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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 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): July 23, 2020**

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**ARCUTIS BIOTHERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

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

**001-39186**  
(Commission File Number)

**81-2974255**  
(IRS Employer Identification Number)

**2945 Townsgate Road, Suite 110**  
**Westlake Village, CA 91361**  
(Address of principal executive offices, including Zip Code)

**Registrant's telephone number, including area code: (805) 418-5006**

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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 Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	ARQT	The Nasdaq Global Select Market

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

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

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

On July 27, 2020, Arcutis Biotherapeutics, Inc. (the “Company” or “Arcutis”) announced the appointment of Patrick Burnett, M.D., Ph.D., FAAD, as the Company’s Chief Medical Officer, effective as of August 1, 2020. Dr. Burnett will succeed Howard Welgus, M.D., FAAD, the Company’s current Chief Medical Officer, who will be retiring from that position and has been appointed to the Board of Directors of the Company (the “Board”) effective as of August 1, 2020 filling the vacancy created by the resignation of Daniel Estes, Ph.D. from the Board.

Prior to joining Arcutis, Dr. Burnett, age 49, was the Chief Medical Officer of Verrica Pharmaceuticals from April 2018 to July 2020, where he oversaw the Phase 3 program and new drug application (“NDA”) submission for VP-102. Prior to Verrica Pharmaceuticals, Dr. Burnett was Associate Vice President of Clinical Development at Sun Pharmaceuticals from September 2015 to March 2018, where he led the biologics license application submission for Ilumya for psoriasis in the United States and Europe, and oversaw their dermatology and rheumatology pipeline. Prior to Sun Pharmaceuticals, Dr. Burnett worked at Novartis from 2010 to August 2015, most recently as Global Program Medical Director, where he was involved in the approval of Cosentyx for psoriasis in the United States. Dr. Burnett is a board certified dermatologist and was a member of the medical faculty at Vanderbilt University Medical Center as an Assistant Professor of Dermatology from 2004 to 2010. Dr. Burnett holds an M.D. and Ph.D. in neuroscience from Johns Hopkins School of Medicine and a B.S. in Biology and Biochemistry from the University of Iowa.

The Company has entered into an offer letter of employment with Dr. Burnett setting forth the terms of his employment. Pursuant to the offer letter, Dr. Burnett is entitled to an annual base salary of \$410,000 and is eligible to earn a discretionary annual performance bonus based on achievement goals determined by the Board, currently 40% of his annual base salary. Dr. Burnett will also be granted a stock option award exercisable for 320,000 shares of the Company’s common stock (the “Option”) pursuant to the Company’s 2020 Equity Incentive Plan, which will have an exercise price equal to the closing price of the Company’s common stock on the Nasdaq Global Select Market on the date of grant and will vest and become exercisable as to 25% of the shares underlying the Option on the one-year anniversary of Dr. Burnett’s commencement of employment and as to 1/48<sup>th</sup> of the shares underlying the Option on a monthly basis thereafter, subject to his continued service through each vesting date. In addition, Dr. Burnett will receive 33,500 performance stock units each of which constitutes the right to receive a share of Arcutis common stock upon vesting (the “PSUs”). The PSUs granted to Dr. Burnett will commence vesting as to 16,750 PSUs upon U.S. Food and Drug Administration (“FDA”) acceptance of a NDA for ARQ-151 in plaque psoriasis and as to 16,750 PSUs upon approval by the FDA of the NDA for ARQ-151 in plaque psoriasis, in each case, subject to Dr. Burnett’s continued employment through each vesting date. Dr. Burnett will also be entitled to reimbursement of certain travel and commuting expenses up to \$5,000 per month.

The Company also entered into a severance and change in control agreement with Dr. Burnett. In the event, Dr. Burnett is terminated without cause or resigns for good reason (each to be defined in the severance and change in control agreement), outside of a period of time that begins three months prior to and ends 18 months following a change in control (as defined in the severance and change in control agreement), then Dr. Burnett will be entitled to receive: (i) continued base salary for 9 months following the date of termination and (ii) payment or reimbursement of continued healthcare coverage for up to 9 months following the date of termination, in each case, subject to his timely execution and delivery of a release of claims against the Company. In the event Dr. Burnett is terminated without cause or resigns for good reason, during a period of time that begins three months prior to and ends 18 months following a change in control, Dr. Burnett will be eligible to receive: (i) continued base salary for 12 months following the date of termination, (ii) a lump sum severance payment equal to his target annual incentive payment; (iii) payment or reimbursement of continued healthcare coverage for up to 12 months following the date of termination; and (iv) the full accelerated vesting of his then-unvested equity awards that otherwise would have vested based on continued service to Arcutis, provided that, any performance awards (as defined in the severance and change in control agreement) may provide for alternative treatment and, absent any such treatment in such grant agreement, the vesting acceleration shall be deemed to have been met based on the achievement of the award at the greater of “at target” or, if determinable, actual performance, in each case, subject to his timely execution and delivery of a release of claims against the Company.

