

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): **December 5, 2022**

AVID BIOSERVICES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction
of incorporation)

001-32839
(Commission
File Number)

95-3698422
(IRS Employer
Identification No.)

14191 Myford Road, Tustin, California 92780
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: **(714) 508-6100**

(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425).
- Soliciting material pursuant to Rule 14A-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 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	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	CDMO	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

Adoption of Executive Severance Plan

Effective December 5, 2022, following a review of our existing severance and change in control practices, and based on the recommendation of the Compensation Committee of the Board of Directors following its review of current market practices in consultation with its independent compensation consultant, the Board of Directors approved and adopted an Executive Severance Plan (“Plan”) applicable to all of our executive officers (collectively, “Executives”).

Executives covered by the Plan will generally be eligible to receive severance benefits in the event of a termination by us without Cause or by the Executive for Good Reason. Good Reason is a defined term under the Plan and generally includes a material reduction in the executive’s annual base salary; a relocation of the Executive’s principal workplace by more than 50 miles that increases the Executive’s one way commute based on his or her residence as of immediately prior to the time that the relocation is announced by at least 50 miles; or a material reduction in the Executive’s duties, authority or responsibilities. Cause is a defined term under the Plan and generally includes Executive’s breach in any material respect or failure to fulfill in any material respect the fiduciary duty owed to us; breach in any material respect the terms of Executive’s employment agreement with us, if any, or any other confidentiality or non-solicitation, non-competition agreement between us and Executive; pleads guilty to or is convicted of a felony; is found to have engaged in any reckless, fraudulent, dishonest or grossly negligent misconduct; or violates any material rule, regulation or policy of ours that may be established and made known to our employees from time to time, including without limitation, our employee handbook. Change in Control is also a defined term under the Plan and generally includes the acquisition of stock representing more than 50% of our voting power; a merger, consolidation or similar transaction; or the sale or other disposition of all or substantially all of our assets.

Under the Plan, in the event of a termination by us without Cause or by the Executive for Good Reason three (3) or more months prior to a Change in Control or more than twelve (12) months following a Change in Control, the severance benefits for the Executive shall generally consist of continued payment of base salary following the date of such Executive’s termination of employment, plus reimbursement for the cost of continued group health insurance coverage, for the applicable severance period, which is twelve (12) months for C-level Executives and six (6) months for Executives who are vice presidents.

Under the Plan, in the event of a termination by the Company without Cause or by the Executive for Good Reason, in each case within three (3) months prior to a Change in Control or within twelve (12) months following a Change in Control, the severance benefits for the Executive shall consist of the following:

- payment of a lump sum amount equal to the Executive’s base salary and target bonus, plus reimbursement for the cost of continued group health insurance coverage, for the number of months in the applicable severance period, which is twenty-four (24) months for C-level Executives and twelve (12) months for Executives who are vice presidents; and
- immediate vesting in full of all of the Executive’s outstanding equity awards; provided, however, if vesting is otherwise based on satisfaction of performance objectives, such objectives shall be deemed satisfied at 100% of target for each performance period.

To the extent an Executive is currently a party to an existing agreement with us providing for severance benefits, such Executive has the ability, following the occurrence of an event entitling such Executive to receive severance benefits, to elect whether to receive the benefits under the existing agreement or the Plan.

Receipt of severance benefits under the Plan is conditioned upon the Executive’s execution of a separation agreement containing, among other provisions, a general release of all claims in favor of us.

Payments are designed to comply with Section 409A of the Internal Revenue Code (the “Code”). In addition, if any payment under the Plan would constitute an excess parachute payment within the meaning of Section 280G of the Code, the payments will be reduced to the minimum extent necessary so that no portion of any payment or benefit will constitute an excess parachute payment, provided however, that the reduction will be made only if and to the extent that such reduction would result in an increase in the aggregate payment and benefits to be provided, determined on an after tax basis (taking into account the excise tax imposed pursuant to Section 4999 of the Code, or any successor provision, or any other tax).

