
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): **July 1, 2019**

Shutterstock, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35669
(Commission
File Number)

80-0812659
(IRS Employer
Identification No.)

350 Fifth Avenue, 21st Floor
New York, New York 10118
(Address of principal executive offices)

10118
(Zip Code)

(646) 710-3417
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Class	Trading symbol	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	SSTK	New York Stock Exchange

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) of the Exchange Act.

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

On July 1, 2019, Shutterstock, Inc. (the "Company") and Steven Bems, the Company's former Co-Chief Operating Officer and Chief Financial Officer, entered into a Separation Agreement and General Release effective as of June 22, 2019 (the "Agreement"), pursuant to which, upon a general release of claims becoming irrevocable, Mr. Bems will be entitled to the following payments and benefits:

- his base salary effective as of his separation date for a period of 12 months commencing on the sixtieth day after June 25, 2019 (the date of Mr. Bems' departure from the Company), which will be paid in accordance with our regular payroll practices;
- a pro-rated annual bonus for 2019 equal to \$144,000, less all applicable taxes and withholdings and other applicable deductions, to be paid at the same time annual bonuses are paid by the Company to other executives of the Company for fiscal year 2019, but in no event later than March 15, 2020;
- reimbursement for premiums paid for coverage pursuant to COBRA for Mr. Bems and his eligible dependents for up to 12 months from June 25, 2019;
- accelerated vesting of the unvested portion of all Mr. Bems' time-based equity awards outstanding as of June 25, 2019 as if he had remained employed for 12 months following his termination of employment and continued eligibility for pro-rated vesting of the first year's portion of his outstanding performance stock unit award, determined based on Company performance, in accordance with the terms of that award;
- the post-termination exercise period for his outstanding vested options will be extended to 90 days following the opening of the Company's next open trading window pursuant to the Company's Insider Trading and Disclosure Policy; and
- outplacement benefits for six months following termination of employment, up to a maximum of \$5,000.

The foregoing description of the Agreement is qualified in its entirety by the text of the Agreement, which is filed as Exhibit 10.1 to this Current Report and incorporated herein by reference.

In addition, on July 1, 2019, in connection with Mr. Steve Ciardiello's appointment as Interim Chief Financial Officer of the Company, the Compensation Committee of the Board (the "Compensation Committee") approved (i) a guaranteed bonus for Mr. Ciardiello for fiscal 2019 in the amount of \$200,000 and (ii) a grant to Mr. Ciardiello of restricted stock units ("RSUs") of the Company's common stock, which RSUs have a grant date fair value of \$450,000, and 33% of which will vest on each of the first and second anniversaries of the grant and 34% of which will vest on the third anniversary of the grant, subject to Mr. Ciardiello's continued employment with the Company. Mr. Ciardiello's RSU grant will be subject to the terms of the Company's Amended and Restated 2012 Omnibus Incentive Plan (the "2012 Plan") and related restricted stock unit award agreement.

Further, on July 1, 2019, in connection with Mr. Stan Pavlovsky's appointment as President and Chief Operating Officer, the Compensation Committee approved a grant to Mr. Pavlovsky of an option to purchase shares of the Company's common stock, having a grant date fair value of \$1,500,000, which option will vest in equal installments over a four year period, subject to Mr. Pavlovsky's continued employment with the Company. Mr. Pavlovsky's option grant will be subject to the terms of the 2012 Plan and related stock option award agreement.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

10.1 Separation Agreement and General Release, dated June 22, 2019

EXHIBIT INDEX

Exhibit No.

Exhibit Description

10.1

[Separation Agreement and General Release, dated June 22, 2019](#)

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.

SHUTTERSTOCK, INC.

Dated: July 3, 2019

By: /s/ Heidi Garfield

Heidi Garfield

VP, General Counsel and Corporate Secretary

Confidential Separation Agreement and General Release

Dated as of June 22, 2019

Steven Berns
c/o Shutterstock, Inc.
350 Fifth Avenue, 21st Floor
New York, NY 10118

Dear Steven,

When signed below in the places indicated, the following shall constitute an agreement (the "Agreement") between you ("you" or "Executive") and Shutterstock, Inc. ("Shutterstock" or the "Company"). Please initial and date each page of this Agreement where indicated in the footer.

