

**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) October 18, 2022 (October 17, 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.

As previously announced on August 12, 2022, Shift Technologies, Inc. (the “Company”) implemented an executive leadership succession plan in connection with the transition of George Arison from the Company as its Chief Executive Officer, effective September 1, 2022. Mr. Arison, Co-Founder of the Company, is leaving his position as an officer of the Company to pursue other interests. Mr. Arison’s transition is not the result of any disagreements over the Company’s business, operations, or strategic direction.

In order to ensure an orderly transition of responsibilities, Mr. Arison continued to be employed in a non-executive capacity with the Company through October 14, 2022 (the “Separation Date”). Mr. Arison was not required to resign from the Board of Directors (the “Board”) of the Company or as Chairman of the Board upon the termination of his employment with the Company on October 14, 2022.

In connection with his transition from employment with the Company, the Company and Mr. Arison entered into a Transition and Separation Agreement on October 17, 2022 (the “Agreement”) that reflects the terms of his transition and the benefits he is eligible to receive. Pursuant to the Agreement, Mr. Arison will be entitled to receive the following benefits: (i) a cash payment equal to eighteen (18) months of his 2022 monthly base salary, payable in equal installments on the Company’s regular payroll cycles over an 18-month period following his termination of employment, (ii) payment of his 2022 annual bonus, prorated for the number of days employed by the Company in 2022 and determined based on actual performance (with any personal goals considered to be fulfilled), and payable at such time that annual bonuses are otherwise generally paid to employees of the Company, and (iii) payment of COBRA premiums for eighteen (18) months following the Separation Date (to the extent Mr. Arison elects COBRA continuation coverage), less amounts equal to the amount active employees pay for such coverage during such time period, and subject to reduction or elimination if Mr. Arison becomes entitled to duplicative benefits through other employment. The Company and Mr. Arison also agreed that Mr. Arison will resign as Chairman of the Board at the next Board meeting following the Separation Date. Mr. Arison is not resigning as a member of the Board.

In addition, upon execution of the Agreement and in connection with his October 14, 2022 termination of employment, Mr. Arison will provide a general waiver and release of claims in favor of the Company. Mr. Arison will be subject to certain restrictive covenants following his termination of employment with the Company.

The foregoing description of the 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.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

| | |
|------|--|
| 10.1 | Transition and Separation Agreement, by and between Shift Technologies, Inc. and George Arison, dated October 17, 2022 |
| 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: October 18, 2022

/s/ Jeff Clementz

Name: Jeff Clementz

Title: Chief Executive Officer

SHIFT TECHNOLOGIES, INC.**TRANSITION AND SEPARATION AGREEMENT**

This Transition and Separation Agreement (the "Agreement") is entered into by and between Shift Technologies, Inc., a Delaware corporation (the "Company") and George Arison (the "Employee") (the Company and Employee collectively referred to herein as the "Parties") as of the last date set forth on the signature page hereto.

1. Transition Period.

(a) The Parties hereby acknowledge and agree that Employee resigned Employee's position as Chief Executive Officer of the Company effective September 1, 2022 (the "Transition Date"). Effective as of the Transition Date, Employee continued to be employed in a non-executive capacity with the Company from the Transition Date through October 14, 2022 (the "Separation Date", and such period from the Transition Date to Separation Date, the "Transition Period").

(b) During the Transition Period, Employee was responsible for ensuring the orderly transition of his duties and responsibilities as Chief Executive Officer of the Company and worked with the senior management team of the Company to do so. During the Transition Period, Employee worked with the Company's employees, including his current executive assistant, in furtherance of the orderly transition through the Transition Period. Employee agreed to perform those tasks reasonably assigned to Employee by the Board of Directors of the Company (the "Board") consistent with his duties and in furtherance of the achievement of the orderly transition through the Transition Period.

(c) The Company continued to pay Employee's base salary (at an annual rate of \$590,000) through the Separation Date. While employed through the Separation Date, Employee remained eligible to continue participation in other benefit plans or programs of the Company (including, for the avoidance of doubt, the Shift Technologies, Inc. Severance Plan for Key Management Employees (the "Severance Plan"). For the avoidance of doubt, nothing contained herein limited or otherwise prevented Employee from using his remaining paid time off, including vacation, holiday, and sick leave, in accordance with the Company's policies on or before the Separation Date.