We have the right, in our sole discretion, to amend the Plan or to terminate it prospectively, provided that the Plan may not be amended in any manner which is materially adverse to any Executive without that Executive's written consent.

The foregoing summary is qualified in its entirety by reference to the Plan filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements And Exhibits

(d) Exhibits. The following material is filed as an exhibit to this Current Report on Form 8-K:

Exhibit Number	Description
10.1	Executive Severance Plan adopted December 5, 2022.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

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.

AVID BIOSERVICES, INC.

Date: December 9, 2022

By: /s/ Daniel R. Hart
Daniel R. Hart
Chief Financial Officer

EXHIBIT INDEX

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AVID BIOSERVICES, INC.

EXECUTIVE SEVERANCE PLAN

1. Purpose. The purpose of this Avid Bioservices, Inc. Executive Severance Plan (the “**Plan**”) is to encourage employees of Avid Bioservices, Inc. (the “**Company**”) to remain in the employ of the Company and its Affiliates by providing severance protections to such employees in the event that their employment is terminated under the circumstances described in this Plan. Nothing in this Plan shall be construed as creating an express or implied contract of employment and nothing shall alter the “at will” nature of the Participants’ employment with the Company or its Affiliates. This Plan document also serves as the Summary Plan Description for the Plan. All capitalized terms shall have the meanings ascribed to them in the Plan.

2. Definitions. The following terms shall be defined as set forth below:

(a) “**Administrator**” means the Company’s board of directors or such committee of the Company’s board of directors that has been delegated administrative authority with respect to this Plan by the Company’s board of directors.

(b) “**Affiliate**” means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control,” when used with respect to any person or entity, means the power to direct the management and policies of such person or entity, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

(c) “**Cause**” means the Participant (i) breaches in any material respect or fails to fulfill in any material respect fiduciary duty owed to Company; (ii) breaches in any material respect the terms of Participant’s employment agreement with the Company, if any, or any other confidentiality or non-solicitation, non-competition agreement between Company and Participant; (iii) pleads guilty to or is convicted of a felony; (iv) is found to have engaged in any reckless, fraudulent, dishonest or grossly negligent misconduct, (v) fails to perform his or her duties to the Company, provided that Participant fails to cure any such failure within thirty (30) days after written notice from Company of such failure, provided further, however, that such right to cure shall not apply to any repetition of the same failure previously cured hereunder; or (vi) violates any material rule, regulation or policy of the Company that may be established and made known to Company’s employees from time to time, including without limitation, the Company Employee Handbook.

(d) “**CEO Participant**” means the Participant serving as the Company’s Chief Executive Officer as of immediately prior to his or her Separation Date (or the date on which a reduction of his or her title occurred without his or her consent).

(e) “**Change in Control**” or “**CIC**” means the (i) acquisition by any one person, or more than one person acting as a group (as determined in accordance with Treasury Regulation Section 1.409A-3(i)(5)), of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, (ii) consummation of a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such transaction, or (iii) sale of all or substantially all of the consolidated assets of the Company and its subsidiaries, other than a sale of all or substantially all of the consolidated assets of the Company and its subsidiaries to an entity, more than 50% of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the outstanding voting securities of the Company immediately prior to such sale.

(f) “**CIC Period**” means that period commencing on the date that is three (3) months prior to a Change in Control and ending on the date that is (12) months following a Change in Control.

(g) “**CIC Severance Period**” shall mean with respect to a Participant, the period beginning on the Participant’s Separation Date through the date occurring the applicable number of months thereafter as specified on Exhibit A.

(h) “**COBRA**” shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(i) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(j) “**Covered Termination**” shall mean a termination of the Participant’s employment (i) by the Participant for Good Reason or (ii) by the Company or one of its Affiliates (or any successor to the Company or one of its Affiliates) without Cause.

