
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

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

GRUBHUB INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

46-2908664
(I.R.S. Employer
Identification No.)

111 W. Washington Street, Suite 2100
Chicago, Illinois
(Address of Principal Executive Offices)

60602
(Zip Code)

Grubhub Inc. December 2019 Restricted Stock Unit Inducement Awards
(Full title of the plan)

Margo Drucker, Esq.
Senior Vice President, General Counsel and Secretary
Grubhub Inc.

111 W. Washington Street, Suite 2100
Chicago, Illinois 60602
(877) 585-7878

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

Copies to:

Ross M. Leff, P.C.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800

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

Large accelerated filer
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting 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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	212,246	\$42.56	\$9,033,189.76	\$1,172.51

- (1) The number of shares being registered represents an aggregate of 212,246 shares of Grubhub Inc. common stock, par value \$0.0001 per share (“Common Stock”), issuable upon the vesting and settlement of an aggregate of 212,246 restricted stock units granted under the Grubhub Inc. December 2019 Restricted Stock Unit Inducement Awards pursuant to New York Stock Exchange Rule 303A.08. Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of Common Stock which become issuable because of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock.
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EXPLANATORY NOTE

Grubhub Inc. (the “Company”) is filing this Registration Statement on Form S-8 with respect to up to 212,246 shares of Common Stock for issuance under the Grubhub Inc. December 2019 Restricted Stock Unit Inducement Awards. The inducement awards were granted outside of the Company’s incentive award plans as “employment inducement grants” under New York Stock Exchange Listing Rule 303A.08.

PART I INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

The documents containing the information specified in Part I will be delivered in accordance with the instructions to Form S-8 and Rule 428(b) under the Securities Act. Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the “Commission”), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Registration Statement on Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Item 2. Registrant Information and Employee Plan Annual Information.

The written statement required by Item 2 of Part I is included in documents delivered to participants in the plans covered by this Registration Statement pursuant to Rule 428(b) of the Securities Act.

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have been filed by the Company with the Commission, are hereby incorporated by reference into this Registration Statement:

- (a) The Company’s Annual Report on Form 10-K for the year ended December 31, 2018, filed with the Commission on February 28, 2019 (File No. 001-36389);
- (b) The Company’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2019, June 30, 2019 and September 30, 2019, filed with the Commission on May 10, 2019, August 6, 2019 and November 7, 2019, respectively (File No. 001-36389);
- (c) All other reports filed* by the Company pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), since the end of the fiscal year covered by the Annual Report on Form 10-K referred to in (a) above (File No. 001-36389); and
- (d) The description of the Company’s Common Stock contained in the Company’s Registration Statement on Form 8-A (File No. 001-36389) filed with the Commission on April 1, 2014, pursuant to Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

* Any report (or portion thereof) “furnished” on Form 8-K shall not be incorporated by reference.

All reports and other documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than reports (or portions thereof) on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 of Form 8-K, including any exhibits included with such information, unless otherwise indicated therein) after the date of this Registration Statement, but prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Company is incorporated under the laws of the State of Delaware. Reference is made to Section 102(b)(7) of the Delaware General Corporation Law (“DGCL”), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director’s fiduciary duty, except (1) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (4) for any transaction from which a director derived an improper personal benefit. The Company’s amended and restated certificate of incorporation provides for this limitation of liability.

Reference is also made to Section 145 of the DGCL, which provides that a corporation may indemnify any person, including an officer or director, who is, or is threatened to be made, party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of such corporation, by reason of the fact that such person was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the corporation’s best interest and, for criminal proceedings, had no reasonable cause to believe that his or her conduct was unlawful. A Delaware corporation may indemnify any officer or director in an action by or in the right of the corporation under the same conditions, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145.

The Company’s amended and restated bylaws provide that the Company must indemnify its directors and officers to the fullest extent permitted by the DGCL and must also pay expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to very limited exceptions. In addition, the Company’s amended and restated certificate of incorporation provides that, to the fullest extent permitted by the DGCL, none of its directors shall be liable to the Company or its stockholders for monetary damages for any breach of fiduciary duties as directors, except for liability (i) for any breach of the director’s duty of loyalty to the Company or its stockholders, (ii) for any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, (iii) for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

The Company has entered into indemnification agreements with each of its directors and officers that are broader than the specific indemnification provisions contained in the DGCL (the “Indemnification Agreements”). The Indemnification Agreements require the Company, among other things, to indemnify its directors and officers against liabilities that may arise by reason of their status or service. The Indemnification Agreements also require the Company to advance all expenses incurred by the directors and officers in investigating or defending any such action, suit or proceeding.