2. Separation Date. The Parties hereby acknowledge and agree that Employee's employment by the Company terminated effective as of the Separation Date. The Separation Date shall be deemed to be the date of separation from service and the date that employment ends for purposes of that certain Employment Agreement dated October 13, 2020, as amended on February 24, 2022 (the "Employment Agreement"), and any applicable Company plans or programs in which Employee participated (including, for the avoidance of doubt, the Severance Plan).

3. Accrued Obligations and Vested Benefits. Employee is entitled to receive the following accrued obligations at his separation from service: (a) all base salary earned, accrued and owing, but not yet paid, and (b) any benefits accrued and due in accordance with the terms of any applicable benefit plans or programs of the Company.

4. Separation Payments and Benefits. Provided that Employee signs and does not timely revoke this Agreement (in accordance with Section 22 and 23 herein), and complies with the terms and conditions of this Agreement, the Company shall provide Employee with the following separation payments and benefits (less federal, state and local tax withholdings and any other deductions required by law or previously authorized by Employee), in full satisfaction of all termination obligations the Company may have to Employee under any agreement, plan or arrangement, including without limitation the Employment Agreement and Severance Plan, (the “Separation Benefits”):

(a) In full satisfaction of the provisions of Section 8(c) of the Employment Agreement and the provisions of the Severance Plan:

(i) Base Salary Continuation. The Company shall pay Employee an amount in cash equal to \$885,000, to be paid to Employee in equal installments on the Company’s regular payroll cycles during the eighteen (18) month period commencing on the first payroll date following the Effective Date (as defined below).

(ii) 2022 Prorated Annual Bonus. Employee shall be eligible for the 2022 annual bonus that would have been payable to him under the Employment Agreement, prorated based on a fraction (i) the numerator of which is the number of days between January 1, 2022 and the Separation Date, and (ii) the denominator of which is 365. The actual amount of the bonus (if any) shall be determined by the Board (determined based on actual performance of Company goals, without negative discretion, and provided that any personal goals shall be considered to be fulfilled), and shall be paid at the same time as such bonuses are otherwise generally paid to other employees of the Company, but no later than March 15, 2023.

(iii) Health Plan Continuation Coverage. If Employee timely and properly elects health continuation coverage pursuant to Employee’s benefit continuation rights under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), the Company shall take appropriate steps so as to charge Employee his COBRA continuation premium at the amount paid by active employees for comparable coverage rather than the full permissible COBRA premium amount that may otherwise be charged for COBRA continuation coverage (and the Company shall pay the remaining amount of such COBRA premium amount). This reduced COBRA premium shall be applicable for a period that ends on the eighteen (18) month anniversary of the Separation Date, or the date Employee becomes entitled to duplicative benefits by virtue of Employee’s subsequent or other employment, whichever occurs first. If the payment by the Company of any portion of the COBRA premium would violate the nondiscrimination rules or cause the reimbursement of claims to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the “Act”) or Section 105(h) of the Code (as defined below), the Company-paid portion of the premium will be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 105(h) of the Code.

(b) Unvested Equity Awards. For avoidance of doubt, and solely for purposes of clarity, as provided under the Shift Technologies, Inc. 2020 Omnibus Equity Compensation Plan (the “Plan”), Employee’s outstanding equity awards held by Employee under the Plan shall be forfeited and cancelled for no consideration as of the Separation Date.

(c) Employee acknowledges and agrees that, unless he executes this Agreement, he will not otherwise be entitled to receive the consideration set forth in this Section 4. Employee further acknowledges and agrees that the consideration set forth or referenced in Section 4 constitutes satisfaction and accord for any and all compensation and benefits due and owing to him pursuant to any plan, agreement or other arrangements relating to his employment with the Company and termination thereof.

