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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): November 2, 2023**

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**Advanced Energy Industries, Inc.**

(Exact name of registrant as specified in its charter)

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<b>Delaware</b> (State or other jurisdiction of incorporation)	<b>000-26966</b> (Commission File Number)	<b>84-0846841</b> (IRS Employer Identification No.)
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**1595 Wynkoop Street, Suite 800, Denver, Colorado**  
(Address of principal executive offices)

**80202**  
(Zip Code)

**(970) 407-6626**  
(Registrant's telephone number, including area code)

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

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value	AEIS	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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2). 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.**

***Amendment and Restatement of the Company's 2023 Omnibus Incentive Plan***

On November 2, 2023, the Board of Directors (the "Board") of Advanced Energy Industries, Inc. (the "Company"), upon the recommendation of the Compensation Committee of the Board (the "Committee"), approved the amendment and restatement (the "A&R Omnibus Plan") of the Company's 2023 Omnibus Incentive Plan (the "2023 Omnibus Plan") to provide for partial acceleration of vesting in the event of a participant's death. The material terms of the A&R Omnibus Plan are substantially the same as those in the 2023 Omnibus Incentive Plan, which was approved by stockholders at the Company's 2023 annual meeting of stockholders on April 27, 2023. A summary of such terms can be found in the Company's definitive proxy statement on Schedule 14A filed with the Securities and Exchange Commission on March 13, 2023 (the "2023 Proxy Statement"), under the caption "Proposal No. 5 – Approval of Advanced Energy's 2023 Omnibus Incentive Plan", which is incorporated herein by reference.

***Amendment of Executive Change in Control and General Severance Agreements***

Additionally, on November 2, 2023, the Board, upon the recommendation of the Committee, approved amendments to the Company's form of Executive Change in Control and General Severance Agreement (the "Amended Severance Agreement") to add provisions for Singapore law to include in the agreement for the Company's Chief Operations Officer and make other changes. The Company intends to enter into the Amended Severance Agreement with each of the Company's named executive officers (Mr. Steve Kelley, President and Chief Executive Officer (the "CEO"), Mr. Paul Oldham, Executive Vice President and Chief Financial Officer, Mr. Eduardo Bernal Acevedo, Executive Vice President and Chief Operations Officer, Mr. John Donaghey, Executive Vice President and Global Head of Sales, and Ms. Elizabeth Vonne, Executive Vice President, General Counsel and Corporate Secretary).

Under the Amended Severance Agreement, if an individual's employment is terminated without cause or for good reason within eighteen (18) months following or within the ninety (90) days preceding a change in control, the individual shall be entitled to receive:

- a) all then accrued compensation for the year in which the termination is effected;
  - b) a lump sum payment in cash equal to (i) two times (2x) the sum of the individual's then current annual base salary and target bonus for the year in which termination is effected, in the case of the CEO, or (ii) one and a half times (1.5x) the sum of the individual's then current annual base salary and target bonus for the year in which the termination is effected, in the case of named executive officers, other than the CEO;
  - c) the continuation of medical benefits for up to eighteen (18) months following the date of termination;
  - d) a lump sum payment equal to the employer contributions that would have been made to the Company's retirement plans on the individual's behalf, if the individual had continued to be employed for eighteen (18) months following the date of termination;
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- e) reimbursement for outplacement services, up to (i) \$25,000 for the CEO or (ii) \$15,000 for named executive officers, other than the CEO; and
- f) full vesting of all RSUs and performance stock units (“PSUs”) then held by the terminated individual (at an assumed maximum performance attainment) and full vesting and right to exercise all stock options then held by the terminated individual.

Under the Amended Severance Agreement, if an individual’s employment is terminated without cause or for good reason (and not in connection with a change in control), then the individual shall be entitled to:

- a) all then accrued compensation for the year in which the termination is effected;
- b) a lump sum payment in cash equal to (i) one and a half times (1.5x) the individual’s then current annual base salary plus a pro-rata portion of the individual’s target bonus for the year in which termination is effected, in the case of the CEO or (ii) the individual’s then current annual base salary plus a pro-rata portion of the individual’s target bonus for the year in which termination is effected, in the case of named executive officers, other than the CEO;
- c) continuation of medical benefits for up to twelve (12) months following the date of termination;
- d) a lump sum payment equal to the employer contributions that would have been made to the Company’s retirement plans on the individual’s behalf, if the individual had continued to be employed for twelve (12) months following the date of termination; and
- e) reimbursement for outplacement services, up to \$15,000.

The payment of compensation, benefits, or other payments under the Amended Severance Agreement is conditioned upon the individual’s execution of a full release of claims against the Company.

The above descriptions of the A&R Omnibus Plan and Amended Severance Agreement do not purport to be complete and are qualified in their entirety by reference to the complete texts of the A&R Omnibus Plan and Amended Severance Agreement, copies of which are filed as Exhibit 10.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

#### ***Appointment of Bernard Colpitts, Jr. as Chief Accounting Officer***

On November 2, 2023, the Board appointed Mr. Bernard Colpitts, Jr. to the position of Senior Vice President, Chief Accounting Officer, effective as of Mr. Colpitts’ first day of employment with the Company on November 8, 2023 (the “Effective Date”). Mr. Colpitts will serve as the Company’s principal accounting officer.

Mr. Paul Oldham, the Company’s Executive Vice President and Chief Financial Officer, who has served as the Company’s principal financial officer and principal accounting officer since May 2018, notified the Board on November 2, 2023 of his intention to transfer his role as principal accounting officer to the Chief Accounting Officer as of the Effective Date. Mr. Oldham will continue to serve as principal financial officer.

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Mr. Colpitts was previously Chief Accounting Officer of ON Semiconductor Corporation (“ON Semi”), a supplier of semiconductor-based solutions, from May 2020 to November 2023. He also served as Chief Accounting Officer and Vice President, Finance of Semiconductor Components Industries, LLC, ON Semi’s wholly-owned subsidiary (“SCI”). From October 2019 to May 2020, Mr. Colpitts served as Senior Vice President and Chief Accounting Officer at GameStop Corp., a video game retailer. Prior to Gamestop, Mr. Colpitts held various positions with ON Semi and SCI, including Vice President, Finance and Treasury of SCI and Chief Accounting Officer of ON Semi and SCI from 2017 to 2019 and Corporate Controller of SCI from 2013 to 2017. Mr. Colpitts is a certified public accountant.

Mr. Colpitts has no family relationships with any director, executive officer, or person nominated or chosen by the Company to become a director or executive officer of the Company. Mr. Colpitts is not a party to any transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

In connection with his appointment, Mr. Colpitts will receive a base salary and be eligible to participate in the Company’s short- and long-term incentive plans (which are described in the 2023 Proxy Statement), and other plans and agreements at levels commensurate with other similarly situated persons at the Company. In addition, Mr. Colpitts will receive a \$100,000 cash sign-on bonus and a new hire grant of RSUs under the A&R Omnibus Plan, with an initial equity value of \$450,000. The RSUs will vest annually in three equal installments, beginning on the first anniversary of the grant date, subject to continued service through each vesting date.

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

(d) Exhibits

##### **Exhibit**

##### **Number   Description**

10.1      [Amended and Restated 2023 Omnibus Incentive Plan](#)

10.2      [Form of Executive Change in Control and General Severance Agreement](#)

104      The cover page from Advanced Energy Industries, Inc. Current Report on Form 8-K, formatted in Inline XBRL.

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## 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.

ADVANCED ENERGY INDUSTRIES, INC.

/s/ Elizabeth K. Vonne

Elizabeth K. Vonne

Executive Vice President, General Counsel & Corporate  
Secretary

Date: November 8, 2023

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**ADVANCED ENERGY INDUSTRIES, INC.**  
**Amended and Restated 2023 Omnibus Incentive Plan**  
**(as amended and restated November 2, 2023)**

**1. Purpose; Effective Date; Effect on Prior Plan.**

(a) **Purpose.** The Advanced Energy Industries, Inc. 2023 Omnibus Incentive Plan (the “Plan”) has two complementary purposes: (i) to attract and retain outstanding individuals to serve as officers, directors, employees, consultants and advisors, and (ii) to increase stockholder value. The Plan will provide participants with incentives to increase stockholder value by offering the opportunity to acquire shares of the Company’s common stock, receive monetary payments based on the value of such common stock, or receive other incentive compensation, on the potentially favorable terms that this Plan provides.

(b) **Effective Date; Effect on Prior Plan.** The Plan became effective on the date of the Company’s 2023 Annual Meeting of Stockholders (the “Effective Date”), which was April 27, 2023. The Plan will terminate as provided in Section 15. Following the Effective Date, no additional awards will be made under the Company’s 2017 Omnibus Incentive Plan (the “Prior Plan”), although awards previously granted under the Prior Plan and still outstanding as of the Effective Date will remain outstanding and continue to be subject to all terms and conditions of the Prior Plan.

**2. Definitions.** Capitalized terms used and not otherwise defined in this Plan or in any Award agreement have the following meanings:

(a) **“10% Stockholder”** means an individual who owns more than ten percent (10%) of the total combined voting power of all classes of outstanding stock of the Company, its parent or any of its Subsidiaries. In determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

(b) **“Administrator”** means the Board or the Committee; *provided that*, to the extent the Board or the Committee has delegated authority and responsibility as an Administrator of the Plan as permitted by Section 3(b), the term “Administrator” shall also mean such committee(s) and/or officer(s).

(c) **“Affiliate”** has the meaning ascribed to such term in Rule 12b-2 under the Exchange Act. Notwithstanding the foregoing, for purposes of determining those individuals to whom an Option or a Stock Appreciation Right may be granted, the term “Affiliate” means any entity that, directly or through one or more intermediaries, is controlled by or is under common control with, the Company within the meaning of Code Sections 414(b) or (c); *provided that*, in applying such provisions, the phrase “at least 20 percent” shall be used in place of “at least 80 percent” each place it appears therein.

(d) **“Applicable Exchange”** means the national securities exchange or automated trading system on which the Stock is principally traded at the applicable time.

(e) **“Award”** means a grant of Options, Stock Appreciation Rights, Performance Stock Units, Performance Units, Stock, Restricted Stock, Restricted Stock Units, a Cash Incentive Award, or any other type of award permitted under this Plan.

(f) **“Board”** means the Board of Directors of the Company.

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(g) “**Cash Incentive Award**” means the right to receive a cash payment to the extent Performance Goals are achieved (or other requirements are met), as described in Section 10.

(h) A “**Change of Control**” shall have the meaning given in an Award agreement or, if no meaning is given in an Award agreement, shall be deemed to occur upon the consummation of any of the following transactions:

(i) The acquisition by any Person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then-outstanding Shares (the “Outstanding Company Common Stock”) or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); provided, however, that the following acquisitions shall not constitute a Change of Control: (1) any acquisition directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate or (4) any acquisition by any corporation pursuant to a transaction that complies with Sections 2(h)(iii)(A) – 2(h)(iii)(C);

(ii) Any time at which individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of the Company’s assets which occurs on the date that any Person acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a “Business Combination”), in each case unless, following such Business Combination, (A) at least 50% of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding common equity and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or

related trust) of the Company or an Affiliate or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 50% or more of, respectively, the then-outstanding common equity of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(iv) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, for purposes of an Award (1) that provides for the payment of deferred compensation that is subject to Code Section 409A or (2) with respect to which the Company permits a deferral election, the definition of Change of Control herein shall be deemed amended to conform to the requirements of Code Section 409A to the extent necessary for the Award and deferral election to comply with Code Section 409A.

(j) “**Code**” means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes any successor provision and the regulations promulgated under such provision.

(k) “**Committee**” means the Compensation Committee of the Board, any successor committee thereto or such other committee of the Board that is designated by the Board with the same or similar authority. The Committee shall consist only of Non-Employee Directors (not fewer than two (2)) who meet the definition of “non-employee director” under Rule 16b-3(b)(3) promulgated under the Exchange Act to the extent necessary for the Plan and Awards to comply with Rule 16b-3 promulgated under the Exchange Act.

(l) “**Company**” means Advanced Energy Industries, Inc., a Delaware corporation, or any successor thereto.

(m) “**Director**” means a member of the Board.

(n) “**Disability**” means the Participant is unable to perform each of the essential duties of such Participant’s position by reason of a medically determinable physical or mental impairment which is potentially permanent in character or which can be expected to last for a continuous period of not less than twelve (12) months; provided, however, that, with respect to rules regarding expiration of an incentive stock option following termination of the Participant’s employment, Disability shall mean the Participant is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(o) “**Dividend Equivalent Unit**” means the right to receive a payment, in cash or Shares, equal to the cash dividends or other cash distributions paid with respect to a Share.

(p) “**Effective Date**” means the date on which the Board approves the Plan.



(q) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended. Any reference to a specific provision of the Exchange Act includes any successor provision and the regulations and rules promulgated under such provision.

