year. The Employee agrees that the Company may withhold from each Retention Bonus payable hereunder, to the extent permitted by law, any amounts that the Employee owes the Company at the time of payment of such Retention Bonus.

4. Consequences of a Termination of Employment Without Cause. Notwithstanding the continued employment requirement of Section 2 above and subject to Section 2, in the event that the Employee's employment with the Company is terminated by the Company without Cause after July 19, 2023 and prior to November 19, 2023, then the Employee will be paid a prorated portion of any unpaid Second Retention Bonus (with such proration based on whole months worked versus the whole months in the entire Retention Period) in accordance with Sections 2 and 3 above; provided that the Employee had not failed to satisfy any of the conditions set forth in Section 2 immediately prior to such termination. For the avoidance of doubt, if the Employee's employment with the Company is terminated by the Company without Cause on or prior to July 19, 2023, the Employee's opportunity to receive any unpaid Retention Bonus(es) hereunder shall automatically terminate and be forfeited. For purposes of this Agreement:

- a. "Cause" shall mean the Employee's action, or failure to act, during the Employee's employment with the Company that is determined to constitute any of the following: (i) performance of any act or failure to perform any act in bad faith and to the detriment of any Company Entities; (ii) dishonesty, intentional misconduct or material breach of any agreement with any Company Entity; or (iii) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person. Prior to any termination for Cause pursuant to each such event listed in (i) or (ii) above, to the extent such event(s) is capable of being cured by the Employee, the Company shall give the Employee written notice thereof describing in reasonable detail the circumstances constituting Cause and the Employee shall have the opportunity to remedy the same within thirty (30) days after receiving written notice.
- b. "Company Entity" shall mean any parent, subsidiary or affiliate of the Company.

5. Termination of Agreement. Upon the Employee's failure to satisfy any of the payment conditions set forth in this Agreement, this Agreement and the opportunity to receive any payment due to the Employee hereunder shall automatically terminate and be forfeited, void and of no further force and effect, in all cases, without any action from the parties hereto.

6. No Right to Continued Employment. This Agreement shall not be regarded as a contract of employment for a set period of time and does not confer upon the Employee any right with respect to the continuance of employment or other service with the Company or any subsidiary. Further, this Agreement shall not interfere in any way with any right that the Company or any subsidiary would otherwise have to terminate the Employee's employment or other service at any time. The Employee remains an at-will employee for the duration of the Employee's employment with the Company, including during the Retention Period, which means that the Company or the Employee may terminate the Employee's employment at any time with or without cause and without advance notice. Any economic or other benefit to the Employee under this Agreement shall not be taken into account in determining any benefits to which the Employee may be entitled under any severance, retirement or other benefit or compensation plan or policy maintained by the Company unless expressly provided for under such plan or policy.

7. **Section 409A of the Internal Revenue Code.** Although the Company does not guarantee the tax treatment of any payment under this Agreement, this Agreement and any payments made hereunder are intended to comply with or be exempt from Section 409A of the Code, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted in a manner consistent therewith. Any payment under this Agreement may only be made upon an event and in a manner permitted by Section 409A of the Code, and such payments are intended to be exempt from Section 409A of the Code under the “short-term deferral” exception, to the maximum extent applicable. For purposes of Section 409A of the Code, the Employee’s right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Prior to November 19, 2023, the Company reserves the right to amend the provisions of this Agreement at any time and in any manner without the Employee’s consent but with notice to the Employee solely to comply with the requirements of Section 409A of the Code and to avoid the imposition of additional tax, interest or income inclusion under Section 409A of the Code on any payment to be made hereunder. Notwithstanding the foregoing, in no event shall the Company be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on the Employee by Section 409A of the Code or for damages for failing to comply with Section 409A of the Code.

