

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of report (Date of earliest event reported): May 21, 2024

ARRAY TECHNOLOGIES, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation)

001-39613  
(Commission  
File Number)

83-2747826  
(I.R.S. Employer  
Identification No.)

3901 Midway Place NE  
Albuquerque, New Mexico 87109  
(Address of Principal Executive Offices, and Zip Code)

(505) 881-7567  
Registrant's Telephone Number, Including Area Code

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 communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value	ARRY	Nasdaq Global Market

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

Emerging growth company

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

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

***Deferred Compensation Plan***

On May 21, 2024, the Human Capital Committee (the “Committee”) of the Board of Directors (the “Board”) of Array Technologies, Inc. (the “Company”) adopted the Array Tech, Inc. Deferred Compensation Plan (the “Plan”). The Plan is a non-qualified deferred compensation plan that is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”). Participation in the Plan is voluntary and is currently open to U.S. employees of the Company and its subsidiaries at the level of Vice President or higher.

The Plan allows for deferrals by participants of up to 50% of their base salary and up to 100% of their cash incentive compensation. There is no maximum dollar limit on the amount that may be deferred by a participant in any year.

In addition, the Company will make a matching contribution to the Plan in respect of cash compensation that could not be recognized under the Company’s 401(k) plan due to the Code Section 401(a)(17) compensation limit (\$345,000 for 2024). The Plan matching contribution will be equal to the matching contribution established for the Company’s 401(k) plan for the applicable year. Under the terms of the Plan, the Company may also provide discretionary contributions to participants as determined annually in the discretion of the Committee. The participants are always 100% vested in the amount they defer, and any Company contributions will vest fully on the second anniversary of the date on which the Company contribution is made.

Compensation deferred pursuant to the Plan, along with any Company contributions to the Plan, may be invested by participants in accordance with investment menu of the Plan, which will mirror the fund choices of the Company 401(k) plan.

Compensation deferred pursuant to the Plan will be distributed in accordance with elections made by the participant. Participants may elect to receive distributions upon a separation from service or a specified date in the form of a lump sum payment or annual installment payments for up to 10 years, for distributions following a separation from service, or 5 years, for distributions upon a specified date. Compensation deferred pursuant to the Plan may also be distributed in the form of a lump sum benefit in the event of the participant’s death, disability, or unforeseeable emergency that results in “severe financial hardship,” as contemplated by Section 409A of the Code.

The Plan does not require the Company to establish any trust, escrow account, or other mechanism to hold the participant deferrals and Company contributions. The obligations of the Company under the Plan are general unsecured obligations.

The Company may amend the Plan at any time, except that no such amendment or termination may adversely affect a participant’s right with respect to the amount of the participant’s accounts as of the date of such amendment or termination. The Company may terminate the Plan at any time, in accordance with the requirements of Section 409A of the Code, and pay the participants their vested amounts in a single lump sum or on a schedule determined by the Committee.

The foregoing description of the Plan is qualified in its entirety by reference to the full text of the Plan, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

**Item 5.07 Submission of Matters to a Vote of Security Holders.**

On May 21, 2024 the Company held its 2024 Annual Meeting of Stockholders (the “Annual Meeting”). Matters voted on at the Annual Meeting and the results thereof were as follows:

*Proposal No. 1* – The Company’s stockholders elected the three nominees to the Company’s Board to serve three-year terms expiring at the 2027 annual meeting of stockholders and until their successors are duly elected and qualified, or until their earlier resignation or removal, with the votes cast as follows:

<b>Nominee</b>	<b>For</b>	<b>Withheld</b>	<b>Broker Non-Votes</b>
Troy Alstead	61,378,741	58,067,993	10,144,548
Orlando Ashford	70,866,270	48,580,464	10,144,548
Bilal Khan	111,197,289	8,249,445	10,144,548

*Proposal No. 2* – The Company’s stockholders ratified the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the fiscal year ended December 31, 2024, with the votes cast as follows:

	<b>Votes Cast</b>
For	129,124,253
Against	348,331
Abstentions	118,698

*Proposal No. 3* – The Company’s stockholders approved, on a non-binding advisory basis, the compensation of the Company’s Named Executive Officers, with the votes cast as follows:

	<b>Votes Cast</b>
For	107,634,675
Against	11,506,965
Abstentions	305,094
Broker Non-Votes	10,144,548

**Item 9.01 Financial Statements and Exhibits.**

(d) *Exhibits.*

The following exhibits are filed as part of this report:

<b>Exhibit#</b>	<b>Description</b>
10.1	<a href="#">Array Technologies, Inc. Deferred Compensation Plan.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURE**

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.

**Array Technologies, Inc.**

Date: May 24, 2024

By: /s/ Tyson Hottinger

Name: Tyson Hottinger

Title: Chief Legal Officer and Corporate Secretary

**Array Tech, Inc. Deferred Compensation Plan**

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Effective June 1, 2024

## IMPORTANT NOTE

This document has not been approved by the Department of Labor, Internal Revenue Service, or any other governmental entity. An adopting Employer must determine whether the Plan is subject to the Federal securities laws and the securities laws of the various states. An adopting Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is “unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees” under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer’s particular situation. FMR LLC, its affiliates and employees cannot provide you with legal advice in connection with the execution of this document. This document should be reviewed by the Employer’s attorney prior to execution.