(r) **“Fair Market Value”** means, as of a given date, the closing sale price of a Share on the Applicable Exchange on such date or, if there shall be no such sale on such date, on the next preceding day on which such a sale shall have occurred; provided that, if so determined by the Administrator, Fair Market Value may instead mean a price that is based on the opening, closing, actual, high or low sale price, or the arithmetic mean of selling prices of, a Share, on the Applicable Exchange on the applicable date, the preceding trading day, the next succeeding trading day, or the arithmetic mean of selling prices on all trading days over a specified averaging period weighted by volume of trading on each trading day in the period that is within 30 days before or 30 days after the applicable date, as determined by the Administrator in its discretion; provided further that, if an arithmetic mean of prices is used to set a grant price or an exercise price for an Option or Stock Appreciation Right, the commitment to grant the applicable Award based on such arithmetic mean must be irrevocable before the beginning of the specified averaging period in accordance with Treasury Regulation §1.409A-1(b)(5)(iv)(A). The method of determining Fair Market Value with respect to an Award shall be determined by the Administrator and may differ depending on whether Fair Market Value is in reference to the grant, exercise, vesting, settlement, or payout of an Award. If the Stock is not traded on an established stock exchange, the Administrator shall determine in good faith the Fair Market Value in whatever manner it considers appropriate, but based on objective criteria; provided that, to the extent required to secure an exemption from Code Section 409A, Fair Market Value shall be determined using a reasonable application of a reasonable valuation method. Notwithstanding the foregoing, in the case of an actual sale of Shares, the actual sale price shall be the Fair Market Value of such Shares.

(s) **“Non-Employee Director”** means a Director who is not also an employee of the Company or its Subsidiaries.

(t) **“Option”** means the right to purchase Shares at a stated price for a specified period of time.

(u) **“Participant”** means an individual selected by the Administrator to receive an Award.

(v) **“Performance Goals”** means any objective or subjective goals the Administrator establishes with respect to an Award. Performance Goals may include, but are not limited to, the performance of the Company or any one or more of its Subsidiaries, Affiliates or its or their business units (or any combination thereof) with respect to the following measures: (a) net earnings or net income; (b) operating earnings, operating income; (c) pretax earnings; (d) earnings per share; earnings per share after applying a capital charge; (f) share price, including growth measures and total stockholder return; (g) earnings before interest and taxes and related margin; (h) earnings before interest, taxes, depreciation and/or amortization and related margin; (i) sales or revenue growth, whether in general, by type of product, application or service, or by type of customer; (j) gross or operating profit or margins; (k) return measures, including return on assets, capital, investment, equity, sales or revenue; (l) economic value add (EVA) with or without a capital charge; (m) cash flow, including operating cash flow, free cash flow, cash flow return on equity and cash flow return on investment; (n) productivity ratios; (o) expense targets; (p) market share; (q) financial ratios as provided in credit agreements of the Company and its subsidiaries and interest expense; (r) working capital targets; (s) completion of acquisitions of

business or companies; (t) completion of divestitures and asset sales; (u) operating metrics, design wins and inventory; and (v) any combination of any of the foregoing business criteria and associated margins, some of which may exclude restructuring charges, acquisition related costs, stock based compensation, amortization of intangibles, tax release items, certain one-time tax items and other one-time charges, and may be limited to continuing operations. Performance Goals may also relate to a Participant's individual performance.

The Administrator reserves the right to adjust Performance Goals, or modify the manner of measuring or evaluating a Performance Goal, for any reason the Administrator determines is appropriate, including but not limited to: (i) by excluding the effects of charges for reorganizing and restructuring; discontinued operations; asset write-downs; gains or losses on the disposition of a business; or mergers, acquisitions or dispositions; and extraordinary, unusual and/or non-recurring items of gain or loss; (ii) excluding the costs of litigation, claims, judgments or settlements; (iii) excluding the effects of changes laws or regulations affecting reported results, or changes in tax or accounting principles, regulations or law; and (iv) excluding any accruals of amounts related to payments under the Plan or any other compensation arrangement maintained by the Company or an Affiliate.

The inclusion in an Award agreement of specific adjustments or modifications shall not be deemed to preclude the Administrator from making other adjustments or modifications, in its discretion, as described herein, unless the Award agreement provides that the adjustments or modifications described in such agreement shall be the sole adjustments or modifications.

(w) **"Performance Stock Units"** means the right to receive Shares or a cash payment equal to the Fair Market Value of one or more Shares to the extent Performance Goals are achieved (or other requirements are met).

(x) **"Performance Unit"** means the right to receive a cash payment and/or Shares valued in relation to a unit that has a designated dollar value or the value of which is equal to the Fair Market Value of one or more Shares, to the extent Performance Goals are achieved (or other requirements are met).

(y) **"Person"** has the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, or any group of Persons acting in concert that would be considered "persons acting as a group" within the meaning of Treas. Reg. § 1.409A-3(i)(5).

(z) **"Plan"** means this Advanced Energy Industries, Inc. 2023 Omnibus Incentive Plan, as it may be amended from time to time.

(aa) **"Restricted Stock"** means Shares that are subject to a risk of forfeiture or restrictions on transfer, or both a risk of forfeiture and restrictions on transfer, which may lapse upon the achievement or partial achievement of Performance Goals or upon the completion of a period of service, or both.

(bb) **"Restricted Stock Unit"** means the right to receive a Share or a cash payment the value of which is equal to the Fair Market Value of one Share.

(cc) **"Retirement"** means, unless otherwise determined by the Administrator, a Participant's voluntary termination after having attained age sixty (60) and having earned five (5) years or more of continuous employment or service.

(dd) “**Section 16 Participants**” means Participants who are subject to the provisions of Section 16 of the Exchange Act.

(ee) “**Share**” means a share of Stock.

(ff) “**Stock**” means the common stock of the Company.

(gg) “**Stock Appreciation Right**” or “**SAR**” means the right to receive a cash payment, and/or Shares with a Fair Market Value, equal to the appreciation of the Fair Market Value of a Share during a specified period of time.

(hh) “**Subsidiary**” means any corporation, limited liability company or other limited liability entity in an unbroken chain of entities beginning with the Company if each of the entities (other than the last entities in the chain) owns the stock or equity interest possessing more than fifty percent (50%) of the total combined voting power of all classes of stock or other equity interests in one of the other entities in the chain.

### **3. Administration.**

(a) **Administration.** In addition to the authority specifically granted to the Administrator in this Plan, the Administrator has full discretionary authority to administer this Plan, including but not limited to the authority to: (i) interpret the provisions of this Plan or any agreement covering an Award; (ii) prescribe, amend and rescind rules and regulations relating to this Plan; (iii) correct any defect, supply any omission, or reconcile any inconsistency in the Plan, any Award or any agreement covering an Award in the manner and to the extent it deems desirable to carry this Plan or such Award into effect; and (iv) make all other determinations necessary or advisable for the administration of this Plan. All Administrator determinations shall be made in the sole discretion of the Administrator and are final and binding on all interested parties.

(b) **Delegation.** To the extent applicable law permits, the Board may delegate to another committee of the Board, or the Committee may delegate to a subcommittee of the Committee, or either may delegate to one or more persons or bodies, any or all of their respective authority and responsibility as an Administrator of the Plan; *provided that* no such delegation is permitted with respect to Stock-based Awards made to Section 16 Participants at the time any such delegated authority or responsibility is exercised unless the delegation is to another committee of the Board consisting entirely of Non-Employee Directors. If the Board or the Committee has made such a delegation, then all references to the Administrator in this Plan include such other committee, subcommittee or one or more persons or bodies to the extent of such delegation.

(c) **No Liability; Indemnification.** No member of the Board or the Committee, and no officer or member of any other committee or person to whom a delegation under Section 3(b) has been made, will be liable for any act done, or determination made, by the individual in good faith with respect to the Plan or any Award. The Company will indemnify and hold harmless each such individual as to any acts or omissions, or determinations made, in each case done or made in good faith, with respect to this Plan or any Award to the maximum extent that the law and the Company’s By-Laws permit.

**4. Eligibility.** The Administrator may designate any of the following as a Participant from time to time, to the extent of the Administrator’s authority: any officer or other employee of the Company or its Affiliates; any individual who the Company or an Affiliate has engaged to

become an officer or employee; any consultant or advisor who provides services to the Company or its Affiliates; any Director, including a Non-Employee Director; and, subject to compliance with applicable law, any other person whom the Administrator believes it is in the best interests of the Company to designate as a Participant. The issuance of securities under the Plan will be authorized to consultants and advisors only if they are natural persons, they provide bona fide services to the Company, and the services are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities. The Administrator's designation of, or granting of an Award to, a Participant will not require the Administrator to designate such individual as a Participant or grant an Award to such individual at any future time. The Administrator's granting of a particular type of Award to a Participant will not require the Administrator to grant any other type of Award to such individual.

**5. Types of Awards.** Subject to the terms of this Plan, the Administrator may grant any type of Award to any Participant it selects, but only employees of the Company or a Subsidiary may receive grants of incentive stock options within the meaning of Code Section 422. Awards may be granted alone or in addition to, in tandem with, or (subject to the prohibition on repricing set forth in Section 15(e)) in substitution for any other Award (or any other award granted under another plan of the Company or any Affiliate, including the plan of an acquired entity).

**6. Shares Reserved under this Plan.**

(a) **Plan Reserve.** Subject to adjustment as provided in Section 17, an aggregate of two million four hundred thousand (2,400,000) Shares are reserved for issuance under this Plan, all of which may be issued pursuant to the exercise of incentive stock options. The Shares reserved for issuance may be either authorized and unissued Shares or Shares reacquired at any time and now or hereafter held as treasury stock.

(b) **Depletion and Replenishment of Shares Under this Plan.**

(i) The aggregate number of Shares reserved under Section 6(a) shall be depleted on the date of grant of an Award by the maximum number of Shares, if any, with respect to which such Award is granted. Notwithstanding the foregoing, an Award that may be settled solely in cash (or partially in cash to the extent of the cash amount of the Award) shall not cause any depletion of the Plan's Share reserve at the time such Award is granted.

(ii) To the extent (A) an Award lapses, expires, terminates or is cancelled without the issuance of Shares under the Award (whether due currently or on a deferred basis) or is settled in cash, (B) it is determined during or at the conclusion of the term of an Award that all or some portion of the Shares with respect to which the Award was granted will not be issuable on the basis that the conditions for such issuance will not be satisfied, (C) Shares are forfeited under an Award, or (D) Shares are issued under any Award and the Company subsequently reacquires them pursuant to rights reserved upon the issuance of the Shares, then such Shares shall be recredited to the Plan's reserve and may again be used for new Awards under this Plan, but Shares recredited to the Plan's reserve pursuant to clause (D) may not be issued pursuant to incentive stock options. Notwithstanding the foregoing, in no event shall the following Shares be recredited to the Plan's reserve: (x) Shares tendered or withheld in payment of the exercise price of an Option or as a result of the net settlement of an outstanding Stock

Appreciation Right, (y) Shares tendered or withheld to satisfy federal, state or local tax withholding obligations, or (z) Shares purchased by the Company (subject to compliance with applicable law) using proceeds from Option exercises

(c) **Non-Employee Director Award Limitation.** Subject to adjustment as provided in Section 17, the maximum number of Shares that may be granted during any fiscal year to any individual Non-Employee Director shall not exceed that number of Shares that has a grant date fair value of, when added to any cash compensation received by such Non-Employee Director, \$1,000,000 (the "Director Limit"); provided that the Administrator may make exceptions to the Director Limit in extraordinary circumstances as the Administrator may determine in its discretion; provided further that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation.

**7. Options.** Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each Option, including but not limited to: (a) whether the Option is an "incentive stock option" which meets the requirements of Code Section 422, or a "nonqualified stock option" which does not meet the requirements of Code Section 422; (b) the grant date, which may not be any day prior to the date that the Administrator approves the grant; (c) the number of Shares subject to the Option; (d) the exercise price, which may never be less than the Fair Market Value of the Shares subject to the Option as determined on the date of grant (110% of the Fair Market Value in the case of an incentive stock option granted to a 10% Stockholder) unless the Option complies with, or otherwise qualifies for an exemption from, Code Section 409A; (e) the terms and conditions of vesting and exercise; (f) the term, except that an Option must terminate no later than ten (10) years after the date of grant (five (5) years in the case of an incentive stock option granted to a 10% Stockholder); and (g) the manner of payment of the exercise price. In all other respects, the terms of any incentive stock option should comply with the provisions of Code Section 422 except to the extent the Administrator determines otherwise. If an Option that is intended to be an incentive stock option fails to meet the requirements thereof, the Option shall automatically be treated as a nonqualified stock option to the extent of such failure. If any Participant shall make any disposition of Shares issued pursuant to the exercise of an incentive stock option under the circumstances described in Code Section 421(b) (relating to certain disqualifying dispositions), such Participant shall notify the Company of such disposition within ten (10) days thereof. To the extent previously approved by the Administrator (which approval may be set forth in an Award agreement or in administrative rules), and subject to such procedures as the Administrator may specify, the payment of the exercise price of Options may be made by (i) delivery of cash or other Shares or other securities of the Company (including by attestation) having a then Fair Market Value equal to the purchase price of such Shares, (ii) by delivery to the Company or its designated agent of an executed irrevocable option exercise form together with irrevocable instructions to a broker-dealer to sell or margin a sufficient portion of the Shares and deliver the sale or margin loan proceeds directly to the Company to pay for the exercise price, (iii) by surrendering the right to receive Shares otherwise deliverable to the Participant upon exercise of the Award having a Fair Market Value at the time of exercise equal to the total exercise price, or (iv) by any combination of (i), (ii) and/or (iii). Except to the extent otherwise set forth in an Award agreement, a Participant shall have no rights as a holder of Stock as a result of the grant of an Option until the Option is exercised, the exercise price and applicable withholding taxes are paid and the Shares subject to the Option are issued thereunder.

