

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

Shift Technologies, Inc.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

5500

(Primary Standard Industrial
Classification Code Number)

82-5325852

(IRS Employer
Identification No.)

Shift Technologies, Inc. 2022 Employment Inducement Plan
(Full title of the plan)

**290 Division Street, Suite 400
San Francisco, California 94103
(855) 575-6739**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Ryan Lawrence
Shift Technologies, Inc.
290 Division Street, Suite 400
San Francisco, California 94103
(855) 575-6739**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

with copies to:
**Martin C. Glass
Jenner & Block LLP
1155 Avenue of the Americas
New York, NY 10036
(212) 891-1672**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

Explanatory Note

This Registration Statement on Form S-8 is being filed for the purpose of registering an aggregate of 660,000 shares of Class A common stock, par value \$0.0001 per share (the "Class A common stock"), of Shift Technologies, Inc. (the "Registrant"), under the Registrant's 2022 Employment Inducement Plan (the "Inducement Plan").

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of Form S-8.

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents are not required to be, and are not, filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2021, filed with the Commission on March 16, 2022.
- (b) The Amendment No. 1 to the Registrant's Annual Report on [Form 10-K/A](#) for the year ended December 31, 2021, filed with the SEC on April 25, 2022.
- (c) The Registrant's Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2022 filed with the SEC on May 10, 2022.
- (d) The Registrant's Current Reports on Form 8-K filed with the Commission on [January 12, 2022](#), [February 24, 2022](#), [March 15, 2022](#), [May 6, 2022](#), [May 13, 2022](#) and [June 24, 2022](#).
- (e) The description of the Registrant's Class A common stock contained in the registration statement on [Form 8-A](#) filed on March 18, 2019 and any amendment or report filed with the Commission for the purpose of updating the description.

In addition, all documents filed by Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, (excluding any portions thereof furnished by the Registrant, including but not limited to information furnished under Item 2.02 and Item 7.01 and any exhibits relating to Item 2.02 or Item 7.01 furnished under Item 9.01 of Form 8-K and any certification required by 18 U.S.C. § 1350), on or after the date of this Registration Statement, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in this Registration Statement or in a document incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement or in any subsequently filed document that is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145(a) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made with respect to any claim, issue or matter as to which he or she shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or other adjudicating court shall deem proper.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under Section 145 of the DGCL.

Our Second Amended and Restated Certificate of Incorporation provides that our directors shall not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL. Our Second Amended and Restated Bylaws provide for indemnification of our directors and officers to the maximum extent permitted by applicable law.

The right to indemnification conferred by our Second Amended and Restated Bylaws also includes the right to be paid the expenses (including attorneys' fees) incurred by a present or former director or officer in defending any civil, criminal, administrative, or investigative action, suit, or proceeding in advance of its final disposition; provided, however, that if the Delaware law requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer shall be made only upon the Company's receipt of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified for such expenses under our Second Amended and Restated Bylaws, or otherwise.

The Registrant also maintains a general liability insurance policy, which will cover certain liabilities of directors and officers of the Registrant arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claims.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
4.1	Second Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on October 14, 2020).
4.2	Second Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on October 14, 2020).
5.1	Opinion of Jenner & Block LLP (filed herewith).
23.1	Consent of Deloitte & Touche LLP, independent public accounting firm of Shift Technologies, Inc. (filed herewith).
23.2	Consent of Jenner & Block LLP (included in Exhibit 5.1).
24.1	Power of Attorney (contained on the signature page hereto).
99.1	Shift Technologies, Inc. Employment Inducement Plan (filed herewith).
99.2	Form of Time-Based RSU Inducement Award Agreement (filed herewith).
107	Filing Fee Table (filed herewith).

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - i. to include any prospectus required by Section 10(a)(3) of the Securities Act;
 - ii. to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement
 - iii.
 - iv. to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on June 30, 2022.

SHIFT TECHNOLOGIES, INC.

/s/ George Arison

George Arison

Chief Executive Officer and Chairman

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints George Arison and Oded Shein, and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully for all intents and purposes as he or she might or could do in persons, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his or her substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>/s/ George Arison</u> George Arison	Chief Executive Officer and Chairman of the Board of Directors (principal executive officer)	June 30, 2022
<u>/s/ Oded Shein</u> Oded Shein	Chief Financial Officer (principal financial officer and principal accounting officer)	June 30, 2022
<u>/s/ Toby Russell</u> Toby Russell	Director	June 30, 2022
<u>/s/ Victoria McInnis</u> Victoria McInnis	Director	June 30, 2022
<u>/s/ Kellyn Smith Kenny</u> Kellyn Smith Kenny	Director	June 30, 2022
<u>/s/ Jason Krikorian</u> Jason Krikorian	Director	June 30, 2022
<u>/s/ Emily Melton</u> Emily Melton	Director	June 30, 2022
<u>/s/ Adam Nash</u> Adam Nash	Director	June 30, 2022
<u>/s/ Manish Patel</u> Manish Patel	Director	June 30, 2022

June 30, 2022

Shift Technologies, Inc.
290 Division Street, Suite 400
San Francisco, California 94103

Re: Registration of Securities on Form S-8

Ladies and Gentlemen:

We have acted as special counsel to Shift Technologies, Inc. (the “Company”) in connection with the Registration Statement on Form S-8 (the “Registration Statement”) being filed under the Securities Act of 1933, as amended (the “Act”), on or about the date of this letter to register 660,000 shares (the “Shares”) of Class A common stock, \$0.0001 par value per share (the “Class A common stock”), of the Company pursuant to the 2022 Employment Inducement Plan (the “Inducement Plan”).

We are familiar with the Registration Statement and the exhibits thereto. We have also examined originals or copies, certified or otherwise, of such other documents, certificates, evidence of corporate action and instruments, as we have deemed necessary or advisable for the purpose of rendering this opinion, including (i) the corporate and organizational documents of the Company, including the bylaws and the certificate of incorporation of the Company; (ii) the Inducement Plan; and (iii) minutes or other records of the corporate proceedings of the Company with respect to the Inducement Plan and registration and issuance of the Shares.

For purposes of this opinion, we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies. We have also assumed the legal capacity of all natural persons, the genuineness of the signatures of persons signing all documents in connection with which this opinion is rendered, the authority of such persons signing on behalf of the parties thereto other than the Company and the due authorization, execution and delivery of all documents by the parties thereto other than the Company. We have not independently established or verified any facts relevant to the opinion expressed herein, but have relied upon (i) statements and representations of officers and other representatives of the Company and others as to factual matters material to this opinion and (ii) factual information we have obtained from such other sources as we have deemed reasonable.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, it is our opinion that the Shares covered by the Registration Statement have been duly authorized and, when issued and delivered in accordance with the applicable Plan and the applicable award agreements, will be validly issued, fully paid and nonassessable.

Our opinion expressed above is based exclusively on the General Corporation Law of the State of Delaware (including the statutory provisions, all applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing).

Our advice on any legal issue addressed in this letter represents our opinion as to how that issue would be resolved were it to be considered by the highest court in the jurisdiction which enacted such law. The manner in which any particular issue would be treated in any actual court case would depend in part on facts and circumstances particular to the case, and this letter is not intended to guarantee the outcome of any legal dispute which may arise in the future.

We hereby consent to the use of our name in the Registration Statement and to filing of this opinion with the Securities and Exchange Commission (the “Commission”) as Exhibit 5 to the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or “Blue Sky” laws of the various states to the issuance and sale of the Shares. This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. We assume no obligation to revise or supplement this opinion should the General Corporation Law of the State of Delaware be changed by legislative action, judicial decision or otherwise.