In addition, the Company will enter into an indemnification agreement with Dr. Burnett on the form previously approved by the Board and entered into with the Company's other executive officers.

There is no arrangement or understanding between Dr. Burnett and any other person pursuant to which he was selected as an officer of the Company, and there are no family relationships between Dr. Burnett and any of the Company's directors or executive officers. There are no transactions to which the Company is a party and in which Dr. Burnett has a direct or indirect material interest that would be required to be disclosed under Item 404(a) of Regulation S-K.

The foregoing description of the terms of Dr. Burnett's employment is a summary of the terms and qualified in its entirety by reference to the actual terms of the offer letter and severance and change in control agreement, which are attached hereto as exhibits 10.1 and 10.2, respectively.

On July 26, 2020, Dr. Welgus was appointed to the Board effective as of August 1, 2020 as a Class II director of the Company, with a term of office expiring at the 2022 annual meeting of stockholders. Dr. Welgus fills the vacancy created by Dr. Estes who, on July 23, 2020, notified the Company of his intention to resign from the Board effective August 1, 2020. Following his retirement from the Chief Medical Officer position, Dr. Welgus will also serve in a non-executive strategic advisory role to the Company. As a member of the Board, Dr. Welgus will be eligible to participate in the Company's non-employee director compensation program and, in consideration for his services as a strategic advisor, will receive cash compensation in the amount of five hundred dollars per hour.

Further information regarding Dr. Welgus' age, background, business experience, compensation and any related party transactions appears in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed with the Securities and Exchange Commission on March 19, 2020 under Item 10. "Directors, Executive Officers and Corporate Governance," Item 11. "Executive Compensation," and Item 13. "Certain Relationships and Related Party Transactions and Director Independence," which information is incorporated herein by reference. Dr. Welgus will be eligible to receive compensation for his services as a director pursuant to the Company's non-employee director compensation program.

There is no arrangement or understanding between Dr. Welgus and any other person pursuant to which he was selected as a director of the Company, and there are no family relationships between Dr. Welgus and any of the Company's directors or executive officers.

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

##### (d) Exhibits

10.1+ [Offer Letter, dated July 7, 2020, by and between Arcutis Biotherapeutics, Inc. and Patrick Burnett](#)

10.2+ [Severance & Change in Control Agreement, dated July 28, 2020, by and between Arcutis Biotherapeutics, Inc. and Patrick Burnett](#)

+ Indicates management contract or compensatory plan.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**ARCUTIS BIOTHERAPEUTICS, INC.**

Date: July 29, 2020

By: /s/ John W. Smither

John W. Smither

Chief Financial Officer



July 7, 2020

Patrick Burnett, MD  
16 Sussex Avenue  
Chatham NJ

RE: Employment with Arcutis Biotherapeutics, Inc. Dear Patrick:

This employment letter sets forth the terms confirms your employment as Senior Vice President and Chief Medical Officer with Arcutis Biotherapeutics, Inc., a Delaware Corporation (the "Company" or "Arcutis"). You will report to me, the Company's Chief Executive Officer. If you accept this offer, you will commence employment with the Company on August 1st, 2020 or such other date mutually agreed in writing between you and the Company (the date you actually commence employment with the Company, the "Effective Date").

1. **Compensation.**

(a) **Salary.** In this position, the Company will pay you an annual base salary of \$410,000 per year, payable in accordance with the Company's standard payroll schedule. Your pay will be periodically subject to adjustment pursuant to the Company's policies as in effect from time to time and pro-rated for any partial employment hereunder.

(b) **Bonus.** You will be eligible to receive a cash incentive annual bonus of up to 40% of your base salary, based upon the achievement of both annual and personal goals. Any annual bonus earned will be paid no later than March 15th of the year following the year in which such bonus was earned and will be contingent upon your continued employment through the applicable payment date. Please note that bonus programs, payouts and criterion are subject to change or adjustment as the business needs at the Company may require.

