

**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 31, 2023**

**PFWeb, Inc.**

(Exact name of registrant as specified in its charter)

Delaware  
(STATE OR OTHER JURISDICTION  
OF INCORPORATION)

000-28275  
(COMMISSION FILE NUMBER)

75-2837058  
(IRS EMPLOYER  
IDENTIFICATION NO.)

4455 REGENT BLVD  
IRVING, TX 75063  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

(972) 881-2900  
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

N/A  
(FORMER NAME OR 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 communication 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, \$0.001 par value	PFSW	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) of the Exchange Act.

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## INFORMATION TO BE INCLUDED IN THE REPORT

### ITEM 1.01 Entry into a Material Definitive Agreement

#### *Amendment to Rights Agreement*

On August 31, 2023, PFSweb, Inc. (the “Company”) and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC), a Delaware corporation, as successor to ChaseMellon Shareholder Services, L.L.C., a New Jersey limited liability company, as rights agent (the “Rights Agent”), entered into Amendment No. 10 to Rights Agreement (the “Amendment”). The Amendment amends the Rights Agreement, dated as of June 8, 2000, between the Company and the Rights Agent, as amended by Amendment No. 1 thereto dated as of May 30, 2008, Amendment No. 2 thereto dated as of May 24, 2010, Amendment No. 3 thereto dated as of July 2, 2010, Amendment No. 4 thereto dated as of May 15, 2013, Amendment No. 5 thereto dated as of June 18, 2015, Amendment No. 6 thereto dated as of July 28, 2015, and Amendment No. 7 dated as of June 27, 2018, Amendment No. 8 dated as of August 24, 2021, and Amendment No. 9 dated as of August 31, 2022 (collectively, as amended, the “Rights Agreement”).

The Amendment was approved by the Company’s stockholders at its 2023 Annual Meeting of Stockholders held on August 29, 2023. The Amendment extends the expiration date of the Rights Agreement to the close of business on the 30th day after the Company’s 2024 Annual Meeting of Stockholders unless continuation of the Rights Agreement is approved by the stockholders of the Company at that meeting. The Amendment to the Rights Agreement is filed herewith as Exhibit 4.1.

The foregoing description of the Amendment and the Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by, a summary of the material terms of the Rights Agreement, as amended by the Amendment, together with the full text of the Rights Agreement, and each of Amendments Nos. 1 to 9 thereto, as set forth in the Company’s Proxy Statement filed with the Securities and Exchange Commission on July 17, 2023.

### ITEM 3.03 Material Modification to Rights of Security Holders

The information set forth in Item 1.01 of this Form 8-K under the heading "Amendment to Rights Agreement" is incorporated herein by reference.

### ITEM 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

#### *2023 Elimination of the Long-Term Incentive Total Shareholder Return Performance Share Award*

In conjunction with the Company’s Compensation Committee of the Board of Directors annual executive compensation review, the Company discontinued future issuances of the Long-Term Incentive Total Shareholder Performance Share Awards (the “LTI TSR Share Awards”) for its Named Executive Officers.

#### *Creation of 2023 LTI Performance-Based Restricted Stock Unit Award for Named Executive Officers*

In lieu of the elimination of the LTI TSR Share Awards, on September 7, 2023, the Compensation Committee of the Board of Directors finalized the establishment of a new 2023 LTI Performance-Based Restricted Stock Unit Award for Named Executive Officers (“2023 LTI PSU for NEO Award”) to govern the awards originally issued in 2023 for Zach Thomann and Thomas Madden.

The new 2023 LTI PSU for NEO Award agreement is substantially the same as the Company’s LTI Performance Based Restricted Stock Unit Award agreement with the following exceptions related to the full vesting of each tranche’s awards upon a qualifying change in control and the offering of additional stock units upon achievement of certain stretch EBITDA performance metrics.

For purposes of clarity, vesting of the awards shall occur as of the Change in Control for the current fiscal year and all remaining fiscal years based on the Company’s actual Adjusted EBITDA performance year-to-date having met the base, target, or stretch bonus target established for the fiscal year of the Change in Control.