Very truly yours,

/s/ Jenner & Block LLP

Jenner & Block LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 16, 2022 relating to the financial statements of Shift Technologies, Inc., appearing in the Annual Report on Form 10-K of Shift Technologies, Inc. for the year ended December 31, 2021.

/s/ Deloitte & Touche LLP

San Francisco, California
June 30, 2022

SHIFT TECHNOLOGIES, INC.
EMPLOYMENT INDUCEMENT PLAN

1. Purpose

The purpose of the Plan is to provide a means through which the Company and its Affiliates may make Grants to provide a material inducement for certain individuals to enter into employment with the Company and its Affiliates. Each Grant under the Plan is intended to qualify as an “employment inducement grant” in accordance with Nasdaq Listing Rule 5635(c)(4).

2. Definitions

Whenever used in this Plan, the following terms will have the respective meanings set forth below:

(a) “*Administrator*” means the Committee, or, if determined by the Board, such other committee of the Board comprised of at least two members, each of whom must be an Independent Director.

(b) “*Affiliate*” means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Company. For purposes of the preceding sentence, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity or organization, shall mean the possession, directly or indirectly, of the power (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of the controlled entity or organization or (ii) to direct or cause the direction of the management and policies of the controlled entity or organization, whether through the ownership of voting securities, by contract, or otherwise.

(c) “*Board*” means the Company’s Board of Directors as constituted from time to time.

(d) “*Change of Control*” has the meaning set forth in the Shift Technologies, Inc. 2020 Omnibus Equity Compensation Plan.

The Committee may modify the definition of Change of Control for a particular Grant as the Committee deems appropriate to comply with section 409A of the Code or otherwise. Notwithstanding the foregoing, if a Grant constitutes deferred compensation subject to section 409A of the Code and the Grant provides for payment upon a Change of Control, then, for purposes of such payment provisions, no Change of Control shall be deemed to have occurred upon an event described in such definition unless the event would also constitute a change in ownership or effective control of, or a change in the ownership of a substantial portion of the assets of, the Company under section 409A of the Code.

(e) “*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including the guidance and regulations promulgated thereunder and successor provisions, guidance and regulations thereto.

(f) “*Company*” means Shift Technologies, Inc., a Delaware corporation.

(g) “*Committee*” means the Leadership Development, Compensation and Governance Committee of the Board.

(h) “*Date of Grant*” means the date a Grant is effective; provided, however, that no retroactive Grants will be made.

(i) “*Dividend Equivalent*” means an amount determined by multiplying the number of shares of Stock, Performance Shares or Stock Units subject to a Grant by the per-share cash dividend, or the per-share fair market value (as determined by the Administrator) of any dividend in consideration other than cash, paid by the Company on its Stock on a dividend payment date.

(j) “*Effective Date*” of the Plan means April 25, 2022.

(k) “*Eligible Person*” means any individual to whom the Company may issue Grants without approval of the Company’s stockholders in accordance with Nasdaq Listing Rule 5635(c)(4) (or any successor rule thereto).

(l) “*Employer*” shall mean the Company and any Parent or Subsidiary of the Company.

(m) “*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

(n) “*Fair Market Value*” of Stock is (i) if the Stock is publicly traded, then the Fair Market Value per share shall be determined as follows: (A) if the principal trading market for the Stock is a national securities exchange, the last reported sale price during regular trading hours on the relevant date or (if there were no trades on that date) the latest preceding date upon which a sale was reported, or (B) if the Stock is not principally traded on such exchange or market, the mean between the last reported “bid” and “asked” prices of Stock on the relevant date, as reported by the National Daily Quotation Bureau, Inc. or as reported in a customary financial reporting service, as applicable and as the Administrator determines, or (ii) if the Stock is not publicly traded or, if publicly traded, is not subject to reported transactions or “bid” or “asked” quotations as set forth above, the Fair Market Value per share shall be as determined by the Administrator.

(o) “*Grant*” means a Non-Qualified Stock Option, SAR, Stock Unit, Performance Share, Stock Award, Dividend Equivalent or Other Stock-Based Award granted under the Plan.

(p) “*Grant Instrument*” means the written agreement (including all amendments thereto) that sets forth the terms, conditions, restrictions and/or limitations applicable to a Grant, in addition to those set forth under the Plan.

(q) “*Independent Director*” means a member of the Board who is (i) a “non-employee director” within the meaning of Rule 16b-3(b)(3) of the Exchange Act, or any successor rule, and (ii) who qualifies as “independent” within the meaning of Nasdaq Listing Rule 5605(a)(2), or any successor rule, if the Company’s securities are traded on the Nasdaq Stock Market, and/or the applicable requirements of any other established stock exchange on which the Company’s securities are traded, as applicable, as such rules and requirements may be amended from time to time.

(r) “*Listing Rule*” means the Listing Rules of The Nasdaq Stock Market LLC. Reference to any Listing Rule will include the terms and conditions of the Listing Rule and any applicable Interpretive Material and other guidance issued under the Listing Rule.

(s) “*Non-Qualified Stock Option*” means a stock option that is not intended to be an “incentive stock option” within the meaning of Section 422 of the Code.

(t) “*Option Price*” means an amount per share of Stock purchasable under a Non-Qualified Stock Option, as designated by the Administrator.

(u) “*Other Stock-Based Award*” means any Grant based on, measured by or payable in Stock (other than Grants described in Sections 7, 8, 9, 10, 11 and 12), as described in Section 13.

(v) “*Parent*” means a “*parent corporation*,” as defined in section 424(e) of the Code, of the Company.

(w) “*Performance Shares*” means an award of phantom shares, representing one or more shares of Stock, as described in Section 10.

(x) “*Person*” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, or unincorporated association, and any fiduciary acting in such capacity on behalf of any of the foregoing.

(y) “*Plan*” means this Shift Technologies, Inc. Employment Inducement Plan, as in effect from time to time.

(z) “*Stock*” means the common stock, par value \$0.0001 per share, of the Company or such other securities of the Company as may be substituted for Stock pursuant to Sections 5(d) or 18.

(aa) “*SAR*” means an award of a stock appreciation right, as described in Section 8.

(bb) “*Stock Award*” means an award of Stock, as described in Section 11.

(cc) “*Stock Unit*” means an award of a phantom unit, representing one or more shares of Stock, as described in Section 9.

(dd) “*Subsidiary*” means any entity in which the Company has a greater than 50% ownership interest.

(ee) “*Successor Person*” means the personal representative or other person entitled to succeed to the rights of the Eligible Person in accordance with Section 17.

3. Administration

(a) The Plan shall be administered by the Administrator. In order to comply with the exemption from the stockholder approval requirements for “employment inducement grants” set forth in Nasdaq Listing Rule 5635(c)(4) (or any successor rule), all Grants made under the Plan must be approved by the independent compensation committee of the Board or a majority of the Independent Directors. Subject to the express provisions of the Plan, Rule 16b-3 of the Exchange Act and other applicable laws, the Administrator shall have the sole authority to (i) determine the Eligible Persons to whom Grants shall be made under the Plan, (ii) determine the type, size and terms of the Grants to be made to each Eligible Person, (iii) determine the time when the Grants will be made and the duration of any applicable exercise or restriction period, including the criteria for exercisability and the acceleration of exercisability, (iv) amend the terms of any previously issued Grant, subject to the provisions of Section 20, (v) adopt guidelines separate from the Plan that set forth the specific terms and conditions for Grants under the Plan, and (vi) deal with any other matters arising under the Plan.

