

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): August 24, 2020

InfuSystem Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-35020
(Commission File Number)

20-3341405
(I.R.S. Employer Identification No.)

3851 West Hamlin Road
Rochester Hills, Michigan 48309
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (248) 291-1210

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 (see General Instruction A.2. below):

- 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:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, par value \$0.0001 per share	INFU	NYSE American LLC

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

On August 24, 2020, InFuSystem Holdings, Inc. (the “Company”) entered into a First Amendment to Employment Agreement (the “Amendment”) with Richard DiIorio, the Company’s Chief Executive Officer, President and member of the Company’s Board of Directors (the “Board”). The Amendment was approved by the Board to ensure that Mr. DiIorio’s Employment Agreement, dated November 15, 2017 (the “Employment Agreement”), as amended by the Amendment, contains appropriate market-based terms not previously set forth in the Employment Agreement, including an increase to his annual base salary and annual incentive compensation bonus and additional equity grants.

The Amendment amends the Employment Agreement to increase Mr. DiIorio’s base annual salary to \$550,000 and to increase the annual incentive compensation bonus for Mr. DiIorio to up to seventy percent (70%) of his base salary, or \$385,000, based upon satisfaction of certain performance objectives.

The Company has granted 20,000 service-based Restricted Stock Units (“RSUs”) to Mr. DiIorio which will vest 10,000 RSUs one year from the date of grant and 10,000 RSUs two years from the date of the grant. Additionally, the Company has granted Mr. DiIorio an additional 180,000 performance-based RSUs which will vest in accordance with the following schedule (with the indicated Company stock price being the closing price achieved for ten consecutive trading days prior to the applicable expiration date):

<u>Amount of Grant</u>	<u>Restriction on Vesting</u>	<u>Expiration Date</u>
60,000 RSUs	Stock price of \$18.00 per share	Three years from date of grant
60,000 RSUs	Stock price of \$20.00 per share	Three years from date of grant
60,000 RSUs	Stock price of \$22.00 per share	Three years from date of grant

The foregoing RSU grants were made on August 24, 2020 and the terms of the awards are subject to the Restricted Stock Unit Agreements entered into by the Company and Mr. DiIorio on the same date.

Pursuant to the Amendment, the Company will provide Mr. DiIorio with a Company-leased automobile selected by Mr. DiIorio (subject to the approval of the Company as to a reasonable amount) during the term of the Employment Agreement.

The Amendment also amends the Employment Agreement to add change of control provisions defining a “Change of Control” to mean (a) the sale of all or substantially all of the assets of the Company; (b) the merger or recapitalization of the Company whereby the Company is not the surviving entity; or (c) the acquisition, directly or indirectly, of the beneficial ownership (within the meaning of that term as it is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder) of fifty percent (50%) or more of the outstanding voting securities of the Company by any person, trust, entity or group. The Amendment also amends the Employment Agreement to specify that a “Change of Control Termination” means an “Involuntary Termination” as defined in the Employment Agreement within two months prior to, or six months following, a Change of Control and provide that a termination may be either an Involuntary Termination or a Change of Control Termination, but not both.

The Amendment also amends the Employment Agreement to provide that if Mr. DiIorio’s employment is terminated by reason of a Change of Control Termination (other than a “Termination for Cause” as defined in the Employment Agreement), he will be entitled to receive the following amounts: (i) the unpaid base salary earned for services rendered through the date of such termination; (ii) any accrued and unpaid any accrued but unpaid incentive compensation earned in the previous year (“Bonus Amount”); (iii) unreimbursed amounts to which he is entitled to reimbursement under the Employment Agreement; (iv) a lump sum severance payment in an aggregate amount equal to twelve (12) months of Mr. DiIorio’s then current base salary; and (v) three (3) months of COBRA coverage. The severance payments and benefits specified in the immediately foregoing clauses (iv) and (v) will be contingent upon Mr. DiIorio’s execution and delivery of an unconditional general release, in a form satisfactory to the Company and Mr. DiIorio’s continued performance of his obligations pursuant to the covenants contained in the Employment Agreement.

Except as summarized above, the Employment Agreement remains materially unchanged.