The foregoing description of the agreement is qualified in its entirety by reference to the full text of the agreement, a copy of which is filed herewith as Exhibit 10.1.

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**ITEM 9.01 Financial Statements and Exhibits.**

(d) *Exhibits.*

<b>Exhibit No.</b>	<b>Description</b>
4.1	<a href="#">Amendment No. 10 to Rights Agreement, dated as of August 31, 2023 between the Company and Computershare Inc., as rights agent.</a>
10.1	<a href="#">2023 LTI Performance-Based Restricted Stock Unit Award for Named Executive Officers</a>
104	Cover Page Interactive Data file, formatted in Inline XBRL

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**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.

**PFSweb, Inc.**

Dated: September 7, 2023

By: /s/ Thomas J. Madden  
Thomas J. Madden  
Executive Vice President,  
Chief Financial Officer

**AMENDMENT NO. 10 TO RIGHTS AGREEMENT**

This Amendment No. 10 to Rights Agreement, dated as of August 31, 2023 (this “Amendment No. 10”), is entered into by and between PFSweb, Inc., a Delaware corporation (the “Company”), and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC), a Delaware corporation, as successor to ChaseMellon Shareholder Services, L.L.C., a New Jersey limited liability company (the “Rights Agent”).

WHEREAS, the Company and the Rights Agent are parties to that certain Rights Agreement dated as of June 8, 2000, as amended by Amendment No. 1 thereto dated as of May 30, 2008, Amendment No. 2 thereto dated as of May 24, 2010, Amendment No. 3 thereto dated as of July 2, 2010, Amendment No. 4 thereto dated as of May 15, 2013, Amendment No. 5 thereto dated as of June 18, 2015, Amendment No. 6 thereto dated as of July 30, 2015, Amendment No. 7 thereto dated as of June 27, 2018, Amendment No. 8 thereto dated as of August 24, 2021, and Amendment No. 9 thereto dated as of August 31, 2022 (each, an “Amendment” and collectively, as amended, the “Agreement”);

WHEREAS, the Company desires to amend the Rights Agreement on the terms and conditions hereinafter set forth; and

WHEREAS, the Board of Directors of the Company has duly authorized this Amendment No. 10.

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth in the Agreement and this Amendment No. 10, the parties hereby agree as follows:

1. Amendment to Section 7.

(a) Amendment to Section 7(a). Section 7(a) of the Agreement is hereby amended by:

(1) Deleting clause (i) therein and inserting the following as clause (i) therein: “(i) the close of business on the 30th day after the Company’s 2024 annual meeting of stockholders, (the “Final Expiration Date”), unless continuation of this Agreement is approved by the stockholders of the Company at that meeting (with such amendments thereto, including any amendment to this Section 7(a), as may be approved at such meeting),”; and

(2) Adding the following as the last sentence thereof: “The Company shall provide the Rights Agent with notice of the 2024 annual meeting and relevant dates referenced in Section 7(a)(i) hereof promptly after the occurrence of such annual meeting.”.

(b) Amendment to Section 7(b). Section 7(b) of the Agreement is hereby amended by: "(b) The Purchase Price for each one-thousandth of a Series A Preferred Share pursuant to the exercise of a Right shall be \$35.00, shall be subject to adjustment from time to time as provided in Section 11 and 13 hereof

and shall be payable in lawful money of the United States of America in accordance with paragraph (c) below."

2. Amendments to Exhibits B and C . Exhibits B and C of the Agreement are hereby amended to incorporate the applicable terms and provisions of the Agreement, including, for the avoidance of doubt, this Amendment No. 10 and the continuing provisions of all prior Amendments, and all conflicting or inconsistent terms therein shall be deemed amended and modified accordingly.

3. Amendment No. 10. This Amendment No. 10 is made pursuant to and compliant in all respects with Section 27 of the Agreement. Except as expressly amended hereby, the Agreement shall remain in full force and effect.

