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

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**FORM 8-K**

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**CURRENT REPORT**  
Pursuant to Section 13 or 15(d) of  
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) **December 6, 2017**

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**IRIDEX CORPORATION**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-27598**  
(Commission  
File Number)

**77-0210467**  
(IRS Employer  
Identification No.)

**1212 Terra Bella Avenue**  
**Mountain View, California 94043**  
(Address of principal executive offices, including zip code)

**(650) 940-4700**  
(Registrant's telephone number, including area code)

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

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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))
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Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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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**Item 1.01 Entry into a Material Definitive Agreement.**

On December 6, 2017, IRIDEX Corporation (the “Company”) entered into a Change in Control Severance Agreement (the “Change in Control Agreement”) with George Marcellino, a member of the Company’s board of directors and V.P., Clinical Affairs, that provides certain severance benefits in the event that his employment with the Company is terminated under certain circumstances, as described below.

*Termination Inside of the Change in Control Context:*

If in the event that, within twelve months following a Change in Control (as defined in the Company’s 2008 Equity Incentive Plan) or at any time prior to a Change in Control if such termination is effected at the request of any successor to the Company (such time period, the “Change in Control Period”), Mr. Marcellino terminates his employment with the Company for Good Reason (as defined below), or the Company terminates the Mr. Marcellino’s employment for a reason other than Cause (as defined below), death or disability, and, in each case, the Mr. Marcellino signs and does not revoke a standard release of claims with the Company, then Mr. Marcellino will receive the following severance from the Company:

- *Cash Severance Payment.* A lump sum cash payment equal to 50% of his annual base salary.
- *Vesting Acceleration.* Accelerated vesting as to 100% of the then unvested portion of his outstanding Company equity awards, assuming, with respect to Company equity awards subject to performance criteria, the performance criteria had been achieved at the specified target levels during the applicable performance period.
- *Continued Employee Benefits.* Reimbursement from the Company for a period of up to twelve months for the costs and expenses incurred by himself and/or his eligible dependents for coverage under the Company’s benefit plans.

For the purposes of the Change in Control Agreement, the following definitions will apply.

“Cause” generally means (i) an act of dishonesty made by Mr. Marcellino in connection with Mr. Marcellino’s responsibilities as an employee; (ii) Mr. Marcellino’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude, or a material violation of federal or state law by Mr. Marcellino that the Board reasonably believes has had or will have a detrimental effect on the Company’s reputation or business; (iii) Mr. Marcellino’s gross misconduct; (iv) Mr. Marcellino’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Mr. Marcellino owes an obligation of nondisclosure as a result of Mr. Marcellino’s relationship with the Company; (v) Mr. Marcellino’s willful breach of any obligations under any written agreement or covenant with the Company; or (vi) Mr. Marcellino’s continued failure to perform his employment duties after Mr. Marcellino has received a written demand of performance from the Company which specifically sets forth the factual basis for the Company’s belief that Mr. Marcellino has not substantially performed his duties and has failed to cure such non-performance to the Company’s satisfaction within ten business days after receiving such notice.

“Good Reason” generally means the occurrence of one or more of the following events effected without Mr. Marcellino’s prior consent, provided that Mr. Marcellino’s employment terminates within 90 days following the expiration of the Company’s Cure Period (defined below): (i) the assignment to Mr. Marcellino of any duties or the reduction of Mr. Marcellino’s duties, either of which results in a material diminution in Mr. Marcellino’s position or responsibilities with the