The foregoing descriptions of the Amendment and Restricted Stock Unit Agreements are only a summary, do not purport to be complete, and are qualified in their entirety by the terms of the Amendment, Restricted Stock Unit Agreement (Service-Based) and Restricted Stock Unit Agreement (Performance-Based), which are filed as Exhibits 10.1, 10.2 and 10.3 hereto, respectively, and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit

No.	Description
10.1	<u>Amendment to Employment Agreement, dated August 24, 2020, between the Company and Richard DiIorio.</u>
10.2	<u>Restricted Stock Unit Agreement (Service-Based), dated August 24, 2020, between the Company and Richard DiIorio.</u>
10.3	<u>Restricted Stock Unit Agreement (Performance-Based), dated August 24, 2020, between the Company and Richard DiIorio.</u>

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.

INFUSYSTEM HOLDINGS, INC.

By: /s/ Barry Steele
Barry Steele
Chief Financial Officer

Dated: August 25, 2020

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (this "**Amendment**"), dated August 24, 2020, amends the Employment Agreement (the "**Employment Agreement**") dated November 15, 2017 between InfuSystem Holdings, Inc., a Delaware corporation (the "**Company**"), and Richard A. DiIorio, an individual ("**Employee**").

WHEREAS, the Company and Employee desire to amend the Employment Agreement to provide Employee with appropriate market-based terms not addressed in the Employment Agreement;

NOW, THEREFORE, for such consideration as set forth herein, the sufficiency of which is acknowledged by the Company and Employee, the Company and Employee agree to amend the Employment Agreement as follows:

1. The following new definitions are hereby added to Section 1 of the Employment Agreement to read as follows:

"**Change of Control**" means: (a) the sale of all or substantially all of the assets of the Company; (b) the merger or recapitalization of the Company whereby the Company is not the surviving entity; or (c) the acquisition, directly or indirectly, of the beneficial ownership (within the meaning of that term as it is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder) of fifty percent (50%) or more of the outstanding voting securities of the Company by any person, trust, entity or group.

"**Change of Control Termination**" means an Involuntary Termination within two months prior to, or six months following, a Change of Control. For the avoidance of doubt, a termination may be either an Involuntary Termination or a Change of Control Termination, but not both.

2. Section 6.A. of the Employment Agreement is hereby amended and restated to read as follows:

A. Employee's base salary will be paid at the rate of \$550,000 per annum.

3. Section 6.C. of the Employment Agreement is hereby amended and restated to read as follows:

C. Commencing with the year 2020, Employee will be eligible for an annual incentive compensation bonus of up to seventy percent (70%) of Employee's then-current base salary based upon satisfaction of certain performance objectives. These performance objectives will be developed annually by the Compensation Committee of the Board, in its sole discretion, and will relate to, among other things, the Company's Annual Operating Plan. All bonuses payable to Employee hereunder will be paid within sixty (60) days after the end of the calendar year for which the incentive compensation was earned; provided, however, that if it is administratively impracticable to make the payment by such date, the payment shall be made as soon as reasonably practicable thereafter, but in any event by the fifteenth (15th) day of the third (3rd) month following the calendar year for which the incentive compensation was earned. All bonuses pursuant to this paragraph, including Employee's satisfaction of the performance objective applicable to any such bonus, are subject to approval of the Compensation Committee, in its sole discretion.

4. A new Section 7.C. is hereby added to the Employment Agreement to read as follows:
 - C. The Company will provide to Employee a Company-leased automobile of year, make and model selected by Employee (subject to the approval of the Company as to a reasonable amount).
 5. Section 9.A. of the Employment Agreement is hereby amended and restated to read as follows:
 - A. Death and Permanent Disability. Upon Employee's death or permanent disability during the Employment Period, the employment relationship created pursuant to this Agreement will immediately terminate and no further compensation will become payable to Employee pursuant to Section 6 or Section 7. Should Employee's employment with the Company terminate by reason of Employee's death or permanent disability during the Employment Period, (i) the unpaid base salary earned by Employee pursuant to Section 6.A for services rendered through the date of Employee's death or permanent disability, as applicable, (ii) any accrued but unpaid compensation pursuant to Section 6.C determined by the Compensation Committee, in its sole direction, to have been earned in respect of the immediately preceding calendar year ("**Bonus Amount**") as of the date of death or permanent disability, (iii) unreimbursed amounts under Section 7.A, and (iv) the limited death, disability, and/or income continuation benefits provided under Section 7.B, if any, will be payable within thirty (30) days of the death or permanent disability, excluding any Bonus Amount, which will be paid in accordance with Section 6.C. For purposes of this Agreement, Employee will be deemed "**permanently disabled**" if Employee is so characterized pursuant to the terms of the Company's disability policies or programs applicable to Employee from time to time, or if no such policy is applicable, if Employee is unable to perform his duties or responsibilities to the Company as a result of physical or mental ailment or incapacity for an aggregate period of one hundred and eighty (180) calendar days (whether or not consecutive).
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6. Section 9.B. of the Employment Agreement is hereby amended and restated to read as follows:

B. Involuntary Termination; Change of Control Termination. Upon termination of Employee's employment by reason of Involuntary Termination or Change of Control Termination (other than a Termination for Cause), the employment relationship created pursuant to this Agreement will terminate and no further compensation will become payable to Employee pursuant to Section 6 or Section 7 upon the effectiveness of such Involuntary Termination or Change of Control Termination. Upon Employee's Involuntary Termination or Change of Control Termination (other than a Termination for Cause), Employee will be entitled to receive only the amounts provided in this Section 9.B: (i) the unpaid base salary earned by Employee pursuant to Section 6.A for services rendered through the date of such termination; (ii) any accrued and unpaid Bonus Amount; (iii) unreimbursed amounts under Section 7.A; (iv) a lump sum severance payment in an aggregate amount equal to three (3) months (in the case of an Involuntary Termination) or twelve (12) months (in the case of a Change of Control Termination) of the Employee's then current base salary; and (v) three (3) months of COBRA coverage under the Company's medical, dental and vision plans, as then in effect, at the cost paid by active employees of the Company, if and to the extent the Employee and his eligible dependents (a) are participating in such plans on his effective date of termination and (b) timely enroll for COBRA coverage thereunder. The severance pay and benefits in respect of clauses (iv) and (v) shall be contingent upon Employee's execution and delivery to the Company of an unconditional general release, in form satisfactory to the Company, of all claims against the Company and its Affiliates and their respective directors, officers, employees and representatives, arising from or in connection with this Agreement or Employee's employment with the Company, subject to applicable law. Further, the severance pay and benefits set forth in clauses (iv) and (v) shall be contingent upon Employee's continued performance of his obligations under Sections 8.A, 8.B, 8.D, 8.E and 8.G. Any payments in respect of clauses (i) or (iii) shall be made within thirty (30) days of such Involuntary Termination or Change of Control Termination; any Bonus Amount in respect of clause (ii) shall be paid in accordance with Section 6.C; and any severance amount in respect of clause (iv) shall be paid as soon as administratively feasible after the Employee's execution and delivery to the Company an unconditional general release, as described in this Section 9.B.

7. Section 9.C. of the Employment Agreement is hereby amended and restated to read as follows:

C. Termination for Cause. The Company may at any time, upon written notice, terminate Employee's employment hereunder for any act qualifying as a Termination for Cause. Such termination will be effective immediately upon such notice. Upon such Termination for Cause, the Company will only be required to pay Employee (i) any unpaid compensation earned by Employee pursuant to Section 6.A, (ii) any accrued and unpaid Bonus Amount, and (iii) unreimbursed amounts under Section 7.A; no termination or severance benefits will be payable to Employee under Section 9.B. Any payments in respect of clauses (i) or (iii) shall be made within thirty (30) days of such Involuntary Termination; and any Bonus Amount shall be paid in accordance with Section 6.C.

8. Section 18 of the Employment Agreement is hereby amended and restated to read as follows:

18. Notices. Any notice required to be given under this Agreement shall be deemed sufficient, if in writing, and sent by certified mail, return receipt requested, via overnight courier, or hand delivered to the Company at Office of the Corporate Secretary, 3851 W. Hamlin Road, Rochester Hills, Michigan 48309 and to Employee at the most recent address reflected in the Company's permanent records.

9. In all other respects, the provisions of the Employment Agreement will remain in full force and effect.

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This Amendment is adopted on August 24, 2020.

InfuSystem Holdings, Inc.

By: /s/ Scott Shuda
Name: Scott Shuda
Title: Chairman of the Board

/s/ Richard A. Dilorio
Richard A. Dilorio

RESTRICTED STOCK UNIT AGREEMENT

INFUSYSTEM HOLDINGS, INC.
2014 EQUITY PLAN

Restricted stock units are hereby granted to Richard A. DiIorio (the "Participant") by InfuSystem Holdings, Inc., a Delaware corporation (the "Company") pursuant to this Restricted Stock Unit Agreement (this "Agreement"). The restricted stock units granted pursuant to this Agreement (the "RSUs") are subject to the terms and conditions of the InfuSystem Holdings, Inc. 2014 Equity Plan, as amended (the "Plan"), the receipt of which is hereby acknowledged by the Participant. Any capitalized terms that are not defined in this Agreement have the meaning set forth in the Plan.