(k) “**Eligible Executives**” shall mean, as of the applicable measurement date, all individuals employed by the Company at the C-Suite level and the Vice President level.

(l) “**Equity Awards**” shall mean a Participant’s outstanding stock options, stock appreciation rights, restricted stock units, performance shares and performance stock units of the Company and any other Company equity compensation awards. For purposes of this “Equity Award” definition, the term “Company” will be interpreted to include any Company Affiliate and any successor to the Company or any Company Affiliate.

(m) “**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

(n) “**Good Reason**” shall mean, with respect to any Participant, any one of the following that occurs without the consent of the Participant: (i) a material reduction in the Participant’s duties, authority, or responsibilities relative to Participant’s duties, authority, or responsibilities as in effect immediately prior to such reduction; *provided, however*, that continued employment following a Change in Control with substantially the same responsibility with respect to the Company’s business and operations will not constitute a material reduction in title, duties, authority, or responsibilities, (ii) a material reduction in the Participant’s annual base salary, other than a reduction that occurs in connection with a Company-wide decrease in executive team compensation, (iii) a relocation of the Participant’s principal workplace by more than 50 miles that increases the Participant’s one way commute based on his or her residence as of immediately prior to the time that the relocation is announced by at least 50 miles, or (iv) the Company’s material breach of any written compensatory agreement as to which both the Company (or a Company Affiliate) and the Participant are parties; *provided, however*, that in each such case, the Participant must provide 30 days’ notice of the Participant’s intent to resign for Good Reason within 90 days after the Participant learns of a potential Good Reason trigger, and the resignation shall be for Good Reason only if the potential Good Reason trigger remains substantially uncured as of the specified date of resignation.

(o) “**Separation Date**” shall mean the date that a Participant’s employment with the Company (or any successor) or any of its Affiliates ends. Notwithstanding the foregoing, a Participant’s employment shall not be deemed to have been terminated solely as a result of (i) the Participant becoming an employee of any direct or indirect successor to the business or assets of the Company, (ii) the Participant being transferred to, between or among Company Affiliates, or (iii) the sale by the Company or one of its Affiliates of the employing Affiliate of the Participant.

(p) “**Severance Period**” shall mean, with respect to a Participant, the period beginning on the Participant’s Separation Date through the date that is the applicable number of months thereafter as specified on Exhibit A.

3. Administration of the Plan.

(a) Administrator. The Plan shall be administered by the Administrator.

(b) Powers of Administrator. Subject to the provisions of Section 19, the Administrator shall have all powers necessary to enable it properly to carry out its duties with respect to the complete control of the administration of the Plan. Not in limitation, but in amplification of the foregoing, the Administrator shall have the power and authority in its discretion to:

(i) construe the Plan to determine all questions that shall arise as to interpretations of the Plan's provisions;

(ii) determine which individuals are and are not Participants, the benefits to which any Participants may be entitled, the eligibility requirements for participation in the Plan and all other matters pertaining to the Plan;

(iii) adopt amendments to the Plan which are deemed necessary or desirable to comply with all applicable laws and regulations, including but not limited to Section 409A of the Code and the guidance thereunder;

(iv) make all determinations it deems advisable for the administration of the Plan, including the authority and ability to delegate administrative functions to a third party;

(v) decide all disputes arising in connection with the Plan;

(vi) in the event of an impending Change in Control, the Administrator may appoint a person (or persons) independent of the third-party effectuating the Change in Control to be the Administrator effective upon the occurrence of a Change in Control (which may be one or more members of the Company's Board of Directors prior to such Change in Control) and such Administrator shall not be removed or modified following a Change in Control, other than at its own initiative (the "**Independent Administrator**"); and

(vii) otherwise supervise the administration of the Plan.

(c) If, due to errors in drafting, any Plan provision does not accurately reflect its intended meaning, as demonstrated by consistent interpretations or other evidence of intent (by the Company or the Administrator), or as determined by the Administrator in its sole and absolute discretion, the provision shall be considered ambiguous and shall be interpreted by the Administrator and all Plan representatives in a fashion consistent with its intent, as determined in the sole and absolute discretion of the Administrator, but in no event shall such interpretation result in a vesting of Plan benefits.