5. Directorship. In accordance with the Employment Agreement, Employee shall not be required to resign from the Board or as Chairman of the Board upon Employee's termination of employment on the Separation Date; provided, however, the parties agree that Employee shall resign as Chairman of the Board at the next Board meeting following the Separation Date. For avoidance of doubt, the foregoing proviso shall not limit Employee from continuing to serve as a director of the Board after his Separation Date through the end of his current term, which shall end at the 2023 annual meeting of the shareholders (the "2023 Annual Meeting"), or to stand for re-election at the 2023 Annual Meeting. During the period that Employee is Chairman of the Board on and after the Separation Date, Employee shall be entitled to work with the Company's executive assistants from time to time. Further, Employee agrees that in such capacity as Chairman of the Board he will make himself available to the senior management of the Company in an advisory capacity, assisting with the orderly transition of his duties and responsibilities and will work with the senior management team of the Company to do so. For the avoidance of doubt, Employee will, after his Separation Date, serve as a non-employee director and be compensated commensurate with such role in accordance with the Company's applicable non-employee director compensation policy (as may be amended or modified from time to time).

6. Post-Separation Covenants; Dispute Resolution. The Company and Employee acknowledge and agree that the post-separation covenants and dispute resolution provisions set forth in the Employment Agreement (including, without limitation, Sections 15(c), 16 and 17 of the Employment Agreement) are incorporated into this Agreement by reference and shall remain in full force and effect following the Separation Date in accordance with their respective terms; provided however, with prior written approval of the Company with respect to a specified employee, Section 16(a) of the Employment Agreement shall not apply with respect to such specified Company employee and the Company will not seek to enforce any terms (if any) contained in such employee's respective agreement (if any) with the Company that would prevent the application of this proviso. In the event of material breach by Employee of this Agreement, Employee acknowledges and agrees that: (a) the Company shall have the right to terminate any remaining unpaid Separation Benefits and file a lawsuit against Employee to recover ninety-five percent (95%) of the Separation Benefits, as such amount is not deemed earned absent Employee's compliance with this Agreement; and (b) the remaining five percent (5%) of the Separation Benefits shall constitute full and complete consideration sufficient to support enforcement of this Agreement against Employee, including, but not limited to, enforcement of Employee's release of claims set forth below.

7. Release. In consideration of the Separation Benefits and the Company's promises in this Agreement:

(a) Employee hereby RELEASES the Company, its past and present parents, subsidiaries, affiliates, predecessors, successors, assigns, related companies, entities or divisions, its or their past and present employee benefit plans, trustees, fiduciaries and administrators, and any and all of its and their respective past and present officers, directors, partners, agents, representatives, attorneys and employees (all collectively included in the term "Company" for purposes of this release), from any and all claims, demands or causes of action which Employee, or Employee's heirs, executors, administrators, agents, attorneys, representatives or assigns (all collectively included in the term "Employee" for purposes of this release), have, had or may have against the Company, based on any events or circumstances arising or occurring prior to and including the date of Employee's execution of this Agreement to the fullest extent permitted by law, regardless of whether such claims are now known or are later discovered, including but not limited to any claims relating to Employee's employment or termination of employment by the Company, any rights of continued employment, reinstatement or reemployment by the Company, and any costs or attorneys' fees incurred by Employee, PROVIDED, HOWEVER, Employee is not waiving, releasing or giving up any rights Employee may have to vested benefits under any pension or savings plan, any rights Employee may have as a shareholder of the Company, to continued benefits in accordance with COBRA, to unemployment insurance, or to enforce the terms of this Agreement, any claims or rights Employee may have to indemnification, or any other right which cannot be waived as a matter of law. In the event any claim or suit is filed on Employee's behalf against the Company by any person or entity, Employee waives any and all rights to receive monetary damages or injunctive relief in favor of Employee from or against the Company.