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Company; provided that, it being understood that the continuance of Mr. Marcellino's duties and responsibilities at the subsidiary or divisional level following a Change in Control, rather than at the parent, combined or surviving company level following such Change in Control shall not be deemed Good Reason within the meaning of this clause (i); (ii) a reduction by the Company in the base salary of Mr. Marcellino by 15% or more, unless similar such reductions occur concurrently with and apply to the Company's senior management; (iii) a material change in the geographic location at which Mr. Marcellino must perform services (for purposes of the Change of Control Agreement, the relocation of Mr. Marcellino to a facility or a location less than 25 miles from Mr. Marcellino's then-present location shall not be considered a material change in geographic location); (iv) a material reduction of facilities, perquisites or in the kind or level of employee benefits to which the Mr. Marcellino is entitled, unless similar such reductions occur concurrently and apply to the Company's senior management; or (v) any material breach by the Company of any material provision of the Change of Control Agreement. Mr. Marcellino will not resign for Good Reason without first providing the Company with written notice of the acts or omissions constituting the grounds for "Good Reason" within 90 days of the initial existence of the grounds for "Good Reason" and a reasonable cure period of 30 days ("Cure Period") following the date of such notice.

The foregoing description of the Change in Control Agreement with Mr. Marcellino does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in their entirety by reference to the full text of the Change in Control Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	<a href="#"><u>Change in Control Severance Agreement, between the Company and Mr. Marcellino dated as of December 6, 2017.</u></a>

**SIGNATURES**

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.

**IRIDEX CORPORATION**

By: /s/ WILLIAM M. MOORE  
William M. Moore  
President and Chief Executive Officer

Date: December 11, 2017

## IRIDEX CORPORATION

## CHANGE IN CONTROL SEVERANCE AGREEMENT

This Change in Control Severance Agreement (the “Agreement”) is made and entered into by and between George Marcellino (“Executive”) and IRIDEX Corporation, a Delaware corporation (the “Company”), effective as of December 6, 2017 (the “Effective Date”).

**RECITALS**

**WHEREAS**, it is expected that the Company from time to time will consider the possibility of a merger with another company, an acquisition by another company or other Change in Control (as defined herein). The Board of Directors of the Company (the “Board”) recognizes that such consideration can be a distraction to Executive and can cause Executive to consider alternative employment opportunities. The Board has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Executive, notwithstanding the possibility, threat or occurrence of a merger, acquisition or Change in Control of the Company.

**WHEREAS**, the Board believes that it is in the best interests of the Company and its stockholders to provide Executive with an incentive to continue Executive’s employment and to motivate Executive to maximize the value of the Company upon a Change in Control for the benefit of its stockholders.

**WHEREAS**, the Board believes that it is in the best interests of the Company and its stockholders to provide Executive with certain severance benefits upon Executive’s termination of employment other than for Cause (as defined herein), death or Disability (as defined herein), or upon a resignation for Good Reason, in each case, in connection with a Change in Control of the Company, in order to provide Executive with enhanced financial security and incentive to remain with the Company.

**WHEREAS**, certain capitalized terms used in the Agreement are defined in Section 6 below.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Term of Agreement.** This Agreement will terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.
  2. **At-Will Employment.** The Company and Executive acknowledge that Executive’s employment is and will continue to be at-will, as defined under applicable law. If Executive’s employment terminates for any reason, including (without limitation) any termination not set forth in Section 3, Executive will not be entitled to any payments, benefits, damages, awards or compensation other than as specifically provided by this Agreement.
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3. Severance Benefits.

(a) Termination in Connection With a Change in Control. If, in the event that (a) within twelve (12) months following a Change in Control, or (b) at any time prior to a Change in Control if such termination is effected at the written request of any successor to the Company, (x) Executive resigns Executive's employment with the Company (or any parent or subsidiary or successor of the Company) for Good Reason, or (y) the Company (or any parent or subsidiary or successor of the Company) terminates Executive's employment for a reason other than Cause, death or Disability, and, in each case, Executive signs and does not revoke a release of claims agreement and complies with certain non-solicitation restrictions as set forth in Section 4 hereof, then Executive will receive, in addition to Executive's salary payable through the date of termination of employment and any other employee benefits earned and expense reimbursements owed through the date of termination, the following severance pay and benefits from the Company (subject to Section 4(c) hereof):

(i) Severance Payment. A lump sum severance payment equal to (A) Executive's annual base salary, as then in effect on the date of such termination, or, if greater, at the level in effect immediately prior to the Change in Control, *multiplied by* (B) a factor of 0.5, which will be paid in accordance with the Company's regular payroll procedures.