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**Preamble**

The Plan is intended to be a “plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees” within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, or an “excess benefit plan” within the meaning of Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended, or a combination of both. The Plan is further intended to conform with the requirements of Internal Revenue Code Section 409A and the final regulations issued thereunder and shall be interpreted, implemented, and administered in a manner consistent therewith.

Array Tech, Inc.  
Deferred Compensation Plan

Preamble 1

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**Article 1 - General****1.1. Plan**

The Plan will be referred to by the name specified in the Adoption Agreement.

**1.2. Effective Dates**

- (a) Original Effective Date. The Original Effective Date is the date as of which the Plan was initially adopted.
- (b) Amendment Effective Date. The Amendment Effective Date is the date specified in the Adoption Agreement as of which the Plan is amended and restated. Except as otherwise provided in the Adoption Agreement, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.
- (c) Special Effective Date. A Special Effective Date may apply to any given provision if so specified in Appendix A of the Adoption Agreement. A Special Effective Date will control over the Original Effective Date or Amendment Effective Date, whichever is applicable, with respect to such provision of the Plan.

**1.3. Amounts Not Subject to Code Section 409A**

Except as otherwise indicated by the Plan Sponsor in Section 1.01 of the Adoption Agreement, amounts deferred before January 1, 2005 that are earned and vested on December 31, 2004 will be separately accounted for and administered in accordance with the terms of the Plan as in effect on December 31, 2004.

## **Article 2 - Definitions**

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

### **2.1. Account**

“Account” means an account and any subaccounts established for the purpose of recording amounts credited on behalf of a Participant and any earnings, expenses, gains, losses, or distributions included thereon. The Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant or to the Participant’s Beneficiary pursuant to the Plan.

### **2.2. Administrator**

“Administrator” means the person or persons designated by the Plan Sponsor in Section 1.05 of the Adoption Agreement to be responsible for the administration of the Plan. If no Administrator is designated in the Adoption Agreement, the Administrator is the Plan Sponsor.

### **2.3. Adoption Agreement**

“Adoption Agreement” means the agreement adopted by the Plan Sponsor that establishes the Plan.

### **2.4. Beneficiary**

“Beneficiary” means the persons, trusts, estates, or other entities entitled under Section 8.2 to receive benefits under the Plan upon the death of a Participant.

### **2.5. Board or Board of Directors**

“Board” or “Board of Directors” means the Board of Directors of the Plan Sponsor.

### **2.6. Bonus**

“Bonus” means an amount of incentive remuneration payable by the Employer to a Participant.

### **2.7. Change in Control**

“Change in Control” means the occurrence of an event involving the Plan Sponsor that is described in Section 9.7.

### **2.8. Code**

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

### **2.9. Compensation**

“Compensation” has the meaning specified in Section 3.01 of the Adoption Agreement.

**2.10. Director**

“Director” means a non-employee member of the Board.

**2.11. Disability**

“Disability” means that a Participant is disabled as defined in Section 5.01(e) of the Adoption Agreement.

**2.12. Eligible Employee**

“Eligible Employee” means an employee of the Employer who is identified as eligible.

**2.13. Employer**

“Employer” means the Plan Sponsor and any other Related Employer that is listed in Section 1.04 of the Adoption Agreement and which is authorized by the Plan Sponsor to participate in and, in fact, does adopt the Plan.

**2.14. ERISA**

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

**2.15. Identification Date**

“Identification Date” means the date as of which Key Employees are determined. For the purposes of the Plan, the Identification Date shall be December 31.

**2.16. Key Employee**

“Key Employee” means an employee who satisfies the conditions set forth in Section 9.6.

**2.17. Participant**

“Participant” means an Eligible Employee who commences participation in the Plan in accordance with Article 3.

**2.18. Plan**

“Plan” means the unfunded plan of deferred compensation set forth herein, including the Adoption Agreement and any trust agreement, as adopted by the Plan Sponsor, and as amended from time to time.

**2.19. Plan Sponsor**

“Plan Sponsor” means the entity identified in Section 1.03 of the Adoption Agreement or any successor by merger, consolidation or otherwise.

**2.20. Plan Year**

“Plan Year” means the period identified in Section 1.02 of the Adoption Agreement.

### **2.21. Related Employer**

“Related Employer” means the Plan Sponsor and (a) any corporation that is a member of a controlled group of corporations as defined in Code Section 414(b) that includes the Plan Sponsor and (b) any trade or business that is under common control as defined in Code Section 414(c) that includes the Plan Sponsor.

### **2.22. Retirement**

“Retirement” has the meaning specified in 5.01(d) of the Adoption Agreement.

### **2.23. Separation from Service**

“Separation from Service” means the date that the Participant dies, retires, or otherwise has a termination of employment with respect to all entities comprising the Related Employer. A Separation from Service does not occur if the Participant is on military leave, sick leave or other bona fide leave of absence if the period of leave does not exceed six months or such longer period during which the Participant’s right to re-employment is provided by statute or contract. If the period of leave exceeds six months and the Participant’s right to reemployment is not provided either by statute or contract, a Separation from Service will be deemed to have occurred on the first day following the six-month period. If the period of leave is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where the impairment causes the Participant to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a 29 month period of absence may be substituted for the six month period.