4. Counterparts. This Amendment No. 10 may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. A facsimile or pdf signature shall be considered the same as an original signature for purposes of execution of this Amendment No. 10.

5. Severability. If any term, provision, covenant or restriction of this Amendment No. 10 is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment No. 10 shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

6. Governing Law. This Amendment No. 10 shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State; provided, however, that all provisions regarding the rights, duties and obligations of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 10 to be duly executed as of the day and year first above written.

**PFSWEB, INC.**

By: /s/ Thomas J. Madden  
Name: Thomas J. Madden  
Title: Chief Financial Officer

**COMPUTERSHARE INC., as Rights Agent**

By: /s/ Kathy Heagerty  
Name: Kathy Heagerty  
Title: Manager, Client Management

**2023 LTI PERFORMANCE-BASED RESTRICTED STOCK UNIT AWARD  
FOR  
NAMED EXECUTIVE OFFICERS**

**THIS 2023 LTI TIME AND PERFORMANCE-BASED RESTRICTED STOCK UNIT AWARD** (this “Agreement”) is granted at September 7, 2023, with an effective as of the 30th day of January, 2023 (the “Grant Date”), by and between the individuals (each, a Named Executive Officer and each in his own individual capacity (an “Executive”)) whose names appears on the Award Certificates attached hereto as Attachment A and PFSweb, Inc., a Delaware corporation (the “Company”), and is issued under and pursuant to the PFSweb, Inc. 2020 Stock and Incentive Plan, as the same may be amended from time to time (the “Plan,” terms defined in the Plan having the same meaning when used herein, except as otherwise defined herein).

**NOW, THEREFORE**, intending to be legally bound, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Company and the Executive hereby agree as follows:

**1. Definitions.** The following terms (not otherwise defined herein), when used in this Agreement, shall have the following meanings, unless the context clearly requires otherwise (such definitions to be equally applicable to both the singular and plural of the defined terms):

“Adjusted EBITDA” shall mean the amount determined by the Committee as the Company’s “Adjusted EBITDA” for any applicable Fiscal Year (which, for the avoidance of doubt, shall be determined prior to recognition of Performance Based Cash Awards or amounts payable under the Company’s director level bonus program).

“Base Bonus Target” shall mean the amount the Committee designates for each applicable Fiscal Year: (i) Adjusted EBITDA for such applicable Fiscal Year equaling or exceeding the amount so designated by the Committee as the Base Bonus Target for such applicable Fiscal Year, or (ii) if applicable, such other Qualified Business Criteria as the Committee shall designate as the Base Bonus Target for such Fiscal Year.

“Change in Control” shall mean the (i) upon the merger or consolidation of the Company with, or the sale of all or substantially all of the assets of the Company to, any other corporation or other entity, in each case, unless, following such merger, consolidation or sale (A) the voting securities of the Company outstanding immediately prior thereto continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving or purchasing entity (the “Surviving Entity”)) more than fifty percent (50%) of the combined voting power of the voting securities of the Company or the Surviving Entity outstanding immediately after such merger, consolidation or sale; and (B) at least a majority of the members of the board of directors of the Surviving Entity were Incumbent Directors at the time of the execution of the initial agreement, or of the action of the Board, providing for such merger, consolidation or sale; or (ii) sale of an operating business segment of the Company for which the Executive is designated or allocated to perform services or is otherwise employed under.

“ERISA” shall mean the Employee Retirement Income Security Act of 1986, as amended.

“Fiscal Year” shall mean the 12-consecutive-month period beginning on January 1 and ending on December 31, so that, by way of example, Fiscal Year 2023 shall mean the 12-consecutive-month period beginning on January 1, 2023 and ending on December 31, 2023.



“Severance Period” shall mean the period following the termination of the Executive’s employment by the Company during which the Executive is entitled to continue to receive his or her base compensation pursuant to a written severance agreement.