**8. Stock Appreciation Rights.** Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each SAR, including but not limited to: (a) the grant

date, which may not be any day prior to the date that the Administrator approves the grant; (b) the number of Shares to which the SAR relates; (c) the grant price, which may never be less than the Fair Market Value of the Shares subject to the SAR as determined on the date of grant unless the SAR complies with, or otherwise qualifies for an exemption from, Code Section 409A; (d) the terms and conditions of exercise or maturity, including vesting; (e) the term, *provided that* an SAR must terminate no later than ten (10) years after the date of grant; and (f) whether the SAR will be settled in cash, Shares or a combination thereof.

**9. Performance and Stock Awards.** Subject to the terms of this Plan, the Administrator will determine all terms and conditions of each award of Shares, Restricted Stock, Restricted Stock Units, Performance Stock Units or Performance Units, including but not limited to: (a) the number of Shares or units to which such Award relates; (b) whether, as a condition for the Participant to realize all or a portion of the benefit provided under the Award, one or more Performance Goals must be achieved during such period as the Administrator specifies; (c) the length of the vesting or performance period and, if different, the date on which payment of the benefit provided under the Award will be made; (d) with respect to Performance Units, whether to measure the value of each unit in relation to a designated dollar value or the Fair Market Value of one or more Shares; and (e) with respect to Restricted Stock Units and Performance Units, whether to settle such Awards in cash, in Shares (including Restricted Stock), or in a combination of cash and Shares. Except to the extent the Administrator provides otherwise, holders of Restricted Stock and Stock shall have the right to vote the Shares subject to such Awards and the right to receive any dividends declared or paid with respect to such Shares. Except to the extent the Administrator provides otherwise, holders of other types of Awards shall not have any rights as stockholders of the Company with respect to such Awards. A holder of Restricted Stock Units, Performance Stock Units or Performance Units shall have no rights other than those of a general creditor of the Company; such Awards represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of this Plan and the applicable Award agreement. The holder of Restricted Stock, Restricted Stock Units or Performance Stock Units shall be required, to the extent required by applicable law, to purchase the Restricted Stock or Shares subject to vested Restricted Stock Units or Performance Stock Units from the Company at a purchase price equal to the greater of (x) the aggregate par value of the Shares represented by such Restricted Stock, Restricted Stock Units or Performance Stock Units or (y) the purchase price, if any, specified in the applicable Award agreement relating to such Restricted Stock, Restricted Stock Units or Performance Stock Units.

**10. Cash Incentive Awards.** Subject to the terms of this Plan, the Administrator will determine all terms and conditions of a Cash Incentive Award, including but not limited to the Performance Goals, performance period, the potential amount payable, and the timing of payment.

**11. Dividends and Dividend Equivalent Units.**

(a) **Prohibitions.** In no event may dividends or Dividend Equivalent Units be awarded with respect to Options, SARs or any other stock-based award that is not a grant of Stock, Restricted Stock, Restricted Stock Units, Performance Stock Units or Performance Units. Notwithstanding anything to the contrary in this Plan, and for the avoidance of doubt, this Plan expressly prohibits the payment of dividends or Dividend Equivalent Units on unvested Awards for all equity Award types.

(b) **Dividends.** If cash dividends are paid while shares of Restricted Stock are unvested, then such dividends will either, at the discretion of the Administrator, be (i)

automatically reinvested as additional shares of Restricted Stock that are subject to the same terms and conditions, including the risk of forfeiture, as the original grant of Restricted Stock, or (ii) paid in cash at the same time and the same extent that the Restricted Stock vests. For clarity, in no event will dividends be distributed to a Participant unless, until and to the same extent as the underlying shares of Restricted Stock vest.

(c) **Dividend Equivalent Units.** The Administrator may grant Dividend Equivalent Units only in tandem with Restricted Stock Units, Performance Stock Units or Performance Units. Dividend Equivalent Units will either, at the discretion of the Administrator, be (i) accumulated and paid, in cash or Shares in the Administrator's discretion, at the same time and to the same extent that the tandem Award vests or is earned or (ii) reinvested in additional units that are subject to the same terms and conditions (including vesting and forfeiture) as the tandem Award. The Administrator will determine all other terms and conditions of each award of Dividend Equivalent Units. For clarity, in no event will a Participant receive payment with respect to a Dividend Equivalent Unit unless, until and to the same extent as the tandem Award vests and is paid.

**12. Other Stock-Based Awards.** Subject to the terms of this Plan, the Administrator may grant to a Participant shares of unrestricted Stock as replacement for other compensation to which the Participant is entitled, such as in payment of director fees, in lieu of cash compensation, in exchange for cancellation of a compensation right, or as a bonus.

**13. Minimum Vesting; Discretion to Accelerate Vesting.**

(a) **Minimum Vesting Period.** All Awards granted under the Plan shall have a minimum vesting period of one year from the date of grant, *provided* that such minimum vesting period will not apply to Awards with respect to up to 5% of the total number of Shares reserved pursuant to Section 6(a). For purposes of Awards granted to Non-Employee Directors, "one year" may mean the period of time from one annual stockholders meeting to the next annual stockholders meeting, *provided* that such period of time is not less than 50 weeks.

(b) **Discretion to Accelerate Vesting.** Notwithstanding Section 13(a), the Administrator may accelerate the vesting of an Award, deem an Award to be earned in whole or in part, waive any forfeiture conditions, or otherwise modify or adjust any other condition or limitation regarding an Award in the event of a Participant's death (i.e., beyond what is provided for in Section 18(c)), Disability, Retirement, voluntary or involuntary termination, as provided in an Award agreement, in connection with a Change of Control described in Section 17(c), or upon any other event as determined by the Administrator in its sole and absolute discretion.

**14. Transferability.** Awards are not transferable, including to any financial institution, other than by will or the laws of descent and distribution, unless and to the extent the Administrator allows a Participant to: (a) designate in writing a beneficiary to exercise the Award or receive payment under the Award after the Participant's death; (b) transfer an Award to the former spouse of the Participant as required by a domestic relations order incident to a divorce; or (c) transfer an Award; *provided, however*, that with respect to clause (c) above the Participant may not receive consideration for such a transfer of an Award.

**15. Term of Plan; Termination and Amendment; Survival; Repricing and Backdating Prohibited; Foreign Participation; Deferrals.**

(a) **Term of Plan.** Unless the Board earlier terminates this Plan pursuant to Section 15(b), this Plan will terminate on, and no further Awards may be granted under this Plan, after the tenth (10<sup>th</sup>) anniversary of the latest date on which this Plan, or any amendment thereto or restatement thereof, has been approved by the Company's stockholders.

(b) **Termination and Amendment.** The Board or the Administrator may amend, alter, suspend, discontinue or terminate this Plan at any time, subject to the following limitations:

(i) the Board, in addition to the Administrator, must approve any amendment of this Plan to the extent the Company determines such approval is required by: (A) prior action of the Board, (B) applicable corporate law, or (C) any other applicable law;

(ii) stockholders must approve any amendment of this Plan (which may include an amendment to materially increase the number of Shares specified in Section 6(a), except as permitted by Section 17) to the extent the Company determines such approval is required by: (A) Section 16 of the Exchange Act, (B) the Code, (C) the listing requirements of the Applicable Exchange, or (D) any other applicable law; and

(iii) stockholders must approve an amendment that would diminish the protections afforded by Section 15(e).

If the Board or the Administrator takes any action under this Plan that is not, at the time of such action, authorized by this Plan, but that could be authorized by this Plan as amended by the Board or the Administrator, as applicable, the Board or Administrator action will be deemed to constitute an amendment to this Plan to authorize such action to the extent permissible under applicable law and the requirements of the Applicable Exchange.

(c) **Amendment, Modification, Cancellation and Disgorgement of Awards.**

(i) Except as provided in Section 15(e) and subject to the requirements of this Plan, the Administrator may modify, amend or cancel any Award, or waive any restrictions or conditions applicable to any Award or the exercise of the Award; *provided that*, except as otherwise provided in the Plan or the Award agreement, any modification or amendment that materially diminishes the rights of the Participant, or the cancellation of an Award, shall be effective only if agreed to by the Participant or any other person(s) as may then have an interest in such Award, but the Administrator need not obtain Participant (or other interested party) consent for the modification, amendment or cancellation of an Award as follows: (A) to the extent necessary to comply with any applicable law or the listing requirements of the Applicable Exchange; or (B) to the extent necessary to preserve favorable accounting or tax treatment of any Award for the Company. Notwithstanding the foregoing, unless determined otherwise by the Administrator, any such amendment shall be made in a manner that will enable an Award intended to be exempt from Code Section 409A to continue to be so exempt, or to enable an Award intended to comply with Code Section 409A to continue to so comply.

(ii) Changes, settlements, and other actions contemplated by Section 15(f) or Section 17 shall not be deemed to constitute changes or amendments for purposes of this Section 15(c).

(iii) No Award may be granted during any period of suspension or after termination of the Plan.



(iv) Any Awards granted pursuant to this Plan, and any Stock issued or cash paid pursuant to an Award, shall be subject to any recoupment or clawback policy that is adopted by, or any recoupment or similar requirement otherwise made applicable by law, regulation or the listing standards of an Applicable Exchange to, the Company from time to time.

(d) **Survival of Authority and Awards.** Notwithstanding the foregoing, the authority of the Board and the Administrator under this Section 15 and to otherwise administer the Plan with respect to then-outstanding Awards will extend beyond the date of this Plan's termination. In addition, termination of this Plan will not affect the rights of Participants with respect to Awards previously granted to them, and all unexpired Awards will continue in force and effect after termination of this Plan except as they may lapse or be terminated by their own terms and conditions.

(e) **Repricing and Backdating Prohibited.** Notwithstanding anything in this Plan to the contrary, and except for the adjustments provided for in Section 17, neither the Administrator nor any other person may (i) amend the terms of outstanding Options or SARs to reduce the exercise or grant price of such outstanding Options or SARs; (ii) cancel outstanding Options or SARs in exchange for Options or SARs with an exercise or grant price that is less than the exercise or grant price of the original Options or SARs; or (iii) cancel outstanding Options or SARs with an exercise or grant price above the current Fair Market Value of a Share in exchange for cash or other securities. In addition, the Administrator may not make a grant of an Option or SAR with a grant date that is effective prior to the date the Administrator takes action to approve such Award.

(f) **Foreign Participation.** To assure the viability of Awards granted to Participants employed or residing in foreign countries, the Administrator may provide for such special terms as it may consider necessary or appropriate to accommodate differences in local law, tax policy, accounting or custom. Moreover, the Administrator may approve such supplements to, or amendments, restatements or alternative versions of, this Plan as it determines is necessary or appropriate for such purposes. Any such amendment, restatement or alternative versions that the Administrator approves for purposes of using this Plan in a foreign country will not affect the terms of this Plan for any other country. In addition, all such supplements, amendments, restatements or alternative versions must comply with the provisions of Section 15(b)(ii).

(g) **Deferrals.** The Administrator may permit or require the deferral of any Award or Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish. Any such deferrals shall be made in a manner that complies with Code Section 409A.

## **16. Taxes.**

(a) **Withholding.** In the event the Company or one of its Affiliates is required to withhold any federal, state or local taxes or other amounts in respect of any income recognized by a Participant as a result of the grant, vesting, payment or settlement of an Award or disposition of any Shares acquired under an Award, the Company may satisfy such obligation by:

(i) If cash is payable under an Award, deducting (or requiring an Affiliate to deduct) from such cash payment the amount needed to satisfy such obligation;

(ii) If Shares are issuable under an Award, then to the extent previously approved by the Administrator (which approval may be set forth in an Award agreement or in administrative rules), and subject to such procedures as the Administrator may specify, (A) withholding Shares having a Fair Market Value equal to such obligations; or (B) allowing the Participant to elect to (1) have the Company or its Affiliate withhold Shares otherwise issuable under the Award, (2) tender back Shares received in connection with such Award or (3) deliver other previously owned Shares, in each case having a Fair Market Value equal to the amount to be withheld; *provided that* the amount to be withheld under this clause (ii) may not exceed the total maximum statutory tax withholding obligations associated with the transaction to the extent needed for the Company and its Affiliates to avoid an accounting charge. If an election is provided, the election must be made on or before the date as of which the amount of tax to be withheld is determined and otherwise as the Administrator requires; or

(iii) Deducting (or requiring an Affiliate to deduct) the amount needed to satisfy such obligation from any wages or other payments owed to the Participant, requiring such Participant to pay to the Company or its Affiliate, in cash, promptly on demand, or make other arrangements satisfactory to the Company or its Affiliate regarding the payment to the Company or its Affiliate of the amount needed to satisfy such obligation.