The Company maintains insurance to protect it and its directors and officers against any expense, liability or loss, whether or not the Company would have the power to indemnify such persons against such expense, liability or loss under applicable law.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquires under any statute, provision of the Company's amended and restated certificate of incorporation, the Company's amended and restated bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Reference is made to the attached Exhibit Index, which is incorporated by reference herein.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

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

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
3.1	<u>Amended and Restated Certificate of Incorporation of Grubhub Inc. (incorporated by reference to Exhibit 3.1 to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, filed with the Securities and Exchange Commission on August 7, 2014 (File No. 001-36389)).</u>
3.2	<u>Amended and Restated Bylaws of Grubhub Inc. (incorporated by reference to Exhibit 3.2 to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014, filed with the Securities and Exchange Commission on August 7, 2014 (File No. 001-36389)).</u>
4.1	<u>Form of certificate of stock of the Registrant (incorporated by reference to Exhibit 4.1 to the registrant's Registration Statement on Form S-1, as amended, filed with the Commission on March 20, 2014 (File No. 333-194219)).</u>
5.1*	<u>Opinion of Kirkland & Ellis LLP.</u>
23.1*	<u>Consent of Crowe LLP.</u>
23.2*	<u>Consent of Kirkland & Ellis LLP (included in Exhibit 5.1).</u>
24.1*	<u>Powers of Attorney (included on the signature pages of this Registration Statement).</u>
99.1*	<u>Form of Grubhub Inc. December 2019 Restricted Stock Unit Inducement Award Agreement.</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on December 6, 2019.

GRUBHUB INC.

By: /s/ Matthew Maloney

Name: Matthew Maloney

Title: Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby severally constitutes and appoints Matthew Maloney, Adam DeWitt and Margo Drucker, and each of them individually, with full power of substitution and resubstitution, his or her true and lawful attorney-in fact and agent, with full powers to each of them to sign for us, in our names and in the capacities indicated below, the Registration Statement on Form S-8 and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and any and all amendments to said Registration Statement (including post-effective amendments), granting unto said attorneys-in fact, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as each of them might or could do in person, and hereby ratifying and confirming all that said attorneys-in fact, and each of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue of this power of attorney. This power of attorney may be executed in counterparts and all capacities to sign any and all amendments.

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

<u>Signatures</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Matthew Maloney</u> Matthew Maloney	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	December 6, 2019
<u>/s/ Adam DeWitt</u> Adam DeWitt	President and Chief Financial Officer <i>(Principal Financial Officer)</i>	December 6, 2019
<u>/s/ Brandt Kucharski</u> Brandt Kucharski	Principal Accounting Officer and Controller <i>(Principal Accounting Officer)</i>	December 6, 2019
<u>/s/ Brian McAndrews</u> Brian McAndrews	Chairman of the Board of Directors	December 6, 2019
<u>/s/ David Fisher</u> David Fisher	Director	December 6, 2019
<u>/s/ Lloyd Frink</u> Lloyd Frink	Director	December 6, 2019
<u>/s/ David Habiger</u> David Habiger	Director	December 6, 2019
<u>/s/ Girish Lakshman</u> Girish Lakshman	Director	December 6, 2019

<u>/s/ Linda Johnson Rice</u> Linda Johnson Rice	Director	December 6, 2019
<u>/s/ Katrina Lake</u> Katrina Lake	Director	December 6, 2019
<u>/s/ Keith Richman</u> Keith Richman	Director	December 6, 2019
<u>/s/ Arthur Francis Starrs, III</u> Arthur Francis Starrs, III	Director	December 6, 2019

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS601 Lexington Avenue
New York, NY 10022
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December 6, 2019

Grubhub Inc.
111 West Washington Street, #2100
Chicago, IL 60602

Ladies and Gentlemen:

We are acting as special counsel to Grubhub Inc., a Delaware corporation (the “**Company**”), in connection with the filing by the Company of a Registration Statement on Form S-8 (the “**Registration Statement**”) under the Securities Act of 1933, as amended (the “**Act**”), with the Securities and Exchange Commission (the “**Commission**”) covering the offering of up to 212,246 shares of common stock, par value \$0.0001 per share, of the Company (the “**Award Shares**”) pursuant to the Grubhub Inc. December 2019 Restricted Stock Unit Inducement Awards (the “**Awards**”).