Whether a termination of employment has occurred is based on whether the facts and circumstances indicate that the Related Employer and the Participant reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the Participant would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36 month period (or the full period of services to the Related Employer if the employee has been providing services to the Related Employer for less than 36 months).

An independent contractor is considered to have experienced a Separation from Service with the Related Employer upon the expiration of the contract (or, in the case of more than one contract, all contracts) under which services are performed for the Related Employer if the expiration constitutes a good-faith and complete termination of the contractual relationship.

If a Participant provides services as both an employee and an independent contractor of the Related Employer, the Participant must separate from service both as an employee and as an independent contractor to be treated as having incurred a Separation from Service. If a Participant ceases providing services as an independent contractor and begins providing services as an employee, or ceases providing services as an employee and begins providing services as an independent contractor, the Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services in both capacities.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate Related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as a Director are not taken into account in determining whether the Participant has incurred a Separation from Service as an employee for purposes of a nonqualified deferred compensation plan in which the Participant participates as an employee that is not aggregated under Code Section 409A with any plan in which the Participant participates as a Director.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as an employee are not taken into account in determining whether the Participant has experienced a Separation from Service as a Director for purposes of a nonqualified deferred compensation plan in which the Participant participates as a Director that is not aggregated under Code Section 409A with any plan in which the Participant participates as an employee.

All determinations of whether a Separation from Service has occurred will be made in a manner consistent with Code Section 409A and the final regulations thereunder.

#### **2.24. *Unforeseeable Emergency***

“Unforeseeable Emergency” means a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant’s spouse, the Participant’s Beneficiary, or the Participant’s dependent (as defined in Code Section 152, without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)); loss of the Participant’s property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

#### **2.25. *Valuation Date***

“Valuation Date” means each business day of the Plan Year that the New York Stock Exchange is open.

#### **2.26. *Years of Service***

“Years of Service” means each one-year period for which the Participant receives service credit according to the elapsed time method in Treas. Reg. Sec. 1.410(a)-7. A Participant’s Years of Service shall include all service performed for the Employer and shall include service performed for the Related Employer.

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**Article 3 - Participation****3.1. Participation**

The Participants in the Plan shall be those Eligible Employees as selected by the Employer.

**3.2. Termination of Participation**

The Administrator may terminate a Participant's participation in the Plan in a manner consistent with Code Section 409A. If the Employer terminates a Participant's participation before the Participant experiences a Separation from Service, the Participant's vested Accounts shall be paid in accordance with the provisions of Article 9.



## **Article 4 - Participant Elections**

### **4.1. *Deferral Agreement***

If permitted by the Plan Sponsor in accordance with Section 3.01 of the Adoption Agreement, each Eligible Employee may elect to defer his or her Compensation within the meaning of Section 2.01 of the Adoption Agreement by executing in writing or electronically, a deferral agreement in accordance with rules and procedures established by the Administrator and the provisions of this Article 4.

A new deferral agreement must be timely executed for each Plan Year during which the Eligible Employee desires to defer Compensation. An Eligible Employee who does not timely execute a deferral agreement shall be deemed to have elected zero deferrals of Compensation for such Plan Year.

A deferral agreement may be changed or revoked during the period specified by the Administrator. Except as provided in Section 9.3, a deferral agreement becomes irrevocable at the close of the specified period.

### **4.2. *Amount of Deferral***

An Eligible Employee may elect to defer Compensation in any amount permitted by Section 3.01 (a) of the Adoption Agreement.

### **4.3. *Timing of Election to Defer***

Each Eligible Employee who desires to defer Compensation otherwise payable during a Plan Year must execute a deferral agreement within the period preceding the Plan Year specified by the Administrator. Each Eligible Employee who desires to defer Compensation that is a Bonus must execute a deferral agreement within the period preceding the Plan Year during which the Bonus is earned that is specified by the Administrator, except that if the Bonus can be treated as performance based compensation as described in Code Section 409A(a)(4)(B)(iii), the deferral agreement may be executed within the period specified by the Administrator, which period, in no event, shall end after the date which is six months prior to the end of the period during which the Bonus is earned, provided the Participant has performed services continuously from the later of the beginning of the performance period or the date the performance criteria are established through the date the Participant executed the deferral agreement and provided further that the compensation has not yet become 'readily ascertainable' within the meaning of Treas. Reg. § 1.409A-2(a)(8). In addition, if the Compensation qualifies as 'fiscal year compensation' within the meaning of Treas. Reg. § 1.409A-2(a)(6), the deferral agreement may be made not later than the end of the Employer's taxable year immediately preceding the first taxable year of the Employer in which any services are performed for which such Compensation is payable.

Except as otherwise provided below, an employee who is classified or designated as an Eligible Employee during a Plan Year may elect to defer Compensation otherwise payable during the remainder of such Plan Year in accordance with the rules of this Section 4.3 by executing a deferral agreement within the thirty (30) day period beginning on the date the employee is classified or designated as an Eligible Employee. If Compensation is based on a specified performance period that begins before the Eligible Employee executes his or her deferral agreement, the election will be deemed to apply to the portion of such Compensation equal to the total amount of Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election becomes irrevocable and effective over the total number of days in the performance period. The rules of this paragraph shall not apply unless the Eligible Employee can be treated as initially eligible in accordance with Treas. Reg. § 1.409A-2(a)(7).