(b) **No Guarantee of Tax Treatment.** Notwithstanding any provisions of this Plan to the contrary, the Company does not guarantee to any Participant or any other Person with an interest in an Award that (i) any Award intended to be exempt from Code Section 409A shall be so exempt, (ii) any Award intended to comply with Code Section 409A or Code Section 422 shall so comply, or (iii) any Award shall otherwise receive a specific tax treatment under any other applicable tax law, nor in any such case will the Company or any Affiliate be required to indemnify, defend or hold harmless any individual with respect to the tax consequences of any Award.

## **17. Adjustment and Change of Control Provisions.**

(a) **Adjustment of Shares.** If (i) the Company shall at any time be involved in a merger or other transaction in which the Shares are changed or exchanged; (ii) the Company shall subdivide or combine the Shares or the Company shall declare a dividend payable in Shares, other securities (other than stock purchase rights issued pursuant to a stockholder rights agreement) or other property; (iii) the Company shall effect a cash dividend the amount of which, on a per Share basis, exceeds ten percent (10%) of the Fair Market Value of a Share at the time the dividend is declared, or the Company shall effect any other dividend or other distribution on the Shares in the form of cash, or a repurchase of Shares, that the Board determines by resolution is special or extraordinary in nature or that is in connection with a transaction that the Company characterizes publicly as a recapitalization or reorganization involving the Shares; or (iv) any other event shall occur, which, in the case of this clause (iv), in the judgment of the Administrator necessitates an adjustment to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Plan, then the Administrator shall, in such manner as it may deem equitable to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under this Plan, adjust any or all of: (A) the number and type of shares subject to this Plan (including the number and type of shares described in Section 6(a)) and which may after the event be made the subject of Awards; (B) the number and type of shares subject to outstanding Awards; (C) the grant, purchase, or exercise price with respect to any Award; and (D) the Performance Goals of an

Award. In any such case, the Administrator may also (or in lieu of the foregoing) make provision for a cash payment to the holder of an outstanding Award in exchange for the cancellation of all or a portion of the Award (without the consent of the holder of an Award) in an amount determined by the Administrator effective at such time as the Administrator specifies (which may be the time such transaction or event is effective). However, in each case, with respect to Awards of incentive stock options, no such adjustment may be authorized to the extent that such authority would cause this Plan to violate Code Section 422(b). Further, the number of Shares subject to any Award payable or denominated in Shares must always be a whole number. In any event, previously granted Options or SARs are subject to only such adjustments as are necessary to maintain the relative proportionate interest the Options and SARs represented immediately prior to any such event and to preserve, without exceeding, the value of such Options or SARs.

Without limitation, in the event of any reorganization, merger, consolidation, combination or other similar corporate transaction or event, whether or not constituting a Change of Control (other than any such transaction in which the Company is the continuing corporation and in which the outstanding Stock is not being converted into or exchanged for different securities, cash or other property, or any combination thereof), the Administrator may substitute, on an equitable basis as the Administrator determines or as set forth in the applicable purchase or merger agreement, for each Share then subject to an Award and the Shares subject to this Plan (if the Plan will continue in effect), the number and kind of shares of stock, other securities, cash or other property to which holders of Stock are or will be entitled in respect of each Share pursuant to the transaction.

Notwithstanding the foregoing, in the case of a stock dividend (other than a stock dividend declared in lieu of an ordinary cash dividend) or subdivision or combination of the Shares (including a reverse stock split), if no action is taken by the Administrator, adjustments contemplated by this subsection that are proportionate shall nevertheless automatically be made as of the date of such stock dividend or subdivision or combination of the Shares.

(b) **Issuance or Assumption.** Notwithstanding any other provision of this Plan, and without affecting the number of Shares otherwise reserved or available under this Plan, in connection with any merger, consolidation, acquisition of property or stock, or reorganization, the Administrator may authorize the issuance or assumption of awards under this Plan upon such terms and conditions as it may deem appropriate.

(c) **Effect of Change of Control.**

(i) Upon a Change of Control, except to the extent otherwise provided in an applicable Award agreement, if the successor or surviving corporation (or parent thereof) so agrees, then, without the consent of any Participant (or other person with rights in an Award), some or all outstanding Awards may be assumed, or replaced with the same type of award with substantially equivalent terms and conditions, by the successor or surviving corporation (or parent thereof) in the Change of Control transaction, subject to the following requirements:

(A) Each Award which is assumed by the successor or surviving corporation (or parent thereof) shall be appropriately adjusted, immediately after such Change of Control, to apply to the number and class of securities which would have been issuable to the Participant upon the consummation of such Change of Control had the Award been exercised,

vested or earned immediately prior to such Change of Control, and such other appropriate adjustments in the terms and conditions of the Award shall be made.

(B) If the securities to which the Awards relate after the Change of Control are not listed and traded on a national securities exchange, then (1) the Participant shall be provided the option, upon exercise or settlement of an Award, to elect to receive, in lieu of the issuance of such securities, cash in an amount equal to the fair value equal of the securities that would have otherwise been issued and (2) for purposes of determining such fair value, no reduction shall be taken to reflect a discount for lack of marketability, minority interest or any similar consideration.

(ii) To the extent the purchaser, successor or surviving entity (or parent thereof) in the Change of Control transaction does not assume the Awards or issue replacement awards as provided in clause (i), then, except to the extent otherwise provided in an applicable Award agreement and unless the Administrator otherwise determines:

(A) Each Option or SAR that is then held by a Participant who is employed by or in the service of the Company or an Affiliate shall either (x) become immediately exercisable and remain so for a period of fifteen (15) days prior to the consummation of the Change of Control (with any exercisability being conditioned and effective upon such consummation and any unexercised Options or SARs terminating upon such consummation) or (y) be cancelled (whether or not then vested) on the date of the Change of Control in exchange for a payment in cash or securities upon or promptly after the consummation of the Change of Control having a value equal to the excess of the Change of Control Price (as defined below) of the Shares covered by the Option or SAR that is so cancelled over the purchase or grant price of such Shares under the Award; *provided, however*, that all Options and SARs that have a purchase or grant price that is greater than the Change of Control Price shall be cancelled for no consideration;

(B) Restricted Stock and Restricted Stock Units (that are not Performance Awards) that are not then vested shall vest in full as of immediately prior to the Change of Control and shall be cancelled in exchange for a payment in cash upon or promptly after the consummation of the Change of Control having a value equal to the Change of Control Price of the Shares covered by the Award that is so cancelled;

(C) All Performance Stock Units, Performance Units, and Cash Incentive Awards for which the performance period has expired shall be paid based on actual performance (and assuming all employment or other requirements had been met in full); and all Performance Stock Units, Performance Units and Cash Incentive Awards for which the performance period has not expired shall be cancelled in exchange for a payment in cash upon or promptly after the consummation of the Change of Control equal to the amount that would have been due under such Award(s) as determined by the Administrator;

(D) All Dividend Equivalent Units that are not vested shall vest (to the same extent as the Award granted in tandem with the Dividend Equivalent Unit, if applicable) and be paid upon or promptly after the consummation of the Change of Control; and

(E) All other Awards that are not vested shall vest and if an amount is payable under such vested Award, such amount shall be paid in cash upon or promptly after the consummation of the Change of Control equal to the value of the Award.

“Change of Control Price” shall mean the per share price paid or deemed paid in the Change of Control transaction, and to the extent necessary, as determined by the Administrator.

(d) **Application of Limits on Payments.** Notwithstanding any other provision of this Plan or of any other agreement, contract, or understanding heretofore or hereafter entered into by a Participant with the Company or any Affiliate, except an agreement, contract, or understanding that expressly addresses Section 280G or Section 4999 of the Code (an “Other Agreement”), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Participant (including groups or classes of Participants or beneficiaries of which the Participant is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Participant (a “Benefit Arrangement”), if the Participant is a “disqualified individual,” as defined in Section 280G(c) of the Code, any Option, Restricted Stock, Restricted Stock Unit, Performance Stock Unit or Performance Unit held by that Participant and any right to receive any payment or other benefit under this Plan shall not become exercisable or vested (i) to the extent that such right to exercise, vesting, payment, or benefit, taking into account all other rights, payments, or benefits to or for the Participant under this Plan, all Other Agreements, and all Benefit Arrangements, would cause any payment or benefit to the Participant under this Plan to be considered a “parachute payment” within the meaning of Section 280G(b)(2) of the Code as then in effect (a “Parachute Payment”) and (ii) if, as a result of receiving a Parachute Payment, the aggregate after-tax amounts received by the Participant from the Company under this Plan, all Other Agreements, and all Benefit Arrangements would be less than the maximum after-tax amount that could be received by the Participant without causing any such payment or benefit to be considered a Parachute Payment. In the event that the receipt of any such right to exercise, vesting, payment, or benefit under this Plan, in conjunction with all other rights, payments, or benefits to or for the Participant under any Other Agreement or any Benefit Arrangement would cause the Participant to be considered to have received a Parachute Payment under this Plan that would have the effect of decreasing the after-tax amount received by the Participant as described in clause (ii) of the preceding sentence, then the rights, payments, or benefits under this Plan, any Other Agreements, and any Benefit Arrangements shall be reduced or eliminated in the following manner and order: any such reduction or elimination in rights, payments and benefits shall be applied first against the latest scheduled cash payments; then current cash payments; then any equity or equity derivatives that are included under Code Section 280G at full value rather than accelerated value (with the highest value reduced or eliminated first); then any equity or equity derivatives included under Code Section 280G at an accelerated value (and not at full value) shall be reduced or eliminated with the highest value reduced or eliminated first (as such values are determined under Treasury Regulation 1.280G-1, Q&A 24); finally any other non-cash benefits will be reduced or eliminated in the order of latest scheduled payments to earliest scheduled payments.

## 18. Effect of Termination of Employment or Service on Awards.

Except as otherwise provided in Section 19(a), by the Administrator in an Award agreement, or as otherwise determined by the Administrator prior to or at the time of termination of a Participant's employment or service, the following provisions shall apply upon a Participant's termination of employment or service with the Company and its Affiliates.

(a) **Termination of Employment or Service.** If a Participant's employment or service with the Company and its Affiliates ends for any reason other than (i) death, (ii) Disability or (iii) Retirement, then:

(i) Any outstanding unvested Options or SARs shall be forfeited immediately upon such termination, and any outstanding vested Options or SARs shall be exercisable until the earlier of (A) ninety (90) days following the Participant's termination date and (B) the expiration date of the Option or SAR under the terms of the applicable Award agreement.

(ii) All other outstanding Awards made to the Participant, to the extent not then earned, vested and paid to the Participant, shall terminate on the Participant's last day of employment or service.

(b) **Disability of Participant.** If a Participant's employment or service with the Company and its Affiliates terminates as a result of Disability, then:

(i) Any outstanding unvested Options or SARs shall be forfeited immediately upon such death or termination, and any outstanding vested Options or SARs shall be exercisable until the earlier of (A) twelve (12) months following the date of such death or termination and (B) the expiration date of the Option or SAR under the terms of the applicable Award agreement.

(ii) All other outstanding Awards made to the Participant, to the extent not then earned, vested and paid to the Participant, shall terminate on the Participant's last day of employment or service.

(c) **Death of Participant.** If a Participant's employment or service with the Company and its Affiliates ends as a result of such Participant's death, then all unvested time-vesting equity Awards (including Restricted Stock Units, Restricted Stock, and Options) held by the Participant on the date of such Participant's death that are scheduled to vest during the 12 months after Participant's death shall vest immediately as to service requirements on the date of death, all service-based restrictions for such Awards shall lapse, and any performance-based equity Awards (including Performance Units and Performance Stock Units) for which the end of the performance period is within 12 months after the date of such Participant's death shall be deemed to have been earned at target performance with the amount prorated through the date of such Participant's death. Any performance-based Awards shall be settled and paid to the Participant's estate within 90 days of Participant's death. All accelerated upon death and all outstanding and vested Options or SARs will be exercisable until the earlier of (A) twelve (12) months following the Participant's date of death and (B) the expiration date of the Option or SAR under the terms of the applicable Award agreement.

For those equity Awards that are scheduled to vest after the date that is 12 months from the date of Participant's death and all unvested cash Awards:

(i) Any outstanding unvested Options or SARs shall be forfeited immediately upon such termination; and

(ii) All other outstanding Awards made to the Participant, to the extent not then earned, vested and paid to the Participant, shall terminate on the Participant's last day of employment or service.

(d) **Retirement of Participant.** If a Participant's employment or service terminates as a result of Retirement, then:

(i) Any outstanding unvested Options or SARs shall be forfeited immediately upon such Retirement, and any outstanding vested Options or SARs shall be exercisable until the earlier of (A) thirty-six (36) months following the date of such Retirement and (B) the expiration date of the Option or SAR under the terms of the applicable Award agreement.

(ii) All other outstanding Awards made to the Participant, to the extent not then earned, vested and paid to the Participant, shall terminate on the Participant's last day of employment or service.

(d) **Time of Termination.** For purposes of this Section 18, termination of service shall be deemed to occur at 11:59 p.m. (Eastern Time) on the relevant date described above. Forfeiture or termination of Awards required by this Section 18 shall occur on the date of termination immediately after termination.

(e) **Consultants, Advisors and Other Stock-Based Awards.** The Administrator shall have the discretion to determine the effect of the termination of service of a consultant or advisor on Awards held by such individual, and the effect on other Stock-based Awards of a Participant's termination of employment or service with the Company and its Affiliates.