For purposes of this letter, we have examined such documents, records, certificates, resolutions and other instruments deemed necessary as a basis for this opinion, and we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we advise you that the Award Shares are duly authorized and when the Award Shares have been duly issued pursuant to and in accordance with the terms and conditions of the Awards and the Company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, the Award Shares will be validly issued, fully paid and non-assessable.

Our opinions expressed above are subject to the qualifications that we express no opinion as to the applicability of, compliance with, or effect of any laws except the General Corporation Law of the State of Delaware.

We have relied without independent investigation upon, among other things, an assurance from the Company that the number of shares which the Company is authorized to issue in its Amended and Restated Certificate of Incorporation exceeds the number of shares outstanding and the number of shares which the Company is obligated to issue (or had otherwise reserved for issuance) for any purposes other than issuances of the Award Shares by at least the number of Award Shares and we have assumed that such condition will remain true at all future times relevant to this opinion.

KIRKLAND & ELLIS LLP

December 6, 2019
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We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or “Blue Sky” laws of the various states to the issuance and sale of the Award Shares.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. We assume no obligation to revise or supplement this opinion should the General Corporation Law of the State of Delaware be changed by legislative action, judicial decision or otherwise.

This opinion is furnished to you in connection with the filing of the Registration Statement, and is not to be used, circulated, quoted or otherwise relied upon for any other purposes.

Sincerely,

/s/ Kirkland & Ellis LLP
Kirkland & Ellis LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Grubhub Inc. of our report dated February 28, 2019 relating to the consolidated financial statements of Grubhub Inc., and our report dated the same date relative to the effectiveness of internal control over financial reporting, appearing in the Annual Report on Form 10-K of Grubhub Inc. for the year ended December 31, 2018.

/s/ Crowe LLP
Crowe LLP

Oak Brook, Illinois
December 6, 2019

RESTRICTED STOCK UNIT AWARD AGREEMENT

WHEREAS, this Restricted Stock Unit Award Agreement, which is attached to the Restricted Stock Unit Grant Notice (the “Grant Notice” and this Restricted Stock Unit Award Agreement shall be referred to collectively as the “Agreement”), has been entered into, effective on the Grant Date specified in the Grant Notice, by and between GrubHub Inc., a Delaware corporation (the “Company”), and the Participant specified in the Grant Notice. This Agreement shall constitute an “inducement award” under the New York Stock Exchange Listed Company Manual Rule 303A.08, but shall otherwise be subject to the terms and conditions of the GrubHub Inc. 2015 Long-Term Incentive Plan, as in effect and as amended from time to time (the “Plan”); and

WHEREAS, the Committee has determined that it would be in the best interests of the Company to grant the Restricted Stock Units (“RSUs”) provided herein to the Participant, subject to the vesting schedule set forth in the Grant Notice and all other terms and conditions set forth under the Plan and this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth and for other good and valuable consideration, the parties hereto hereby mutually covenant and agree as follows:

1. **Incorporation By Reference; Plan Document Receipt.** This Agreement is subject in all respects to the terms and provisions of the Plan as if this Agreement were made under the Plan (including, without limitation, any amendments thereto adopted at any time and from time to time unless such amendments are expressly intended not to apply to the Award provided hereunder), all of which terms and provisions are made a part of and incorporated into this Agreement as if they were each expressly set forth herein. Any capitalized term not defined in this Agreement shall have the same meaning as is ascribed thereto in the Plan. The Participant hereby acknowledges receipt of a true copy of the Plan and also acknowledges that the Participant has read the Plan carefully and fully understands its content. In the event of any conflict between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall control.

2. **Grant of Restricted Stock Unit Award.** The Company hereby grants to the Participant, as of the Grant Date specified in the Grant Notice, the number of RSUs specified in the Grant Notice. Except as otherwise provided by the Plan, the Participant agrees and understands that nothing contained in this Agreement provides, or is intended to provide, the Participant with any protection against potential future dilution of the Participant’s interest in the Company for any reason, and no adjustments shall be made for dividends in cash or other property, distributions or other rights in respect of the shares of Common Stock underlying the RSUs, except as otherwise specifically provided for in the Plan or this Agreement.

3. **Vesting.**

(a) Subject to the provisions of Sections 3(b) and 3(c) hereof, the RSUs subject to this Award shall become vested as set forth in the Grant Notice, provided that the Participant has not incurred a Termination prior to each such vesting date. There shall be no proportionate or partial vesting in the periods prior to each vesting date and all vesting shall occur only on the appropriate vesting date, subject to the Participant's continued service with the Company or any of its Subsidiaries on each applicable vesting date.