(d) All decisions and interpretations of the Administrator (including the Independent Administrator) shall be final and binding on all persons, including the Company and Participants; *provided* that in the event that no Independent Administrator is appointed, any determination after a Change in Control by the Administrator of whether "Cause" or "Good Reason" exists shall be subject to *de novo* review.

4. Termination Benefits Generally. In the event that a Participant's employment with the Company or one of its Affiliates is terminated for any reason, the Company shall (or shall use commercially reasonable efforts to cause the employing Affiliate to) pay or provide, to the extent applicable, to the Participant any earned but unpaid salary, unpaid expense reimbursements in accordance with the policy of the Company or the employing Affiliate, and accrued but unused vacation to the extent required by applicable law or Company policy, if any, within the time required by law but in no event more than 60 days after the Separation Date and the Participant shall remain entitled to any vested benefits the Participant may have under any employee benefit plan of the Company or its Affiliates in accordance with the terms and conditions of such employee benefit plan (collectively, the "**Accrued Benefits**")

5. Severance Benefits Upon a Covered Termination Not in Connection with a Change in Control.

(a) If a Covered Termination occurs outside of the CIC Period with respect to a Participant, in addition to the Accrued Benefits, subject to his or her execution of a separation agreement in a form satisfactory to the Company containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property, non-disparagement and reaffirmation of the Participant's post-termination restrictive covenants pursuant to any agreement entered into between the Participant and the Company or any Company Affiliate (the "**Separation Agreement**") and the Separation Agreement becoming effective and irrevocable, all within the time period set forth in the Separation Agreement but in no event more than 60 days after the Separation Date, and subject to the Participant complying with the Separation Agreement;

(i) the Company shall (or shall use commercially reasonable efforts to cause the employing Affiliate to) pay the Participant his or her base salary in effect immediately prior to the Covered Termination for the duration of the Participant's Severance Period; and

(ii) provided the Participant timely elects continued coverage under COBRA, the Company shall (or shall use commercially reasonable efforts to cause the employing Affiliate to) reimburse the Participant in an amount equal to the Participant's COBRA premiums sufficient to continue group health insurance coverage for the Participant and any covered dependents, less the employee portion of such coverage in effect as of the Separation Date, until the sooner of (A) the end of the Participant's Severance Period; (B) the date the Participant is no longer eligible for COBRA coverage; or (C) the date the Participant becomes eligible for health insurance coverage through another employer.

(b) Subject to Section 8 and Section 11 below, the cash severance payable pursuant to Section 5(a)(i) shall be paid out in substantially equal installments in accordance with the Company's (or the applicable Company Affiliate's) payroll practices over the Severance Period, commencing within 70 days after the Separation Date following the date on which the Separation Agreement becomes effective and irrevocable; *provided, however*, if Section 409A of the Code applies to such payments and the 60-day release consideration period begins in one calendar year and ends in a second calendar year, the severance shall begin to be paid in the second calendar year by the last day of such 60-day release consideration period; and *provided further*, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Separation Date.

(c) If a Participant's employment is terminated in any circumstance outside of the CIC Period other than as a result of a Covered Termination, the Participant will not be entitled to any compensation or benefits under this Plan other than the Accrued Benefits.