1. **Number of RSUs.** The number of RSUs granted pursuant to this Agreement is 20,000 units (the "Award").
2. **Grant Date.** The date of the grant of the RSUs is August 24, 2020.
3. **Consideration.** The Award is made in consideration of the services to be rendered by the Participant to the Company.
4. **Vesting.** Except as otherwise provided herein, provided that the Participant remains continuously employed by the Company through the date on which the RSUs vest (the "Vesting Date"), the RSUs will vest in accordance with the following schedule.

<u>No. of RSUs</u>	<u>Vesting Date</u>
10,000	One year from date of grant
10,000	Two years from date of grant

5. **Share Issuance upon Vesting.** Each vested RSU will be settled by issuance to the Participant of one (1) share of InfuSystem Common Stock ("Share") as soon as practicable following the Vesting Date, but in no event later than the close of the quarter in which such vesting occurs. Notwithstanding the foregoing, if the Participant is deemed a "specified employee" within the meaning of Section 409A of the Code, as determined by the Committee, at a time when the Participant becomes eligible for settlement of the vested RSUs upon his "separation from service" within the meaning of Section 409A of the Code, then to the extent necessary to prevent any accelerated or additional tax under Section 409A of the Code, settlement of the vested RSUs will be delayed until the earlier of the date that is six months following the Participant's separation from service or the Participant's death.

6. **Change in Control.** Notwithstanding any of the foregoing, upon the occurrence of a Change in Control (as defined below), any unvested RSUs shall vest as of the date of the Change in Control. Notwithstanding anything herein to the contrary, in the event of a Change in Control (as defined below), the Committee will take or cause to be taken one or more of the following actions to be effective as of the date of the Change in Control:
- (a) provide that the RSUs shall be assumed, or equivalent equity compensation shall be substituted (“Substitute Equity”) by the acquiring or succeeding corporation (or an affiliate thereof), provided that the shares of stock issuable upon the exercise of the Substitute Equity will constitute securities registered in accordance with the Securities Act of 1933, as amended (the “1933 Act”), or such securities will be exempt from such registration in accordance with Sections 3(a)(2) or 3(a)(5) of the 1933 Act (collectively, “Registered Securities”), or in the alternative, if the securities issuable upon the exercise of the Substitute Equity do not constitute Registered Securities, then the Participant will receive upon consummation of the Change in Control transaction a cash payment for the RSUs surrendered equal to the fair market value of the consideration to be received for each Share in the Change in Control transaction times the number of Shares subject to the surrendered RSUs; or
 - (b) in the event of a transaction under the terms of which the holders of the Shares of the Company will receive upon consummation thereof a cash payment (the “Merger Price”) for each Share exchanged in the Change in Control transaction, to make or to provide for a cash payment to Participant equal to the Merger Price times the number of Shares under the RSUs.

For purposes of this Agreement, the term “Change in Control” means: (a) the sale of all or substantially all of the assets of the Company; (b) the merger or recapitalization of the Company whereby the Company is not the surviving entity; or (c) the acquisition, directly or indirectly, of the beneficial ownership (within the meaning of that term as it is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder) of fifty percent (50%) or more of the outstanding voting securities of the Company by any person, trust, entity or group.

7. **Termination of Service.** Should the Participant’s employment cease or terminate for any reason (including death) prior to vesting of any of the RSUs subject to this Agreement, then the Award will be immediately cancelled with respect to those RSUs that remain unvested as of the date of such termination.
8. **Restrictions on Transferability.** Until such time as the RSUs are settled in accordance with Section 4 of this Agreement, the RSUs or any rights related thereto may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber the RSUs or any rights related thereto will be wholly ineffective and, if any such attempt is made, the RSUs will be forfeited by the Participant and all of the Participant’s rights to the RSUs will immediately terminate without any payment or consideration by the Company.