(c) **Equity Awards.** In connection with entering into this employment letter agreement, following the Effective Date, the Company will recommend to the Board of Directors that it grant you:

(i) **Stock Options.** An option to purchase 320,000 shares of the Company's common stock (the "Stock Option") at a per-share exercise price equal to the fair market value of a share of the Company's common stock on the date of grant (the closing price of the Company's common stock as reported on the Nasdaq Global Select Market on the date of grant). The shares subject to the Stock Option will vest and become exercisable at the rate of twenty-five percent (25%) on the first anniversary of the Effective Date, and an additional 2.0833% per month thereafter, so long as you remain employed

2945 TOWNSGATE ROAD • SUITE 110

WESTLAKE VILLAGE • CA • 91361

by the Company through the applicable vesting date.

(ii) **Restricted Stock.** 33,500 Restricted Stock Units of the Company's common stock (the "RSUs"). The RSUs will vest and become exercisable as follows: upon the US FDA's acceptance of the New Drug Application for ARQ-151 for plaque psoriasis, 16,750 RSUs will commence vesting at a rate of 2.0833% per month so long as you remain employed by the Company through the applicable vesting date; and, upon the US FDA's approval of ARQ-151 for plaque psoriasis, 16,750 RSUs will commence vesting at a rate of 2.0833% per month so long as you remain employed by the Company through the applicable vesting date.

The Stock Option and RSUs will otherwise be subject to the terms and conditions of the Company's 2020 Equity Incentive Plan (the "Plan") and a stock option agreement or restricted stock unit agreement to be entered into between you and the Company. You may be eligible to receive such future stock options or restricted stock unit grants as the Board of Directors of the Company shall deem appropriate; however, the grant of such options or restricted stock units by the Company is not a promise of compensation and is not intended to create any obligation on the part of the Company.

(a) **Withholdings.** All forms of compensation paid to you as an employee of the Company shall be less all applicable withholdings.

2. **Employee Benefits.** You will be entitled to participate in employee benefit plans currently and hereafter maintained by the Company of general applicability to other employees of the Company subject to the eligibility requirements of each such benefit plan. The Company, in its sole discretion, may amend, suspend or terminate its employee benefits at any time, with or without notice. In addition, you will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time. We also acknowledge that you have entered, or will enter, into the Severance and Change in Control Agreement with the Company (the "**Severance & Change in Control Agreement**").

3. **Expenses.**

(a) The Company will reimburse Employee for reasonable travel, entertainment or other expenses incurred by Employee in the furtherance of or in connection with the performance of Employee's duties hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

(b) The Company will reimburse Employee for actual expenses, as evidenced by receipts, incurred for travel to and from and housing at the corporate headquarters, up to a maximum of \$5,000 per month. No other reimbursement will be made for these costs.

4. **Confidentiality Agreement.** As an employee of the Company, you will have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, you will need to sign the Company's standard "Employee Invention Assignment and Confidentiality Agreement" as a condition of your employment. We wish to impress upon you that we do not want you to, and we hereby direct you not to, bring with you any confidential or proprietary material of any former employer or to violate any other obligations you may have to any former employer. During the period that you render services to the Company, you agree to not engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or

organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company.

5. **No Conflicting Obligations.** You understand and agree that by signing this letter agreement, you represent to the Company that your performance will not breach any other agreement to which you are a party, including, without limitation, any agreement currently in place between your current or past employers, and that you have not, and will not during the term of your employment with the Company, enter into any oral or written agreement in conflict with any of the provisions of this letter or the Company's policies. You are not to bring with you to the Company, or use or disclose to any person associated with the Company, any confidential or proprietary information belonging to any former employer or other person or entity with respect to which you owe an obligation of confidentiality under any agreement or otherwise. The Company does not need and will not use such information and we will assist you in any way possible to preserve and protect the confidentiality of proprietary information belonging to third parties. Also, we expect you to abide by any obligations to refrain from soliciting any person employed by or otherwise associated with any former employer and suggest that you refrain from having any contact with such persons until such time as any non-solicitation obligation expires.

6. **Outside Activities.** While you render services to the Company, you agree that you will not engage in any other employment, consulting or other business activity without the written consent of the Company. In addition, while you render services to the Company, you will not assist any person or entity in competing with the Company, in preparing to compete with the Company or in hiring any employees or consultants of the Company. Notwithstanding the above, the Company acknowledges that you intend to continue to see private dermatology patients for between one half and one day a week.