**4.4. Election of Payment Schedule and Form of Payment**

All elections of a payment schedule and a form of payment will be made in accordance with rules and procedures established by the Administrator and the provisions of this Section 4.4.

The Plan Sponsor permits annual distribution elections in accordance with Section 5.01(b) of the Adoption Agreement. At the time an Eligible Employee completes a deferral agreement, the Eligible Employee must elect a distribution event (which includes a specified time) and a form of payment for the Compensation subject to the deferral agreement from among the options the Plan Sponsor has made available for this purpose and which are specified in 5.01(b) of the Adoption Agreement. Prior to the time required by Treas. Reg. § 1.409A-2, the Eligible Employee shall elect a distribution event (which includes a specified time) and a form of payment for any Employer contributions that may be credited to the Participant's Account during the Plan Year. If an Eligible Employee fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service as the distribution event. If he or she fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.

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**Article 5 - Employer Contributions****5.1. Matching Contributions**

If elected by the Plan Sponsor in Section 4.01(a) of the Adoption Agreement, the Employer will credit the Participant's Account with a matching contribution determined in accordance with a formula elected by the Employer. The matching contribution will be treated as allocated to the Participant's Account at the time elected by the Employer.

**5.2. Other Contributions**

If elected by the Plan Sponsor in Section 4.01(b) of the Adoption Agreement, the Employer will credit the Participant's Account with a contribution or contributions determined in accordance with a formula elected by the Employer. These contributions will be treated as allocated to the Participant's Account at the time elected by the Employer.

Array Tech, Inc.  
Deferred Compensation Plan

Article 5-1

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**Article 6 - Accounts and Credits****6.1. Establishment of Account**

For accounting and computational purposes only, the Administrator will establish and maintain an Account on behalf of each Participant which will reflect the credits made pursuant to Section 6.2, distributions or withdrawals, along with the earnings, expenses, gains and losses allocated thereto, attributable to the hypothetical investments made with the amounts in the Account as provided in Article 7. The Administrator may establish and maintain such other records and accounts, as it decides in its discretion to be reasonably required or appropriate to discharge its duties under the Plan.

**6.2. Credits to Account**

A Participant's Account will be credited for each Plan Year with the amount of his or her elective deferrals under Section 4.1 at the time the amount subject to the deferral election would otherwise have been payable to the Participant and the amount of Employer contributions, if any, treated as allocated on his or her behalf under Article 5.

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**Article 7 - Investment of Contributions****7.1. *Investment Options***

The amount credited to each Account shall be treated as invested in the investment options designated for this purpose by the Administrator.

**7.2. *Adjustment of Accounts***

The amount credited to each Account shall be adjusted for hypothetical investment earnings, expenses, gains or losses in an amount equal to the earnings, expenses, gains or losses attributable to the investment options selected from among the investment options provided in Section 7.1. A Participant (or the Participant's Beneficiary after the death of the Participant) may, in accordance with rules and procedures established by the Administrator, select the investments from among the options provided in Section 7.1 to be used for the purpose of calculating future hypothetical investment adjustments to the Account or to future credits to the Account under Section 6.2 effective as of the Valuation Date coincident with or next following notice to the Administrator. Each Account shall be adjusted as of each Valuation Date to reflect: (a) the hypothetical earnings, expenses, gains, and losses described above; (b) amounts credited pursuant to Section 6.2; and (c) distributions or withdrawals. In addition, each Account may be adjusted for its allocable share of the hypothetical costs and expenses associated with the maintenance of the hypothetical investments provided in Section 7.1.

## **Article 8 - Right to Benefits**

### **8.1. Vesting**

A Participant, at all times, has a 100% nonforfeitable interest in the amounts credited to his or her Account attributable to his or her elective deferrals made in accordance with Section 4.1.

A Participant's right to the amounts credited to his or her Account attributable to Employer contributions made in accordance with Article 5 shall be determined in accordance with the relevant schedule and provisions in Section 6.01 of the Adoption Agreement. Upon a Separation from Service and after application of the provisions of Section 6.01 of the Adoption Agreement, the Participant shall forfeit the nonvested portion of his or her Account.

### **8.2. Death**

The Plan Sponsor may elect to accelerate vesting upon the death of the Participant in accordance with Section 6.01(b) of the Adoption Agreement and/or to accelerate distributions upon death in accordance with Section 5.01(c) of the Adoption Agreement. If the Plan Sponsor does not elect to accelerate distributions upon death in accordance with Section 5.01(c) of the Adoption Agreement, the vested amount credited to the Participant's Account will be paid in accordance with the provisions of Article 9.

A Participant may designate a Beneficiary or Beneficiaries, or change any prior designation of Beneficiary or Beneficiaries in accordance with rules and procedures established by the Administrator. Whenever a Participant designates a new Beneficiary, all former Beneficiary designations by such Participant shall be revoked automatically. If a Participant and the Participant's spouse divorce, any designations of the spouse as Beneficiary shall become null and void. The former spouse shall be treated as the Beneficiary under the Plan only if after the divorce is final, the Participant expressly re-designates the former spouse as the Participant's Beneficiary.