WHEREAS, the Executive is a party to an Employment Agreement with the Company dated August 5, 2015, as amended March 1, 2017 (collectively, the "Employment Agreement");

WHEREAS, pursuant to the Employment Agreement, the Executive has been employed as the Company's Chief Financial Officer and Co-Chief Operating Officer;

WHEREAS, the Parties wish to document the Executive's separation from the Company and establish the terms of the Executive's severance arrangement;

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows

1. Your employment will terminate at the close of business on June 25, 2019 (the "Separation Date"). You will be paid your current salary and accrued benefits, including accrued paid time off, through the close of business on the Separation Date. As of the Separation Date, all salary payments from the Company will cease and any benefits the Executive had as of the Separation Date under Company-provided benefit plans, programs, or practices will terminate, except as required by federal or state law or as otherwise provided in this Agreement, incorporating by reference as necessary any related agreements (including without limitation the stock option plan, 401K and medical benefits as provided under Company plans).
2. **Severance.** Provided the Executive executes this Agreement and does not revoke acceptance of this Agreement as set forth in Section 4(b) of this Agreement, the Company will provide the Executive with the following severance benefits (the "Severance Benefits"):
 - a. **Severance Pay:** Commencing on sixtieth day after the Separation Date, the Company shall pay an amount equal to the Executive's base salary, at the rate in effect immediately prior to the Separation Date, less all required tax withholdings and other applicable deductions, in substantially equal installments for a period of twelve (12) months following the Separation Date, which installments shall be paid in accordance with the Company's regular payroll procedures; provided, however, that any such installments otherwise payable during the 60 day period immediately following the Separation Date shall be paid to you sixty days following the Separation Date.
 - b. **2019 Bonus:** The Company will pay to the Executive a pro-rated annual bonus for 2019 equal to \$144,000, less all applicable taxes and withholdings and other applicable deductions, to be paid at the same time annual bonuses are paid by the Company to other executives of the Company for fiscal year 2019, but in no event later than March 15, 2020.
 - c. **COBRA:** If you elect continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") for you and your eligible dependents, within the time period prescribed pursuant to COBRA, the Company will reimburse you for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Employee's termination or resignation) until the earlier of (A) twelve months from the Separation Date, or (B) the date upon which you and/or your eligible dependents become covered under similar plans. COBRA reimbursements will be made by the Company to you consistent with the Company's normal expense reimbursement policy and will be taxable to the extent required to avoid adverse consequences to Employee or the Company under either Code Section 105(h) or the Patient Protection and Affordable Care Act of 2010.