6. Severance Benefits Upon a Covered Termination in Connection with a Change in Control.

(a) If a Covered Termination occurs within the CIC Period with respect to a Participant, in addition to the Accrued Benefits, subject to his or her execution of a Separation Agreement and the Separation Agreement becoming effective and irrevocable, all within the time period set forth in the Separation Agreement but in no event more than 60 days after the Separation Date, and subject to the Participant complying with the Separation Agreement;

(i) the Company shall (or shall use commercially reasonable efforts to cause the employing Affiliate to) pay the Participant a lump sum amount equal to his or her base salary plus target bonus in effect immediately prior to the Covered Termination for the number of months in the CIC Severance Period;

(ii) all of such Participant's outstanding (as of immediately prior to the Covered Termination, but subject to any maximum term) Equity Awards shall vest in full; *provided, however*, if vesting is otherwise based on satisfaction of performance objectives, such objectives shall be deemed satisfied at 100% of target for each performance period (i.e., the current performance period in which the Covered Termination occurred and each subsequent performance period provided in the Equity Award(s)); and

(iii) provided the Participant timely elects continued coverage under COBRA, the Company shall (or shall use commercially reasonable efforts to cause the employing Affiliate to) reimburse the Participant in an amount equal to the Participant's COBRA premiums sufficient to continue group health insurance coverage for the Participant and any covered dependents, less the employee portion of such coverage in effect as of the Separation Date, until the sooner of (A) the end of the Participant's CIC Severance Period; or (B) the date the Participant is no longer eligible for COBRA coverage.

(b) Subject to Section 8 and Section 11 below, the severance benefits payable pursuant to Section 6(a) (i) and (ii) shall be paid within 70 days after the Separation Date following the date on which the Separation Agreement becomes effective and irrevocable; *provided, however*, if Section 409A of the Code applies to such payment and the 60-day period begins in one calendar year and ends in a second calendar year, the severance shall be paid in the second calendar year by the last day of such 60-day period.

(c) If a Participant's employment is terminated in any circumstance during the CIC Period other than as a result of a Covered Termination, the Participant will not be entitled to any compensation or benefits under this Plan other than the Accrued Benefits.

(d) Severance benefits under this Section 6 are not meant to duplicate severance benefits received under Section 5, and will be offset for any prior amounts or benefits previously received by the Participant pursuant to Section 5.

7. Withholding. All payments made pursuant to this Plan shall be subject to any tax or other amounts required to be withheld by the Company or an Affiliate of the Company under applicable law.

8. Section 409A.

(a) The payments under this Plan are intended to comply with or be exempt from Section 409A of the Code and, accordingly, to the maximum extent permitted, this Plan shall be interpreted to be in compliance therewith. Notwithstanding any provision of this Plan to the contrary, in the event that the Administrator determines that any amounts payable hereunder will be subject to Section 409A of the Code, the Administrator may (without any obligation to do so or to indemnify the Participant for failure to do so) (i) adopt such amendments to this Plan or adopt such other policies and procedures (including amendments, policies and procedures with retroactive effect) that it determines to be necessary or appropriate to preserve the intended tax treatment of the benefits provided by this Plan, to preserve the economic benefits of this Plan and/or (ii) take such other actions it determines to be necessary or appropriate to exempt the amounts payable hereunder from Section 409A of the Code or to comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder. Each payment pursuant to this Plan is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

(b) To the extent that any payment or benefit described in this Plan constitutes “non-qualified deferred compensation” under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Participant’s termination of employment, then such payments or benefits shall be payable only upon the Participant’s “separation from service” within the meaning of Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h).

(c) Anything in this Plan to the contrary notwithstanding, if at the time of a Participant’s “separation from service” within the meaning of Section 409A of the Code, the Company determines that the Participant is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Participant becomes entitled to under this Plan would be considered deferred compensation subject to the twenty percent (20%) additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (i) six (6) months and one (1) day after the Participant’s separation from service, or (ii) the Participant’s death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during such period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(d) Any reimbursement provided hereunder shall be provided in accordance with the Company’s standard expense reimbursement procedures, but in no event later than the end of the calendar year following the calendar year in which the applicable expense was incurred.

(e) The Company makes no representation or warranty and shall have no liability to the Participant or any other person if any provisions of this Plan are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section.