(b) The Administrator shall have full power and express discretionary authority to administer and interpret the Plan, to make factual determinations and to adopt or amend such rules, regulations, agreements and instruments for implementing the Plan and for the conduct of its business as it deems necessary or advisable, in its sole discretion. The Administrator’s interpretations of the Plan and all determinations made by the Administrator pursuant to the powers vested in it hereunder shall be conclusive and binding on all persons having any interest in the Plan or in any awards granted hereunder. All powers of the Administrator shall be executed in its sole discretion, in the best interest of the Company, not as a fiduciary, and in keeping with the objectives of the Plan and need not be uniform as to similarly situated individuals.

(c) The Administrator, in its discretion, may delegate any or all of its powers and duties under the Plan to one or more officers of the Company, including the power to perform administrative functions under the Plan; provided, however, that such delegation does not (i) violate state or corporate law, (ii) result in the loss of an exemption under Rule 16b-3 of the Exchange Act for Grants made to Eligible Persons subject to Section 16 of the Exchange Act in respect of the Company or (iii) result in any Grant failing to comply with the exemption from the stockholder approval requirements for “employment inducement grants” set forth in Nasdaq Listing Rule 5635(c)(4) (or any successor rule). The Administrator may revoke or amend the terms of a delegation at any time, but such action shall not invalidate any prior actions of the Administrator’s delegate or delegates that were consistent with the terms of the Plan and the Administrator’s prior delegation. Any delegation by the Administrator pursuant to this section shall be subject to such conditions and limitations as may be determined by the Administrator and shall be subject to and limited by applicable law or regulation, including without limitation the rules and regulations of the Nasdaq Stock Market or such other securities exchange on which the Stock is then listed.

4. Grants

(a) General. Grants under the Plan may consist of Non-Qualified Stock Options, SARs, Stock Units, Performance Shares, Stock Awards, Dividend Equivalents and Other Stock-Based Awards. All Grants shall be subject to the terms and conditions set forth herein and to such other terms and conditions consistent with the Plan as the Administrator deems appropriate and as are specified in writing by the Administrator in separate guidelines or to the individual in the Grant Instrument or an amendment to the guidelines or Grant Instrument. The Administrator shall approve the form and provisions of each Grant Instrument. All Grants shall be made conditional upon the Eligible Person’s acknowledgment, in writing or by acceptance of the Grant, that all decisions and determinations of the Administrator shall be final and binding on the Eligible Person, his or her beneficiaries, and any other person having or claiming an interest under such Grant. Grants under a particular section of the Plan need not be uniform as among the Eligible Persons.

(b) Correction of Errors. Notwithstanding anything in any Grant Instrument to the contrary, the Administrator may amend a Grant, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of correcting errors occurring in connection with the grant or documentation of a Grant, including rescinding a Grant erroneously granted, including, but not limited to, a Grant erroneously granted to an individual who is not eligible for a Grant as of the Date of Grant. By accepting a Grant under this Plan, an Eligible Person agrees to any amendment made pursuant to this Section 4(b) to any Grant made under the Plan without further consideration or action.

5. Shares of Stock Subject to the Plan

(a) Shares Authorized. The total aggregate number of shares of Stock that may be issued or transferred under the Plan is 660,000. The shares may be authorized but unissued shares of Stock or reacquired shares of Stock, including shares purchased by the Company on the open market for purposes of the Plan. Grants paid in cash shall not count against the foregoing share limits.

(b) Share Counting. For administrative purposes, when the Administrator makes a Grant payable in Stock, the Administrator shall reserve shares of Stock equal to the maximum number of shares of Stock that may be payable under the Grant. If and to the extent Non-Qualified Stock Options or SARs granted under the Plan terminate, expire, or are canceled, forfeited, exchanged or surrendered without having been exercised or if any Stock Awards, Stock Units, Performance Shares, Dividend Equivalents or Other Stock-Based Awards are forfeited or terminated, or otherwise are not paid in full, the shares subject to such Grants which have not been issued shall again be available for purposes of the Plan. Shares of Stock withheld in payment of the Option Price of a Non-Qualified Stock Option or withheld for purposes of satisfying the Employer's minimum tax withholding obligations with respect to Grants under the Plan shall not be available for re-issuance or transfer under the Plan. Upon the exercise of a Non-Qualified Stock Option through the withholding of shares or upon the exercise of a SAR, then both for purposes of calculating the number of shares of Stock remaining available for issuance under the Plan and the number of shares of Stock remaining available for exercise under the Non-Qualified Stock Option or SAR, the number of such shares shall be reduced by the gross number of shares for which the Non-Qualified Stock Option or SAR is exercised. To the extent that any Grants are paid in cash and not shares of Stock, such Grants shall not count against the share limits in subsection (a) above. For the avoidance of doubt, if shares of Stock are repurchased on the open market with the proceeds of the exercise price of Non-Qualified Stock Options, such shares may not again be made available for issuance under the Plan.

(c) Individual Limits. All Grants under the Plan, other than Dividend Equivalents, shall be expressed in shares of Stock. The maximum aggregate number of shares of Stock with respect to which all Grants, other than Dividend Equivalents, may be made under the Plan to any individual during any calendar year shall be 660,000 shares of Stock, subject to adjustment as described below. An Eligible Person may not accrue cash-based Dividend Equivalents during any calendar year in excess of \$1,000,000. The individual limits described in this subsection (c) shall apply without regard to whether the Grants are to be paid in Stock or in cash. All cash payments (other than Dividend Equivalents) shall equal the Fair Market Value of the shares of Stock to which the cash payment relates.

(d) Adjustments. If there is any change in the number or kind of shares of Stock outstanding (i) by reason of a stock dividend, spinoff, recapitalization, stock split, or combination or exchange of shares, (ii) by reason of a merger, reorganization or consolidation, (iii) by reason of a reclassification or change in par value, or (iv) by reason of any other extraordinary or unusual event affecting the outstanding Stock as a class without the Company's receipt of consideration, or if the value of outstanding shares of Stock is substantially reduced as a result of a spinoff or the Company's payment of an extraordinary dividend, distribution, or partial liquidation, the number of shares of Stock available for issuance under the Plan, the maximum number of shares of Stock for which any individual may receive pursuant to Grants in any year, the number of shares covered by outstanding Grants, the kind of shares to be issued or transferred under the Plan, performance goals or other applicable metrics or hurdles, Option Prices, base amounts of SARs, and the price per share or the applicable market value of such Grants shall be equitably adjusted by the Administrator, in such manner as the Administrator deems appropriate, to reflect any increase or decrease in the number of, or change in the kind or value of, issued shares of Stock to preclude, to the extent practicable, the enlargement or dilution of rights and benefits under such Grants; provided, however, that any fractional shares resulting from such adjustment shall be eliminated. In addition, in the event of a Change of Control of the Company, the provisions of Section 18 of the Plan shall apply. Any adjustments to outstanding Grants shall be consistent with section 409A or 424 of the Code, to the extent applicable. Any adjustments determined by the Administrator shall be final, binding and conclusive.

6. Participation in the Plan

The Administrator shall select the Eligible Persons who may receive Grants under the Plan and shall determine the number of shares of Company Stock subject to a particular Grant in such manner as the Administrator determines. Further, the Administrator may in its discretion adopt procedures from time to time to ensure that an Eligible Person is eligible to participate in the Plan prior to receipt of any Grant to such individual under the Plan (including without limitation a requirement that each such Eligible Person certify to the Company prior to the receipt of a Grant under the Plan that he or she has not been previously employed by the Company or any Parent or Subsidiary of the Company, or if previously employed, has had a bona fide period of non-employment, and that the Grant under the Plan is an inducement material to his or her agreement to enter into employment with the Company or any Parent or Subsidiary of the Company). Non-Qualified Stock Options and SARs may be granted only to persons who perform direct services to the Company on the date of grant, as determined under section 409A of the Code.