(b) Employee agrees and acknowledges: that this Agreement is intended to be a general release that extinguishes all claims by Employee against the Company; that Employee is waiving any claims arising under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. §1981, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Older Worker Benefit Protection Act, the Employee Retirement Income Security Act of 1974, the Family and Medical Leave Act, the Equal Pay Act, the Worker Adjustment and Retraining Notification Act, the Uniformed Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, the Fair Credit Reporting Act, the California Fair Employment and Housing Act, the Unruh Civil Rights Act, the California Government Code, the California Business and Professions Code, the California Family Rights Act, the California Pregnancy Disability Leave Law, the California Equal Pay Law, the California Crime Victim Leave Law, the California Healthy Family Act, the California Plant Closing Law, the Virginians with Disabilities Act, the Virginia Human Rights Act, the Virginia Equal Pay Act, and all other federal, state and local statutes, ordinances and common law, including but not limited to any claims based on public policy, breach of contract, either expressed or implied, equitable claims, defamation, retaliation, whistleblowing, negligence, invasion of privacy, infliction of emotional distress, slander, libel, estoppel, fraud, misrepresentation, and other torts (including intentional torts) and wrongful discharge, and claims for discretionary bonuses and other discretionary payments to the fullest extent permitted by law; that Employee is waiving all claims against the Company, known or unknown, arising or occurring prior to and including the date of Employee's execution of this Agreement; that the consideration that Employee will receive in exchange for Employee's waiver of the claims specified herein exceeds anything of value to which Employee is already entitled; that Employee was hereby advised in writing to consult with an attorney and that Employee had at least twenty-one (21) calendar days to consider this Agreement; that Employee has entered into this Agreement knowingly and voluntarily with full understanding of its terms and after having had the opportunity to seek and receive advice from counsel of Employee's choosing; and that Employee has had a reasonable period of time within which to consider this Agreement. Employee represents that Employee has not assigned any claim against the Company to any person or entity; that Employee has no right to any future employment by the Company; that Employee has received all compensation, benefits, remuneration, accruals, contributions, reimbursements, bonuses, vacation pay, and other payments, leave and time off due; and that Employee has not suffered any injury that resulted, in whole or in part, from Employee's work at the Company that would entitle Employee to payments or benefits under any state worker's compensation law and the termination of Employee's employment by the Company is not related to any such injury.

(c) Employee expressly waives the benefit of any statute or rule of law which, if applied to this Agreement, would otherwise preclude from its binding effect any claim against the Company (as defined in Paragraph 6(a) above) not now known by Employee to exist, including any benefit under Section 1542 of the California Civil Code which states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

8. Permitted Conduct. Employee understands that nothing contained in this Agreement limits: (a) Employee's ability to file a charge or complaint with the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission, law enforcement, or any other federal, state or local governmental agency or commission ("Government Agencies"); (b) Employee's right to disclose information about or testify regarding alleged criminal conduct or unlawful acts in the workplace, including but not limited to discrimination, harassment, retaliation or any other unlawful or potentially unlawful conduct; or (c) Employee's ability to file or disclose any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which Employee is entitled. Employee further understands that this Agreement does not limit Employee's ability to initiate, testify, assist, comply with a subpoena from, or communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company and that nothing herein precludes Employee from requesting or receiving confidential legal advice; *provided, however*, that Employee may not disclose Company information that is protected by the attorney-client privilege, except as expressly authorized by law. This Agreement does not limit Employee's right to receive an award for information provided to any Government Agencies.

9. Defend Trade Secrets Act of 2016. The Company provides notice to Employee pursuant to the Defend Trade Secrets Act of 2016 that:

(a) An individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (1) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and

(b) An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (1) files any document containing the trade secret under seal; and (2) does not disclose the trade secret, except pursuant to court order.

10. Cooperation. Following the Separation Date, Employee agrees to cooperate fully with the Company in the defense, prosecution or conduct of any claims, actions, investigations, or reviews now in existence or which may be initiated in the future against, involving or on behalf of the Company which relate to events or occurrences that transpired while Employee was employed by the Company (“**Matters**”). For the avoidance of doubt, this includes Employee’s cooperation in connection with such Matters, which will include, but not be limited to, being available for telephone conferences with outside counsel and/or personnel of the Company, and being available for interviews as reasonably requested. The Company will reimburse Employee for all reasonable out-of-pocket expenses incurred by Employee in connection with such cooperation and shall pay Employee for such cooperation at an hourly rate consistent with Employee’s base salary as of immediately prior to the Separation Date.