9. Limitation on Payments. In the event that the severance and other benefits provided for under this Plan or otherwise payable to a Participant (i) constitute “parachute payments” within the meaning of Section 280G of the Code, and (ii) but for this Section 9, would be subject to the excise tax imposed by Section 4999 of the Code, then the Participant’s benefits under this Plan will be either:

- (a) delivered in full, or

(b) delivered as to such lesser extent which would result in no portion of such 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 the Participant on an after-tax basis of the greatest amount of benefits, notwithstanding that all or some portion of such 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 Section 280G of the Code); (iii) cancellation of accelerated vesting of Equity Awards; and (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 the Participant’s Equity Awards.

Any determination required under this Section 9 will be made in writing by the Company’s independent public accountants immediately prior to a Change in Control, the Company’s legal advisors immediately prior to a Change in Control or such other person or entity to which the parties mutually agree (the “*Firm*”), whose determination will be conclusive and binding upon the Participant and the Company. For purposes of making the calculations required by this Section 9, 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 the Participant will furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section 9. The Company will bear all costs the Firm may incur in connection with any calculations contemplated by this Section 9.

10. Notice and Date of Termination. Any notices, requests, demands, and other communications provided for by this Plan shall be sufficient if in writing and delivered in person or sent by registered or certified mail, postage prepaid, to a Participant at the last known address as set forth in the Company’s records, or to the Company as follows:

Avid Bioservices, Inc.
14191 Myford Road
Tustin, CA 92780
Attention: Administrator
LegalDepartment@avidbio.com

11. No Mitigation; Indebtedness. The Participant is not required to seek other employment or to attempt in any way to reduce any amounts payable to the Participant by the Company under this Plan. Subject to compliance with Section 409A of the Code and other applicable law, if a Participant is indebted to the Company or any of its Affiliates as of his or her Separation Date, the Company and its Affiliates reserve the right to offset any severance payments under the Plan by the amount of such indebtedness.

12. No Required Benefits Funding. When benefits are due pursuant to the Plan, they will be paid on an unfunded basis from the general assets of the Company or the employing Affiliate. The Company is not required to establish a trust to fund the Plan. In all instances, a Participant shall have no greater claim than a general unsecured creditor of the Company or, if employed by an Affiliate of the Company, than of a general unsecured creditor of that employing Affiliate.

13. Successors and Assigns. This Plan shall inure to the benefit of and be binding upon the Company and the Participants, and, to the extent relevant, their respective successors, executors, administrators, heirs and permitted assigns. In the event of a Participant’s death or Disability after a Covered Termination but prior to the completion by the Company of all payments due to him or her under this Plan, the Company shall continue such payments to the Participant’s beneficiary designated in writing to the Company prior to his or her death (or to his or her estate, if the Participant fails to make such designation).

14. Enforceability. If any portion or provision of this Plan shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Plan, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Plan shall be valid and enforceable to the fullest extent permitted by law.

15. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Plan, or the waiver by any party of any breach of this Plan, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

16. Non-Duplication of Benefits and Effect on Other Plans. If a Participant is covered by any other severance or separation pay plan, policy or practice of the Company or has executed an individually negotiated employment contract or agreement with the Company relating to severance benefits (collectively, an “**Other Severance Arrangement**”), in either case with respect to severance benefits payable upon an event that constitutes a Covered Termination (used herein as defined herein), then within seven (7) days following the occurrence of an event constituting a Covered Termination, such Participant shall provide written notice to the Administrator whether he or she elects, to the extent permitted by Section 409A, to receive the benefits under this Plan or the Other Severance Arrangement. Failure to deliver such notice shall be deemed an election by such Participant to receive the benefits under this Plan. Notwithstanding any other provision in the Plan to the contrary, if the Participant is entitled to any cash severance and/or continued health benefits outside of the Plan by operation of applicable law, his or her benefits under the Plan correspondingly will be reduced by the cash severance and/or continued health benefits that the Participant receives by operation of applicable law., in all cases as administered by the Administrator; *provided, however*, that the Participant shall receive at least 10 days’ written notice of any proposed offset (except that offsets set forth in Section 6(d) shall not require any prior notice).