A copy of the death notice or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's vested Account, such amount will be paid to his or her estate (such estate shall be deemed to be the Beneficiary for purposes of the Plan) in accordance with the provisions of Article 9.

### **8.3. Disability**

If the Plan Sponsor has elected to accelerate vesting upon the occurrence of a Disability in accordance with Section 6.01(b) of the Adoption Agreement and/or to permit distributions upon Disability in accordance with Section 5.01(c) of the Adoption Agreement, the determination of whether a Participant has incurred a Disability shall be based on the definition of Disability in Section 5.01(e) of the Adoption Agreement and in a manner consistent with the requirements of Code Section 409A.

## **Article 9 - Distribution of Benefits**

### **9.1. Amount of Benefits**

The vested amount credited to a Participant's Account as determined under Articles 6, 7 and 8 shall determine and constitute the basis for the value of benefits payable to the Participant under the Plan.

### **9.2. Method and Timing of Distributions**

Except as otherwise provided in this Article 9, distributions under the Plan shall be made in accordance with the elections made or deemed made by the Participant under Article 4. Subject to an election in Section 5.01 of the Adoption Agreement requiring a six-month delay for certain distributions to all Employees if stock of the Plan Sponsor, any Employer or any Related Employer is publicly traded on an established securities market, distributions following a payment event shall commence at the time specified in Section 5.01(a) of the Adoption Agreement. A Participant may elect, at least twelve months before a scheduled distribution event, to delay the payment date for a minimum period of sixty months from the originally scheduled date of payment, provided the election does not take effect for at least twelve months from the date on which the election is made. The participant may elect up to two distribution election changes, and each must be made in accordance with procedures and rules established by the Administrator. The Participant may, at the same time the date of payment is deferred, change the form of payment but such change in the form of payment may not effect an acceleration of payment in violation of Code Section 409A or the provisions of Treas. Reg. § 1.409A-2 (b). For purposes of this Section 9.2, a series of installment payments is always treated as a single payment and not as a series of separate payments.

### **9.3. Unforeseeable Emergency**

A Participant may request a distribution due to an Unforeseeable Emergency if the Plan Sponsor has elected to permit Unforeseeable Emergency withdrawals under Section 7.01(a) of the Adoption Agreement. The request must be in writing and must be submitted to the Administrator along with evidence that the circumstances constitute an Unforeseeable Emergency. The Administrator has the discretion to require whatever evidence it deems necessary to determine whether a distribution is warranted, and may require the Participant to certify that the need cannot be met from other sources reasonably available to the Participant. Whether a Participant has incurred an Unforeseeable Emergency will be determined by the Administrator on the basis of the relevant facts and circumstances in its sole discretion, but, in no event, will an Unforeseeable Emergency be deemed to exist if the hardship can be relieved: (a) through reimbursement or compensation by insurance or otherwise, (b) by liquidation of the Participant's assets to the extent such liquidation would not itself cause severe financial hardship, or (c) by cessation of deferrals under the Plan. A distribution due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need and may include any amounts necessary to pay any federal, state, foreign or local income taxes and penalties reasonably anticipated to result from the distribution. The distribution will be made in the form of a single lump sum cash payment. If permitted by Section 7.01(b) of the Adoption Agreement, a Participant's deferral elections for the remainder of the Plan Year will be cancelled upon a withdrawal due to an Unforeseeable Emergency. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with Section 9.6 at the time he or she experiences an Unforeseeable Emergency, the amount being delayed shall not be subject to the provisions of this Section 9.3 until the expiration of the six month period of delay required by section 9.6.

#### **9.4. Payment Election Overrides**

If the Plan Sponsor has elected one or more payment election overrides in accordance with Section 5.01(c) of the Adoption Agreement, the following provisions apply. Upon the occurrence of the first event selected by the Plan Sponsor, the remaining vested amount credited to the Participant's Account shall be paid in the form designated to the Participant or his or her Beneficiary regardless of whether the Participant had made different elections of time and/or form of payment or whether the Participant was receiving installment payments at the time of the event.

#### **9.5. Cashouts of Amounts Not Exceeding Stated Limit**

If the vested amount credited to the Participant's Account does not exceed \$25,000 at the time he or she incurs a Separation from Service for any reason, the Employer shall distribute such amount to the Participant at the time specified in Section 5.01(a) of the Adoption Agreement in a single lump sum cash payment following such Separation from Service regardless of whether the Participant had made different elections of time or form of payment as to the vested amount credited to his or her Account or whether the Participant was receiving installments at the time of such termination. A Participant's Account, for purposes of this Section 9.5, shall include any amounts described in Section 1.3.

#### **9.6. Required Delay in Payment to Key Employees**

Except as otherwise provided in this Section 9.6, a distribution made on account of Separation from Service to a Participant who is a Key Employee as of the date of his or her Separation from Service shall not be made before the date which is six months after the Separation from Service.