11. No Unlawful Conduct. Employee represents and warrants that Employee has not engaged in any unlawful or fraudulent conduct in connection with Employee’s employment or duties with the Company; that Employee is not aware of the Company’s violation of any applicable law, rule, regulation and/or binding legal guidance; and that Employee is not aware of the Company’s material non-compliance with any applicable accounting or professional responsibility rule, practice and/or principle.

12. Confidentiality; Non-Disparagement.

(a) Employee agrees to keep the terms of this Agreement confidential and not to disclose the terms of this Agreement to anyone other than Employee’s immediate family or legal, tax or financial advisors or as otherwise required by law, and agrees to take all steps necessary to assure confidentiality by those recipients of this information. With reference to Section 162(q) of the Internal Revenue Code of 1986, as amended, and the corresponding regulations and guidance promulgated thereunder (the “**Code**”), nothing contained in this Agreement shall be interpreted or construed as requiring non-disclosure with respect to factual information relating to allegations of sexual harassment or sexual abuse.

(b) Employee agrees not to make, or cause or attempt to cause any other person to make any statement, written or oral, or convey any information about the Company (directly or indirectly) or attempt to cause any other person or entity to make any statement, written or oral (including, but not limited to, statements made in person, by phone, email, text message, online, on social media, or otherwise) which is false, disparaging, or defamatory towards the Company, as the Company is defined in Section 7(a) of this Agreement. The Company agrees to instruct its executives officers and directors of the Board not to make, or cause or attempt to cause any other person to make any statement, written or oral, or convey any information about Employee (directly or indirectly) or attempt to cause any other person or entity to make any statement, written or oral (including, but not limited to, statements made in person, by phone, email, text message, online, on social media, or otherwise) which is false, disparaging, or defamatory towards Employee. Nothing in this Section 12(b) shall prohibit the foregoing parties from testifying truthfully in any forum or to any government agency.

(c) Employee specifically acknowledges and reaffirms Employee's ongoing obligations to the Company (1) not to use for any purpose or disclose any confidential or proprietary information of the Company or a third party to which Employee had access or created during: (i) the period of Employee's employment with the Company, or (ii) during his service as a director of the Board, (2) to return after the cessation of his services to the Company any and all materials containing such confidential or proprietary information to the Company, and (3) to comply with the obligations set forth in the Employment Agreement and this Agreement.

13. No Admission of Liability. This Agreement does not constitute and will not be construed as an admission by the Company that it has violated any law, interfered with any rights, breached any obligation or otherwise engaged in any improper or illegal conduct with respect to Employee, and the Company expressly denies that it has engaged in any such conduct.

14. Amendment; Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and, other than as specifically set forth in this Agreement, supersedes and replaces all prior negotiations and agreements, whether written or oral. This Agreement may be modified only by a written instrument signed by the Parties hereto. The Parties acknowledge and agree that Employee and Company remain subject to all employment and post-employment obligations set forth in the Employment Agreement (subject to modifications provided herein); provided, however, for the avoidance of doubt, that the foregoing shall not be construed as resulting in the duplication of any compensation or severance benefits payable to Employee.

15. Execution. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same Agreement, and the Parties agree that signatures delivered by hand delivery, U.S. mail, fax, and e-mail/pdf are valid.

16. Withholding. The Company may withhold from any and all amounts payable under this Agreement or otherwise such federal, state, and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

17. 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. Notwithstanding anything herein to the contrary, if, at the time of Employee's termination of employment with the Company, Employee is a "specified employee" (as such term is defined in Section 409A of the Code) and it is necessary to postpone the commencement of any payments or benefits otherwise payable under this Agreement as a result of such termination of employment to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will postpone the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to Employee) that are not otherwise paid within the "short-term deferral exception" under Treas. Reg. §1.409A-1(b)(4), and the "separation pay exception" under Treas. Reg. §1.409A-1(b)(9)(iii), until the first payroll date that occurs after the date that is six months following Employee's "separation of service" (as such term is defined in Section 409A of the Code) with the Company. If any payments are postponed due to such requirements, such postponed amounts will be paid in a lump sum to Employee on the first payroll date that occurs after the date that is six months following Employee's separation of service with the Company. If Employee dies during the postponement period prior to the payment of postponed amount, the amounts withheld on account of Section 409A of the Code shall be paid to the personal representative of Employee's estate within sixty (60) days after the date of Employee's death.