“Stretch Bonus Target” shall mean the amount the Committee designates for each applicable Fiscal Year: (i) Adjusted EBITDA for such applicable Fiscal Year equaling or exceeding the amount that the Committee designates as the Stretch Bonus Target for such applicable Fiscal Year, or (ii) if applicable, such other Qualified Business Criteria as the Committee shall designate as the Stretch Bonus Target for such Fiscal Year.

“Target Bonus Target” shall mean the Committee designates for each applicable Fiscal Year: (i) Adjusted EBITDA for such applicable Fiscal Year equaling or exceeding the amount that the Committee designates as the Target Bonus Target for such applicable Fiscal Year, or (ii) if applicable, such other Qualified Business Criteria as the Committee shall designate as the Target Bonus Target for such Fiscal Year.

“Vesting Date” shall mean each of December 31, 2023, December 31, 2024, and December 31, 2025, as applicable or as the context may require.

**2. Issuance and Vesting of Restricted Stock Units.** Subject to the vesting conditions set forth herein and the other terms and provisions of the Plan, the Company hereby issues to the Executive the number of Restricted Units set forth in the Award Certificate attached hereto. Except as otherwise set forth herein or in the Plan, provided that (i) the applicable Base Bonus Target is achieved for the Fiscal Year ending on the corresponding Vesting Date, and (ii) the Executive retains his/her Continuous Status as a Participant through the applicable Vesting Date set forth below, then for each Vesting Date the corresponding number of Restricted Stock Units set forth below will vest on the day following the applicable Vesting Date.

<b>Vesting Date/Fiscal Year</b>	<b>Number of Vested Restricted Stock Units</b>
December 31, 2023	33.33% of the number of Restricted Stock Units
December 31, 2024	33.33% of the number of Restricted Stock Units
December 31, 2025	33.34% of the number of Restricted Stock Units

If the Stretch Bonus Target is achieved for any applicable Fiscal Year, and the Executive meets the Continuous Status provision described above, the Executive is eligible to receive and will vest in an additional Restricted Stock Unit award equal to 30% of the number of Base Level Restricted Stock Units vesting in that particular year. If the Company’s Adjusted EBITDA is between the Target Bonus Target and the Stretch Bonus Target, the Executive is eligible to receive and will vest in an additional Restricted Stock Unit award calculated on a pro rata basis from 0% to up to 30% of the number of Base Level Restricted Stock Units vesting in that particular year, dependent upon the actual Adjusted EBITDA performance as compared to the Target Bonus Target and the Stretch Target Bonus. If the Base Bonus Target is not achieved for any applicable Fiscal Year, the unvested portion of the Restricted Stock Unit Award shall not vest for such Fiscal Year. Subject to the Executive retaining his/her Continuous Status as a Participant through the applicable Vesting Date, failure to achieve the Base Bonus Target for any Fiscal Year, shall not affect any subsequent Fiscal Year – e.g., if the Company achieves the Base Bonus Target for the 2023 Fiscal Year and the 2024 Fiscal Year, but fails to achieve the Base Bonus Target for the 2025 Fiscal Year, then, subject to the Executive retaining his/her Continuous Status as a Participant through the applicable Vesting Date, 33.33% of the Restricted Stock Units will vest for the 2023 Fiscal Year and 33.33% of the Restricted Stock Units will vest for the 2024 Fiscal Year, but not for the 2025 Fiscal Year.

**3. Determination of Base Bonus Target Achievement.** The Committee, in its sole and absolute discretion, shall determine whether the Base Bonus Target has been achieved. Such determination, which shall be final and binding on all parties, shall be certified in writing as soon as administratively practicable following each Vesting Date.

**4. Vesting of Restricted Stock Units; Forfeiture.** The Executive shall have no vested right in the Restricted Stock Units for any Fiscal Year unless the Committee certifies that the Base Bonus Target has been achieved for such Fiscal Year. Such achievement, as evidenced by such certification by the Committee, shall be construed by all parties as a condition related to the purpose of the compensation for purposes of Section 409A of the Code. Provided that such certification is made, and the Executive is employed by the Company as of the applicable Vesting Date set forth in Section 2 above, vesting of the number of Restricted Stock Units to which the Executive may be entitled hereunder shall occur as of the day following such Vesting Date. If, prior to any Vesting Date, the Executive voluntarily leaves employment with the Company other than for Good Reason or is terminated by the Company for Cause, the Executive shall forfeit the entirety of the Restricted Stock Units otherwise issuable hereunder.