- (a) A Participant is treated as a Key Employee if: (i) he or she is employed by a Related Employer any of whose stock is publicly traded on an established securities market, and (ii) he or she satisfies the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii), determined without regard to Code Section 416(i)(5), at any time during the twelve month period ending on the Identification Date.
- (b) A Participant who is a Key Employee on an Identification Date shall be treated as a Key Employee for purposes of the six month delay in distributions for the twelve month period beginning on the first day of a month no later than the fourth month following the Identification Date. April 1 shall be the effective date for purposes of applying the six month delay in distributions to Key Employees.
- (c) The Plan Sponsor may elect to apply an alternative method to identify Participants who will be treated as Key Employees for purposes of the six month delay in distributions if the method satisfies each of the following requirements: (i) is reasonably designed to include all Key Employees, (ii) is an objectively determinable standard providing no direct or indirect election to any Participant regarding its application, and (iii) results in either all Key Employees or no more than 200 Key Employees being identified in the class as of any date. Use of an alternative method that satisfies the requirements of this Section 9.6(c) will not be treated as a change in the time and form of payment for purposes of Treas. Reg. § 1.409A-2(b).



- (d) The six-month delay does not apply to payments described in Section 9.9(a), (b) or (d) or to payments that occur after the death of the Participant. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with this Section 9.6 at the time he or she incurs a Disability which would otherwise require a distribution under the terms of the Plan, no amount shall be paid until the expiration of the six month period of delay required by this Section 9.6.

#### **9.7. Change in Control**

The Plan Sponsor reserves the right to terminate the Plan and distribute all vested amounts credited to Participant Accounts upon a Change in Control as described in this Section 9.7. Distribution of the remaining vested balance of each Participant's Account shall not automatically be paid as a lump sum payment upon the occurrence of a Change in Control.

A Change in Control, for purposes of the Plan, will occur upon a change in the ownership of the Plan Sponsor, a change in the effective control of the Plan Sponsor or a change in the ownership of a substantial portion of the assets of the Plan Sponsor. The Plan Sponsor, for this purpose, includes any corporation identified in this Section 9.7.

Whether a Change in Control has occurred will be determined by the Administrator in accordance with the rules and definitions set forth in this Section 9.7. A distribution to the Participant will be treated as occurring upon a Change in Control if the Plan Sponsor terminates the Plan in accordance with Section 10.2 and distributes the Participant's benefits within twelve months of a Change in Control as provided in Section 10.3.

- (a) Relevant Corporations. To constitute a Change in Control for purposes of the Plan, the event must relate to: (i) the corporation for whom the Participant is performing services at the time of the Change in Control, (ii) the corporation that is liable for the payment of the Participant's benefits under the Plan (or all corporations liable if more than one corporation is liable) but only if either the deferred compensation is attributable to the performance of services by the Participant for such corporation (or corporations) or there is a bona fide business purpose for such corporation (or corporations) to be liable for such payment and, in either case, no significant purpose of making such corporation (or corporations) liable for such payment is the avoidance of federal income tax, or (iii) a corporation that is a majority shareholder of a corporation identified in (i) or (ii), or any corporation in a chain of corporations in which each corporation is a majority shareholder of another corporation in the chain, ending in a corporation identified in (i) or (ii). A majority shareholder is defined as a shareholder owning more than fifty percent (50%) of the total fair market value and voting power of such corporation.

- (b) Stock Ownership. Code Section 318(a) applies for purposes of determining stock ownership. Stock underlying a vested option is considered owned by the individual who owns the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). If, however, a vested option is exercisable for stock that is not substantially vested (as defined by Treas. Reg. § 1.83-3(b) and (j)) the stock underlying the option is not treated as owned by the individual who holds the option.
- (c) Change in the Ownership of a Corporation. A change in the ownership of a corporation occurs on the date that any one person or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of such corporation. If any one person or more than one person acting as a group is considered to own more than fifty percent (50%) of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation as discussed below in Section 9.7(d)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock. Section 9.7 (c) applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction. For purposes of this Section 9.7(c), persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time or as a result of a public offering. Persons will, however, be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (d) Change in the Effective Control of a Corporation. A change in the effective control of a corporation occurs on the date that either (i) any one person, or more than one person acting as a group, acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing thirty percent (30%) or more of the total voting power of the stock of such corporation, or (ii) a majority of members of the corporation's Board of Directors is replaced during any twelve month period by Directors whose appointment or election is not endorsed by a majority of the members of the corporation's Board of Directors prior to the date of the appointment or election, provided that for purposes of this paragraph (ii), the term corporation refers solely to the relevant corporation identified in Section 9.7(a) for which no other corporation is a majority shareholder for purposes of Section 9.7(a). In the absence of an event described in Section 9.7(d)(i) or (ii), a change in the effective control of a corporation will not have occurred. A change in effective control may also occur in any transaction in which either of the two corporations involved in the transaction has a change in the ownership of such corporation as described in Section 9.7(c) or a change in the ownership of a substantial portion of the assets of such corporation as described in Section 9.7(e). If any one person, or more than one person acting as a group, is considered to effectively control a corporation within the meaning of this Section 9.7(d), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation or to cause a change in the ownership of the corporation within the meaning of Section 9.7(c). For purposes of this Section 9.7(d), persons will or will not be considered to be acting as a group in accordance with rules similar to those set forth in Section 9.7(c) with the following exception. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (e) **Change in the Ownership of a Substantial Portion of a Corporation's Assets.** A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in accordance with rules similar to those set forth in Section 9.7(d)), acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation or the value of the assets being disposed of determined without regard to any liabilities associated with such assets. There is no Change in Control event under this Section 9.7(e) when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer. A transfer of assets by a corporation is not treated as a change in ownership of such assets if the assets are transferred to (i) a shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock, (ii) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the corporation, (iii) a person, or more than one person acting as a group, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the corporation, or (iv) an entity, at least fifty (50%) of the total value or voting power of which is owned, directly or indirectly, by a person described in Section 9.7(e)(iii). For purposes of the foregoing, and except as otherwise provided, a person's status is determined immediately after the transfer of assets.