7. **General Obligations.** As an employee, you will be expected to adhere to the Company's standards of professionalism, loyalty, integrity, honesty, reliability and respect for all. You will also be expected to comply with the Company's policies and procedures. The Company is an equal opportunity employer.

8. **At-Will Employment.** Employment with the Company is for no specific period of time. Your employment with the Company will be on an "at will" basis, meaning that either you or the Company may terminate your employment at any time for any reason or no reason. The Company also reserves the right to modify or amend the terms of your employment at any time for any reason. Any contrary representations which may have been made to you are superseded by this letter agreement. Further, your participation in ant stock option or benefit program is not to be regarded as assuring you of continuing employment for any particular period of time. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and the Company's Chief Executive Officer.

9. **Authorization to Work.** Please note that because of employer regulations adopted in the Immigration Reform and Control Act of 1986, within three (3) business days of starting your new position you will need to present documentation demonstrating that you have authorization to work in the United States.

10. **Arbitration and Class Action Waiver.** You and the Company agree to submit to mandatory binding arbitration any and all claims arising out of or related to your employment with the Company and the termination thereof, including, but not limited to, claims for unpaid wages, wrongful termination, torts, stock or stock options or other ownership interest in the Company, and/or discrimination (including harassment) based upon any federal, state or local ordinance, statute, regulation or constitutional provision except that each party may, at its, his or her option, seek injunctive relief in court related to the improper

use, disclosure or misappropriation of a party's private, proprietary, confidential or trade secret information (collectively, "**Arbitrable Claims**"). Further, to the fullest extent permitted by law, you and the Company agree that no class or collective actions can be asserted in arbitration or otherwise. All claims, whether in arbitration or otherwise, must be brought solely in your or the Company's individual capacity, and not as a plaintiff or class member in any purported class or collective proceeding. Nothing in this Arbitration and Class Action Waiver section, however, restricts your right, if any, to file in court a representative action under California Labor Code Sections 2698, et seq.

SUBJECT TO THE ABOVE PROVISIO, THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS. THE PARTIES FURTHER WAIVE ANY RIGHTS THEY MAY HAVE TO PURSUE OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION PERTAINING TO ANY ARBITRABLE CLAIMS BETWEEN YOU AND THE COMPANY.

This Agreement does not restrict your right to file administrative claims you may bring before any government agency where, as a matter of law, the parties may not restrict the employee's ability to file such claims (including, but not limited to, the National Labor Relations Board, the Equal Employment Opportunity Commission and the Department of Labor). However, the parties agree that, to the fullest extent permitted by law, arbitration shall be the exclusive remedy for the subject matter of such administrative claims. The arbitration shall be conducted in San Francisco County, California through JAMS before a single neutral arbitrator, in accordance with the JAMS employment arbitration rules then in effect. The JAMS rules may be found and reviewed at <http://www.jamsadr.com/rules-employment-arbitration>. If you are unable to access these rules, please let me know and I will provide you with a hardcopy. The arbitrator shall issue a written decision that contains the essential findings and conclusions on which the decision is based. The arbitration provisions of this Agreement shall be governed by and enforceable pursuant to the Federal Arbitration Act. In all other respects for provisions not governed by the Federal Arbitration Act, this employment letter agreement shall be construed in accordance with the laws of the State of California, without reference to conflicts of law principles.

11. **Entire Agreement.** This employment letter agreement, once accepted, together with the Severance & Change in Control Agreement and the Employee Invention Assignment and Confidentiality Agreement, constitute the entire agreement between you and the Company with respect to the subject matter hereof and supersedes all prior offers, negotiations and agreements, if any, whether written or oral, relating to such subject matter. You acknowledge that neither the Company nor its agents have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this agreement for the purpose of inducing you to execute the agreement, and you acknowledge that you have executed this agreement in reliance only upon such promises, representations and warranties as are contained herein.

12. **Acceptance.** This offer will remain open until Friday, July 10th, 2020. If you decide to accept our offer, and I hope you will, please sign the enclosed copy of this letter in the space indicated and return it to me. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this offer letter and the attached documents, if any. Should you have anything else that you wish to discuss, please do not hesitate to call me.

We look forward to the opportunity to welcome you to the Company.

[SIGNATURE PAGE FOLLOWS]

Patrick Burnett Offer  
24 JUN 20



This letter agreement supersedes and replaces any prior understandings or agreements, whether oral, written or implied, between you and the Company regarding the matters described in this letter. This letter will be governed by the laws of California, without regard to its conflict of laws provisions.