- d. **Equity:** Effective as of the Effective Date (as defined below), other than any Performance Stock Unit awards, all of the Executive's invested and outstanding equity awards that would have vested through June 25, 2020 shall immediately vest and become exercisable. Effective as of the Effective Date, in accordance with the terms of the applicable award agreement, the Executive will remain eligible to vest in a pro-rata portion of those unvested performance stock units granted to the Executive on April 1, 2019 that are determined to vest in the normal course for such award's first performance year under the terms of the applicable award agreement. In addition, the Executive will have ninety (90) days in which to exercise any outstanding stock options he may have, measured from the first date of the Company's next open trading window pursuant to the Company's Insider Trading and Disclosure Policy; provided, however, that in no event may any equity award be exercised beyond the earlier of (x) the original maximum term of such equity award (unrelated to termination), and (y) ten (10) years from the original grant date of such equity award. For the sake of clarity, as of the Separation Date, Executive shall cease to be a Service Provider for purposes of the applicable Equity Plan and award agreements.
 - e. **Outplacement Benefits:** The Company will provide the Executive with outplacement services for a period of six months at a total cost to the Company not to exceed \$5,000. The Company shall select the outplacement provider and shall pay the cost for such services directly to the provider.
3. If this Agreement does not become effective and irrevocable by the sixtieth (60th) day following the Separation Date, Executive will forfeit and will not be entitled to any of the severance benefits set forth herein, including those under Paragraph 2.
4. **OWBPA.** This Agreement is intended to satisfy the requirements of the Older Workers' Benefit Protection Act (the "OWBPA"), 29 U.S.C. sec. 626(f).
 - a. You acknowledge and agree that (i) you have read and understand the terms of this Agreement; (ii) you are advised to consult with an attorney before executing this Agreement, and you have been represented by legal counsel in connection with the signing of this Agreement or you have waived your right to such representation; (iii) you understand that the Company hereby gives you a period of twenty-one (21) days to review and consider this Agreement before signing it. You further understand that you may use as much of this review and consideration period as you wish prior to signing. The Executive understands that he may revoke this Agreement for a period of seven (7) days after he signs each respective agreement, and that neither agreement shall be effective or enforceable until the expiration of each respective seven (7) day revocation period. Changes to this Agreement, material or otherwise, will not extend the aforementioned review and consideration period. You also agree and acknowledge that the consideration provided to you under this Agreement is in addition to anything of value to which you are already entitled.
 - b. You may revoke this Agreement for a period of seven (7) days following the day you sign same (the "Revocation Period"). Any revocation must be submitted, in writing, to Shutterstock, Inc. 350 Fifth Avenue, 21st Floor, New York, New York 10118 Attention: General Counsel, and must state, "I hereby revoke my acceptance of my Separation Agreement and General Release". This Agreement shall not become effective or enforceable until the expiration of the Revocation Period (the "Effective Date"). If the last day of the Revocation Period is a Saturday, Sunday or such legal holiday, then the Revocation Period shall not expire until the next following day which is not a Saturday, Sunday or legal holiday. If you revoke this Agreement, it shall not be effective or enforceable, and you will receive no further benefits under this Agreement.
 - c. **Preserved Rights of Executive.** This Agreement does not waive or release any rights or claims that you may have under the Age Discrimination in Employment Act of 1967 (the "ADEA") that arise after your execution of this Agreement. In addition, this Agreement does not prohibit you from challenging the validity of this Agreement's waiver and release of claims under the ADEA or the OWBPA or commencing an arbitration to enforce this Agreement, in accordance with Paragraph 16 below.
5. **No Other Compensation.** Except as expressly set forth in this Agreement, Executive shall not be entitled to any other compensation or benefits, including but not limited to salary, front pay, back pay, vacation pay, severance, commissions or bonuses from Releasees, as defined below, with respect to your employment with or termination from Shutterstock. The severance payments and benefits provided for in this Paragraph 2 shall be subject to the provisions of Section 6(a) of the Employment Agreement and such provisions are hereby incorporated herein.
6. **Release.**

- a. For and in consideration of the payments and benefits enumerated in Paragraph 2, and for other valuable consideration to be provided to Executive pursuant to this Agreement, the receipt and sufficiency of which you hereby acknowledge, you, for yourself, your heirs, executors, administrators, trustees, legal representatives, successors and assigns (collectively referred to as “Releasors”), hereby forever release and discharge Shutterstock and any of its employees, officers, shareholders, investors, subsidiaries, joint ventures, affiliates, divisions, employee benefit and/or pension plans or funds, successors and assigns and any of their past, present or future directors, officers, attorneys, agents, trustees, administrators, employees, or assigns (whether acting as agents or in their individual capacities) (collectively referred to as “Releasees”), from any and all claims, demands, causes of action, contracts, suits, proceedings, debts, damages and liabilities, in law or equity, known or unknown, whether asserted or not, arising out of or relating to your employment by or performance of services for Shutterstock or the termination of such employment or services, including without limitation any claims relating to a wrongful, premature or discriminatory termination of your employment and/or any and all claims under any and all federal, state or local laws including, but not limited to the fair employment practice laws of all jurisdictions, states, municipalities and localities, including, but not limited to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 et seq., the Civil Rights Act of 1991, the Older Workers Benefit Protection Act, the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 et seq., the Americans With Disabilities Act of 1990, 42 U.S.C. §12101 et seq., the Consolidated Omnibus Budget Reconciliation Act of 1985, the Immigration Reform and Control Act of 1986, the Civil Rights Act of 1866, 42 U.S.C. §1981, the Employee Retirement Income Security Act of 1974; the Family and Medical Leave Act of 1993, the Genetic Information Non-Discrimination Act of 2008; the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101 et seq., the New York Executive Law, Article 15, §290 et seq., the New York State Labor Law, the New York City Human Rights law, the New York City Earned Sick Time Act; all as amended; and any claims relating to rights under federal, state or local laws prohibiting discrimination on the basis of race, color, creed, ancestry, national origin, age, sex, or other basis prohibited by law, and any other applicable federal, state or local laws or regulations. You expressly waive any and all entitlement you have now, to any relief, such as back pay (to the exclusion of any references in this Agreement), front pay, reinstatement, compensatory damages, punitive damages, as well as all claims, demands, causes of action, and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common-law, statutory, federal, state, local or otherwise including but not limited to tortious conduct), whether known or unknown, by reason of any act, omission, transaction or occurrence which Releasors ever had, now have or hereafter can, shall or may have arising out of your employment or separation from employment with Shutterstock against the Releasees up to and including the date of your execution of this Agreement. Notwithstanding the foregoing, you will not release or discharge the Releasees from any of Shutterstock’s obligations to you under or pursuant to (1) Paragraph 1 and/or 2 of this Agreement (or any benefit plans referenced therein), (2) any tax qualified pension plan of Shutterstock pertaining to vested and accrued benefits, or (3) any obligations of indemnification in your capacity as an employee, officer or director of the Company, whether under insurance policies, contract, Company by-laws or certification of incorporation or under applicable law.
- b. Executive understands and agrees that this is a full and general release covering all unknown, undisclosed and unanticipated losses, wrongs, injuries, debts, claims or damages to you which may have arisen, or may arise from any act or omission prior to the date of your execution of this Agreement, including, without limitation, any claim arising out of or related, directly or indirectly, to your employment, compensation or termination of employment, as well as those losses, wrongs, injuries, debts, claims or damages now known or disclosed which may arise as a result of any act or omission as described above.
- c. The Company hereby fully, forever, irrevocably and unconditionally releases, remises and discharges the Executive from any and all claims arising out of acts undertaken by the Executive in good faith and in a manner the Executive reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that this release does not include any claims arising out of or related to any fraudulent, criminal, or willful misconduct by the Executive.