## **19. Miscellaneous.**

(a) **Other Terms and Conditions.** (i) The Administrator may provide in any Award agreement such other provisions (whether or not applicable to the Award granted to any other Participant) as the Administrator determines appropriate to the extent not otherwise prohibited by the terms of the Plan. No provision in an Award agreement shall limit the Administrator's discretion hereunder unless such provision specifically so provides for such limitation. (ii) Notwithstanding anything in this Plan, the Executive Change in Control & General Severance Agreements (as may be modified from time to time or other replacement agreement between executives and the Company) or other employment, change of control, severance or similar agreement provided that such other agreement references this Plan, control over any conflicting term in this Plan; provided that, any term in this Plan that is more favorable to a Participant than a term addressing the same subject matter in such Participant's Executive Change in Control & General Severance Agreement (or other agreement referencing this Plan) shall control.

(b) **Employment and Service.** The issuance of an Award shall not confer upon a Participant any right with respect to continued employment or service with the Company or any Affiliate, or the right to continue as a Director. Unless determined otherwise by the Administrator, for purposes of the Plan and all Awards, the following rules shall apply:

(i) a Participant who transfers employment between the Company and its Affiliates, or between Affiliates, will not be considered to have terminated employment;

(ii) a Participant who ceases to be a Non-Employee Director because he or she becomes an employee of the Company or an Affiliate shall not be considered to have ceased service as a Director with respect to any Award until such Participant's termination of employment with the Company and its Affiliates;

(iii) a Participant who ceases to be employed by the Company or an Affiliate and immediately thereafter becomes a Non-Employee Director, a non-employee director of an Affiliate, or a consultant to the Company or any Affiliate shall not be considered to have terminated employment until such Participant's service as a director of, or consultant to, the Company and its Affiliates has ceased; and

(iv) a Participant employed by an Affiliate will be considered to have terminated employment when such entity ceases to be an Affiliate.

Notwithstanding the foregoing, for purposes of an Award that is subject to Code Section 409A, if a Participant's termination of employment or service triggers the payment of compensation under such Award, then the Participant will be deemed to have terminated employment or service upon his or her "separation from service" within the meaning of Code Section 409A. Notwithstanding any other provision in this Plan or an Award to the contrary, if any Participant is a "specified employee" within the meaning of Code Section 409A as of the date of his or her "separation from service" within the meaning of Code Section 409A, then, to the extent required to avoid the imposition of additional taxes under Code Section 409A, any payment made to the Participant on account of such separation from service shall not be made before a date that is six months after the date of the separation from service.

(c) **No Fractional Shares.** No fractional Shares or other securities may be issued or delivered pursuant to this Plan, and the Administrator may determine whether cash, other securities or other property will be paid or transferred in lieu of any fractional Shares or other securities, or whether such fractional Shares or other securities or any rights to fractional Shares or other securities will be canceled, terminated or otherwise eliminated with or without consideration.

(d) **Unfunded Plan; Awards Not Includable for Benefits Purposes.** This Plan is unfunded and does not create, and should not be construed to create, a trust or separate fund with respect to this Plan's benefits. This Plan does not establish any fiduciary relationship between the Company and any Participant or other person. To the extent any person holds any rights by virtue of an Award granted under this Plan, such rights are no greater than the rights of the Company's general unsecured creditors. Income recognized by a Participant pursuant to an Award shall not be included in the determination of benefits under any employee pension benefit plan (as such term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended) or group insurance or other benefit plans applicable to the Participant which are maintained by the Company or any Affiliate, except as may be provided under the terms of such plans or determined by resolution of the Board.

(e) **Requirements of Law and Securities Exchange.** The granting of Awards and the issuance of Shares in connection with an Award are subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required. Notwithstanding any other provision of this Plan or any award



agreement, the Company has no liability to deliver any Shares under this Plan or make any payment unless such delivery or payment would comply with all applicable laws and the applicable requirements of any securities exchange or similar entity, and unless and until the Participant has taken all actions required by the Company in connection therewith. The Company may impose such restrictions on any Shares issued under the Plan as the Company determines necessary or desirable to comply with all applicable laws, rules and regulations or the requirements of any national securities exchanges.

(f) **Securities Law Compliance.** With respect to Section 16 Participants, transactions under this Plan are intended to qualify for the exemption provided by Rule 16b-3 under the Exchange Act.

(g) **Code Section 409A.** Any Award granted under this Plan shall be provided or made in such manner and at such time as to either make the Award exempt from, or comply with, the provisions of Code Section 409A, to avoid a plan failure described in Code Section 409(a)(1), and the provisions of Code Section 409A are incorporated into this Plan to the extent necessary for any Award that is subject to Code Section 409A to comply therewith.

(h) **No Corporate Action Restriction.** The existence of this Plan, the Award agreements and the Awards granted hereunder shall not limit, affect or restrict in any way the right or power of the Board or the stockholders of the Company to make or authorize: (a) any adjustment, recapitalization, reorganization or other change in the capital structure or business of the Company or any Subsidiary, (b) any merger, arrangement, business combination, amalgamation, consolidation or change in the ownership of the Company or any Subsidiary, (c) any issue of bonds, debentures, capital, preferred or prior preference stock ahead of or affecting the capital stock (or the rights thereof) of the Company or any Subsidiary, (d) any dissolution or liquidation of the Company or any Subsidiary, (e) any sale or transfer of all or any part of the assets or business of the Company or any Subsidiary, or (f) any other corporate act or proceeding by the Company or any Subsidiary. No Participant, beneficiary or any other person shall have any claim under any Award or Award agreement against any member of the Board or the Administrator, or the Company or any employees, officers or agents of the Company or any Subsidiary, as a result of any such action.

(i) **Governing Law; Venue.** This Plan, and all agreements under this Plan, will be construed in accordance with and governed by the laws of the State of Colorado, without reference to any conflict of law principles. Any legal action or proceeding with respect to this Plan, any Award or any award agreement, or for recognition and enforcement of any judgment in respect of this Plan, any Award or any award agreement, may only be brought and determined in (i) a court sitting in the State of Colorado, and (ii) a "bench" trial, and any party to such action or proceeding shall agree to waive its right to a jury trial.

(j) **Limitations on Actions.** Any legal action or proceeding with respect to this Plan, any Award or any award agreement, must be brought within one year (365 days) after the day the complaining party first knew or should have known of the events giving rise to the complaint.

(k) **Construction.** Whenever any words are used herein in the masculine, they shall be construed as though they were used in the feminine in all cases where they would so apply; and wherever any words are used in the singular or plural, they shall be construed as though they were used in the plural or singular, as the case may be, in all cases where they would so apply. Titles of sections are for general information only, and this Plan is not to be construed with reference to such titles. The title, label or characterization of an Award in an award

agreement or in the Company's public filings or other disclosures shall not be determinative as to which specific Award type is represented by the award agreement. Instead, the Administrator may determine which specific type(s) of Award(s) is (are) represented by any award agreement, at the time such Award is granted or at any time thereafter. Except to the extent otherwise provided in the applicable award agreement, in the case of any Award that includes a "series of installment payments" (within the meaning of Section 1.409A-2(b)(2)(iii) of the Treasury Regulations), the Award holder's right to the series of installment payments shall be treated as a right to a series of separate payments and not as a right to a single payment.

(l) **Severability.** If any provision of this Plan or any award agreement or any Award (i) is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction, or as to any person or Award, or (ii) would cause this Plan, any award agreement or any Award to violate or be disqualified under any law the Administrator deems applicable, then such provision should be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Administrator, materially altering the intent of this Plan, award agreement or Award, then such provision should be stricken as to such jurisdiction, person or Award, and the remainder of this Plan, such award agreement and such Award will remain in full force and effect.

**FORM OF  
EXECUTIVE CHANGE IN CONTROL &  
GENERAL SEVERANCE AGREEMENT**

This Executive Change in Control & General Severance Agreement (this “*Agreement*”), is made as of the [ ] day of [month] [year] (the “*Effective Date*”), by and between Advanced Energy Industries, Inc., a Delaware corporation (the “*Company*”), and [ name ] (the “*Executive*”).

**WITNESSETH**

**WHEREAS**, The Executive is expected to serve as the [ title ] of the Company;

**WHEREAS**, The Board of Directors of the Company (the “*Board*”) acknowledges that consolidation within the industries in which the Company operates is likely to continue and the potential for a change in control of the Company, whether friendly or hostile, currently exists and from time to time in the future will exist, which potential can give rise to uncertainty among the senior executives of the Company. The Board considers it essential to the best interests of the Company to reduce the risk of the Executive’s departure and/or the inevitable distraction of the Executive’s attention from his duties to the Company, which are normally attendant to such uncertainties, and based on market data, offers certain benefits as outlined in this Agreement;

**WHEREAS**, The Board also acknowledges that should the Executive be involuntarily terminated without cause, even during a time where no potential change of control is occurring, that based on market data, certain standard severance benefits would be available to the Executive;

**WHEREAS**, The Executive confirms that the terms of this Agreement (a) reduce the risks of his/her departure and distraction of his/her attention from his/her duties to the Company and (b) provides retention value, and, accordingly, desires to enter into this Agreement; and

**WHEREAS**, This Agreement replaces any former executive change in control and general severance agreement previously entered into (if applicable) with the Executive.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants contained herein, the Company and the Executive agree as follows:

**Section 1. Definitions.** Capitalized terms used herein shall have the meanings given to them in Annex A attached hereto, except where the context requires otherwise.

**Section 2. Term of Agreement.** This Agreement shall be effective as of the Effective Date and shall continue in effect until the termination of the Executive’s employment or upon mutual written agreement of the Executive and the Company. For the avoidance of doubt, the Executive’s and Company’s obligations hereunder that are intended to survive the Executive’s termination of employment shall nonetheless be enforceable.

**Section 3. At Will Employment; Reasons for Termination.** The Executive’s employment shall continue to be at-will, as defined under applicable law. If the Executive’s

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employment terminates for any reason or no reason, the Executive shall not be entitled to any compensation, benefits, damages, awards or other payments in respect of such termination, except as provided in this Agreement or pursuant to the terms of any Applicable Benefit Plan.

**Section 4. General Benefits Upon Separation; Release.**

(a) Compensation and Benefits Required by Law or Applicable Benefit Plan.

Notwithstanding anything to the contrary herein, upon the Executive's termination of employment for any reason, the Executive (or his estate) shall be entitled to any and all compensation, benefits, awards and other payments required by any Applicable Benefit Plan[, or the COBRA Act]<sup>1</sup> or other applicable law, after taking into account the agreements set forth herein.

(b) No Payments Without Release. The Executive shall not be entitled to any of the compensation (other than Accrued Compensation), benefits or other payments provided herein in respect of the termination of his employment, unless and until he has provided to the Company a full release of claims, substantially in the form of Appendix I attached hereto, which release shall be dated not earlier than the date of the termination of his/her employment, which release shall be provided to the Executive within 9 days of the Executive's Date of Termination and executed within 30 days of the Executive's Date of Termination[; *provided* that any applicable Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621 et seq., timing requirements will be set forth in the release.]<sup>2</sup>

**Section 5. Termination of Employment Due to Voluntary Resignation; Termination for Cause; Death; Long-Term Disability.**

(a) Voluntary Resignation or Termination for Cause.

(i) In the event of the Executive's Voluntary Resignation or termination of his employment by the Company for Cause, the Executive shall not be entitled to any compensation, benefits, awards or other payments in connection with such termination of his/her employment, except as provided in paragraph (a) of Section 4.

(ii) The Executive shall not be deemed to have been terminated for Cause under this Agreement, unless the following procedures have been observed: To terminate an Executive, who at the time of such termination is a "*named executive officer*" under United States 17 CFR 229.402, for Cause, the Board must deliver to the Executive notice of such termination in writing, which notice must specify the facts purportedly constituting Cause in reasonable detail. The Executive will have the right, within 10 calendar days of receipt of such notice, to submit a written request for review by the Board. If such request is timely made, within a reasonable time thereafter, the Board (with all directors attending in person or by telephone) shall give the Executive the opportunity to be heard (personally or by

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<sup>1</sup> Applicable to U.S.-based employees.

<sup>2</sup> Applicable to U.S.-based employees.

counsel). Following such hearing, unless a majority of the directors then in office confirm that the Executive's termination was for Cause, the Executive's termination shall be deemed to have been made by the Company without Cause for purposes of this Agreement. To terminate an Executive who is not a named executive officer for Cause, the Chief Executive Officer must simply deliver to the Executive notice of such termination in writing without any further action.

(b) Death or Long-Term Disability. In the event of the Executive's termination due to his/her death or Long-Term Disability, the Executive (or his/her estate or personal representative) shall be entitled to receive, in addition to the amounts described in paragraph (a) of Section 4, (i) the proceeds of any life insurance policy carried by the Company with respect to the Executive, or (ii) payments pursuant to any long-term disability insurance policy carried by the Company with respect to the Executive, as applicable, subject to and in accordance with the terms of such policies. In the event of such a termination, the Executive shall not be treated as having incurred a CIC Involuntary Termination or an Involuntary Termination, and thus shall not be entitled to receive the severance benefits described herein (for avoidance of doubt, Executive may be provided additional benefits in other Company compensatory plans in the event of death or Long-Term Disability, e.g., partial acceleration of equity awards in the event of death).