#### **9.8. Permissible Delays in Payment**

Distributions may be delayed beyond the date payment would otherwise occur in accordance with the provisions of Articles 8 and 9 in any of the following circumstances (as long as the Employer treats all payments to similarly situated Participants on a reasonably consistent basis):

- (a) The Employer may delay payment if it reasonably anticipates that its deduction with respect to such payment would be limited or eliminated by the application of Code Section 162(m). Payment must be made during the Participant's first taxable year in which the Employer reasonably anticipates, or should reasonably anticipate, that if the payment is made during such year the deduction of such payment will not be barred by the application of Code Section 162 (m) or during the period beginning with the Participant's Separation from Service and ending on the later of the last day of the Employer's taxable year in which the Participant separates from service or the 15<sup>th</sup> day of the third month following the Participant's Separation from Service. If a scheduled payment to a Participant is delayed in accordance with this Section 9.8(a), all scheduled payments to the Participant that could be delayed in accordance with this Section 9.8(a) will also be delayed.
- (b) The Employer may also delay payment if it reasonably anticipates that the making of the payment will violate federal securities laws or other applicable laws provided payment is made at the earliest date on which the Employer reasonably anticipates that the making of the payment will not cause such violation.

- (c) The Employer reserves the right to amend the Plan to provide for a delay in payment upon such other events and conditions as the Secretary of the Treasury may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

### **9.9. Permitted Acceleration of Payment**

The Employer may permit acceleration of the time or schedule of any payment or amount scheduled to be paid pursuant to a payment under the Plan provided such acceleration would be permitted by the provisions of Treas. Reg. § 1.409A-3(j)(4), including the following events:

- (a) Domestic Relations Order. A payment may be accelerated if such payment is made to an alternate payee pursuant to and following the receipt and qualification of a domestic relations order as defined in Code Section 414(p).
- (b) Compliance with Ethics Agreement and Legal Requirements. A payment may be accelerated as may be necessary to comply with ethics agreements with the Federal government or as may be reasonably necessary to avoid the violation of Federal, state, local or foreign ethics law or conflicts of laws, in accordance with the requirements of Code Section 409A.
- (c) De Minimis Amounts. A payment may be accelerated if (i) the amount of the payment is not greater than the applicable dollar amount under Code Section 402 (g)(1)(B), (ii) at the time the payment is made the amount constitutes the Participant's entire interest under the Plan and all other plans that are aggregated with the Plan under Treas. Reg. § 1.409A-1 (c)(2).
- (d) FICA Tax. A payment may be accelerated to the extent required to pay the Federal Insurance Contributions Act tax imposed under Code Sections 3101, 3121(a) and 3121(v)(2) of the Code with respect to compensation deferred under the Plan (the "FICA Amount"). Additionally, a payment may be accelerated to pay the income tax on wages imposed under Code Section 3401 of the Code on the FICA Amount and to pay the additional income tax at source on wages attributable to the pyramiding Code Section 3401 wages and taxes. The total payment under this subsection (d) may not exceed the aggregate of the FICA Amount and the income tax withholding related to the FICA Amount.
- (e) Section 409A Additional Tax. A payment may be accelerated if the Plan fails to meet the requirements of Code Section 409A; provided that such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A.
- (f) Offset. A payment may be accelerated in the Employer's discretion as satisfaction of a debt of the Participant to the Employer, where such debt is incurred in the ordinary course of the service relationship between the Participant and the Employer, the entire amount of the reduction in any of the Employer's taxable years does not exceed \$5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the Participant.
- (g) Other Events. A payment may be accelerated in the Administrator's discretion in connection with such other events and conditions as permitted by Code Section 409A.

## **Article 10 - Amendment and Termination**

### **10.1. Amendment by Plan Sponsor**

The Plan Sponsor reserves the right to amend the Plan (for itself and each Employer) through action of its Board of Directors or other authorized person. No amendment can directly or indirectly deprive any current or former Participant or Beneficiary of all or any portion of his or her Account which had accrued and vested prior to the amendment.

### **10.2. Plan Termination Following Change in Control or Corporate Dissolution**

The Plan Sponsor reserves the right to terminate the Plan and distribute all amounts credited to all Participant Accounts within the 30 days preceding or the twelve months following a Change in Control as determined in accordance with the rules set forth in Section 9.7. For this purpose, the Plan will be treated as terminated only if all agreements, methods, programs and other arrangements sponsored by the Related Employer immediately after the Change in Control which are treated as a single plan under Treas. Reg. § 1.409A-1(c)(2) are also terminated so that all Participants under the Plan and all similar arrangements are required to receive all amounts deferred under the terminated arrangements within twelve months of the date the Plan Sponsor irrevocably takes all necessary action to terminate the arrangements. In addition, the Plan Sponsor reserves the right to terminate the Plan within twelve months of a corporate dissolution taxed under Code Section 331 or with the approval of a bankruptcy court pursuant to 11 U. S. C. Section 503(b)(1)(A) provided that amounts deferred under the Plan are included in the gross incomes of Participants in the latest of (a) the calendar year in which the termination and liquidation occurs, (b) the first calendar year in which the amount is no longer subject to a substantial risk of forfeiture, or (c) the first calendar year in which payment is administratively practicable.