(b) **Committee Discretion to Accelerate Vesting.** Notwithstanding the foregoing, the Committee may, in its sole discretion, provide for accelerated vesting of the RSUs at any time and for any reason.

(c) **Change in Control.** In the event of a Change in Control, any unvested RSUs shall be treated as set forth in Article XII of the Plan.

(d) **Forfeiture.** Subject to the Committee's discretion to accelerate vesting hereunder, all unvested RSUs shall be immediately forfeited upon the Participant's Termination for any reason.

4. **Delivery of Shares.**

(a) **General.** Subject to the provisions of Section 4(b) hereof or as required to comply with applicable law, rule or regulation, the Company shall deliver to the Participant the number of shares of Common Stock that correspond to the number of RSUs that have become vested on the applicable vesting date or as soon as reasonably practicable thereafter, but in no event later than sixty (60) days following the vesting of the RSUs.

(b) **Deferrals.** If permitted by the Company, the Participant may elect, subject to the terms and conditions of the Plan and any other applicable written plan or procedure adopted by the Company from time to time for purposes of such election, to defer the distribution of all or any portion of the shares of Common Stock that would otherwise be distributed to the Participant hereunder (the "**Deferred Shares**"), consistent with the requirements of Section 409A of the Code. Upon the vesting of RSUs that have been so deferred, the applicable number of Deferred Shares shall be credited to a bookkeeping account established on the Participant's behalf (the "**Account**"). Subject to Section 5 hereof, the number of shares of Common Stock equal to the number of Deferred Shares credited to the Participant's Account shall be distributed to the Participant in accordance with the terms and conditions of the Plan and the other applicable written plans or procedures of the Company, consistent with the requirements of Section 409A of the Code.

5. **Dividends; Rights as Stockholder.** The Participant shall have no rights as a stockholder, and shall not receive payment of, or credit for, dividends or dividend equivalents, with respect to any shares of Common Stock covered by any RSU unless and until the Participant has become the holder of record of such shares.

6. **Non-Transferability**. The RSUs granted under this Agreement and the Plan, and any rights and interests with respect thereto, shall not be sold, exchanged, transferred, assigned or otherwise disposed of in any way by the Participant (or any beneficiary of the Participant), other than by testamentary disposition by the Participant or the laws of descent and distribution. Notwithstanding the foregoing, the Committee may, in its sole discretion, permit the RSUs to be Transferred to a Family Member for no value, provided that such Transfer shall only be valid upon execution of a written instrument in form and substance acceptable to the Committee in its sole discretion evidencing such Transfer and the transferee's acceptance thereof, signed by the Participant and the transferee, and provided further that the RSUs may not be subsequently Transferred other than by will or by the laws of descent and distribution or to another Family Member (as permitted by the Committee in its sole discretion) in accordance with the terms of the Plan and this Agreement, and shall in any event at all times remain subject to the terms of the Plan and this Agreement. Any attempt to sell, exchange, transfer, assign, pledge, encumber or otherwise dispose of or hypothecate in any way the RSUs, or the levy of any execution, attachment or similar legal process upon the RSUs, contrary to the terms and provisions of this Agreement and/or the Plan shall be null and void and without legal force or effect.

7. **Governing Law**. All questions concerning the construction, validity and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the choice of law principles thereof.

8. **Withholding of Tax**. The Company shall have the power and the right to deduct or withhold, or require the Participant to remit to the Company, an amount sufficient to satisfy any federal, state, local and foreign taxes of any kind (including, but not limited to, the Participant's FICA and SDI obligations) which the Company, in its sole discretion, deems necessary to be withheld or remitted to comply with the Code and/or any other applicable law, rule or regulation with respect to the RSUs and, if the Participant fails to do so, the Company may otherwise refuse to issue or transfer any shares of Common Stock otherwise required to be issued pursuant to this Agreement. Any minimum statutorily required withholding obligation with regard to the Participant may be satisfied by reducing the amount of cash or shares of Common Stock otherwise deliverable to the Participant hereunder (which, with respect to RSUs that vest during a "blackout period," shall be satisfied by reducing the amount of shares of Common Stock otherwise deliverable to the Participant hereunder).

9. **Securities Representations**. This Agreement is being entered into by the Company in reliance upon the following express representations and warranties of the Participant. The Participant hereby acknowledges, represents and warrants that:

(a) The Participant has been advised that the Participant may be an "affiliate" within the meaning of Rule 144 under the Securities Act, and in this connection, the Company is relying in part on the Participant's representations set forth in this Section 9.