**Section 6. Termination of Employment Due to Change in Control: CIC Involuntary Termination and Severance.**

(a) CIC Involuntary Termination. In the event the Executive's employment is terminated under circumstances constituting a CIC Involuntary Termination, the Executive shall be entitled to receive:

(i) within fifteen (15) calendar days after the Date of Termination, the Executive's Accrued Compensation; and

(ii) [within fifteen (15) calendar days after the seven (7) day period for revocation of the release has elapsed,]<sup>3</sup> a lump sum payment in cash equal to [TWO TIMES (2X)]<sup>4</sup> [ONE AND A HALF TIMES (1.5X)]<sup>5</sup> the sum of (x) the Executive's annual Base Salary and (y) the Executive's Target Bonus in effect as of the Date of Termination; and

(iii) for eighteen (18) months after the Date of Termination continuation of medical benefits ("**Benefits**") in which the Executive was enrolled as of the Date of Termination (subject to any changes to Benefits as are applied to similarly-situated active employees), with the full premium cost for such coverage to be borne by the Company; *provided, however*, that if the Executive commences employment with another employer during such eighteen (18) month period and is eligible to receive medical benefits under the new employer's plan(s), the Benefits

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<sup>3</sup> Applicable to U.S.-based employees.

<sup>4</sup> Applicable to the Chief Executive Officer ("CEO").

<sup>5</sup> Applicable to named executive officers, other than the CEO.

shall terminate as of the date the Executive becomes eligible to receive such benefits; and

(iv) [within fifteen (15) calendar days after the seven (7) day period for revocation of the release has elapsed,]<sup>6</sup> a lump sum payment in an amount equal to the employer contributions to the Company's retirement plans on behalf of the Executive that would have been made for the benefit of the Executive if the Executive's employment had continued for eighteen (18) months after the Date of Termination, assuming for this purpose that (A) all benefits under any such retirement plans were fully vested, (B) the Executive's compensation during such eighteen (18) months was the same as it had been immediately prior to the Date of Termination, and (C) the Executive would have made contributions at the level necessary to receive the maximum matching contribution provided under such plans; and

(v) reimbursement, up to [\$25,000]<sup>7</sup> [\$15,000]<sup>8</sup>, for the cost of outplacement services reasonably selected by the Executive incurred within twelve (12) months after the Date of Termination, such reimbursement to occur within thirty (30) days of Executive's submission of reasonably satisfactory documentation of such fees.

(b) CIC Involuntary Termination - Effect on Options. If a CIC Involuntary Termination of the Executive's employment occurs, vesting of any and all Options held by the Executive shall be accelerated so that all such unexpired Options then held by the Executive shall be fully vested and exercisable immediately upon the CIC Involuntary Termination.

(c) CIC Involuntary Termination - Effect on Restricted Stock Units (RSUs) and Performance Stock Units (PSUs). If a CIC Involuntary Termination of the Executive's employment occurs, vesting of any and all RSUs and PSUs (at an assumed *maximum performance attainment* with regard to RSUs and PSU) held by the Executive shall be accelerated so that all such RSUs and all PSUs (at such *maximum performance attainment*) then held by the Executive shall be fully vested immediately upon the CIC Involuntary Termination.

(d) Termination Within 90 Days Prior to Change in Control. If the Executive's employment is terminated by the Company without Cause (or by the Executive for Good Reason) during the 90 days preceding a Change in Control then, upon such Change in Control: (i) the Executive shall be entitled to the benefits described in Section 6(a) as of the date of such Change in Control (with any lump sum payment due thereunder to be made within fifteen (15) calendar days following the Change in Control), but reduced by any benefits already paid or that are payable under Section 7, and (ii) the Options, RSUs and PSUs held by the Executive as of the Date of Termination shall be treated as if the Executive's employment had not been terminated prior to the Change in Control and the

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<sup>6</sup> Applicable to U.S.-based employees.

<sup>7</sup> Applicable to the CEO.

<sup>8</sup> Applicable to named executive officers, other than the CEO.

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Executive's awards shall vest as set forth under Section 6(b) and (c) above as of the date of the Change in Control.

(e) Effect on Equity Awards for Other Terminations. In the event the Executive's employment is terminated by the Company under any circumstances other than those described in this Section 6, the effect of such termination of employment on the Options, RSUs and/or PSUs then held by the Executive shall be as set forth in the agreements and plans representing such Options, RSU and/or PSUs.

**Section 7. Termination of Employment Due to Involuntary Termination (Not in Connection with CIC): Involuntary Termination and Severance.**

(a) Involuntary Termination. In the event the Executive's employment is terminated under circumstances constituting an Involuntary Termination (other than a CIC Involuntary Termination), the Executive shall be entitled to receive:

(i) within fifteen (15) calendar days after the Date of Termination, the Executive's Accrued Compensation through the Date of Termination; and

(ii) [within fifteen (15) calendar days after the seven (7) day period for revocation of the release has elapsed,]<sup>9</sup> a lump sum payment in cash equal to the sum of (x) [ONE AND A HALF TIMES (1.5X)]<sup>10</sup> [ONE TIMES (1X)]<sup>11</sup> of the Executive's annual Base Salary as of the Date of Termination and (y) the Pro Rata Bonus through the Date of Termination; and

(iii) for twelve (12) months after the Date of Termination, continuation of the Benefits in which the Executive was enrolled as of the Date of Termination (subject to any changes to Benefits as are applied to similarly-situated active employees), with the full premium cost for such coverage to be borne by the Company; *provided, however*, that if the Executive commences employment with another employer during such twelve (12) month period and is eligible to receive medical benefits under the new employer's plan(s), the Benefits shall terminate as of the date the Executive becomes eligible to receive such benefits; and

(iv) [within fifteen (15) calendar days after the seven (7) day period for revocation of the release has elapsed,]<sup>12</sup> a lump sum payment in an amount equal to the employer contributions to the Company's retirement plans on behalf of the Executive that would have been made for the benefit of the Executive if the Executive's employment had continued for twelve (12) months after the Date of Termination, assuming for this purpose that (A) all benefits under any such retirement plans were fully vested, (B) the Executive's compensation during such twelve (12) months was the same as it had been immediately prior to the Date of Termination, and (C) the Executive would have made contributions at the level

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<sup>9</sup> Applicable to U.S.-based employees.

<sup>10</sup> Applicable to the CEO.

<sup>11</sup> Applicable to named executive officers, other than the CEO.

<sup>12</sup> Applicable to U.S.-based employees.

necessary to receive the maximum matching contribution provided under such plans;  
and

(v) reimbursement, up to \$15,000, for outplacement services reasonably selected by the Executive incurred within twelve (12) months after the Date of Termination, such reimbursement to occur within thirty (30) days of Executive's submission of reasonably satisfactory documentation of such fees.

(b) Effect on Options, Restricted Stock Units and Performance Stock Units. Any unvested Options, RSUs and PSUs shall be forfeited on the Date of Termination unless provided otherwise in the plan or award agreement governing such Options, RSUs and PSUs.

(c) Effect on Short Term and Long Term Incentive Plans. Any opportunity to participate in the Company's short term incentive and long term incentive plans shall be forfeited on the Date of Termination.

(d) No Duplication of Benefits. The Executive cannot claim benefits under this Section 7 if benefits under Section 6 are triggered; *provided, however*, that if the Executive is terminated by the Company without Cause (or by the Executive for Good Reason) within 90 days prior to a Change in Control then the benefits under this Section 7 shall be paid upon as provided in this Section 7, and any additional benefits due under Section 6 shall be paid or provided as of the date of the Change in Control, as provided by Section 6(d).

**Section 8. Mitigation.** In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, and except as set forth in Section 6(a)(iii) and Section 7(a)(iii), such amounts shall not be reduced whether or not the Executive obtains other employment.

**Section 9. Successors.**

(a) This Agreement is personal to the Executive, and, without the prior written consent of the Company, shall not be assignable by the Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

**Section 10. Miscellaneous.**



(a) The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement constitutes the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior understanding, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof; *provided, however*, this Agreement shall have no effect on any confidentiality or restrictive covenant agreements or assignment of inventions agreements between the parties or on any legally required clawback policy of the Company's. This Agreement may not be amended or modified other than by a written agreement executed by the parties hereto or their respective successors and legal representatives. **Any prior executive change in control severance agreement (if any) or severance agreement (if any) between the Company (or its affiliates) and the Executive shall be deemed terminated upon the signing of this Agreement.**

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to the Executive:

[ ]

if to the Company:

Advanced Energy Industries, Inc.  
1595 Wynkoop St, Ste 800  
Denver, CO 80202  
Attention: President and CEO

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such [United States federal, state or]<sup>13</sup> [applicable]<sup>14</sup> local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

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<sup>13</sup> Applicable to U.S.-based employees.

<sup>14</sup> Applicable to Singapore-based employees.

(f) All claims by the Executive for unpaid payments or benefits under Section 6 of this Agreement shall be promptly forwarded to and addressed by the Compensation Committee of the Board of Directors of the Company (the “**Compensation Committee**”) and shall be in writing. All claims by the Executive for unpaid payments or benefits under Section 7 of this Agreement shall be promptly forwarded to and addressed by the Chief Executive Officer of the Company and the Senior Vice President of Human Resources (collectively, “**Senior Management**”), or if the person making the claim is either the Chief Executive Officer or the Senior Vice President of Human Resources, the Compensation Committee, and shall be in writing. Any denial by the Compensation Committee or Senior Management, as the case may be, of a claim for benefits under this Agreement shall be delivered to the Executive in writing and shall set forth the specific reasons for the denial and the specific provisions of this Agreement relied upon. The Compensation Committee and Senior Management, as the case may be, shall afford the Executive a reasonable opportunity for a review of the decision denying a claim and shall further allow the Executive to make a written demand upon the Company to submit the disputed matter to arbitration in accordance with the provisions of paragraph (g) below. With regard to claims under Section 6 of the Agreement, the Company shall pay all expenses of the Executive, including reasonable attorneys and expert fees, in connection with any such arbitration. With regard to claims under Section 7 of the Agreement, the Executive and the Company shall pay for their own expenses, including reasonable attorneys and expert fees, in connection with any such arbitration. With respect to claims under Section 6 of the Agreement, if for any reason the arbitrator has not made his award within one hundred eighty (180) days from the date of the Executive’s demand for arbitration, such arbitration proceedings shall be immediately suspended and the Company shall be deemed to have agreed to the Executive’s position. Thereafter, and only with respect to claims under Section 6 of the Agreement, the Company shall, as soon as practicable and in any event within 10 business days after the expiration of such 180-day period, pay the Executive his reasonable expenses and all amounts reasonably claimed by him that were the subject of such dispute and arbitration proceedings.

(g) [Any disputes arising from or in any way related to this Agreement shall be resolved exclusively by arbitration administered by the Singapore International Arbitration Centre pursuant to its SIAC Rules 2016. The seat of the arbitration shall be in Singapore, and proceedings shall be conducted in English. Any dispute in which the value of any claims and counterclaims is less than \$5 million (US) in the aggregate shall be resolved by a single arbitrator, and disputes of \$5 million (US) or more shall be resolved by a panel of three arbitrators. Either party may seek equitable relief to prevent the occurrence of irreparable harm pending the outcome of arbitration proceedings from any court of competent jurisdiction.]<sup>15</sup>

(g) [Subject to the terms of paragraph (f) above, any dispute arising from, or relating to, this Agreement shall be resolved at the request of either party through binding arbitration in accordance with this paragraph (g). Within 10 business days after demand for arbitration has been made by either party, the parties, and/or their counsel, shall meet to discuss the issues involved, to discuss a suitable arbitrator and arbitration procedure, and

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<sup>15</sup> Applicable to Singapore-based employees.

to agree on arbitration rules particularly tailored to the matter in dispute, with a view to the dispute's prompt, efficient, and just resolution. Upon the failure of the parties to agree upon arbitration rules and procedures within a reasonable time (not longer than 15 business days from the demand), the Commercial Arbitration Rules of the American Arbitration Association shall be applicable. Likewise, upon the failure of the parties to agree upon an arbitrator within a reasonable time (not longer than 15 business days from demand), there shall be a panel comprised of three arbitrators, one to be appointed by each party and the third one to be selected by the two arbitrators jointly, or by the American Arbitration Association, if the two arbitrators cannot decide on a third arbitrator. At least 30 days before the arbitration hearing (which shall be set for a date no later than 60 days from the demand), the parties shall allow each other reasonable written discovery including the inspection and copying of documents and other tangible items relevant to the issues that are to be presented at the arbitration hearing. The arbitrator(s) shall be empowered to decide any disputes regarding the scope of discovery. The award rendered by the arbitrator(s) shall be final and binding upon both parties. The arbitration shall be conducted in Denver County in the State of Colorado. The Colorado District Court located in Denver, Colorado shall have exclusive jurisdiction over disputes between the parties in connection with such arbitration and the enforcement thereof, and the parties consent to the jurisdiction and venue of such court for such purpose.

(h) This Agreement shall be governed by the laws of the State of Colorado, without giving effect to any choice of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado.