7. Executive acknowledges that no representations have been made to you by the Company (other than in this Agreement) about the benefits that the Company might or might not offer in the future.

8. Continuing and Post-Employment Obligations.

- a. **Return of Property.** Executive agrees that by the termination of employment, or as soon thereafter as possible, you will return to the Company all Releasees' credit cards, files, memoranda, documents, records and copies of the foregoing, keys, all storage media containing Releasees' information and any other property of the Releasees in your possession. You represent and warrant that as of the termination of your employment, or as soon thereafter as possible, you will have deleted all files, memoranda, documents and/or records containing Releasees' information from any computer or storage device which you have utilized which is not located on Company premises. The Company acknowledges and agrees that you may retain any documents in your possession concerning employee benefits and/or compensation and personal contacts.
- b. **Non-Disclosure and Non-Competition.** You further agree not to disclose, nor use for your benefit or the benefit of any other person or entity, any information received in connection with the Releasees which is confidential or proprietary and (i) which has not been disclosed publicly by the Releasees, (ii) which is otherwise not a matter of public knowledge or (iii) which is a matter of public knowledge but you know or have reason to know that such information became a matter of public knowledge through an unauthorized disclosure. You further understand and acknowledge that you continue to be bound by the Shutterstock, Inc. Employee Non-Disclosure, Non-Compete and Non-Solicitation Agreement executed by you on May 3, 2019 (the "Employee Obligations Agreement").
- c. **Non-Solicitation.** In addition to the non-solicitation obligations set forth in Paragraph 10 of the Employee Obligations Agreement, for a period of one (1) year following the Separation Date hereof, you shall not, without the prior written consent of the Company's Chief Human Resources Officer: (a) directly or indirectly solicit or employ (or encourage any company or business organization in which you are an officer, manager, employee, partner, director, consultant or member, to solicit or employ) or (b) refer to any employee search firms, any person who was employed by the Company on the Separation Date; notwithstanding the foregoing, the Company agrees that Executive's assistant, Naomi Castillo, is not subject to this Non-Solicitation provision. This Non-Solicitation provision does not, however, restrict any company or business organization in which you are an officer, manager, employee, partner, director, consultant or member from employing or engaging as an independent contractor, any such person whose employment or engagement you have not directly or indirectly solicited or encouraged, including but not limited to general job postings that are not directed to any person who was employed by the Company on the Separation Date.
- d. **Non-Disparagement.**
 - i. You will not disparage Releasees, or issue any communication, written or otherwise, that reflects adversely on or encourages any adverse action against Releasees, except: (a) if testifying truthfully under oath pursuant to any lawful court order or subpoena, (b) otherwise responding to or providing disclosures required by law, or (c) while engaging in the activities referenced in Paragraph 10 of this Agreement. This includes any statement to or response to an inquiry by any member of the press or media, whether written, verbal, electronic, or otherwise. Nothing herein shall prevent you from including your employment with Shutterstock on your resume.
 - ii. The Company shall direct its Executive Leadership Team and Board of Directors not to disparage or induce or encourage others to disparage you at any time and that such conduct is prohibited.
 - iii. You shall direct any potential employer seeking a reference or employment verification to Shutterstock's Human Resources Department, in response to which the Company shall state (a) dates of your employment, (b) last position held, and (c) that it is the Company's policy to only provide these details.
- e. **Future Employment.** Unless otherwise determined by the Company, you shall not apply for or seek employment with the Company, and you waive and release any right to be considered for such employment.
- f. **Cooperation.**
 - i. The Executive agrees that after the Separation Date, for a period of twelve (12) months immediately thereafter he will provide all reasonable cooperation to the Company, including but not limited to, providing the Company with information and assistance related to the Company's business, financial matters, and any other areas for which the Executive was responsible during his employment with the Company, upon prior notice and reasonably subject to Executive's personal and professional obligations. The Company agrees that requests for cooperation under this Section 9.f(i) shall not be excessive and shall be at the Company's reasonable cost and expense.