**5. Additional Vesting Provisions.**

(a) Upon the termination of the Executive's employment by the Company without Cause or if the Executive's employment by the Company is terminated by the Executive for Good Reason, then (i) if applicable, for purposes of Section 2 of this Agreement, the Executive shall be deemed employed by the Company through the last day of any Severance Period which shall be deemed the last day of the Executive's Continuous Status as a Participant, and (ii) subject to the achievement of the Base Bonus Target for such Fiscal Year, the Executive shall be entitled to a portion of the Restricted Stock Units otherwise issuable on the Vesting Date immediately following the date of termination of employment (as determined in accordance with the preceding clause (i)), equal to the amount of the Restricted Stock Units to which the Executive would have vested hereunder on such Vesting Date but for the termination of his or her employment, multiplied by a fraction, the numerator of which is the number of days the Executive is employed (or deemed employed in accordance with the preceding clause (i)) by the Company during the Fiscal Year in which the termination (or deemed termination) occurred and the denominator of which is 365, and such portion shall be deemed vested as of the date of termination of employment (without regard for the provisions of clause (i) herein) and (iii) all other unvested Restricted Stock Units hereunder shall be deemed terminated and forfeited. For the avoidance of doubt, for purposes of this clause (a), to the extent the first day of a Severance Period is in one Fiscal Year and the last day of such Severance period is in the following Fiscal Year, the Executive shall be deemed employed (1) during the entirety of such first Fiscal Year and (2) for that portion of the following Fiscal Year which corresponds to the Severance Period applicable thereto.

(b) Upon termination of employment as the result of the death or Disability of the Executive, the heirs or estate of the deceased Executive or the Disabled Executive shall, subject to the achievement of the Base Bonus Target for the applicable Fiscal Year, be deemed vested in all unvested Restricted Stock Units as of each Vesting Date following such date of termination.

(c) Notwithstanding the provisions of Sections 5(a) and (b) above, upon the occurrence of a Change in Control, all unvested Restricted Stock Units for the Fiscal Year in which the Change in Control occurs and all remaining Fiscal Years thereafter shall be deemed automatically vested at such time as may be necessary or required in order for the Executive to be deemed the lawful owner and holder of record of the shares of Stock to be issued thereunder as of the effective date and time of the Change in Control. For the purposes of clarity, vesting shall occur as of the Change in Control for the current Fiscal Year and all remaining Fiscal Years based on the Company's actual Adjusted EBITDA performance year-to-date having met the Base, Target, or Stretch Target established for the Fiscal Year of the Change in Control.

## **6. Settlement of Restricted Stock Units.**

(a) Each Restricted Stock Unit represents the right to receive one share of Stock, subject to the terms and conditions set forth in this Agreement and the Plan. The Restricted Stock Units shall be credited to a separate account maintained for the Executive on the books and records of the Company (the "**Account**"). All amounts credited to the Account shall continue for all purposes to be part of the general assets of the Company.

(b) Subject to the provisions hereof, no later than the last day of Fiscal Year following the applicable Vesting Date, the Company shall (i) issue and deliver to the Executive the number of shares of Stock equal to the number of vested Restricted Stock Units (rounded up to the nearest whole share); and (ii) enter the Executive's name on the books of the Company as the shareholder of record with respect to the shares of Stock delivered to the Executive (which entry shall be deemed made as of the day following the last day of each applicable Fiscal Year notwithstanding any later delivery of the corresponding shares of Common Stock). Notwithstanding the foregoing, but subject to the provisions of the preceding clause (ii) and Section 16 below, any shares of Stock to be issued in settlement of Restricted Stock Units (i) under Section 5(a) or (b) above shall be issued no later than March 15 following the last day of the Fiscal Year in which the Executive (or heirs or estate thereof) is deemed vested therein, and (ii) under Section 5(c) above shall be issued no later than such time as may be necessary or required in order for the Executive to be deemed the lawful owner and holder of record of the shares of Stock to be issued thereunder as of the effective date and time of the Change in Control.