(b) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the shares of Common Stock issuable hereunder must be held indefinitely unless an exemption from any applicable resale restrictions is available or the Company files an additional registration statement (or a "re-offer prospectus") with regard to such shares of Common Stock. For clarity, the Company is under no obligation to register such shares of Common Stock (or to file a "re-offer prospectus").

(c) If the Participant is deemed an affiliate within the meaning of Rule 144 of the Securities Act, the Participant understands that: (i) the exemption from registration under Rule 144 will not be available unless (A) a public trading market then exists for the Common Stock of the Company, (B) adequate information concerning the Company is then available to the public, and (C) other terms and conditions of Rule 144 or any exemption therefrom are complied with; and (ii) any sale of the shares of Common Stock issuable hereunder may be made only in limited amounts in accordance with the terms and conditions of Rule 144 or any exemption therefrom.

10. **Entire Agreement; Amendment.** This Agreement, together with the Plan, contains the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements or prior understandings, whether written or oral, between the parties relating to such subject matter. The Committee shall have the right, in its sole discretion, to modify or amend this Agreement from time to time in accordance with and as provided in the Plan. This Agreement may also be modified or amended by a writing signed by both the Company and the Participant. The Company shall give written notice to the Participant of any such modification or amendment of this Agreement as soon as practicable after the adoption thereof.

11. **Notices.** Any notice hereunder by the Participant shall be given to the Company in writing or electronically and such notice shall be deemed duly given only upon receipt thereof by the General Counsel of the Company. Any notice hereunder by the Company shall be given to the Participant in writing or electronically and such notice shall be deemed duly given only upon receipt thereof at such address/email address as the Participant may have on file with the Company.

12. **No Right to Employment.** Any questions as to whether and when there has been a Termination and the cause of such Termination shall be determined in the sole discretion of the Committee. Nothing in this Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries or its Affiliates to terminate the Participant's employment or service at any time, for any reason and with or without Cause.

13. **Transfer of Personal Data.** The Participant authorizes, agrees and unambiguously consents to the transmission by the Company (or any Subsidiary) of any personal data information related to the RSUs awarded under this Agreement for legitimate business purposes (including, without limitation, the administration of the Plan). This authorization and consent is freely given by the Participant.

14. **Compliance with Laws.** The grant of RSUs (and the issuance of shares of Common Stock) pursuant to this Agreement shall be subject to, and shall comply with, any applicable requirements of any foreign and U.S. federal and state securities laws, rules and regulations (including, without limitation, the provisions of the Securities Act, the Exchange Act and in each case any respective rules and regulations promulgated thereunder) and any other law, rule or regulation or exchange requirement applicable thereto. The Company shall not be obligated to issue the RSUs or any shares of Common Stock pursuant to this Agreement if any such issuance would violate any such requirements. As a condition to the settlement of the RSUs, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation.

15. **Section 409A.** Notwithstanding anything herein or in the Plan to the contrary, this Agreement is intended to comply with, or be exempt from, Section 409A of the Code and shall be construed and interpreted in a manner that is consistent with the requirements for avoiding additional taxes or penalties under Section 409A of the Code. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A of the Code and in no event shall the Company 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.

16. **Binding Agreement; Assignment.** This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Company and its successors and assigns. The Participant shall not assign (except in accordance with Section 6 hereof) any part of this Agreement without the prior express written consent of the Company.

17. **Headings.** The titles and headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

19. **Further Assurances.** Each party hereto shall do and perform (or shall cause to be done and performed) all such further acts and shall execute and deliver all such other agreements, certificates, instruments and documents as either party reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan and the consummation of the transactions contemplated thereunder.

20. **Severability.** The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

21. **No Right to Damages.** No Participant shall have the right to bring a claim or to receive damages if such Participant is required to forfeit the RSUs granted hereunder, or the shares of Common Stock issued upon the vesting of the RSUs granted hereunder, for any reason. The loss of existing potential profit in Awards will not constitute an element of damages in the event of Termination for any reason, even if such Termination is in violation of an obligation of the Company or its Affiliates to the Participant.

22. **Acquired Rights.** The Participant acknowledges and agrees that: (a) the Company may terminate or amend the Plan at any time; (b) the Award of RSUs made under this Agreement is completely independent of any other award or grant and is made at the sole discretion of the Company; (c) no past grants or awards (including, without limitation, the RSUs awarded hereunder) give the Participant any right to any grants or awards in the future whatsoever; and (d) any benefits granted under this Agreement are not part of the Participant's ordinary salary, and shall not be considered as part of such salary in the event of severance, redundancy or resignation.