(ii) Accelerated Vesting of Equity Awards. Accelerated vesting as to one-hundred percent (100%) of the then unvested portion of all of Executive's outstanding Company equity awards. If, however, an outstanding Company equity award is to vest and/or the amount of the award to vest is to be determined based on the achievement of performance criteria, then the Company equity award will vest as to hundred percent (100%) of the amount of the Company equity award assuming the performance criteria had been achieved at target levels for the relevant performance period(s).

(iii) Continued Employee Benefits. If Executive elects continuation coverage pursuant to COBRA within the time period prescribed pursuant to COBRA for Executive and Executive's eligible dependents, the Company will reimburse Executive for the premiums necessary to continue group health insurance benefits for Executive and Executive's eligible dependents until the earlier of (A) a period of twelve (12) months from the date of Executive's termination of employment, (B) the date upon which Executive and/or Executive's eligible dependents becomes covered under similar plans or (C) the date upon which Executive ceases to be eligible for coverage under COBRA (such reimbursements, the "COBRA Premiums"). However, if the Company determines in its sole discretion that it cannot pay the COBRA Premiums without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company will in lieu thereof provide to Executive a taxable monthly payment payable on the last day of a given month (except as provided by the following sentence), in an amount equal to the monthly COBRA premium that Executive would be required to pay to continue Executive's group health coverage in effect on the date of Executive's termination of employment (which amount will be based on the premium for the first month of COBRA coverage), which payments will be made regardless of whether Executive elects COBRA continuation coverage and will commence on the month following Executive's termination of employment and will end on the earlier of (x) the date upon which Executive obtains other employment or (y) the date the Company has paid an amount equal to twelve

(12) payments. For the avoidance of doubt, the taxable payments in lieu of COBRA Premiums may be used for any purpose, including, but not limited to continuation coverage under COBRA, and will be subject to all applicable tax withholdings. Notwithstanding anything to the contrary under this Agreement, if at any time the Company determines in its sole discretion that it cannot provide the payments contemplated by the preceding sentence without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), Executive will not receive such payment or any further reimbursements for COBRA premiums.

(b) Other Termination Events. If Executive's employment with the Company terminates with the Company (and any parent or subsidiary or successor of the Company) (i) voluntarily by Executive (except as provided in Section 3(a)), (ii) for Cause, (iii) for death or Disability, or (iv) other than for Cause (except as provided in Section 3(a)) by the Company, then Executive will not be entitled to receive any severance payment or benefits and the sole obligation of the Company shall be to pay to Executive (or Executive's estate), an amount equal to Executive's base salary payable through the date of termination of employment and any other employee benefits earned and owed through the date of termination.

(c) Exclusive Remedy. In the event of a termination of Executive's employment with the Company (or any parent or subsidiary or successor of the Company), the provisions of this Section 3 are intended to be and are exclusive and in lieu of any other rights or remedies to which Executive or the Company may otherwise be entitled, whether at law, tort or contract, in equity, or under this Agreement. Executive will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in this Section 3.

#### 4. Conditions to Receipt of Severance.

(a) Separation Agreement and Release of Claims. The receipt of any severance pursuant to Sections 3 will be subject to Executive signing and not revoking a separation agreement and release of claims in a form reasonably satisfactory to the Company (the "Release") and provided that such Release becomes effective and irrevocable no later than sixty (60) days following the termination date (such deadline, the "Release Deadline"). If the Release does not become effective and irrevocable by the Release Deadline, Executive will forfeit any rights to severance or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the Release becomes effective and irrevocable. Except as required by Section 4(c), any installment payments that would have been made to Executive prior to the Release becoming effective and irrevocable but for the preceding sentence will be paid to Executive on the first regularly scheduled Company payroll date following the date the Release becomes effective and irrevocable, and the remaining payments will be made as provided in the Agreement.