7. Options

(a) General Requirements. The Administrator may grant Non-Qualified Stock Options to an Eligible Person upon such terms and conditions as the Administrator deems appropriate under this Section 7.

(b) Number of Shares. The Administrator shall determine the number of shares of Stock that will be subject to each Grant of Non-Qualified Stock Options to Eligible Persons.

(c) Option Price. The Option Price shall be determined by the Administrator and may be equal to or greater than the Fair Market Value of the shares of Stock subject to the Grant on the Date of Grant. Notwithstanding the foregoing, if the Administrator selects a Date of Grant in the future for a Non-Qualified Stock Option, the Option Price may be the average selling price during a period not to exceed 30 days prior to such Date of Grant in accordance with Treas. Reg. Section 1.409A-1(b)(5)(iv)(A).

(d) Option Term. The Administrator shall determine the term of each Non-Qualified Stock Option. The term of a Non-Qualified Stock Option shall not exceed ten years from the Date of Grant.

(e) Exercisability of Options. Non-Qualified Stock Options shall become exercisable in accordance with such terms and conditions as may be determined by the Administrator and specified in the Grant Instrument. The Administrator may accelerate the exercisability of any or all outstanding Non-Qualified Stock Options at any time for any reason.

(f) Termination of Employment. Except as provided in the Grant Instrument, a Non-Qualified Stock Option may only be exercised while the Eligible Person is employed by the Company, an Affiliate or another entity as designated in the Grant Instrument. The Administrator shall specify in the Grant Instrument under what circumstances and during what time periods an Eligible Person may exercise a Non-Qualified Stock Option after termination of employment.

(g) Exercise of Options. An Eligible Person may exercise a Non-Qualified Stock Option that has become exercisable, in whole or in part, by delivering a notice of exercise to the Company or its designated agent. The Eligible Person shall pay the Option Price and any withholding taxes for the Non-Qualified Stock Option (i) in cash or by certified check, (ii) with the approval of the Administrator, by withholding shares of Stock subject to the Non-Qualified Stock Option, by delivering shares of Stock owned by the Eligible Person or by attestation (on a form prescribed by the Administrator) to ownership of shares of Stock (in each case, such shares of Stock shall have an aggregate Fair Market Value on the date of exercise equal to the Option Price), (iii) in cash, on the T+2 settlement date that occurs after the exercise date specified in the notice of exercise, provided that the Eligible Person exercises the Non-Qualified Stock Option through an irrevocable agreement with a registered broker and the payment is made in accordance with procedures permitted by Regulation T of the Federal Reserve Board and such procedures do not violate applicable law, or (iv) by such other method as the Administrator may approve, to the extent permitted by applicable law. Shares of Stock used to exercise a Non-Qualified Stock Option shall have been held by the Eligible Person for the requisite period of time to avoid adverse accounting consequences to the Company with respect to the Non-Qualified Stock Option. Payment for the shares pursuant to the Non-Qualified Stock Option, and any required withholding taxes, must be received by the time specified by the Administrator depending on the type of payment being made.

8. SARs

(a) General Requirements. The Administrator may grant SARs to any Eligible Person, upon such terms and conditions as the Administrator deems appropriate under this Section 8. Each SAR shall represent the right of the Eligible Person to receive, upon settlement of the SAR, shares of Stock or cash equal to the amount by which the Fair Market Value of a share of Stock on the date of exercise of the SAR exceeds the base amount of the SAR as described below in Section 8(c).

(b) Terms of SARs. The Administrator shall determine the terms and conditions of SARs and may grant SARs separately from or in tandem with any Non-Qualified Stock Option (for all or a portion of the applicable Non-Qualified Stock Option). Tandem SARs may be granted either at the time the Non-Qualified Stock Option is granted or any time thereafter while the Option remains outstanding. The Administrator will determine the number of SARs to be granted, the base amount, the vesting and other restrictions applicable to SARs and the period during which SARs will remain exercisable. The term of SARs shall not exceed ten years from the Date of Grant.

(c) Base Amount. The Administrator shall establish the base amount of the SAR at the time the SAR is granted. The base amount shall not be less than the Fair Market Value of the shares of Stock subject to the Grant on the Date of Grant. Notwithstanding the foregoing, if the Administrator selects a SARs Date of Grant that is in the future, the base amount may be the average selling price during a period not to exceed 30 days prior to such Date of Grant in accordance with Treas. Reg. Section 1.409A-1(b)(5)(iv)(A).

(d) Payment With Respect to SARs. The Administrator shall determine whether the appreciation in an SAR shall be paid in the form of cash, in Stock, or in a combination of the two, in such proportion as the Administrator deems appropriate. For purposes of calculating the number of shares of Stock to be received, Stock shall be valued at its Fair Market Value on the date of exercise of the SAR. If shares of Stock are to be received upon exercise of an SAR, cash shall be delivered in lieu of any fractional share.

(e) Requirement of Employment. The Administrator shall determine in the Grant Instrument under what circumstances an Eligible Person may retain SARs after termination of the Eligible Person's employment, and the circumstances under which SARs may be forfeited.

9. Stock Units

(a) General Requirements. The Administrator may grant Stock Units to an Eligible Person, upon such terms and conditions as the Administrator deems appropriate under this Section 9. Each Stock Unit shall represent the right of the Eligible Person to receive a share of Stock or an amount based on the value of a share of Stock. All Stock Units shall be credited to accounts on the Company's records for purposes of the Plan.

(b) Terms of Stock Units. The Administrator may grant Stock Units that are payable if specified performance goals or other conditions are met, or under other circumstances. Stock Units may be paid at the end of a specified period, or payment may be deferred to a date authorized by the Administrator. The Administrator shall determine the number of Stock Units to be granted and the requirements applicable to such Stock Units.

(c) Payment With Respect to Stock Units. Payment with respect to Stock Units shall be made in cash, in Stock, or in a combination of the two, as determined by the Administrator. The Grant Instrument shall specify the maximum number of shares that shall be paid under the Stock Units.

(d) Requirement of Employment. The Administrator shall determine in the Grant Instrument under what circumstances an Eligible Person may retain Stock Units after termination of the Eligible Person's employment, and the circumstances under which Stock Units may be forfeited.

10. Performance Shares

(a) General Requirements. The Administrator may grant Performance Shares to an Eligible Person, upon such terms and conditions as the Administrator deems appropriate under this Section 10. Each Performance Share shall represent the right of the Eligible Person to receive a share of Stock or an amount based on the value of a share of Stock, if specified performance goals are met. All Performance Shares shall be credited to accounts on the Company's records for purposes of the Plan.

(b) Terms of Performance Shares. The Administrator shall establish the performance goals and other conditions for payment of Performance Shares. Performance Shares may be paid at the end of a specified performance or other period, or payment may be deferred to a date authorized by the Administrator. The Administrator shall determine the number of Performance Shares to be granted and the requirements applicable to such Performance Shares.

(c) Payment With Respect to Performance Shares. Payment with respect to Performance Shares shall be made in cash, in Stock, or in a combination of the two, as determined by the Administrator. The Administrator may establish in the Grant Instrument a target amount to be paid under a Performance Share based on achievement of the performance goals.

(d) Requirement of Employment. The Administrator shall determine in the Grant Instrument under what circumstances an Eligible Person may retain Performance Shares after termination of the Eligible Person's employment, and the circumstances under which Performance Shares may be forfeited.