8. **Withholding.** The Company may deduct and withhold from any amount payable under this Agreement such federal, state, local, foreign, or other taxes as are required to be withheld pursuant to any applicable tax law or regulation. The Employee hereby acknowledges that the Company has advised the Employee to consult with the Employee’s legal, tax or financial advisors with respect to any tax or other financial consequences of any amounts paid to the Employee under this Agreement.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and supersedes all prior agreements (including, for the avoidance of doubt, the Original Agreement), promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto; provided, that the restrictive covenants contained in this Agreement are in addition to, and not in lieu of, any existing or future restrictive covenant agreement or similar obligations contained in any other agreements between the Employee and the Company. None of the parties hereto will be liable to any other party in any manner by any representations and warranties or covenants relating to such subject matter except as specifically set forth in this Agreement. Except as provided in Section 7, any modification of this Agreement will be effective only if it is in writing and signed by both parties.

10. **Assignment.** Without the prior written consent of the Company, this Agreement is not assignable by the Employee other than by will or the laws of descent and distribution, and any assignment in violation of this Agreement will be void. Notwithstanding the foregoing, this Agreement and the rights hereunder will inure to the benefit of and be enforceable by the Employee’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. The Company may assign or delegate this Agreement or any of its rights or obligations hereunder to a person or entity that is an affiliate of or successor to the Company.

11. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of California without regard to its conflict of laws rules or principles that might refer to the laws of another jurisdiction.

12. **Counterparts.** This Agreement may be executed in counterparts, which shall be deemed originals with the same effect as if both parties had signed the same document. Any counterpart shall be construed together with any other counterpart and both shall constitute one Agreement. For the purposes of this Agreement, a facsimile or PDF copy of a signature shall be construed to be an original.

[Signature Page Follows]

AGREED AND ACCEPTED AS OF THE RESTATEMENT DATE:

SEAN FOY

Signature: _____

Date: /s/ Sean Foy

SHIFT TECHNOLOGIES, INC.

Signature: _____

Name: /s/ Tracy Notte

Title: Chief People Officer

Date: 06/22/2022

SHIFT TECHNOLOGIES, INC.

RETENTION BONUS AGREEMENT

THIS RETENTION BONUS AGREEMENT (this "Agreement"), dated June 22, 2022 (the "Effective Date"), between Shift Technologies, Inc., (the "Company"), and Oded Shein (the "Employee"), is made to retain the Employee in recognition of the Employee's value to the Company in meeting its financial and strategic business objectives by providing the Employee with the opportunity to earn a retention bonus. For the avoidance of doubt, the term "Company" herein shall include any successor entity thereto or any affiliate thereof. In consideration of the mutual promises made herein, and the Employee's continued employment by the Company in accordance with the terms below, the Employee and the Company agree as follows:

1. **Retention Bonus.** Subject to the terms and provisions below, the Company shall pay to the Employee a total amount of \$400,000 (the "Retention Bonus"), subject to the Employee's continued employment with the Company as a full-time employee in good standing from the Effective Date through November 15, 2022 (the "Retention Period").

2. **Additional Conditions to Receipt.** In addition to remaining actively employed by the Company as provided above (or as otherwise provided under Section 4), the Employee must also comply with the following conditions to receive the Retention Bonus:

a. *Release.* The Retention Bonus payable under this Agreement shall be subject to the Employee (or if applicable, the Employee's estate) executing, delivering and not revoking a general release of claims against the Company (and its agents, parents, subsidiaries, successors and assigns) substantially in the form prescribed by the Company (the "Release"). The Employee agrees to execute the Release as soon as practicable on or after November 15, 2022 (or the Employee's termination date if the Employee's employment is terminated as provided under Section 4), but no later than 30 days following such date. The Release will become effective on the eighth (8th) calendar day after the Employee signs and delivers it, provided the Employee does not timely revoke such Release (the "Release Effective Date").

b. *Performance of Duties.* The Employee agrees to perform the Employee's regular duties and/or such other responsibilities as may be required by the Company in good faith. The Employee must perform the Employee's duties at a satisfactory level (such performance to be determined in the discretion of the Board of Directors of the Company (the "Board") and the Chief Executive Officer of the Company) and continue to comply with all of the Company's policies, codes of conduct and directives (as may be modified or implemented from time to time).