- ii. You agree to cooperate fully in any investigation Releasees undertake into matters occurring during your employment with the Company. Additionally, you agree that when requested by Releasees or third parties with Releasees' consent ("Designated Third Parties"), you will reasonably and truthfully respond to all reasonable inquiries from Releasees, Designated Third Parties and its/their representatives concerning matters relating to Releasees including but not limited to any claims or lawsuits by or against Releasees or any third parties, upon prior notice and reasonably subject to Executive's personal and professional obligations. Furthermore, you agree to testify, and to make yourself reasonably available for interviews or preparation for testimony, in matters related to Releasees when requested by Releasees or Designated Third Parties. In connection with any such requested testimony, interviews or preparation for testimony, the Company will reimburse your reasonable preapproved out-of-pocket expenses and shall provide counsel at the Company's sole expense, but if the Company's counsel has a conflict of interest with you, or if your interests conflict with those of the Company, then you may select your own counsel, subject to the Company's approval, which shall not be unreasonably withheld, and the Company shall pay the reasonable costs and expenses of such counsel. In addition, if there is no conflict of interest with the Company or Company's counsel but nonetheless you would prefer to have your own counsel, you may do so at your own cost and expense. The Company will make its best efforts to not unduly burden Executive under this section 9.f(ii).
9. Nothing in this Agreement shall prohibit or restrict you (or your attorney) without prior notice to Releasees from filing a charge, testifying, assisting, or participating in any manner in an investigation, or proceeding; responding to any inquiry; or making protected disclosures to, or otherwise communicating with, any administrative or regulatory agency or authority, including, but not limited to, the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the Commodity Futures Trading Commission (CFTC), the Consumer Financial Protection Bureau (CFPB), the US Department of Justice (DOJ), the US Congress, any agency Inspector General, the Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB). Pursuant to the Defend Trade Secrets Act of 2016, an individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) 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 (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.
- 10. Confidentiality.** To the extent permitted by law, you agree not to disclose the terms, contents or execution of this Agreement, the claims that have been or could have been raised against Releasees, or the facts and circumstances underlying this Agreement, except you may make such disclosures: (a) to your immediate family, tax advisors, or taxing authorities, so long as such person or entity agrees to be bound by the confidential nature of this Agreement; (b) to your legal counsel; (c) pursuant to the order of a court; (d) while engaging in the activities referenced in Paragraph 10 of this Agreement; (e) as required by applicable law; and/or (f) for purposes of securing enforcement of the terms and conditions of this Agreement, should that ever be necessary.
- 11. Section 409A.** The Company may deduct or withhold from any compensation or benefits any applicable federal, state or local tax or employment withholdings or deductions resulting from any payments or benefits provided under this Agreement. In addition, it is the Company's intention that all payments or benefits provided under this Agreement comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), including without limitation the six month delay for payments of deferred compensation to "key employees" upon separation from service pursuant to Section 409A(a)(2)(B)(i) of the Code (if applicable), and this Agreement shall be interpreted, administered and operated accordingly. If under this Agreement an amount is to be paid in installments, each installment shall be treated as a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii). Notwithstanding anything to the contrary herein, the Company does not guarantee the tax treatment of any payments or benefits under this Agreement, including without limitation under the Code, federal, state, local or foreign tax laws and regulations. In no event may you, directly or indirectly, designate the calendar year of any payment under this Agreement. In the event the period of notice and payment referenced in Section 2 of this Agreement ends in the taxable year following your termination of employment, any severance payment or deferred compensation payment shall be paid or commence in such subsequent taxable year if required under Section 409A of the Code.
- 12. No Admission.** The parties agree that this Agreement shall not constitute or operate as an acknowledgment or admission of any kind by Releasees that they have violated any federal, state, local or municipal statute, regulation or common law, or breached any other legal obligation or duty Releasees have or ever had to you.