11. Stock Awards

(a) General Requirements. The Administrator may issue or transfer shares of Stock to an Eligible Person under a Stock Award, upon such terms and conditions as the Administrator deems appropriate under this Section 11. Shares of Stock issued or transferred pursuant to Stock Awards may be issued or transferred for cash consideration or for no cash consideration, and subject to restrictions or no restrictions, as determined by the Administrator. The Administrator may establish conditions under which restrictions on Stock Awards shall lapse over a period of time or according to such other criteria as the Administrator deems appropriate, including restrictions based upon the achievement of specific performance goals.

(b) Number of Shares. The Administrator shall determine the number of shares of Stock to be issued or transferred pursuant to a Stock Award and any restrictions applicable to such shares.

(c) Requirement of Employment. The Administrator shall determine in the Grant Instrument under what circumstances an Eligible Person may retain Stock Awards after termination of the Eligible Person's employment, and the circumstances under which Stock Awards may be forfeited.

(d) Restrictions on Transfer. While Stock Awards are subject to restrictions, an Eligible Person may not sell, assign, transfer, pledge or otherwise dispose of the shares of a Stock Award except upon death as described in Section 17. Each certificate, or electronic book entry equivalent, for a share of a Stock Award shall contain a legend giving appropriate notice of the restrictions in the Grant. The Eligible Person shall be entitled to have the legend removed when all restrictions on such shares have lapsed. The Administrator may retain possession of any stock certificates for Stock Awards until all restrictions on such shares have lapsed.

(e) Right to Vote and to Receive Dividends. The Administrator shall determine to what extent, and under what conditions, the Eligible Person shall have the right to vote shares of Stock Awards and to receive any dividends or other distributions paid on such shares during the restriction period. The Administrator may determine that an Eligible Person's entitlement to dividends or other distributions with respect to a Stock Award shall be subject to achievement of performance goals or other conditions.

12. Dividend Equivalents

(a) General Requirements. When the Administrator makes a Grant under the Plan, other than a Non-Qualified Stock Option or SAR, the Administrator may grant Dividend Equivalents in connection with such Grants, under such terms and conditions as the Administrator deems appropriate under this Section 12. Dividend Equivalents may be paid to Eligible Persons currently or may be deferred, as determined by the Administrator. All Dividend Equivalents that are not paid currently shall be credited to accounts on the Company's records for purposes of the Plan. Dividend Equivalents may be accrued as a cash obligation or may be converted to Stock Units for the Eligible Person, as determined by the Administrator. Unless otherwise specified in the Grant Instrument, deferred Dividend Equivalents will not accrue interest. The Administrator may provide that Dividend Equivalents shall be payable based on the achievement of specific performance goals. Dividend Equivalents may accrue on unearned performance awards but shall not be payable unless and until such performance metrics are met.

(b) Payment with Respect to Dividend Equivalents. Dividend Equivalents may be payable in cash or shares of Stock or in a combination of the two, as determined by the Administrator.

13. Other Stock-Based Awards

The Administrator may grant other awards that are cash-based or based on, measured by or payable in Stock to Eligible Persons, on such terms and conditions as the Administrator deems appropriate under this Section 13. Other Stock-Based Awards may be granted subject to achievement of performance goals or other conditions and may be payable in Stock or cash, or in a combination of the two, as determined by the Administrator in the Grant Instrument.

14. Performance-Vested Grants

(a) Designation as Performance-Vested Grants. Notwithstanding any other provision of the Plan, the Administrator may determine that Non-Qualified Stock Options, Stock Units, Performance Shares, Stock Awards, Dividend Equivalents or Other Stock Based Awards granted to an Eligible Person may contain vesting conditions based on the achievement of performance goals, as described in this Section 14. This provision is not exclusive and does not inhibit the granting of other awards under this Plan that may have performance goals as part of their terms and conditions.

(b) Performance Goals. When Non-Qualified Stock Options, Stock Units, Performance Shares, Stock Awards, Dividend Equivalents or Other Stock-Based Awards that have performance-based vesting conditions (“Performance-Vested Grants”) are granted, the Administrator shall establish (i) the performance goals that must be met, (ii) the period during which performance will be measured, (iii) the maximum amounts that may be paid if the performance goals are met, and (iv) any other conditions that the Administrator deems appropriate and consistent with the Plan, including, in the Administrator’s discretion, any vesting conditions in addition to the performance-related goals.

(c) Criteria Used for Performance Goals. The Administrator may use performance goals based on one or more of the following criteria, but is not limited to these criteria: cash flow; free cash flow; earnings (including gross margin, earnings before interest and taxes, earnings before taxes, earnings before interest, taxes, depreciation, amortization and charges for stock-based compensation, earnings before interest, taxes, depreciation and amortization, adjusted earnings before interest, taxes, depreciation and amortization and net earnings); earnings per share; growth in earnings or earnings per share; book value growth; stock price; return on equity or average stockholder equity; total stockholder return or growth in total stockholder return either directly or in relation to a comparative group; return on capital; return on assets or net assets; revenue, growth in revenue or return on sales; sales; expense reduction or expense control; expense to revenue ratio; income, net income or adjusted net income; operating income, net operating income, adjusted operating income or net operating income after tax; operating profit or net operating profit; operating margin; gross profit margin; return on operating revenue or return on operating profit; regulatory filings; regulatory approvals, litigation and regulatory resolution goals; other operational, regulatory or departmental objectives; budget comparisons; growth in stockholder value relative to established indexes, or another peer group or peer group index; development and implementation of strategic plans and/or organizational restructuring goals; development and implementation of risk and crisis management programs; improvement in workforce diversity; compliance requirements and compliance relief; safety goals; productivity goals; workforce management and succession planning goals; economic value added (including typical adjustments consistently applied from generally accepted accounting principles required to determine economic value added performance measures); measures of customer satisfaction, employee satisfaction or staff development; development or marketing collaborations, formations of joint ventures or partnerships or the completion of other similar transactions intended to enhance the Company’s revenue or profitability or enhance its customer base; merger and acquisitions; and other similar criteria as determined by the Committee. The performance goals may be established on an absolute or relative basis and may relate to the Eligible Person’s business unit or the performance of the Company, a Subsidiary, or the Company and its Subsidiaries as a whole, or any combination of the foregoing. Relative performance may be measured against a group of peer companies, a financial market index or other objective and quantifiable indices. Performance goals need not be uniform as among Eligible Persons.

(d) Performance Results. The Administrator shall determine the amount, if any, to be paid pursuant to each Grant based on the achievement of the performance goals and the terms of each Grant Instrument.

(e) Death, Disability or Other Circumstances. The Administrator may provide in the Grant Instrument the extent to which Performance-Vested Grants shall be vested, held, continued and/or payable in the event of the Eligible Person’s death or disability, termination of employment, or a Change of Control.

15. Deferrals

The Administrator may permit or require an Eligible Person to defer receipt of the payment of cash or the delivery of shares of Stock that would otherwise be due to the Eligible Person in connection with any Grant. The Administrator shall establish rules and procedures for such deferrals. Any deferrals under the Plan shall be intended to comply with the requirements of section 409A of the Code, and any corresponding regulations and guidance.

16. Withholding of Taxes

(a) Required Withholding. All Grants under the Plan shall be subject to applicable federal (including FICA), state and local tax withholding requirements. The Employer may require that the Eligible Person or other person receiving or exercising Grants pay to the Employer the amount of any federal, state or local taxes that the Employer is required to withhold with respect to such Grants, or the Employer may deduct from other wages paid by the Employer the amount of any withholding taxes due with respect to such Grants.