c. *Certain Terminations of Employment.* If: (i) the Employee resigns from the Employee's position of employment with the Company for any reason (or provides notice to the Company of the Employee's intent to resign from the Employee's position of employment with the Company for any reason), (ii) the Employee's employment with the Company is terminated due to death or disability (as defined under the Company's long-term disability plan and/or policy applicable to the Employee, as may be modified or implemented from time to time), or (iii) the Company terminates the Employee's employment for Cause (as defined below) (or provides notice to the Employee of its intent to terminate the Employee's employment with the Company for Cause), in each case, at any time prior to the end of the Retention Period, the Employee's opportunity to receive the Retention Bonus hereunder shall automatically terminate and be forfeited.

d. *Compliance with Applicable Laws.* The Employee shall at all times comply with laws and regulations applicable to the Employee's actions on behalf of the Company.

e. *Confidentiality of Company Information.* The Employee shall not, at any time during or after employment with the Company, make any unauthorized disclosure of any confidential business or proprietary information or trade secrets of the Company, or make any use thereof, except as required for the Employee to carry out the Employee's job responsibilities with the Company.

f. *Confidentiality of Agreement.* The Employee hereby agrees that the Employee will keep the terms of this Agreement confidential, and will not, except as required by law, disclose such terms to any person other than the Employee's immediate family or legal, tax or financial advisors (who must also keep the terms of this Agreement confidential). Notwithstanding the foregoing, the Company will not discharge or in any manner discriminate against employees who inquire about, discuss, or disclose their own pay or compensation with another Company employee or applicant.

3. Payment of Retention Bonus. Subject to the requirements of Section 2 above, the Retention Bonus shall be payable as soon as administratively practicable after the Release Effective Date, but no later than the first regularly scheduled payroll date following such date; provided, however, that to the extent required by Section 409A of the Internal Revenue Code of 1986, as amended, and the corresponding regulations and guidance promulgated thereunder (the "Code"), if the period between the date of the applicable payment triggering event and the deadline for execution of the Release set forth in Section 2 spans two calendar years, the Retention Bonus shall not be paid until the second calendar year. The Employee agrees that the Company may withhold from the Retention Bonus, to the extent permitted by law, any amounts that the Employee owes the Company at the time of payment of such Retention Bonus.

4. Consequences of a Termination of Employment Without Cause. Notwithstanding the continued employment requirement of Section 2 above and subject to Section 2, in the event that the Employee's employment with the Company is terminated during the Retention Period by the Company without Cause, the Employee will be paid the unpaid Retention Bonus in accordance with Sections 2 and 3 above; provided that the Employee had not failed to satisfy any of the conditions set forth in Section 2 immediately prior to such termination. For purposes of this Agreement:

- a. "Cause" shall mean (i) the Employee has been convicted or entered a plea of guilty or nolo contendere in a federal or state court of a crime classified as a felony or a crime involving moral turpitude; (ii) action or inaction by the Employee (A) that constitutes embezzlement, theft, misappropriation or conversion of assets of any Company Entity which alone or together with related actions or inactions involve assets of more than a de minimis amount or that constitutes intentional fraud, gross malfeasance of duty, or conduct grossly inappropriate to the Employee's office, and (B) such action or inaction has adversely affected or is likely to adversely affect the business of the Company Entities, taken as a whole, or has resulted or is intended to result in a direct or indirect gain or personal enrichment of the Employee (or the Employee's relatives or other similar close relations, as applicable) to the detriment of any Company Entity; (iii) the Employee has been grossly inattentive to, or in a grossly negligent manner failed to competently perform, the Employee's job duties and the failure was not cured within 30 days after written notice from the Company; (iv) breach by the Employee of any material provision of this Agreement; (v) material violation of any Company policy or code, or term of any agreement between the Employee and the Company; or (vi) substantial or habitual abuse of alcohol and/or drugs, including prescription medication, or similar substances that impair the Employee's job performance. Any termination of the Employee's employment by the Company for Cause shall be communicated by written notice from the Company to the Employee, which notice shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee's employment under this provision (the "Notice of Termination"). The Employee shall not be deemed to have been terminated for Cause unless and until (x) the Employee receives a Notice of Termination from the Company; (y) the Employee is given the opportunity to be heard before the Board; and (z) the Board finds in its good faith opinion, the Employee engaged in the conduct set forth in the Notice of Termination. The Board may retroactively deem a termination of the Employee's employment to have been for "Cause" if circumstances constituting "Cause" existed prior to the Employee's date of termination but become known to the Board after the date of termination.
- b. "Company Entity" shall mean any parent, subsidiary or affiliate of the Company.