Very truly yours,

/s/ Todd Franklin Watanabe

ARCUTIS BIOTHERAPEUTICS, INC.

By: Todd Franklin Watanabe

Title: Chief Executive Officer

ACCEPTED AND AGREED:

Patrick Burnett, MD

Signature /s/ Patrick Burnett, MD

Date 9-July-2020

[Signature Page to Employment Letter Agreement]

Patrick Burnett Offer  
24 JUN 20

## ARCUTIS BIOTHERAPEUTICS, INC.

## SEVERANCE &amp; CHANGE IN CONTROL AGREEMENT

This Severance & Change in Control Agreement (the “**Agreement**”), is entered into by and between Patrick Burnett (the “**Executive**”) and Arcutis Biotherapeutics, Inc., a Delaware (the “**Company**”), and is effective as of the date that this Agreement is signed (the “**Effective Date**”).

1. **TERM OF AGREEMENT.**

This Agreement shall terminate on the earlier of (i) the date Executive’s employment with the Company terminates for a reason other than a Qualifying Termination, or (ii) the date the Company has met all of its obligations under this Agreement following a Qualifying Termination (the “**Expiration Date**”).

2. **SEVERANCE BENEFIT.**

Executive’s receipt of any payments or benefits under Section 2 is subject to Executive’s delivery to the Company of a general release (in a form prescribed by the Company) of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company (the “**Release**”), and satisfaction of all conditions to make the Release effective, within sixty (60) days (or such shorter period required by the Company) (the “**Release Period**”) following Executive’s Qualifying Termination, notwithstanding any other provision of this Agreement. In no event will any payment or benefits under Section 2 be paid or provided until the Release becomes effective and irrevocable.

(a) **Qualifying Termination Outside of a Change in Control Period.** If the Executive is subject to a Qualifying Termination outside of a Change in Control Period, the Executive shall be entitled to the following:

(i) **Severance Payments.** The Company shall pay Executive nine (9) months of Executive’s base salary at the rate in effect immediately prior to the Qualifying Termination (the “**Severance**”). The Severance shall be paid out in substantially equal installments in accordance with the Company’s payroll practice over the total number of months of Severance commencing the first payroll period more than 60 days after the Qualifying Termination, subject to the Release becoming effective prior to such time (with the first payment to include all amounts that otherwise would have been paid through such date). Solely for purposes of Section 409A of the Code, each installment payment is considered a separate payment.

(ii) **Health Care Benefit.** If the Executive elects to continue his or her health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”) following the termination of Executive’s employment, then the Company shall pay, or reimburse, the Executive’s monthly premium for Executive and his or her covered dependents under COBRA until the earliest of (A) nine (9) months, (B) the date when the Executive receives similar coverage with a new employer or (C) the expiration of the Executive’s continuation coverage under COBRA; provided that on the first date such amounts become payable as described above, the Company shall pay to Executive a lump sum cash payment equal to the monthly premiums that would have been paid on behalf of Executive had such payments commenced on the date of the Qualifying Termination. Notwithstanding the foregoing, the Company may elect that, in lieu of paying or reimbursing the premiums, the Company shall instead

provide Executive with a monthly cash payment equal to the amount the Company would have otherwise paid pursuant to this Section 2(a)(ii), less applicable tax withholdings.

(b) **Qualifying Termination During a Change in Control Period.** If Executive is subject to a Qualifying Termination during a Change in Control Period, Executive shall be entitled to the following:

(i) **Severance Payments.** The Company shall pay Executive twelve (12) months of Executive's base salary at the rate in effect immediately prior to the Qualifying Termination or the Change in Control, whichever is greater, and 1 times Executive's annual bonus for the then-current fiscal year based on 100% of target performance of any applicable performance objectives (together, the "**CIC Severance**"). The CIC Severance shall be paid out in substantially equal installments in accordance with the Company's payroll practice over the total number of months of CIC Severance commencing the first payroll period more than 60 days after the Qualifying Termination, subject to the Release becoming effective prior to such time (with the first payment to include all amounts that otherwise would have been paid through such date). Solely for purposes of Section 409A of the Code, each installment payment is considered a separate payment.