(b) Election to Withhold Shares. If the Administrator so permits, an Eligible Person may elect to satisfy the Employer's tax withholding obligation with respect to Grants paid in Stock by having shares withheld, at the time such Grants become taxable, up to an amount that does not exceed the minimum applicable withholding tax rate for federal (including FICA), state and local tax liabilities. In addition, with respect to any required tax withholding amount that exceeds the minimum applicable withholding tax rate, the Administrator may permit an Eligible Person to satisfy such tax withholding obligation with respect to such excess amount by providing that the Eligible Person may elect to deliver to the Company shares of Stock owned by the Eligible Person that have been held by the Eligible Person for the requisite period of time to avoid adverse accounting consequences to the Company. The elections described in this subsection (b) must be in a form and manner prescribed by the Administrator and may be subject to the prior approval of the Administrator.

17. Transferability of Grants

(a) In General. Except as provided in this Section 17, only the Eligible Person may exercise rights under a Grant during the Eligible Person's lifetime. An Eligible Person may not transfer those rights except by will or by the laws of descent and distribution or, if permitted in any specific case by the Administrator, pursuant to a domestic relations order. When an Eligible Person dies, a Successor Person may exercise such rights in accordance with the terms of the Plan. A Successor Person must furnish proof satisfactory to the Company of his or her right to receive the Grant under the Eligible Person's will or under the applicable laws of descent and distribution.

(b) Transfer of Non-Qualified Stock Options. Notwithstanding the foregoing, the Administrator may provide in a Grant Instrument that an Eligible Person may transfer Non-Qualified Stock Options to family members of the Eligible Person, one or more trusts in which family members of the Eligible Person have more than 50% of the beneficial interest, foundations in which family members of the Eligible Person (or the Eligible Person) control the management of assets, or any other entity in which family members of the Eligible Person (or the Eligible Person) own more than 50% of the voting interests, consistent with applicable securities laws, according to such terms as the Administrator may determine; provided that the Eligible Person receives no consideration for the transfer of a Non-Qualified Stock Option and the transferred Non-Qualified Stock Option shall continue to be subject to the same terms and conditions as were applicable to the Non-Qualified Stock Option immediately before the transfer.

18. Consequences of a Change of Control

(a) Assumption of Grants. Upon a Change of Control where the Company is not the surviving corporation (or survives only as a subsidiary of another corporation), unless the Administrator determines otherwise, all outstanding Non-Qualified Stock Options and SARs that are not exercised shall be assumed by, or replaced with comparable options or rights by, the surviving corporation (or a parent or subsidiary of the surviving corporation), and other outstanding Grants shall be converted to similar grants of the surviving corporation (or a parent or subsidiary of the surviving corporation).

(b) Other Alternatives. Notwithstanding the foregoing and subject Section 21(b), in the event of a Change of Control, the Administrator may take any of the following actions with respect to any or all outstanding Grants: the Administrator may (i) determine that outstanding Non-Qualified Stock Options and SARs shall accelerate and become exercisable, in whole or in part, upon the Change of Control or upon such other event as the Administrator determines, (ii) determine that the restrictions and conditions on outstanding Stock Awards shall lapse, in whole or in part, upon the Change of Control or upon such other event as the Administrator determines, (iii) determine that Eligible Persons holding Stock Units, Performance Shares, Dividend Equivalents, and Other Stock-Based Awards shall receive a payment in settlement of such Stock Units, Performance Shares, Dividend Equivalents, and Other Stock-Based Awards in an amount determined by the Administrator, (iv) require that Eligible Persons surrender their outstanding Non-Qualified Stock Options and SARs in exchange for a payment by the Company, in cash or Stock, as determined by the Administrator, in an amount equal to the amount by which the then Fair Market Value of the shares of Stock subject to the Eligible Person's unexercised Non-Qualified Stock Options and SARs exceeds the Option Price of the Non-Qualified Stock Options or the base amount of SARs, as applicable, and (v) after giving Eligible Persons an opportunity to exercise their outstanding Non-Qualified Stock Options and SARs, terminate any or all unexercised Non-Qualified Stock Options and SARs at such time as the Administrator deems appropriate. Such surrender, termination or settlement shall take place as of the date of the Change of Control or such other date as the Administrator may specify, including pursuant to an earn out or escrow, if applicable. Without limiting the foregoing, if the per share Fair Market Value of the Stock does not exceed the per share Non-Qualified Stock Option exercise price or SAR base amount, as applicable, the Company shall not be required to make any payment to the Eligible Person upon surrender of the Non-Qualified Stock Option or SAR. The Administrator shall have no obligation to take any of the foregoing actions, and, in the absence of any such actions, outstanding Grants shall continue in effect according to their terms (subject to any assumption pursuant to subsection (a)). Subject to Section 21(b), and any greater rights granted to Eligible Persons hereunder, in the event of a Change of Control, any outstanding Awards shall be treated as provided in the applicable agreement or plan of merger, consolidation or sale of assets.

(c) Administrator. The Administrator making the determinations under this Section 18 following a Change of Control must be comprised of the same members as those constituting the Administrator immediately before the Change of Control.

19. Requirements for Issuance of Shares

No shares of Stock shall be issued or transferred in connection with any Grant hereunder unless and until all legal requirements applicable to the issuance of such Stock have been complied with to the satisfaction of the Administrator. The Administrator shall have the right to condition any Grant made to any Eligible Person hereunder on such Eligible Person's undertaking in writing to comply with such restrictions on his or her subsequent disposition of such shares of Stock as the Administrator shall deem necessary or advisable, and certificates representing such shares may be legended to reflect any such restrictions. Certificates representing shares of Stock issued or transferred under the Plan will be subject to such stop-transfer orders and other restrictions as may be required by applicable laws, regulations and interpretations, including any requirement that a legend be placed thereon.

20. Amendment and Termination of the Plan

(a) Amendment. The Board may amend or terminate the Plan at any time; provided, however, that the Board shall not amend the Plan without approval of the stockholders of the Company if such approval is required in order to comply with the Code, applicable laws and stock exchange requirements, or as required by Section 21(b) below. No amendment or termination of this Plan shall, without the consent of the Eligible Person, impair any rights or obligations under any Grant previously made to the Eligible Person, unless such right has been reserved in the Plan or the Grant Instrument, or except as provided in Section 21(b) below.

(b) No Repricing Without Stockholder Approval. Except in connection with a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spinoff, combination, or exchange of shares), the Company may not, without obtaining stockholder approval, (i) amend the terms of outstanding Non-Qualified Stock Options or SARs to reduce the exercise price of such outstanding Non-Qualified Stock Options or base amount of such SARs, (ii) cancel outstanding Non-Qualified Stock Options or SARs in exchange for Non-Qualified Stock Options or SARs with an exercise price or base amount, as applicable, that is less than the exercise price or base amount of the original Non-Qualified Stock Options or SARs or (iii) cancel outstanding Non-Qualified Stock Options or SARs with an exercise price or base amount, as applicable, above the current stock price in exchange for cash or other securities.

(c) Plan Effective Date and Termination of Plan. The Plan was adopted by the Board to be effective on the Effective Date. The Plan shall terminate on the day immediately preceding the tenth anniversary of its Effective Date, unless the Plan is terminated earlier by the Board. The termination of the Plan shall not impair the power and authority of the Administrator with respect to an outstanding Grant.

21. Miscellaneous

(a) Non-Exclusivity. The adoption of the Plan by the Board shall not be construed as affecting any other equity incentive or compensation plan adopted by the Company or any Affiliate (including the Shift Technologies, Inc. 2020 Omnibus Equity Compensation Plan), nor shall the adoption of the Plan by the Board be construed as creating any limitations on the power of the Board or a committee thereof to adopt such other incentive arrangements as it may deem desirable. Nothing contained in the Plan shall be construed to prevent the Company or any Affiliate from taking any corporate action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any Award granted under the Plan. No Eligible Person, employee, beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

(b) Compliance with Law.