9. **Rights as a Stockholder and Dividend Equivalents.** The Participant will not have any rights of a stockholder with respect to Shares underlying the RSUs (including, without limitation, any voting rights or any right to dividends paid with respect to the Shares underlying the RSUs). The Participant will not be entitled to any dividend equivalents with respect to RSUs to reflect any dividends payable on Shares, except as required to allow for any adjustments to outstanding Shares made pursuant to Section 7 of the Plan.
10. **Securities Law Compliance.** Notwithstanding anything herein to the contrary, vested RSUs may not be settled for Shares unless such Shares are registered under the Securities Act of 1933, as amended, or, if such Shares are not so registered, the Compensation Committee of the Board has determined that such exercise and issuance would be exempt from the registration requirements of such Act. The settlement of the RSUs for Shares also must comply with other applicable laws and regulations governing the Award, and the Award may not vest if the Company determines that such vesting or settlement would not be in material compliance with such laws and regulations.
11. **Withholding.** The vesting of any part of the Award constitutes authorization for the Company to withhold from payroll and other amounts due the Participant, including, if elected by the Participant, from the Shares otherwise issuable upon the vesting of the Award, and any amounts required to satisfy any federal, state or local tax withholding obligation that may arise in connection with the Award. The Award may not be exchanged for Shares unless all such tax withholding obligations are satisfied. The Participant may elect to have the Company reduce the number of Shares otherwise issuable by the number of whole Shares, rounded down, with a Market Value equal to or less than the amount of the withholding tax due. The Company will withhold any remaining withholding tax due from other payments owed to the Participant.
12. **Code Section 409A.** This Agreement is intended to comply with Code Section 409A or an exemption thereunder and is to be construed and interpreted in a manner that is consistent with the requirements for avoiding additional taxes or penalties under Code Section 409A. Notwithstanding the foregoing, the Company makes no representation that the payments and benefits provided under this Agreement comply with Section 409A of the Code and the Company will not be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Participant on account of non-compliance with Section 409A of the Code.

13. **RSUs Subject to the Plan.** This Agreement is subject to the Plan as approved by the Company's stockholders. The terms and provisions of the Plan as it may be amended from time to time are hereby incorporated by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail. Notwithstanding anything herein to the contrary, additional conditions or restrictions related to this Award may be contained in the Plan.
14. **Amendment.** The Committee has the right to amend, alter, suspend, discontinue or cancel the RSUs, prospectively or retroactively; provided, that, no such amendment may adversely affect the Participant's material rights under this Agreement without the Participant's consent.

INFUSYSTEM HOLDINGS, INC.

By: /s/ Scott Shuda
Name: Scott Shuda
Title: Chairman of the Board

/s/ Richard A. DiIorio
Richard A. DiIorio, Participant

RESTRICTED STOCK UNIT AGREEMENT

INFUSYSTEM HOLDINGS, INC.
2014 EQUITY PLAN

Restricted stock units are hereby granted to Richard A. DiIorio (the "Participant") by InfuSystem Holdings, Inc., a Delaware corporation (the "Company") pursuant to this Restricted Stock Unit Agreement (this "Agreement"). The restricted stock units granted pursuant to this Agreement (the "RSUs") are subject to the terms and conditions of the InfuSystem Holdings, Inc. 2014 Equity Plan, as amended (the "Plan"), the receipt of which is hereby acknowledged by the Participant. Any capitalized terms that are not defined in this Agreement have the meaning set forth in the Plan.

1. **Number of RSUs.** The number of RSUs granted pursuant to this Agreement is 180,000 units (the "Award").
2. **Grant Date.** The date of the grant of the RSUs is August 24, 2020.
3. **Consideration.** The Award is made in consideration of the services to be rendered by the Participant to the Company.
4. **Vesting.** Except as otherwise provided herein, provided that the Participant remains continuously employed by the Company through the date on which the RSUs vest (the "Vesting Date"), the Vesting Date for the number of RSUs identified on the schedule below will be the date on which the Company stock price has achieved the applicable closing price stated below for 10 consecutive trading days, provided that the RSUs vest before the applicable Expiration Date identified on the schedule below. If RSUs do not vest before the applicable Expiration Date, those RSUs will be automatically canceled and forfeited by the Participant, and the Company will not have any further obligations to the Participant under this Agreement.

<u>No. of RSUs</u>	<u>Restriction on Vesting</u>	<u>Expiration Date</u>
60,000	Stock price of \$18.00 per share	Three years from date of grant
60,000	Stock price of \$20.00 per share	Three years from date of grant
60,000	Stock price of \$22.00 per share	Three years from date of grant

5. **Share Issuance upon Vesting.** Each vested RSU will be settled by issuance to the Participant of one (1) share of InfuSystem Common Stock ("Share") as soon as practicable following the Vesting Date, but in no event later than the close of the quarter in which such vesting occurs. Notwithstanding the foregoing, if the Participant is deemed a "specified employee" within the meaning of Section 409A of the Code, as determined by the Committee, at a time when the Participant becomes eligible for settlement of the vested RSUs upon his "separation from service" within the meaning of Section 409A of the Code, then to the extent necessary to prevent any accelerated or additional tax under Section 409A of the Code, settlement of the vested RSUs will be delayed until the earlier of the date that is six months following the Participant's separation from service or the Participant's death.