(c) Subject to any exceptions set forth in this Agreement or the Plan, prior to the vesting of the Restricted Stock Units hereunder, the Restricted Stock Units or the rights relating thereto may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Executive. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber the Restricted Stock Units or the rights relating thereto during such period shall be wholly ineffective and, if any such attempt is made, the unvested Restricted Stock Units will be forfeited by the Executive and all of the Executive's rights to shares issuable thereunder shall immediately terminate without any payment or consideration by the Company.

(d) The Executive shall have no rights in, to or under the shares of Stock to be issued upon the vesting of the Restricted Stock Units unless and until the vesting conditions set forth herein are satisfied and, until such date, shall have no rights of a shareholder of the Company including, without limitation, no right to vote such shares and no right to receive any dividends or other distributions paid with respect to such shares. Notwithstanding the foregoing, if during any Fiscal Year, the Company declares a dividend or distribution, whether in cash or other property, then, concurrent with the issuance of the shares of Stock, if any, to the Executive for such Fiscal Year, the Company shall pay to the Executive that amount of cash or other property which the Executive would have received had the Executive been the record holder of such shares of Stock on the record date for such dividend or distribution.

(e) Upon vesting of the Restricted Stock Units, the Company may issue stock certificates or evidence the Executive's interest therein by using a book entry account with the Company's transfer agent.

## **7. Provisions of Plan.**

(a) *Adjustments.* If any change is made to the outstanding Stock or the capital structure of the Company, the shares of Stock to be issued hereunder shall be adjusted or terminated in any manner as contemplated by Article 15 of the Plan.

(b) *Tax Liability and Withholding.* The Executive shall be required to pay to the Company, and the Company shall have the right to deduct from the shares of Stock to be issued upon the vesting of the Restricted Stock Units, the amount of any required withholding taxes in respect of the shares of Stock to be issued upon the vesting of the Restricted Stock Units and to take all such other action as the Company deems necessary to satisfy all obligations for the payment of such withholding taxes.

(c) Except as provided herein, the provisions of this Agreement shall be subject to the provisions of the Plan, which are hereby incorporated herein by reference and made part hereof. The Executive acknowledges and agrees that he or she has been provided with and has read the Plan and understands the provisions thereof. In the event of any conflict between the terms of the Plan and the terms of this Agreement, the terms of the Plan shall take precedence, other than for such provisions of the Plan which, by their terms, are subject to the provisions of an Award Certificate.

**8. No ERISA Plan.** Neither this Agreement nor the award of the Restricted Stock Units hereunder shall be construed by any party as being subject to any provisions of ERISA, and shall not be so subject. Without in any way limiting the generality of the foregoing, the Restricted Stock Units awarded hereunder shall constitute a mere unfunded promise to pay by the Company and a bonus program within the meaning of Department of Labor Regulation Section 2510.3-2(c) promulgated under ERISA.

**9. Compliance with Law.** The issuance of shares of Stock hereunder shall be subject to compliance by the Company and the Executive with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Company's shares of Stock may be listed. No shares of Stock shall be issued or transferred unless and until any then applicable requirements of state and federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel.

**10. Notices.** Any notice required to be delivered to the Company under this Agreement shall be in writing and addressed to the Secretary of the Company at the Company's principal corporate offices. Any notice required to be delivered to the Executive under this Agreement shall be in writing and addressed to the Executive at the Executive's address as shown in the records of the Company. Either party may designate another address in writing (or by such other method approved by the Company) from time to time.