- (i) The Plan, the exercise of Non-Qualified Stock Options or SARs and the obligations of the Company to issue or transfer shares of Stock under Grants shall be subject to all applicable laws and to approvals by any governmental or regulatory agency as may be required. With respect to persons subject to section 16 of the Exchange Act, it is the intent of the Company that the Plan and all transactions under the Plan comply with all applicable provisions of Rule 16b-3 or its successors under the Exchange Act. In addition, it is the intent of the Company that the Plan and applicable Grants comply with any applicable provisions of section 409A of the Code. To the extent that any legal requirement of section 16 of the Exchange Act or section 409A of the Code as set forth in the Plan ceases to be required under section 16 of the Exchange Act or section 409A of the Code, that Plan provision shall cease to apply. The Administrator may revoke any Grant if it is contrary to law or modify a Grant to bring it into compliance with any valid and mandatory government regulation. The Administrator may also adopt rules regarding the withholding of taxes on payments to Eligible Persons. The Administrator may, in its sole discretion, agree to limit its authority under this Section.

- (ii) The Plan is intended to comply with the requirements of section 409A of the Code, to the extent applicable. Each Grant shall be construed and administered such that the Grant either (A) qualifies for an exemption from the requirements of section 409A of the Code or (B) satisfies the requirements of section 409A of the Code. If a Grant is subject to section 409A of the Code, (I) distributions shall only be made in a manner and upon an event permitted under section 409A of the Code, (II) payments to be made upon a termination of employment shall only be made upon a “separation from service” under section 409A of the Code, (III) unless the Grant specifies otherwise, each installment payment shall be treated as a separate payment for purposes of section 409A of the Code, and (IV) in no event shall a Eligible Person, directly or indirectly, designate the calendar year in which a distribution is made except in accordance with section 409A of the Code.
- (iii) Any Grant that is subject to section 409A of the Code and that is to be distributed to a Key Employee (as defined below) upon separation from service shall be administered so that any distribution with respect to such Grant shall be postponed for six months following the date of the Eligible Person’s separation from service, if required by section 409A of the Code. If a distribution is delayed pursuant to section 409A of the Code, the distribution shall be paid within 15 days after the end of the six-month period. If the Eligible Person dies during such six-month period, any postponed amounts shall be paid within 90 days of the Eligible Person’s death. The determination of “Key Employees,” including the number and identity of persons considered Key Employees and the identification date, shall be made by the Administrator or its delegate in accordance with section 416(i) of the Code and the “specified employee” requirements of section 409A of the Code.

(c) Enforceability. The Plan shall be the controlling document. No other statements, representations, explanatory materials or examples, oral or written, may amend the Plan in any manner. The Plan shall be binding upon and enforceable against the Company and its successors and assigns.

(d) Funding of the Plan; Limitation on Rights. This Plan shall be unfunded. Neither the Company nor any other Employer shall be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Grants under this Plan. Nothing contained in the Plan and no action taken pursuant hereto shall create or be construed to create a fiduciary relationship between the Company or any other Employer and any Eligible Person or any other person. No Eligible Person or any other person shall under any circumstances acquire any property interest in any specific assets of the Company or any other Employer. To the extent that any person acquires a right to receive payment from the Company hereunder, such right shall be no greater than the right of any unsecured general creditor of the Company.

(e) Establishment of Subplans. The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board shall establish such sub-plans by adopting supplements to the Plan setting forth (i) such limitations on the Committee’s discretion under the Plan as the Board deems necessary or desirable and (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board shall deem necessary or desirable. All supplements adopted by the Board shall be deemed to be part of the Plan, but each supplement shall apply only to Eligible Persons within the affected jurisdiction and the Employer shall not be required to provide copies of any supplement to Eligible Persons in any jurisdiction that is not affected.

(f) Rights of Eligible Persons. Nothing in this Plan shall entitle any Eligible Person or other person to any claim or right to receive a Grant under this Plan. Neither this Plan nor any action taken hereunder shall be construed as giving any individual any rights to be retained by or in the employment of the Employer.

(g) No Fractional Shares. No fractional shares of Stock shall be issued or delivered pursuant to the Plan or any Grant. The Administrator shall determine whether cash, other awards or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

(h) Clawback Policies. All Grants under the Plan are subject to the applicable provisions of the Company’s clawback or recoupment policy approved by the Board, if any, as such policy may be in effect from time to time.

(i) Governing Law. The validity, construction, interpretation and effect of the Plan and Grant Instruments issued under the Plan shall be governed and construed by and determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

**SHIFT TECHNOLOGIES, INC.
EMPLOYMENT INDUCEMENT PLAN**

RSU AGREEMENT

THIS AGREEMENT (this "Agreement"), dated _____, [YEAR] (the "Date of Grant") between Shift Technologies, Inc., a Delaware corporation (the "Company"), and [NAME] (the "Grantee"), is made pursuant and subject to the provisions of the Company's Employment Inducement Plan (the "Plan"), a copy of which has been made available to the Grantee. All capitalized terms used herein that are not otherwise defined in this Agreement have the same meaning given to them in the Plan.

1. **Award.** Subject to the terms and conditions of the Plan and subject further to the terms and conditions herein set forth, the Company hereby grants the Grantee [●] Restricted Stock Units ("RSUs"), subject to the vesting terms set forth in Section 2 below. Subject to the provisions of this Agreement and the Plan, each vested RSU represents the right to receive one (1) share of Stock. The RSUs shall apply only with respect to a whole number of shares of Stock.

2. **Vesting.**

- (a) The RSUs shall vest in full on the first (1st) anniversary of the Date of Grant, subject to the Grantee's continuous employment with the Company (or an Affiliate of the Company) through such date.
- (b) From and after the Date of Grant through the date on which the RSUs become fully vested pursuant to subparagraph (a) above, the unvested portion of the grant of RSUs remains subject to forfeiture in accordance with the terms of Section 3 hereof.

3. **Termination of Service.** When a Grantee's employment with the Company (or an Affiliate of the Company) terminates, any outstanding and unvested RSUs shall immediately terminate thereafter and become null and void.

4. **Settlement.** During the first open trading window of the Company following the end of each calendar quarter (i.e., March 31, June 30, September 30, December 31), the Company shall deliver to the Grantee one (1) share of Stock in settlement of each RSU that became vested during such calendar quarter, provided that, in no event (i) will an RSU be settled later than March 15 of the year following the year in which such RSU vested, nor (ii) will the Grantee be permitted, directly or indirectly, to specify the taxable year of delivery of any RSU subject to this Agreement.

5. **Delivery of Stock.** Certificates or evidence of book-entry shares representing the Stock issued upon settlement of RSUs pursuant to Section 4 of this Agreement will be delivered to or otherwise made available to the Grantee (or, at the discretion of the Grantee, joint in the names of the Grantee and the Grantee's spouse) or to the Grantee's nominee at such person's request. Delivery of shares of Stock under this Agreement will comply with all applicable laws (including, the requirements of the Exchange Act), and the applicable requirements of any securities exchange or similar entity.

6. **Shareholder Rights.** An RSU is not a share of Stock, and thus, the Grantee will have no rights as a stockholder with respect to the RSUs. Dividend Equivalents shall accrue on shares underlying the RSUs awarded hereunder and such dividends will be paid to Grantee upon the vesting of such RSUs.

7. **Transferability.** The RSUs subject to this Award may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered before they vest in accordance with Section 2. After such RSUs vest and are settled in accordance with Sections 2 and 4, no sale or disposition of such shares shall be made in the absence of an effective registration statement under the Exchange Act with respect to such shares unless an opinion of counsel satisfactory to the Company that such sale or disposition will not constitute a violation of the Exchange Act or any other applicable securities laws is first obtained.