(ii) **Health Care Benefit.** If the Executive elects to continue his or her health insurance coverage under COBRA following the termination of Executive's employment, then the Company shall pay, or reimburse, the Executive's monthly premium for Executive and his or her covered dependents under COBRA until the earliest of twelve (12) months, (B) the date when the Executive receives similar coverage with a new employer or (C) the expiration of the Executive's continuation coverage under COBRA; provided that on the first date such amounts become payable as described above, the Company shall pay to Executive a lump sum cash payment equal to the monthly premiums that would have been paid on behalf of Executive had such payments commenced on the date of the Qualifying Termination. Notwithstanding the foregoing, the Company may elect that, in lieu of paying or reimbursing the premiums, the Company shall instead provide Executive with a monthly cash payment equal to the amount the Company would have otherwise paid pursuant to this Section 2(b)(ii), less applicable tax withholdings.

(iii) **Equity.** Each of Executive's then-outstanding unvested Equity Awards, other than Performance Awards (defined below), shall accelerate and become vested and exercisable or settleable with respect to 100% of the then-unvested shares subject to the Equity Awards. With respect to awards that would otherwise vest only upon satisfaction of performance criteria ("**Performance Awards**"), the grant agreement for the Performance Award may provide for alternative treatment upon a Qualifying Termination and, absent any such treatment in such grant agreement, the vesting acceleration provided for herein shall be deemed to have been met based on the achievement of the Performance Award at the greater of "at target" or, if determinable, actual performance. The accelerated vesting described above shall be effective as of the later of (x) the fifth (5th) business day following expiration of the Release Period, and (y) the closing of the Change in Control; provided, that if (1) the Company terminates Executive's employment for any reason other than Cause before a Change in Control, or (2) Executive voluntarily resigns his or her employment for Good Reason before a Change in Control, then any unvested Equity Awards that would otherwise forfeit upon such termination shall remain outstanding and eligible to vest for three (3) months following such termination (provided that in no event will the Equity Awards remain outstanding beyond the expiration of the Equity Award's maximum term) to permit the acceleration described above. For the avoidance of doubt, upon such termination before a Change in Control, any unvested Equity Awards will not vest in the ordinary course and will only be eligible to vest in the event that a Change in Control is completed within such three (3) month period. In

the event that a Change in Control is not completed during such three (3) month period, any unvested portion of the Equity Awards will be automatically and permanently forfeited without having vested effective three (3) months following such termination.

(iv) **Non-Assumption of Equity Awards.** Notwithstanding anything to the contrary, if, in connection with a Change in Control, the successor or acquiring corporation (if any) of the Company refuses to assume, convert, replace, or substitute Executive's unvested Equity Awards, then notwithstanding any other provision in this Agreement, or any Equity Award Agreement to the contrary, each of Executive's then-outstanding and unvested Equity Awards, other than Performance Awards, that are not assumed, converted, replaced, or substituted in such Change in Control shall accelerate and become vested and exercisable as to 100% of the then-unvested shares subject to the Equity Awards effective immediately prior to the Change in Control and terminate to the extent not exercised (as applicable) upon the Change in Control. With respect to Performance Awards, the vesting for such Performance Awards will accelerate as set forth in the terms of the applicable performance-based Equity Award agreement; and, absent any such treatment in such grant agreement, the vesting acceleration provided for herein shall be deemed to have been met based on the achievement of the Performance Award at the greater of "at target" or, if determinable, actual performance.

(c) **Accrued Compensation and Benefits.** Notwithstanding anything to the contrary in Section 2 above, in connection with any termination of employment, the Company shall pay Executive's earned but unpaid base salary and other vested but unpaid cash entitlements, including the amount of any bonus earned and payable from a prior year which remains unpaid by the Company as of the date of the termination of employment determined in accordance with customary practice or as required by applicable law and unreimbursed documented business expenses incurred by Executive through and including the date of termination (collectively "**Accrued Compensation and Expenses**"). Any Accrued Compensation and Expenses to which Executive is entitled shall be paid to Executive in cash as soon as administratively practicable, in accordance with the Company's standard payroll schedule and procedures, after the termination, and, in any event, no later than two and one-half (2-1/2) months after the end of the taxable year of Executive in which the termination occurs or at such earlier time as may be required by applicable law.

3. **COMPANY POLICIES.** Executive will be bound by and comply fully with the Company's standard Proprietary Information, Inventions Assignment and Noncompete Agreement (a form of which was been provided to Executive), insider trading policy, code of conduct, and any other policies and programs adopted by the Company regulating the behavior of its employees, as such policies and programs may be amended from time to time to the extent the same are not inconsistent with this Agreement.

#### 4. **DEFINITIONS.**

(a) **"Board"** means the Company's Board of Directors.