6. **Change in Control.** Notwithstanding any of the foregoing, upon the occurrence of a Change in Control (as defined below), any unvested RSUs shall vest as of the date of the Change in Control. Notwithstanding anything herein to the contrary, in the event of a Change in Control (as defined below), the Committee will take or cause to be taken one or more of the following actions to be effective as of the date of the Change in Control:
- (a) provide that the RSUs shall be assumed, or equivalent equity compensation shall be substituted (“Substitute Equity”) by the acquiring or succeeding corporation (or an affiliate thereof), provided that the shares of stock issuable upon the exercise of the Substitute Equity will constitute securities registered in accordance with the Securities Act of 1933, as amended (the “1933 Act”), or such securities will be exempt from such registration in accordance with Sections 3(a)(2) or 3(a)(5) of the 1933 Act (collectively, “Registered Securities”), or in the alternative, if the securities issuable upon the exercise of the Substitute Equity do not constitute Registered Securities, then the Participant will receive upon consummation of the Change in Control transaction a cash payment for the RSUs surrendered equal to the fair market value of the consideration to be received for each Share in the Change in Control transaction times the number of Shares subject to the surrendered RSUs; or
 - (b) in the event of a transaction under the terms of which the holders of the Shares of the Company will receive upon consummation thereof a cash payment (the “Merger Price”) for each Share exchanged in the Change in Control transaction, to make or to provide for a cash payment to Participant equal to the Merger Price times the number of Shares under the RSUs.

For purposes of this Agreement, the term “Change in Control” means: (a) the sale of all or substantially all of the assets of the Company; (b) the merger or recapitalization of the Company whereby the Company is not the surviving entity; or (c) the acquisition, directly or indirectly, of the beneficial ownership (within the meaning of that term as it is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder) of fifty percent (50%) or more of the outstanding voting securities of the Company by any person, trust, entity or group.

7. **Termination of Service.** Should the Participant’s employment cease or terminate for any reason (including death) prior to vesting of any of the RSUs subject to this Agreement, then the Award will be immediately cancelled with respect to those RSUs that remain unvested as of the date of such termination.

8. **Restrictions on Transferability.** Until such time as the RSUs are settled in accordance with Section 4 of this Agreement, the RSUs or any rights related thereto may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber the RSUs or any rights related thereto will be wholly ineffective and, if any such attempt is made, the RSUs will be forfeited by the Participant and all of the Participant's rights to the RSUs will immediately terminate without any payment or consideration by the Company.
9. **Rights as a Stockholder and Dividend Equivalents.** The Participant will not have any rights of a stockholder with respect to Shares underlying the RSUs (including, without limitation, any voting rights or any right to dividends paid with respect to the Shares underlying the RSUs). The Participant will not be entitled to any dividend equivalents with respect to RSUs to reflect any dividends payable on Shares, except as required to allow for any adjustments to outstanding Shares made pursuant to Section 7 of the Plan.
10. **Securities Law Compliance.** Notwithstanding anything herein to the contrary, vested RSUs may not be settled for Shares unless such Shares are registered under the Securities Act of 1933, as amended, or, if such Shares are not so registered, the Compensation Committee of the Board has determined that such exercise and issuance would be exempt from the registration requirements of such Act. The settlement of the RSUs for Shares also must comply with other applicable laws and regulations governing the Award, and the Award may not vest if the Company determines that such vesting or settlement would not be in material compliance with such laws and regulations.
11. **Withholding.** The vesting of any part of the Award constitutes authorization for the Company to withhold from payroll and other amounts due the Participant, including, if elected by the Participant, from the Shares otherwise issuable upon the vesting of the Award, and any amounts required to satisfy any federal, state or local tax withholding obligation that may arise in connection with the Award. The Award may not be exchanged for Shares unless all such tax withholding obligations are satisfied. The Participant may elect to have the Company reduce the number of Shares otherwise issuable by the number of whole Shares, rounded down, with a Market Value equal to or less than the amount of the withholding tax due. The Company will withhold any remaining withholding tax due from other payments owed to the Participant.