8. **Change in Capital Structure.** The terms of this Agreement, including the number of shares of Stock subject to this RSU shall be adjusted as the Administrator determines is equitably required in the event the Company effects one or more stock dividends, spinoffs, recapitalizations, stock splits, combinations, exchanges or consolidations of shares or other similar changes in capitalization.

9. **Withholding.**

(a) The Grantee understands that when the RSUs are settled in accordance with Section 4, the Grantee will be obligated to recognize income, for Federal, state and local income tax purposes, as applicable, in an amount equal to the Fair Market Value of the share of Stock as of such date, and the Grantee is responsible for all tax obligations that arise in connection with the RSUs.

(b) Whenever shares of Stock are to be issued upon settlement of the RSUs, the Grantee shall assume sole responsibility for discharging all tax and other obligations associated therewith. The Company has no duty or obligation to minimize the tax consequences to the Grantee and will not be liable to the Grantee for any adverse tax consequences arising in connection with this Award. The Grantee agrees to indemnify the Company against any non-U.S., U.S. federal, state and local withholding taxes for which the Company may be liable in connection with the Grantee's acquisition, ownership or disposition of any shares of Stock.

(c) In its sole discretion, the Administrator may permit the Grantee to satisfy the Company's tax withholding obligation with respect to RSUs settled in Stock by having shares withheld in accordance with Section 16(b) of the Plan (or in accordance with such other process determined by the Administrator). The elections described in this subsection (c) must be in a form and manner prescribed by the Administrator and may be subject to the prior approval of the Administrator.

10. Compliance with Section 409A of the Code. It is the intention of the Company that the Award and Plan are intended either to provide compensation that is exempt from Section 409A of the Code and the rules, regulations and other authorities promulgated thereunder (including the transition rules thereof) (collectively, "Section 409A"), (by reason of being a short-term deferral) or that is nonqualified deferred compensation that is compliant in all regards with the requirements of Section 409A, and all provisions of this Agreement will be construed and interpreted in a manner consistent with this intent. If the Grantee is a "Specified Employee" (within the meaning set forth in Section 409A(a)(2)(B)(i) of the Code) as of the date of the Grantee's "separation from service" (within the meaning of Treasury Regulation Section 1.409A-1(h) and without regard to any alternative definition thereunder), then the issuance of any shares of Stock that would otherwise be made upon the date of the separation from service or within the first six (6) months thereafter will not be made on the originally scheduled date(s) and will instead be issued in a lump sum on the earlier of: (i) the fifth business day following the Grantee's death, or (ii) the date that is six (6) months and one day after the date of the separation from service, with the balance of the shares of Stock issued thereafter in accordance with the original vesting and issuance schedule set forth above, but if and only if such delay in the issuance of the shares of Stock is necessary to avoid the imposition of adverse taxation on the Grantee in respect of the shares of Stock under Section 409A. Each installment of shares of Stock that vests is intended to constitute a "separate payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2). In no event shall the Company be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on the Grantee by Section 409A or for damages for failing to comply with Section 409A.

11. Amendment. The Administrator may at any time amend, modify or terminate the Plan and this Agreement; provided, however, that, (i) except as otherwise specifically permitted under the Plan, no such action of the Administrator shall adversely affect the Grantee's rights under this Agreement without the consent of the Grantee, and (ii) a "material" amendment to this Agreement ("materiality" to be assessed in accordance with Nasdaq Listing Rule 5635(c)) shall require Company shareholder approval. The Administrator, to the extent it deems necessary or advisable in its sole discretion, reserves the right, but shall not be required, to unilaterally amend or modify this Agreement so that the award qualifies for exemption from or complies with Section 409A.

12. Interpretation. This Agreement and the rights of the Grantee hereunder are subject to all of the terms and conditions of the Plan, as it may be amended from time to time, as well as to such rules and regulations as the Administrator may adopt for administration of the Plan. It is expressly understood that the Administrator is authorized to administer, construe and make all determinations necessary or appropriate for the administration of the Plan and this Agreement, all of which shall be binding upon the Grantee.

13. **No Right to Continued Employment.** This Agreement shall not confer upon the Grantee any right to continue to provide services, nor shall this Agreement interfere in any way with the Company's right to terminate the Grantee's employment at any time.

14. **Conflicts.** In the event of any conflict between the provisions of the Plan as in effect on the Date of Grant and the provisions of this Agreement, the provisions of the Plan shall govern. All references herein to the Plan mean the Plan as in effect on the date hereof.

15. **Grantee Bound by Plan.** The Grantee hereby acknowledges that a copy of the Plan has been made available to him or her and agrees to be bound by all the terms and provisions thereof.

16. **Binding Effect.** Subject to the limitations stated above and in the Plan, this Agreement shall be binding upon and inure to the benefit of the successors of the Grantee and any transferee of the Grantee in accordance with Section 7 and the successors of the Company.

17. **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware.

18. **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.

[Signatures appear on following page]

IN WITNESS WHEREOF, the Company has caused its duly authorized officer to execute this Agreement, and the Grantee has placed his or her signature hereon, effective as of the Date of Grant.

SHIFT TECHNOLOGIES, INC.

By: _____
Signature

Name: _____

Title: _____

Date: _____

I hereby accept this Grant and I agree to be bound by the terms of the Plan and this Grant. I further agree that all of the decisions and interpretations of the Company with respect thereto shall be final and binding.

GRANTEE:

By: _____
Signature

Name: _____
Print Name

**IF GRANTEE'S SPOUSE
MUST SIGN:***

By: _____
Signature

Name: _____
Print Name

** If the Grantee is married and holds RSUs jointly with the Grantee's spouse or resides in a community property state, both the Grantee and Grantee's spouse must sign this RSU Agreement. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.*

Calculation of Filing Fee Tables

Form S-8
(Form Type)Shift Technologies, Inc.
(Exact Name of Registrant as Specified in its Charter)

Table 1—Newly Registered Securities

	Security Type	Security Class Title	Fee Calculation Rule	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to Be Paid	Equity	Class A common stock, par value \$0.0001 per share	Rule 457(c) and Rule 457(h)	660,000 (2)	\$0.74	\$488,400.00	\$92.70 per \$1,000,000	\$45.27
Fees Previously Paid	—	—	—	—	—	—	—	—
	Total Offering Amounts					\$488,400.00		\$45.27
	Total Fees Previously Paid							—
	Total Fee Offsets (4)							—
	Net Fee Due							\$45.27

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933 (the “Securities Act”), this Registration Statement also covers an indeterminate number of additional shares that may be issued to adjust the number of shares issued pursuant to the plans described herein in the event of a stock dividend, stock split, reverse stock split, extraordinary dividend, extraordinary distribution, recapitalization, reorganization, merger, combination, consolidation, split-up, spin-off, combination, exchange of shares, rights offering, separation, reorganization, liquidation or similar event.
- (2) Represents shares of Class A common stock, par value \$0.0001 per share (“Class A common stock”), of Shift Technologies, Inc. (the “Registrant”) available for awards under the 2022 Employment Inducement Plan (the “Inducement Plan”) and shares of Class A common stock that may again become available for delivery with respect to awards under the Inducement Plan pursuant to the share counting, share recycling and other terms and conditions of the Inducement Plan.
- (3) Computed solely for purposes of calculating the registration fee in accordance with Rules 457(c) and 457(h) under the Securities Act based on the average of the high and low prices of Common Stock as reported on The Nasdaq Capital Market on June 29, 2022.
- (4) The Registrant does not have any fee offsets.