#### **Section 11. United States Tax**

(a) Other Terms Relating to Section 409A.

(i) This Section 11(a) applies to the extent Section 409A of the United States Internal Revenue Code of 1986, as amended (the "**Code**") applies to Executive.

(ii) Except as provided in Section 11(c), amounts payable under this Agreement following the Executive's termination of employment, other than those expressly payable on a deferred or installment basis or as reimbursement of expenses, will be paid as promptly as practicable after such a termination of employment and, in any event, within 2-1/2 months after the end of the year in which employment terminates, and amounts payable as reimbursements of expenses to the Executive must be made on or before the last day of the calendar year following the calendar year in which such expense was incurred.

(iii) Anything in this Agreement to the contrary notwithstanding, if (i) on the date of Executive's "**separation from service**" the Executive is determined to be a "**specified employee**," as each such term is defined under Section 409A of the Code, and (ii) the Executive would receive any payment under this Agreement that, absent the application of this Section 11(c), would be subject to interest and

additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(2)(B)(i) of the Code, then no such payment shall be payable prior to the date that is the earliest of (A) six (6) months after the Executive's separation from service date, (B) the Executive's death or (C) such other date as will cause such payment not to be subject to such interest and additional tax (with a catch-up payment equal to the sum of all amounts that have been delayed to be made as of the six (6) month payment date).

(iv) It is the intention of the parties that payments or benefits payable under this Agreement not be subject to the additional tax imposed pursuant to Section 409A of the Code. To the extent such potential payments or benefits could become subject to such Section, the parties shall cooperate to amend this Agreement with the goal of giving the Executive the economic benefits described herein in a manner that does not result in such tax being imposed.

(v) Any payment due upon a termination of employment under this Agreement shall be due only upon the Executive's separation from service for purposes of Treasury Regulation Section 1.409A-1(h)(1)(ii).

(vi) Wherever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(b) Other Terms Relating to Section 280G.

(i) Notwithstanding any other provision of this Agreement, if any portion of the payments or other benefits provided to the Executive under this Agreement, or under any other agreement with or plan of the Company or any 409A Affiliate (in the aggregate, "**Total Payments**"), would constitute an "**excess parachute payment**" (as defined below) and would, but for this Section 11, result in the imposition on the Executive of an excise tax under Code Section 4999 (the "**Excise Tax**"), then the Total Payments to be made to the Executive shall either be (i) delivered in full, or (ii) delivered in a reduced amount that is One Dollar (\$1.00) less than the amount that would cause any portion of such Total Payments to be subject to the Excise Tax, whichever of the foregoing results in the receipt by the Executive of the greatest benefit on an after-tax basis (taking into account the applicable federal, state and local income taxes and the Excise Tax).

(ii) Within forty (40) days following the Executive's Date of Termination or notice by one party to the other of its belief that there is a payment or benefit due the Executive that will result in an excess parachute payment, the Executive and the Company, at the Company's expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel ("**National Tax Counsel**") selected by the Company's independent auditors and reasonably acceptable to the Executive (which may be regular outside counsel to the Company in any case), which opinion sets forth (i) the amount of the Base Period Income (as defined below), (ii) the amount and present value of Total Payments, (iii) the

amount and present value of any excess parachute payments determined without regard to any reduction of Total Payments pursuant to Section 11(b)(ii), and (iv) the net after-tax proceeds to the Executive, taking into account the tax imposed under Code Section 4999 if (1) the Total Payments were reduced in accordance with Section 11(b)(ii), or (2) the Total Payments were not so reduced. The opinion of National Tax Counsel shall be addressed to the Company and the Executive and shall be binding upon the Company and the Executive. If such National Tax Counsel opinion determines that clause (ii) of Section 11(b) applies, then the payments hereunder or any other payment or benefit determined by such counsel to be includable in Total Payments shall be reduced or eliminated so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. In such event, payments or benefits included in the Total Payments shall be reduced or eliminated by applying the following principles, in order: (x) the payment or benefit with the higher ratio of the parachute payment value to present economic value (determined using reasonable actuarial assumptions) shall be reduced or eliminated before a payment or benefit with a lower ratio; (y) the payment or benefit with the later possible payment date shall be reduced or eliminated before a payment or benefit with an earlier payment date; and (z) cash payments shall be reduced prior to non-cash benefits; *provided* that if the foregoing order of reduction or elimination would violate Code Section 409A, then the reduction shall be made pro rata among the payments or benefits included in the Total Payments (on the basis of the relative present value of the parachute payments).

(iii) For purposes of this Agreement, (i) the terms “*excess parachute payment*” and “*parachute payments*” shall have the meanings assigned to them in Section 280G of the Code and such “parachute payments” shall be valued as provided therein, (ii) present value for purposes of this Agreement shall be calculated in accordance with Section 1274(b)(2) of the Code, (iii) the term “*Base Period Income*” means an amount equal to the Executive’s “*annualized includable compensation for the base period*” as defined in Section 280G(d)(1) of the Code, (iv) for purposes of the National Tax Counsel opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by the Company’s independent auditors in accordance with the principles of Section 280G(d)(3) and (4) of the Code, which determination shall be evidenced in a certificate of such auditors addressed to the Company and the Executive, and (v) the Executive shall be deemed to pay federal income tax and employment taxes at the highest marginal rate of federal income and employment taxation, and state and local income taxes at the highest marginal rate of taxation in the state or locality of the Executive’s domicile (determined in both cases in the calendar year in which the Date of Termination occurs or notice described in Section 11(c) is given, whichever is earlier), net of the maximum reduction in federal income taxes that may be obtained from the deduction of such state and local taxes. If the National Tax Counsel so requests in connection with the opinion required by this Section 11, the Executive and the Company shall obtain, at the Company’s expense, and the National Tax Counsel may rely on, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by

the Executive solely with respect to its status under Section 280G of the Code and the regulations thereunder.

(iv) The Company agrees to bear all costs associated with, and to indemnify and hold harmless, the National Tax Counsel of and from any and all claims, damages, and expenses resulting from or relating to its determinations pursuant to this Section 11, except for claims, damages or expenses resulting from the gross negligence or willful misconduct of such firm.

(v) This Section 11 shall be amended to comply with any amendment or successor provision to Sections 280G or 4999 of the Code. If such provisions are repealed without successor, then this Section 11 shall be cancelled without further effect.<sup>16</sup>

*[Signature Page Follows]*

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<sup>16</sup> Applicable to U.S.-based employees.

IN WITNESS WHEREOF, the parties have executed this Executive Change in Control and General Severance Agreement as of the date set forth in the Preamble hereto.

**Advanced Energy Industries, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Executive**

By: \_\_\_\_\_  
Name: [ ] \_\_\_\_\_

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## ANNEX A DEFINITIONS

(a) “**Accrued Compensation**” means an amount including all amounts earned or accrued through the Date of Termination but not paid as of the Date of Termination including (i) Base Salary, (ii) reimbursement for reasonable and necessary expenses incurred by the Executive on behalf of the Company during the period ending on the Date of Termination, (iii) vacation and sick leave pay (to the extent provided by Company policy or applicable law), and (iv) incentive compensation (if any) earned in respect of any period ended prior to the Date of Termination. It is expressly understood that incentive compensation shall have been “earned” as of the time that the conditions to such incentive compensation have been met, even if not calculated or payable at such time unless the incentive plan or this Agreement requires otherwise.

(b) “**Affiliate**” has the meaning ascribed to such term in Rule 12b-2 under the Exchange Act.

(c) “**Agreement**” means this Executive Change in Control and General Severance Agreement, as set forth in the Preamble hereto.

(d) “**Applicable Benefit Plan**” means any written employee benefit plan (which may include compensatory equity incentive plans) in effect and in which the Executive participates or under which the Executive retains rights to benefits as of the time of the termination of his/her employment.

(e) “**Base Salary**” means the Executive’s annual base salary at the rate in effect during the last regularly scheduled payroll period immediately preceding the occurrence of the termination of employment (disregarding any reduction in base salary that constitutes Good Reason) and does not include, for example, bonuses, overtime compensation, incentive pay, fringe benefits, sales commissions or expense allowances.

(f) “**Board**” means the Board of Directors of the Company, as set forth in the Recitals hereto.

(g) “**Cause**” means any of the following:

(i) the Executive’s (A) conviction of a felony; (B) commission of any other material act or omission involving dishonesty or fraud with respect to the Company or any of its affiliates or any of the customers, vendors or suppliers of the Company or its affiliates; (C) misappropriation of material funds or assets of the Company for personal use; or (D) engagement in unlawful harassment or unlawful discrimination with respect to any employee of the Company or any of its Subsidiaries;

(ii) the Executive’s continued substantial and repeated neglect of his/her duties, after written notice thereof from Senior Management (or the Compensation Committee, if Executive is a member of Senior Management or a named executive officer of the Company), and such neglect has not been cured within 30 days after the Executive receives notice thereof from Senior Management (or the Compensation Committee, as applicable);

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(iii) the Executive's gross negligence or willful misconduct in the performance of his duties hereunder that is materially and demonstrably injurious to the Company (either singly or on a consolidated basis); or

(iv) the Executive's engaging in conduct constituting a breach of his written obligations to the Company or any Subsidiary in respect of confidentiality and/or the use or ownership of proprietary information.

(h) "**Change in Control**" shall be deemed to occur upon the consummation of any of the following transactions:

(i) The acquisition by any Person of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act of 50% or more of either (A) the then-outstanding Shares (the "**Outstanding Company Common Stock**") or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); *provided, however*, that the following acquisitions shall not constitute a Change in Control: (1) any acquisition directly from the Company, (2) any acquisition by the Company, (3) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate or (4) any acquisition by any corporation pursuant to a transaction that complies with below subsections (h)(iii)(A) – (h)(iii)(C);

(ii) Any time at which individuals who, as of the date hereof, constitute the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of the Company's assets which occurs on the date that any Person acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (A) at least 50% of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding common equity and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or

substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any entity resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or an Affiliate or such entity resulting from such Business Combination) beneficially owns, directly or indirectly, 50% or more of, respectively, the then-outstanding common equity of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(v) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, for purposes of an Award (1) that provides for the payment of deferred compensation that is subject to Code Section 409A or (2) with respect to which the Company permits a deferral election, the definition of Change in Control herein shall be deemed amended to conform to the requirements of Code Section 409A to the extent necessary for the Award and deferral election to comply with Code Section 409A.

(i) "**CIC Involuntary Termination**" means the termination of the Executive's employment with the Company at the time of or following a Change in Control before the end of the CIC Period:

(i) by the Company without Cause, or

(ii) by the Executive for Good Reason.

(j) "**CIC Period**" means the eighteen (18) month period at the time of or following a Change in Control.

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

(l) "**Common Stock**" means common stock, par value \$0.001, of the Company.

(m) "**Company**" means Advanced Energy Industries, Inc., a Delaware corporation, as set forth in the Preamble hereto.

(n) "**Date of Termination**" means (i) if the Executive's employment is terminated for Cause, the date of receipt by the Executive of written notice from Board or the Chief Executive Officer that the Executive has been terminated, or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause, death or Long-Term Disability, the date specified in the Company's written notice to the Executive of such termination, (iii) if the Executive's employment is terminated by reason of the Executive's death or Long-Term Disability, the date of such death or the effective date of such Long-Term Disability, and (iv) if the Executive's employment is terminated by Executive's resignation that

constitutes Good Reason under this Agreement, the date of the Company's receipt of the Executive's notice of termination or any later date specified therein, which date shall not exceed thirty (30) days from the date notice is given.

(o) "**Effective Date**" means the date set forth in the Preamble hereto.

(p) "**Exchange Act**" means the United States Securities Exchange Act of 1934, as amended. Any reference to a specific provision of the Exchange Act includes any successor provision and the regulations and rules promulgated under such provision.

(q) "**Executive**" means the individual identified in the Preamble hereto.

(r) "**Good Reason**" means any of the following:

(i) without the Executive's express written consent a material reduction in the Executive's duties, or level of responsibility or authority, including, without limitation, any requirement that the Executive report to any person(s) other than the [Board]<sup>17</sup> [the Chief Executive Officer of the Company]<sup>18</sup>, or if, following a Change in Control, the Executive is not the [ **title** ] of a publicly traded company that is the ultimate parent entity of the acquirer; or

(ii) (x) a more than 10% reduction in the Executive's Base Salary, without (A) the Executive's express written consent or (B) an increase in the Executive's benefits, perquisites and/or guaranteed bonus, which increase(s) have a value reasonably equivalent to the reduction in Base Salary; or

(y) a more than 10% reduction in the Executive's Target Bonus, without (A) the Executive's express written consent or (B) a corresponding increase in the Executive's Base Salary;

*provided that*, in each case such reductions shall not constitute Good Reason if they are pursuant to a Company-wide reduction of base salaries and/or bonuses; or

(iv) relocation of the Executive's [primary work location to a location more than thirty-five (35) miles from the Executive's then-current primary work location]<sup>19</sup> [principal place of business to a location outside of Singapore]<sup>20</sup>, without the Executive's express written consent; or

(v) any failure by the Company (or any successor) to comply with any of the provisions of this Agreement other than certain isolated, insubstantial and inadvertent failures not occurring in bad faith which are remedied within 30 days.