(b) **"Cause"** means the occurrence of any of the following events, as determined by the Company and/or the Board in its and/or their sole and absolute discretion: (i) Executive engaging in any act of fraud, embezzlement or material act of dishonesty or misrepresentation with respect to the Company; (ii) Executive's violation of any federal or state law or regulation applicable to the business of the Company or its affiliates; (iii) Executive's material breach of any confidentiality agreement or assignment agreement between Executive and the Company (or any affiliate of the Company); (iv) Executive's conviction of or plea of nolo contendere to a felony involving moral turpitude; (v)

Executive's unauthorized use or disclosure of confidential information or trade secrets of the Company (or any parent, subsidiary or affiliate); (vi) any intentional misconduct by Executive adversely affecting the business or affairs of the Company (or any parent, subsidiary or affiliate) in any material manner; (vii) Executive has committed any breach of fiduciary or statutory duty that results in (or would reasonably be expected to result in) material harm to the Company; (viii) Executive has breached any material term or condition of this Agreement or any other material agreement with or material policy of the Company; (ix) Executive's willful and repeated failure to perform in any material respect Executive's duties hereunder after fifteen (15) days' notice and an opportunity to cure such failure and a reasonable opportunity to present to the Board Executive's position regarding any dispute relating to the existence of such failure (other than on account of disability); or (x) Executive's failure to attempt in good faith to implement a clear and reasonable directive from the CEO (or the Board).

*provided; however* that the action or conduct described in clause (viii) above will constitute "Cause" only if such action or conduct continues after the Company has provided Executive with written notice thereof and ten (10) business days to cure the same if such action or conduct is curable. The determination as to the existence of grounds for Executive's termination for Cause shall be made in good faith by the Company or the Board and shall be final and binding on Executive.

(c) "**Code**" means the Internal Revenue Code of 1986, as amended.

(d) "**Change in Control**" means the occurrence of any of the following events: (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company's then outstanding voting securities; (ii) the consummation of the sale or disposition by the Company of all or substantially all of the Company's assets; or (iii) the consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

(e) "**Change in Control Period**" means the period (i) within eighteen (18) months following a Change in Control, or (ii) within three (3) months preceding a Change in Control.

(f) "**Equity Awards**" means all awards for the Company common stock granted to Executive, including but not limited to options, stock bonus awards, restricted stock, restricted stock units, and stock appreciation rights.

(g) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(h) "**Good Reason**" means the occurrence of any of the following events or conditions, without Executive's express written consent: (i) a material diminution of Executive's base salary or target annual performance bonus; (ii) a material diminution in Executive's authority, duties or responsibilities; or (iii) any requirement by the Company that Executive's principal place of employment be relocated to a location more than fifty (50) miles from Executive's principal place of employment prior to such change, which relocation materially increases Executive's commuting distance.

A termination of employment for Good Reason shall be effectuated by giving the Company written notice (“**Notice of Termination for Good Reason**”), setting forth in reasonable detail, the specific conduct of the Company that constitutes Good Reason and the specific provision(s) of this Notice on which Executive is relying. Notice of Termination for Good Reason must be provided within ninety (90) days of the condition first arising. The Company will have an opportunity to cure such conduct constituting Good Reason within thirty (30) days of receiving such Notice of Termination for Good Reason. If the Company does not cure such conduct within such thirty (30) day period, a termination of employment for Good Reason shall be effective on the thirty-first (31st) day following the date when the Notice of Termination for Good Reason is received by the Company.

(i) “**Qualifying Termination**” means a Separation resulting from (x) the Company terminating Executive’s employment for any reason other than Cause or (y) Executive voluntarily resigning his or her employment for Good Reason.

(j) “Separation” means a “separation from service,” as defined in the regulations under Section 409A of the Code, if required by Section 409A of the Code.

## 5. **SUCCESSORS.**

(a) **Company’s Successors.** The Company shall require any successor (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 to assume this Agreement and to agree expressly to perform this Agreement in the same manner and to the same extent as the Company would be required to perform it in the absence of a succession. For all purposes under this Agreement, the term “**Company**” shall include any successor to the Company’s business and/or assets or which becomes bound by this Agreement by operation of law.