17. No Contract of Employment. Nothing in this Plan shall be construed as giving any Participant any right to be retained in the employ of the Company or any of its Affiliates or shall affect the terms and conditions of a Participant’s employment with the Company or any of its Affiliates.

18. Amendment or Termination of Plan. The Company may amend or terminate this Plan at any time or from time to time, but no such action shall adversely affect the rights of any Participant without the Participant’s written consent (which the Participant may withhold for any or no reason). This provision shall survive any purported amendment or termination of the Plan which would adversely affect the rights of the Participant and to which the Participant has not consented.

19. Governing Law. To the extent not governed by U.S. federal law, this Plan shall be construed under and be governed in all respects by the laws of the State of Delaware, without giving effect to the conflict of laws principles.

20. Obligations of Successors. In addition to any obligations imposed by law or contract upon any successor to the Company, any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) shall expressly assume and agree to perform this Plan in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

21. Effective Date. This Plan shall become effective as of December 5, 2022.

22. Other Plan Information. This Plan is designed to be an “employee welfare benefit plan,” as defined in Section 3(1) of ERISA. This Plan also is designed to be a “top hat” welfare benefit plan under Section 104(a)(3) of ERISA and, if ever considered a “pension plan,” it shall be a top hat pension plan. If this Plan is ever determined to be a non-top hat “pension plan” rather than a “welfare plan,” the Plan shall retroactively terminate as of its adoption and no individual shall have any rights with respect to the Plan.

(a) The Employer Identification Number assigned to the Company (which is the “Plan Sponsor” as that term is used in ERISA) by the Internal Revenue Service is 95-3698422. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 510.

(b) The Plan year is the fiscal year.

(c) The agent for the service of legal process with respect to the Plan is the General Counsel, c/o Avid Bioservices, Inc., 14191 Myford Road, Tustin, CA 92780. The service of legal process may also be made on the Plan by serving the Plan Administrator.

(d) The “Plan Sponsor” of the Plan is Avid Bioservices, Inc. Each of the Plan Sponsor and the Administrator can be reached by contacting the Company in writing 14191 Myford Road, Tustin, CA 92780, Attention: General Counsel and by telephone at (714) 508-6100. The Administrator is the named fiduciary charged with the responsibility for administering the Plan; however, because the plan is a top-hat plan, it has no fiduciary duties with respect to the Plan.

23. ERISA Rights. Participants in this Plan are entitled to certain rights and protections under ERISA if the participant is employed in the United States. Participants in this Plan are entitled to:

(a) Examine, without charge, at the Administrator’s office and at other specified locations, such as work sites, all Plan documents and copies of all documents filed by the Plan with the U.S. Department of Labor;

(b) Obtain copies of all Plan documents and Plan information upon written request to the Administrator. The Administrator may make a reasonable charge for the copies; and

(c) Receive a summary of the Plan’s annual financial report, in the case of a plan which is required to file an annual financial report with the Department of Labor.

(d) In addition to creating rights for Plan participants, ERISA imposes duties upon the people responsible for the operation of the employee benefit plan. The people who operate the Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of each Plan Participant and beneficiary.

No one, including the Company, any employing Affiliate or any other person, may fire a Participant or otherwise discriminate against a Participant in any way to prevent a Participant from obtaining a Plan benefit or exercising his or her rights under ERISA. If a Participant’s claim for a Plan benefit is denied in whole or in part, the Participant must receive a written explanation of the reason for the denial. A Participant has the right to have the Administrator review and reconsider the Participant’s claim.