Notwithstanding the foregoing, the Executive will not be considered to have terminated for Good Reason unless (A) the Executive provides written notice to the Company of the circumstance(s) constituting the Good Reason event within 90 days following the initial existence

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<sup>17</sup> Applicable to the CEO.

<sup>18</sup> Applicable to named executive officers, other than the CEO.

<sup>19</sup> Applicable to U.S.-based employees.

<sup>20</sup> Applicable to Singapore-based employees.

of such event, (B) the Company fails to cure the Good Reason event within 30 days following its receipt of such notice, and (C) the Executive provides written notice to the Company of his/her Date of Termination.

(s) “**Involuntary Termination**” means the termination of Executive’s employment with the Company at any time:

- (i) by the Company without Cause, or
- (ii) by the Executive for Good Reason.

(t) “**Long-Term Disability**” is defined according to the Company’s insurance policy regarding long-term disability for its employees.

(u) “**Option**” means options to purchase Common Stock granted by the Company or any of its subsidiaries under a compensation plan adopted or approved by the Company.

(v) “**Payment**” means any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of the Executive, whether paid or payable pursuant to this Agreement or otherwise.

(w) “**Person**” has the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, or any group of Persons acting in concert that would be considered “persons acting as a group” within the meaning of Treas. Reg. § 1.409A-3(i)(5).

(x) “**Pro Rata Bonus**” means an amount equal to 100% of the Target Bonus that the Executive would have been eligible to receive for the Company’s fiscal year in which the Executive’s employment terminates following a Change in Control, multiplied by a fraction, the numerator of which is the number of days in such fiscal year through the Termination Date and the denominator of which is 365. If the Target Bonus for the fiscal year in which the Executive’s employment is terminated has not yet been established as of the date of such termination, then “Target Bonus” shall refer to the Target Bonus as was in effect for the Executive for the fiscal year preceding the fiscal year in which the Executive’s employment terminates.

(y) “**PSUs**” means performance stock units or awards granted by the Company pursuant to which the Company has the right to issue Common Stock upon the satisfaction of vesting and other conditions, which PSUs are subject to an award agreement pursuant to a stock plan of the Company.

(z) “**RSUs**” means restricted stock units or awards granted by the Company pursuant to which the Company has the right to issue Common Stock upon the satisfaction of vesting and other conditions, which RSUs are subject to an award agreement pursuant to a stock plan of the Company.

(z) “**Subsidiary**” means any corporation, limited liability company or other limited liability entity in an unbroken chain of entities beginning with the Company if each of the entities (other than the last entities in the chain) owns the stock or equity interest possessing

more than fifty percent (50%) of the total combined voting power of all classes of stock or other equity interests in one of the other entities in the chain.

(aa) “**Target Bonus**” means the bonus which would have been paid to the Executive for full achievement of specific performance objectives pertaining to the business of the Company or any of its specific business units or divisions, or to individual performance criteria applicable to the Executive or his position (as the case may be), which objectives have been established by the Board of Directors (or the Compensation Committee thereof) or the Chief Executive Officer for the Executive relating to such plan or budget for the year in question. “Target Bonus” shall not mean the “maximum bonus” which the Executive might have been paid for overachievement of such plan.

(bb) “**Value**” of a Payment means the economic present value of a Payment as of the date of the change of control for purposes of Section 280G of the Code, as determined by the Accounting Firm using the discount rate required by Section 280G(d)(4) of the Code.

(cc) “**Voluntary Resignation**” means the termination of the Executive’s employment upon his voluntary resignation, which includes retirement, as set forth in Section 5 hereof. If the Executive terminates his employment for Good Reason, such termination shall not be treated as a Voluntary Resignation.

(dd) [“**409A Affiliate**” means each entity that is required to be included in the Company’s controlled group of corporations within the meaning of Section 414(b) of the Code, or that is under common control with the Company within the meaning of Section 414(c) of the Code; *provided, however*, that the phrase “at least 50 percent” shall be used in place of the phrase “at least 80 percent” each place it appears therein or in the regulations thereunder.]<sup>21</sup>

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<sup>21</sup> Applicable to U.S.-based employees.

## APPENDIX I

### LEGAL RELEASE

This Legal Release (“Release”) is between Advanced Energy Industries, Inc. (the “Company”) and \_\_\_\_\_ (“Executive”) (each a “Party,” and together, the “Parties”).

#### *Recitals*

A. Executive and the Company are parties to an Executive Change in Control and General Severance Agreement to which this Release is appended as Appendix I (the “Agreement”).

B. Executive wishes to receive the compensation, benefits, awards and other payments described in the Agreement.

C. Executive and the Company wish to resolve, except as specifically set forth herein, all claims between them arising from or relating to any act or omission predating the Date of Termination of [ date ].

#### *Agreement*

The Parties agree as follows:

The Company shall pay or provide to Executive the payments and benefits, as, when and on the terms and conditions specified in the Agreement.

#### Legal Releases

1. Release of Claims. (a) Executive, on behalf of Executive and Executive’s heirs, personal representatives and assigns, and any other person or entity that could or might act on behalf of Executive, including, without limitation, Executive’s counsel (all of whom are collectively referred to as “Executive Releasers”), hereby fully and forever releases and discharges the Company, its present and future affiliates and subsidiaries, and each of their past, present and future officers, directors, employees, shareholders, independent contractors, attorneys, insurers and any and all other persons or entities that are now or may become liable to any releaser due to any releasee’s act or omission, (all of whom are collectively referred to as “Executive Releasees”) of and from any and all actions, causes of action, claims, demands, costs and expenses, including attorneys’ fees, of every kind and nature whatsoever, in law or in equity, whether now known or unknown, that Executive Releasers, or any person acting under any of them, may now have, or claim at any future time to have, based in whole or in part upon any act or omission occurring on or before the Date of Termination, without regard to present actual knowledge of such acts or omissions, including specifically, but not by way of limitation, matters which may arise at common law, such as breach of contract, express or implied, promissory estoppel, wrongful discharge, tortious interference with contractual rights, infliction of emotional distress, defamation, or under applicable federal, state or local laws[, for example, the United States Fair Labor Standards Act, the Employee Retirement Income Security Act, the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in

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Employment Act, the Rehabilitation Act of 1973, the Equal Pay Act, the Americans with Disabilities Act, the Family and Medical Leave Act, and any civil rights law of any state or other governmental body]<sup>22</sup> [(if applicable to Executive, for example, the Singapore Employment Act, the Retirement and Re-Employment Act, the Industrial Relations Act, and any other applicable laws]<sup>23</sup>; *provided however*, that notwithstanding the foregoing or anything else contained in this Release the release set forth in this Section shall not extend to: (i) any rights arising under this Release (including the rights to payments and benefits under the Agreement that have not yet been paid or provided as of the Date of Termination); (ii) any vested rights under any pension, retirement, profit sharing or similar plan; (iii) Executive's rights, if any, to indemnification, and/or defense under any Company indemnification agreement, certificate of incorporation, bylaw and/or policy or procedure, or under any insurance contract, in connection with Executive's acts and omissions within the course and scope of Executive's employment with the Company; or (iv) any rights or remedies that cannot by law be waived by private agreement. Executive hereby warrants that Executive has not assigned or transferred to any person any portion of any claim which is released, waived and discharged above.

Executive further states and agrees that Executive has not experienced any illness, injury, or disability that is compensable or recoverable under [the worker's compensation laws of any state]<sup>24</sup> [work injury compensation legislation]<sup>25</sup> that was not reported to the Company by Executive before the Date of Termination. The Company advises Executive to consult with counsel prior to signing this Release. Executive understands and agrees that by signing this Release Executive is giving up any right to bring any legal claim against the Company concerning, directly or indirectly, Executive's employment relationship with the Company, including Executive's separation from employment. Executive agrees that this legal release is intended to be interpreted in the broadest possible manner in favor of the Company, to include all actual or potential legal claims that Executive may have against the Company, except as specifically provided otherwise in this Release. [Employee is releasing all rights under section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.]<sup>26</sup>

(b) In order to provide a full and complete release, Executive understands and agrees that this Release is intended to include all claims, if any, covered herein that Executive may have and not now know or suspect to exist in Executive's favor against any Executive Releasee and that this Release extinguishes such claims. Thus, Executive expressly waives all rights under any statute or common law principle in any jurisdiction that provides, in effect, that a general release does not extend to claims which the releasing party does not know or suspect to exist in Executive's favor at the time of executing the release, which if known by Executive must have materially affected Executive's settlement with the party being released. Notwithstanding any other provision

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<sup>22</sup> Applicable to U.S.-based employees.

<sup>23</sup> Applicable to Singapore-based employees.

<sup>24</sup> Applicable to U.S.-based employees.

<sup>25</sup> Applicable to Singapore-based employees.

<sup>26</sup> Applicable to California-based employees.

of this Section, however, nothing in this Section is intended or shall be construed to limit or otherwise affect in any way Executive's rights under this Release.

(c) Executive agrees and acknowledges that Executive: (i) understands the language used in this Release and the Release's legal effect; [(ii) is specifically releasing all claims and rights under the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621 et seq.];<sup>27</sup> (iii) will receive compensation under this Release to which Executive would not have been entitled without signing this Release; (iv) has been advised by the Company to consult with an attorney before signing this Release; [and (v) will be given up to twenty one (21) calendar days to consider whether to sign this Release. For a period of seven (7) days after Executive signs this Release, Executive may, in Executive's sole discretion, rescind or revoke this Release by delivering a written notice of rescission to the Company's General Counsel. If Executive rescinds or revokes this Release within seven (7) calendar days after Executive signs the Release, or if Executive does not sign this Release within the twenty-one (21) day consideration period, this Release shall be void, all actions taken pursuant to this Release shall be reversed, and neither this Release nor the fact of or circumstances surrounding its execution shall be admissible for any purpose whatsoever in any proceeding between the Parties, except in connection with a claim or defense involving the validity or effective rescission of this Release. If Executive does not rescind or revoke this Release within seven (7) calendar days after the day Executive signs this Release, this Release shall become final and binding and shall be irrevocable]<sup>28</sup>.

Executive acknowledges that Executive has received all compensation to which Executive is entitled for Executive's work up to Executive's last day of employment with the Company, and that Executive is not entitled to any further pay or benefit of any kind, for services rendered or any other reason, other than the payments and benefits, to the extent not already paid, described in the Agreement. Benefits under the Agreement are conditioned on Executive's compliance with any restrictive covenant agreements or assignment of inventions agreements between the parties.

Executive agrees that the only thing of value that Executive will receive by signing this Release is the payments and benefits described in the Agreement.

2. Protected Rights. Nothing in this Agreement is intended to waive claims (a) for unemployment or workers' compensation benefits, (b) for vested rights under ERISA-covered employee benefit plans as applicable on the date Employee signs this Agreement, (c) that may arise after Employee signs this Agreement, (d) for reimbursement of expenses under the Company's expense reimbursement policies, or (e) which cannot be released by private agreement. In addition, nothing in this Agreement including but not limited to the acknowledgments, release of claims, proprietary information, return of property, confidentiality, cooperation, and non-disparagement provisions, (f) limits or affects Employee's right to challenge the validity of this Agreement under the ADEA or the OWBPA, (g) prevents Employee from communicating with, filing a charge or complaint with; providing documents or information voluntarily or in response to a subpoena or other information request to; or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, law enforcement, or any other any

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<sup>27</sup> Applicable to U.S.-based employees.

<sup>28</sup> Applicable to U.S.-based employees.



federal, state or local agency charged with the enforcement of any laws, or from responding to a subpoena or discovery request in court litigation or arbitration, [or] (h) limits Employee from exercising rights under Section 7 of the NLRA or similar state law to engage in protected, concerted activity with other employees, although by signing this Agreement Employee is waiving rights to individual relief (including backpay, frontpay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Employee or on Employee's behalf by any third party, except for any right Employee may have to receive a payment or award from a government agency (and not the Company) for information provided to the government agency or otherwise where prohibited[, or (i) prevents Employee from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful or waives Employee's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the Company, or on the part of the agents or employees of the Company, when Employee has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature]<sup>29</sup>.]<sup>30</sup>

3. [Defend Trade Secrets Act Disclosure. Notwithstanding the confidentiality and non-disclosure obligations in this Agreement and otherwise, Employee understands that as provided by the Federal Defend Trade Secrets Act, Employee will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.]<sup>31</sup>

The Parties agree that their respective rights and obligations under the Agreement shall survive the execution of this Release.

This Agreement may be executed and delivered in one or more counterparts, which, together, shall constitute one and the same agreement and shall be fully effective and binding on the Parties. Execution of the Agreement by the parties via facsimile or electronic signatures shall be deemed the same as original signatures.

**By signing below, you acknowledge that you have read this Agreement carefully in its entirety, that you know and understand its contents, and that you enter into this Agreement freely and as a voluntary act.**

**Note: Do not sign this legal release until after Executive's final day of employment.**

EXECUTIVE

ADVANCED ENERGY INDUSTRIES, INC.

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<sup>29</sup> Applicable to California-based employees.

<sup>30</sup> Applicable to U.S.-based employees.

<sup>31</sup> Applicable to U.S.-based employees.

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_