(b) Non-Solicitation. Until the date one (1) year after the termination of Executive's employment with the Company for any reason, Executive agrees not, either directly or indirectly, to solicit any employee of the Company (or any parent or subsidiary of the Company) to leave his or her employment either for Executive or for any other entity or person. By entering in to this Agreement, Executive represents that Executive (i) is familiar with the foregoing covenant not to solicit, and (ii) is fully aware of his obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of these covenants.

(c)

Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no Deferred Payments will be paid or otherwise provided until Executive has a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Executive has a “separation from service” within the meaning of Section 409A.

(ii) Any severance payments or benefits under this Agreement that would be considered Deferred Payments will be paid on, or, in the case of installments, will not commence until, the sixtieth (60th) day following Executive’s separation from service, or, if later, such time as required by Section 4(c)(iii). Except as required by Section 4(c)(iii), any installment payments that would have been made to Executive during the sixty (60) day period immediately following Executive’s separation from service but for the preceding sentence will be paid to Executive on the sixtieth (60th) day following Executive’s separation from service and the remaining payments shall be made as provided in this Agreement. In no event will Executive have discretion to determine the taxable year of payment for any Deferred Payments.

(iii) Notwithstanding anything to the contrary in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A at the time of Executive’s separation from service (other than due to death), then the Deferred Payments that are payable within the first six (6) months following Executive’s separation from service, will, to the extent required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, become payable on the date six (6) months and one (1) day following the date of Executive’s separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following Executive’s separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Executive’s death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iv) Any amount paid under this Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Payments.

(v) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit will not constitute Deferred Payments.

(vi) The foregoing provisions and all compensation and benefits provided for under this Agreement are intended to comply with or be exempt from the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to

the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be exempt or so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Executive under Section 409A. In no event will the Company reimburse Executive for any taxes that may be imposed on Executive as a result of Section 409A.

5. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Executive (i) constitute “parachute payments” within the meaning of Section 280G of the Code and (ii) but for this Section 5, would be subject to the excise tax imposed by Section 4999 of the Code, then Executive’s severance benefits under Section 3 will be either:

(a) delivered in full, or

(b) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Executive on an after-tax basis, of the greatest amount of severance benefits, notwithstanding that all or some portion of such severance benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting “parachute payments” is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: (i) reduction of cash payments; (ii) cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Code Section 280G); (iii) cancellation of accelerated vesting of equity awards; or (iv) reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Executive’s equity awards. If two or more equity awards are granted on the same date, each award will be reduced on a pro-rata basis. In all events, the Executive shall have no right, power or discretion to determine the reduction of payments and/or benefits.

Unless the Company and Executive otherwise agree in writing, any determination required under this Section 5 will be made in writing by a nationally recognized certified professional services firm selected by the Company, the Company’s legal counsel or such other person or entity to which the parties mutually agree (the “Firm”) immediately prior to the Change in Control, whose determination will be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Executive will furnish to the Firm such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5. The Company will bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 5.

6. Definition of Terms. The following terms referred to in this Agreement will have the following meanings:



(a) Cause. “Cause” means: (i) an act of dishonesty made by Executive in connection with Executive’s responsibilities as an employee; (ii) Executive’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude, or a material violation of federal or state law by Executive that the Board reasonably believes has had or will have a detrimental effect on the Company’s reputation or business; (iii) Executive’s gross misconduct; (iv) Executive’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Executive owes an obligation of nondisclosure as a result of Executive’s relationship with the Company; (v) Executive’s willful breach of any obligations under any written agreement or covenant with the Company; or (vi) Executive’s continued failure to perform his employment duties after Executive has received a written demand of performance from the Company that specifically sets forth the factual basis for the Company’s belief that Executive has not substantially performed his duties and has failed to cure such non-performance to the Company’s satisfaction within ten (10) business days after receiving such notice.

(b) Change in Control. “Change in Control” means a “Change in Control” under the Company’s 2008 Equity Incentive Plan, as amended.

(c) COBRA. “COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or any comparable state law.

(d) Code. “Code” means the Internal Revenue Code of 1986, as amended.