- 13. Amendment; Successors.** This Agreement shall be binding upon the Parties and may not be modified in any manner, except by an instrument in writing of concurrent or subsequent date signed by duly authorized representatives of the Parties hereto. This Agreement are binding upon and shall inure to the benefit of the Parties and their respective agents, assigns, heirs, executors, successors and administrators, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business. For the avoidance of doubt, the Executive's death or disability shall not affect his continued eligibility (or that of his estate, as applicable) to receive the Severance Benefits, subject to the terms and conditions of this Agreement.
- 14. Waiver of Rights.** No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.
- 15. Acknowledgement.** By executing this Agreement, you affirm that you are competent and understand and accept the nature, terms and scope of this Agreement as fully resolving all differences and disputes between you and Releasees. Moreover, you acknowledge that by signing your name below you have read, understand and accept each of the terms of this Agreement, that you have had sufficient opportunity to review it, to consult with an attorney or other advisor (at your own expense), and have done so to the extent that you deem appropriate.
- 16. Tax Acknowledgement.** In connection with the payments and consideration provided to the Executive pursuant to this Agreement, the Company shall withhold and remit to the tax authorities the amounts required under applicable law, and the Executive shall be responsible for all applicable taxes with respect to such payments and consideration under applicable law. The Executive acknowledges that he is not relying upon the advice or representation of the Company with respect to the tax treatment of any of the payments or benefits set forth in Paragraph 2 of this Agreement
- 17. Entire Agreement.** Except for the Employee Obligations Agreement, which shall remain in full force and effect, this is the entire Agreement between you and the Company. This Agreement may not be modified or canceled in any manner except by a writing signed by both you and an authorized Company official. You acknowledge that the Company has made no promises or representations to you other than those in this Agreement. It is not necessary that the Company sign this Agreement for it to become binding upon you. To the extent there is any conflict or inconsistency between any term of this Agreement and the Employee Obligations Agreement, the term which provides the greater benefit or protection to Releasees shall control.
- 18. Jurisdiction and Arbitration.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to conflicts of laws. In the event that either party believes that the other party has breached this Agreement, Executive and the Company hereby agree that such dispute shall be submitted to JAMS for confidential and binding arbitration before a single arbitrator at JAMS' offices in New York City, in accordance with JAMS' Employment Arbitration Rules & Procedures. No claims may be arbitrated on a class or collective basis. Both Executive and the Company expressly waive any right to submit, initiate, or participate in a representative capacity, or as a plaintiff, claimant or member in a class action, collective action or other representative or joint action, regardless of whether the action is filed in arbitration or in court. Notwithstanding the foregoing, either you or the Company may seek injunctive relief in a lawsuit filed in a court of competent jurisdiction in order to prevent irreparable harm or preserve the status quo. Any award pursuant to said arbitration shall be accompanied by a written opinion of the arbitrator setting forth the reason for the award, including findings of fact and conclusions of law. The award rendered by the arbitrator shall be conclusive and binding upon the parties hereto, and judgment upon the award may be entered, and enforcement may be sought in, any court of competent jurisdiction. YOU UNDERSTAND THAT, ABSENT THIS AGREEMENT, YOU AND THE COMPANY WOULD HAVE THE RIGHT TO SUE EACH OTHER IN COURT, AND THE RIGHT TO A JURY TRIAL, BUT, BY THIS AGREEMENT, BOTH PARTIES GIVE UP THAT RIGHT.
- 19. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signatures of any party to a counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart. Executed originals transmitted electronically as PDF files (or their equivalent) shall have the same force and effect as signed originals.
- 20. Recital Paragraphs.** The recital paragraphs at the beginning of this Agreement are incorporated by reference as if fully set forth herein.