**11. Parachute Payments and Parachute Awards.** If the Executive is a "disqualified individual," as defined in paragraph (c) of Code Section 280G, then, notwithstanding any other provision of this Agreement or of any other agreement, contract, or understanding heretofore entered into by the Executive and the Company (an "Other Agreement"), except an agreement, contract, or understanding that expressly addresses Code Section 280G or Code Section 4999 (a "280G Agreement"), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Executive (or an employee group of which the Employee is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Executive (a "Benefit Arrangement"), if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Executive or for the Executive's benefit pursuant to the terms of this Agreement, all Other Agreements and all Benefit Arrangements ("Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Code Section 280G and would, but for this Section, be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to the Executive of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to the Executive if the Covered Payments are limited to the extent

necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax (that amount, the "Reduced Amount"). "Net Benefit" shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes. Any such reduction shall be made in accordance with Section 409A of the Code and the following: (i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and (ii) the Covered Payments shall be reduced in a manner that maximizes the Executive's economic position. In applying this principle, the reduction shall be made in a manner consistent with the requirements of Section 409A of the Code, and where two economically equivalent amounts are subject to reduction but payable at different times, such amounts shall be reduced on a pro rata basis but not below zero. The foregoing shall not be interpreted so as to restrict, reduce, amend or modify any of the existing terms and provisions of any 280G Agreement to which the Executive and the Company may be a party and any payment hereunder shall be entitled to the benefits thereof.

**12. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such determination shall not affect the remaining provisions of this Agreement, which shall be enforced to the maximum extent permitted under applicable law.

**13. Modification.** Subject to the provisions of the Plan, this Agreement may be modified only in writing pursuant to an agreement by and between the Company and the Executive.

**14. Headings.** The headings contained herein are for convenience of reference only and shall not be construed by any party as having any substantive significance.

**15. Clawback.** Notwithstanding any other provisions in this Agreement, this Award is subject to recovery under any current or future law, government regulation or stock exchange listing requirement, and is subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement (or any policy adopted by the Company at any time pursuant to any such law, government regulation or stock exchange listing requirement).

**16. Section 409A of the Code.** If the Executive is deemed a "specified employee" within the meaning of Section 409A of the Code, as determined by the Committee, at a time when the Executive becomes eligible for settlement of the Restricted Stock Units upon his/her "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, such settlement will be delayed until the earlier of: (i) the date that is six months following the Executive's separation from service and (ii) the Executive's death. It is the intent that this Restricted Stock Unit Award shall comply with the requirements of Section 409A, and any ambiguities herein will be interpreted to so comply. The Company reserves the right, to the extent the Company deems necessary or advisable in its sole discretion, to unilaterally amend or modify this Agreement as may be necessary to ensure that all vesting or payouts provided under this Agreement are made in a manner that complies with Section 409A or to mitigate any additional tax, interest and/or penalties or other adverse tax consequences that may apply under Section 409A if compliance is not practical; provided, however, that nothing in this paragraph creates an obligation on the part of the Company to modify the terms of this Agreement or the Plan, and the Company makes no representation that the terms of this Restricted Stock Unit Award Agreement will comply with Section 409A or that payments under this Restricted Stock Unit Award Agreement will not be subject to taxes, interest and penalties or other adverse tax consequences under Section 409A. In no event shall the Company or any of its Subsidiaries be liable to any party for any additional tax, interest or penalties that may be imposed on the Executive by Section 409A or any damages for failing to comply with Section 409A.

17. **Execution and Counterparts.** This Agreement shall be deemed effective as of the September 7, 2023 (the “Effective Date”), giving retroactive effect to the Grant Date, upon (a) the delivery to the Executive of the Award Certificate hereto (or information contained therein) by electronic or other means of transmission, and (b) inclusion hereto of Attachment A, authorized by the Committee as of the Effective Date, where such effectiveness shall not require any counterpart signature of the Executive.

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/s/ Mercedes De Luca

Mercedes De Luca

/s/ David L. Beatson

David L. Beatson

/s/ Benjamin Rosenzweig

Benjamin Rosenzweig