(e) Deferred Payment. “Deferred Payment” means any severance pay or benefits to be paid or provided to Executive (or Executive’s estate or beneficiaries) pursuant to this Agreement and any other severance payments or separation benefits, that in each case, when considered together, are considered deferred compensation under Section 409A.

(f) Disability. “Disability” means that Executive has been unable to perform his Company duties as the result of his incapacity due to physical or mental illness, and such inability, at least twenty-six (26) weeks after its commencement, is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive’s legal representative (such Agreement as to acceptability not to be unreasonably withheld). Termination resulting from Disability may only be effected after at least thirty (30) days’ written notice by the Company of its intention to terminate Executive’s employment. In the event that Executive resumes the performance of substantially all of his duties hereunder before the termination of his employment becomes effective, the notice of intent to terminate will automatically be deemed to have been revoked.

(g) Good Reason. “Good Reason” means the occurrence of one or more of the following events effected without Executive’s prior consent, provided that Executive terminates employment with the Company within ninety (90) days following the expiration of the Company’s Cure Period: (i) the assignment to Executive of any duties or the reduction of Executive’s duties, either of which results in a material diminution in Executive’s position or responsibilities with the Company; provided that, it being understood that the continuance of Executive’s duties and responsibilities at the subsidiary or divisional level following a Change in Control, rather than at the parent, combined or surviving company level following such Change in Control shall not be deemed Good Reason within the meaning of this clause (i); (ii) a reduction by the Company in the base salary of Executive by

fifteen percent (15%) or more, unless similar such reductions occur concurrently with and apply to the Company's senior management; (iii) a material change in the geographic location at which Executive must perform services (for purposes of this Agreement, the relocation of Executive to a facility or a location less than twenty-five (25) miles from Executive's then-present location shall not be considered a material change in geographic location); (iv) a material reduction of facilities, perquisites or in the kind or level of employee benefits to which the Executive is entitled, unless similar such reductions occur concurrently and apply to the Company's senior management; or (v) any material breach by the Company of any material provision of this Agreement. Executive will not resign for Good Reason without first providing the Company with written notice of the acts or omissions constituting the grounds for "Good Reason" within ninety (90) days of the initial existence of the grounds for "Good Reason" and a reasonable cure period of thirty (30) days ("Cure Period") following the date of such notice.

(h) Section 409A. For purposes of this Agreement, "Section 409A" means Section 409A of the Code and any final regulations and guidance thereunder and any applicable state law equivalent, as each may be amended or promulgated from time to time.

(i) Section 409A Limit. For purposes of this Agreement, "Section 409A Limit" will mean two (2) times the lesser of: (i) Executive's annualized compensation based upon the annual rate of pay paid to Executive during the Executive's taxable year preceding the Executive's taxable year of Executive's separation from service as determined under Treasury Regulation Section 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Executive's separation from service occurred.

## 7. Successors.

(a) The Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" will include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this Section 7(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive's Successors. The terms of this Agreement and all rights of Executive hereunder will inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

(c) Assumption. It shall be considered a material breach of the Agreement if the Company fails to obtain the assumption of this Agreement by any successor to the Company.

8. Notice.

(a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of Executive, mailed notices will be addressed to Executive at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of its President.

(b) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or as a result of a voluntary resignation will be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing Executive's rights hereunder.

9. Miscellaneous Provisions.

(a) No Duty to Mitigate. Executive will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any such payment be reduced by any earnings that Executive may receive from any other source.

(b) Waiver. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement, together with Executive's offer letter, confidentiality agreement, any equity or equity award agreement and, with respect to compensation awarded to Executive in his capacity as a member of the Board, the Company's director compensation policy, in each case as may be amended from time to time in accordance with the terms thereof, constitutes the entire agreement of the parties hereto and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed

by duly authorized representatives of the parties hereto and which specifically mention this Agreement.

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions). Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) will be commenced or maintained in any state or federal court located in the jurisdiction where Executive resides, and Executive and the Company hereby submit to the jurisdiction and venue of any such court.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.

(g) Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(h) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