For purposes of Section 409A of the Code, 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. In no event may Employee, directly or indirectly, designate the calendar year of a payment. All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A of the Code.

The Company reserves the right to amend the provisions of this Agreement at any time and in any manner without Employee's consent but with notice to 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 Employee by Section 409A of the Code or for damages for failing to comply with Section 409A of the Code.

18. Severability. If any provision, section, subsection or other portion of this Agreement is determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in whole or in part, and such determination becomes final, such provision or portion will be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portion of this Agreement enforceable. This Agreement as thus amended will be enforced so as to give effect to the intention of the Parties insofar as that is possible. In addition, the Parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this Agreement to the extent necessary to comply with existing law and to enforce this Agreement as modified.

19. Voluntary Agreement. Employee hereby agrees and acknowledges that Employee has carefully read this Agreement, fully understands what this Agreement means, and is signing this Agreement knowingly and voluntarily, that no other promises or agreements have been made to Employee other than those set forth in this Agreement, and that Employee has not relied on any statement by anyone associated with the Company that is not contained in this Agreement in deciding to sign this Agreement.

20. Governing Law and Dispute Resolution. This Agreement will be governed by the laws of the State of California. The Parties agree that all disputes arising under this Agreement will be subject to the Employment Agreement.

21. Return of Company Property. During the Transition Period and through his service as a member of the Board, Employee will maintain the same access to Company systems (e.g., Company equipment, Company email, Company documents, Company shared drives, etc.) as he did prior to the Transition Date (the "Company Access"). Upon termination of Employee's service as a member of the Board, Employee must return to the Company within 120 days after such termination all Company property previously provided to Employee, including, but not limited to, any Company owned computer, personal digital assistant, mobile phone, credit cards, keys, key fobs, computer accessories, and Company documents and materials (however stored), and during such 120-day period, the Company acknowledges and agrees that Employee may maintain the same Company Access in order to ensure proper record retention and effectuate the necessary transfer of the same to the Company, provided that, in the event Employee is separated from service on the Board for cause, then the Company shall have the right, in its sole discretion and in accordance with the best interests of the Company as may be determined by the Board, to terminate or otherwise limit Employee's Company Access. Notwithstanding the foregoing, Employee will be permitted to keep certain Company-provided property following his termination of service as a member of the Board, which items include two (2) iPads, one (1) computer and one (1) mobile phone (each of which shall be cleared of all confidential or proprietary information of the Company upon the termination of Employee's service as a member of the Board). For the avoidance of doubt, subject to the provisions of this Section 21, Company Access and Company property remain subject to applicable Company policies, as may be amended from time to time.

22. Acceptance. Employee may accept this Agreement by delivering an executed copy of the Agreement to the Company within twenty-one (21) calendar days after Employee's receipt of this Agreement. The Parties agree that any changes to the Agreement, whether material or non-material, will not extend the 21-day consideration period.

23. Revocation. Employee may revoke this Agreement within seven (7) calendar days after it is executed and delivered by Employee to the Company by delivering a written notice of revocation to the Company no later than the close of business on the 7th calendar day after this Agreement was signed by Employee. This Agreement will become effective and enforceable on the 8th calendar day after Employee signs and delivers the Agreement to the Company (the "Effective Date"), provided Employee has not timely revoked this Agreement. If Employee fails to timely accept the Agreement or timely revokes this Agreement, the Parties will have no obligations under this Agreement.

24. Attorneys' Fees. The Company shall reimburse Employee for his reasonable legal fees incurred in connection with review of and revisions to this Agreement, in an amount not to exceed Seven Thousand Five Hundred dollars (\$7,500).

[Signature Page Follows]

WHEREFORE, the Parties have executed this Agreement on the date or dates set forth below.

GEORGE ARISON:

Name: /s/ George Arison

Date: 10/17/2022

SHIFT TECHNOLOGIES, INC.

By: /s/ Jeff Clementz

Name: Jeff Clementz

Title: Chief Executive Officer

Date: 10/17/2022