(b) **Executive’s Successors.** This Agreement and all rights of Executive hereunder shall inure to the benefit of, and be enforceable by, Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

## 6. **GOLDEN PARACHUTE TAXES.**

(a) **Best After-Tax Result.** In the event that any payment or benefit received or to be received by Executive pursuant to this Agreement or otherwise (“**Payments**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax (“**Excise Tax**”), then, subject to the provisions of Section 6(b) hereof, such Payments shall be either (x) provided in full pursuant to the terms of this Agreement or any other applicable agreement, or (y) provided as to such lesser extent which would result in no portion of such Payments being subject to the Excise Tax (“**Reduced Amount**”), whichever of the foregoing amounts, taking into account the applicable federal, state, local, and foreign income, employment and other taxes and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive (“**Independent Tax Counsel**”), whose determination shall be conclusive and binding upon Executive and the Company for all purposes.

For purposes of making the calculations required under this Section 6(a), Independent Tax Counsel 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; provided that Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section

6(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within thirty (30) days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "IRS") determines that any Payment is subject to the Excise Tax, then Section 6(b) hereof shall apply, and the enforcement of Section 6(b) shall be the exclusive remedy to the Company.

(b) **Adjustments.** If, notwithstanding any reduction described in Section 6(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within one hundred twenty (120) days after a final IRS determination, an amount of such payments or benefits equal to the "**Repayment Amount.**" The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero if a Repayment Amount of more than zero would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 6(b), Executive shall pay the Excise Tax.

## 7. MISCELLANEOUS PROVISIONS.

(a) **Section 409A.** To the extent (i) any payments to which Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with Executive's termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code, and (ii) Executive is deemed at the time of such termination of employment to be a "specified" employee under Section 409A of the Code, then such payment or payments shall not be made or commence until the earlier of (x) the expiration of the six (6)-month period measured from the date of Executive's "separation from service" (as such term is at the time defined in regulations under Section 409A of the Code) with the Company; or (y) the date of Executive's death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Executive, including (without limitation) the additional twenty percent (20%) tax for which Executive would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in

installments) in the absence of this paragraph shall be paid to Executive or Executive's beneficiary in one lump sum (without interest).

Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement (or otherwise referenced herein) is determined to be subject to (and not exempt from) Section 409A of the Code, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement or in kind benefits to be provided in any other calendar year, in no event shall any expenses be reimbursed after the last day of the calendar year following the calendar year in which Executive incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit.

To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that all payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Agreement (or referenced in this Agreement) are intended to constitute separate payments for purposes of Section 1.409A 2(b)(2) of the regulations under Section 409A.

(b) **Other Severance and Acceleration Arrangements.** Except as otherwise specified herein, this Agreement represents the entire agreement between Executive and the Company with respect to any and all severance arrangements, vesting acceleration arrangements, and post-termination stock option exercise period arrangements, and supersedes and replaces any and all prior verbal or written discussions, negotiations, and/or agreements between Executive and the Company relating to the subject matter hereof as may be set forth under, but not limited to, any and all prior agreements governing any Equity Award, any change in control and severance agreements, employment agreement, offer letter, or programs and plans which were previously offered by the Company to Executive, and Executive hereby waives Executive's rights to any and all such other severance arrangements, vesting acceleration arrangements, and post-termination stock option exercise period arrangements, as applicable.

(c) **Dispute Resolution.** To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Executive and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in Los Angeles County, CA, and conducted by the American Arbitration Association under its then-existing employment rules and procedures. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees.

(d) **Notice.** Notices and all other communications contemplated by this Agreement shall be in writing and shall 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 or deposited with an overnight courier, with shipping charges prepaid. In the case of Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the



Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(e) **Amendment; Waiver.** This Agreement may not be amended or waived except by a writing signed by Executive and by a duly authorized representative of the Company other than Executive. No provision of this Agreement shall be modified, waived, superseded 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) and, to the extent it supersedes this Agreement, that this Agreement is referred to by date. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(f) **Withholding Taxes.** All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

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

(h) **No Retention Rights.** Nothing in this Agreement shall confer upon Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary of the Company or of Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, with or without Cause.

(i) **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (other than their choice-of-law provisions).

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, each of the parties has executed this **Change in Control Severance Agreement**, as of the day and year first above written.

EXECUTIVE

ARCUTIS BIOTHERAPEUTICS, INC.

/s/ Patrick Burnett

\_\_\_\_\_  
Patrick Burnett, MD

/s/ Todd Franklin Watanabe

\_\_\_\_\_  
By: Todd Franklin Watanabe

Title: Chief Executive Officer

**[SIGNATURE PAGE TO THE CHANGE IN CONTROL SEVERANCE AGREEMENT]**