5. Termination of Agreement. Upon the Employee's failure to satisfy any of the payment conditions set forth in this Agreement, this Agreement and the opportunity to receive any payment due to the Employee hereunder shall automatically terminate and be forfeited, void and of no further force and effect, in all cases, without any action from the parties hereto.

6. No Right to Continued Employment. This Agreement shall not be regarded as a contract of employment for a set period of time and does not confer upon the Employee any right with respect to the continuance of employment or other service with the Company or any subsidiary. Further, this Agreement shall not interfere in any way with any right that the Company or any subsidiary would otherwise have to terminate the Employee's employment or other service at any time. The Employee remains an at-will employee for the duration of the Employee's employment with the Company, including during the Retention Period, which means that the Company or the Employee may terminate the Employee's employment at any time with or without cause and without advance notice. Any economic or other benefit to the Employee under this Agreement shall not be taken into account in determining any benefits to which the Employee may be entitled under any severance, retirement or other benefit or compensation plan or policy maintained by the Company unless expressly provided for under such plan or policy.

7. Section 409A of the Internal Revenue Code. Although the Company does not guarantee the tax treatment of any payment under this Agreement, this Agreement and any payments made hereunder are intended to comply with or be exempt from Section 409A of the Code, and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted in a manner consistent therewith. Any payment under this Agreement may only be made upon an event and in a manner permitted by Section 409A of the Code, and such payments are intended to be exempt from Section 409A of the Code under the “short-term deferral” exception, to the maximum extent applicable. For purposes of Section 409A of the Code, the Employee’s right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Prior to November 15, 2022, the Company reserves the right to amend the provisions of this Agreement at any time and in any manner without the Employee’s consent but with notice to the Employee solely to comply with the requirements of Section 409A of the Code and to avoid the imposition of additional tax, interest or income inclusion under Section 409A of the Code on any payment to be made hereunder. Notwithstanding the foregoing, in no event shall the Company be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on the Employee by Section 409A of the Code or for damages for failing to comply with Section 409A of the Code.

8. Withholding. The Company may deduct and withhold from any amount payable under this Agreement such federal, state, local, foreign, or other taxes as are required to be withheld pursuant to any applicable tax law or regulation. The Employee hereby acknowledges that the Company has advised the Employee to consult with the Employee’s legal, tax or financial advisors with respect to any tax or other financial consequences of any amounts paid to the Employee under this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party hereto; provided, that the restrictive covenants contained in this Agreement are in addition to, and not in lieu of, any existing or future restrictive covenant agreement or similar obligations contained in any other agreements between the Employee and the Company. None of the parties hereto will be liable to any other party in any manner by any representations and warranties or covenants relating to such subject matter except as specifically set forth in this Agreement. Except as provided in Section 7, any modification of this Agreement will be effective only if it is in writing and signed by both parties.

10. Assignment. Without the prior written consent of the Company, this Agreement is not assignable by the Employee other than by will or the laws of descent and distribution, and any assignment in violation of this Agreement will be void. Notwithstanding the foregoing, this Agreement and the rights hereunder will inure to the benefit of and be enforceable by the Employee’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. The Company may assign or delegate this Agreement or any of its rights or obligations hereunder to a person or entity that is an affiliate of or successor to the Company.

11. Governing Law. This Agreement shall be governed in all respects by the laws of the State of California without regard to its conflict of laws rules or principles that might refer to the laws of another jurisdiction.

12. Counterparts. This Agreement may be executed in counterparts, which shall be deemed originals with the same effect as if both parties had signed the same document. Any counterpart shall be construed together with any other counterpart and both shall constitute one Agreement. For the purposes of this Agreement, a facsimile or PDF copy of a signature shall be construed to be an original.

[Signature Page Follows]

AGREED AND ACCEPTED:

ODED SHEIN

Signature: _____

Date: /s/ Oded Shein

SHIFT TECHNOLOGIES, INC.

Signature: _____

Name: /s/ Tracy Notte
Title: Chief People Officer

Date: 06/22/2022