Under ERISA, there are steps a Participant can take to enforce the above rights. For instance, if a Participant requests materials from the Plan and does not receive them within 30 days, the Participant may file suit in a U.S. federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay the Participant up to \$110, as periodically adjusted, a day until the Participant receives the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If a Participant has a claim for benefits that is denied or ignored, in whole or in part, the Participant may file suit in a U.S. state or U.S. federal court. If it should happen that the Plan fiduciaries misuse the Plan’s money, or if a Participant is discriminated against for asserting his or her rights, the Participant may seek assistance from the U.S. Department of Labor, or the Participant may file suit in a U.S. federal court. The court will decide who should pay court costs and legal fees. If the Participant is successful, the court may order the person that the Participant has sued to pay these costs and fees. If the Participant loses, the court may order the Participant to pay these costs and fees, for example, if it finds that the claim is frivolous.

If a Participant has any questions about the Plan, the Participant should contact the Administrator. If a Participant has any questions, about his or her rights under ERISA, the Participant should contact the nearest area office of the U.S. Employee Benefits Security Administration, U.S. Department of Labor, listed in his or her telephone directory or the Division of Technical Assistance and Inquires, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. A Participant may also obtain certain publications about his or her rights and responsibilities under ERISA by calling the publications hotline of the U.S. Employee Benefits Security Administration.

24. Claims Procedure. If a Participant or his or her beneficiary feels that he or she has not received the Plan benefits that he or she is entitled to receive, the Participant must file a written claim with the Administrator within six months of the Participant's termination date. Any claim filed after such date will be untimely. The Administrator will review the claim and notify the Participant of its decision in writing within 90 days after the Administrator receives the claim, unless the Administrator determines that special circumstances require an extension of time for processing the claim. If the Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the Participant prior to the termination of the initial 90-day period. Any such extension may be for up to 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan representative expects to render the benefit determination.

If the Plan Administrator denies a claim, in whole or in part, the Plan Administrator's notice will set forth:

- The specific reason(s) for the denial;
- The Plan provision(s) on which the denial is based;
- A description of any material or information necessary for the Participant to perfect the claim, and an explanation of why such material or information is necessary; and
- A description of the Plan's claim review procedures and the time limits applicable to such procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

If a Participant or his or her beneficiary feels the denial of the claim is improper, the Participant or his or her duly authorized representative must file a written request for a full review of the claim. A request for review must be filed with the Plan Administrator within 60 days after the Participant receives the notice of denial and should set forth all of the grounds upon which it is based, all facts in support of the request, and any other matters the Participant or his or her representative deems pertinent. The Participant may submit any written comments, documents, records, and other information relating to the claim for benefits that the Participant wishes. The Plan Administrator will give the Participant, or his or her representative, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits. Any such review shall take into account all comments, documents, records, and other information submitted by the Participant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The Plan Administrator will furnish the Participant with a final written decision within 60 days after receipt of the request for review, unless the Plan Administrator determines that special circumstances require an extension of time for processing the claim. If the Plan Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the Participant prior to the termination of the initial 60-day period. Any such extension may be for up to 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

If the Plan Administrator denies a claim on review, in whole or in part, the Plan Administrator's notice will set forth:

- The specific reason(s) for the denial;
- The Plan provision(s) on which the denial is based;
- A statement that the Participant is are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits; and
- A statement of the Participant's right to bring a civil action under Section 502(a) of ERISA.

If the claim is denied on review and the Participant wishes to file a lawsuit, the Participant must do so within six months of the date the claim was denied on review. Any lawsuit filed after such date will be untimely. In any event, the Participant must timely exhaust the Plan's claims procedures set forth above before filing a lawsuit to recover Plan benefits. Notwithstanding anything to the contrary, claims and appeals shall be handled in accordance with the United States Department of Labor's claims procedure regulations, currently set forth in Sections 2560.503-1 et seq. of Title 29 of the Code of Federal Regulations, which are incorporated by reference.

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EXHIBIT A

Severance Period:

CEO Participant: 12 months

Other C-Level Officer Participants: 12 months

Vice President Officer Participants: 6 months

CIC Severance Period:

CEO Participant: 24 months

Other C-Level Officer Participants: 24 months

Vice President Officer Participants: 12 months