### **10.3. Other Plan Terminations**

The Plan Sponsor retains the discretion to terminate the Plan if (a) all arrangements sponsored by the Plan Sponsor that would be aggregated with any terminated arrangement under Code Section 409A and Treas. Reg. § 1.409A-1 (c)(2) are terminated, (b) no payments other than payments that would be payable under the terms of the arrangements if the termination had not occurred are made within twelve months of the termination of the arrangements, (c) all payments are made within twenty-four months of the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the arrangements, (d) the Plan Sponsor does not adopt a new arrangement that would be aggregated with any terminated arrangement under Code Section 409A and the regulations thereunder at any time within the three year period following the date of termination of the arrangement, and (e) the termination does not occur proximate to a downturn in the financial health of the Plan Sponsor. The Plan Sponsor also reserves the right to amend the Plan to provide that termination of the Plan will occur under such conditions and events as may be prescribed by the Secretary of the Treasury in generally applicable guidance published in the Internal Revenue Bulletin.

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**Article 11 - The Trust****11.1. Establishment of Trust**

The Plan Sponsor may establish a trust to hold amounts which the Plan Sponsor may contribute from time to time to correspond to some or all amounts credited to Participants under Section 6.2. Such trust shall be constructed to constitute an unfunded arrangement that does not affect the status of the Plan as an unfunded plan for purposes of Title I of ERISA and the Code.

**11.2. Trust**

Any trust established by the Plan Sponsor shall be between the Plan Sponsor and a trustee pursuant to a separate written agreement under which assets are held, administered and managed, subject to the claims of the Plan Sponsor's creditors in the event of the Plan Sponsor's insolvency. The Plan Sponsor must notify the trustee in the event of a bankruptcy or insolvency.

**11.3. Investment of Trust Funds**

Any amounts contributed to the trust by the Plan Sponsor shall be invested by the trustee in accordance with the provisions of the trust and the instructions of the Administrator. Trust investments need not reflect the hypothetical investments selected by Participants under Section 7.1 for the purpose of adjusting Accounts and the earnings or investment results of the trust need not affect the hypothetical investment adjustments to Participant Accounts under the Plan.

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## Article 12 - Plan Administration

### 12.1. Powers and Responsibilities of the Administrator

The Administrator has the full power and the full responsibility to administer the Plan in all of its details; subject, however, to the applicable requirements of ERISA. The Administrator's powers and responsibilities include, but are not limited to, the following:

- (a) To make and enforce such rules and procedures as it deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, its interpretation thereof to be final, except as provided in Section 12.2, on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To administer the claims and review procedures specified in Section 12.2;
- (e) To compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;
- (f) To determine the person or persons to whom such benefits will be paid;
- (g) To authorize the payment of benefits;
- (h) To make corrections and recover the overpayment of any benefits;
- (i) To comply with the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA;
- (j) To appoint such agents, counsel, accountants, and consultants as may be required to assist in administering the Plan;
- (k) By written instrument, to allocate and delegate its responsibilities, including the formation of an Administrative Committee to administer the Plan.



## 12.2. Claims and Review Procedures

- (a) Claims Procedure. If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the person's right to bring a civil action following an adverse decision on review. If the claim involves a Disability, the denial must also include the standards that governed the decision, including the basis for disagreeing with any health care professionals, vocational professionals or the Social Security Administration as well as an explanation of the scientific or clinical judgement underlying the denial. Such notification will be given within 90 days (45 days in the case of a claim regarding Disability) after the claim is received by the Administrator. The Administrator may extend the period for providing the notification by 90 days (30 days in the case of a claim regarding Disability, which may be extended an additional 30 days) if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstance is given to such person within the initial 90 day period (45 day period in the case of a claim regarding Disability). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his or her claim.
- (b) Review Procedure. Within 60 days (180 days in the case of a claim regarding Disability) after the date on which a person receives a written notification of denial of claim (or, if written notification is not provided, within 60 days (180 days in the case of a claim regarding Disability) of the date denial is considered to have occurred), such person (or his or her duly authorized representative) may (i) file a written request with the Administrator for a review of his or her denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The notification will explain that the person is entitled to receive, upon request and free of charge, reasonable access to and copies of all pertinent documents and has the right to bring a civil action following an adverse decision on review. The decision on review will be made within 60 days (45 days in the case of a claim regarding Disability). The Administrator may extend the period for making the decision on review by 60 days (45 days in the case of a claim regarding Disability) if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period (45 days in the case of a claim regarding Disability). If the decision on review is not made within such period, the claim will be considered denied.

If the claim is regarding Disability, and the determination of Disability has not been made by the Social Security Administration, the Railroad Retirement Board, or under the Plan Sponsor's long-term disability plan, the person may, upon written request and free of charge, also receive the identification of medical or vocational experts whose advice was obtained in connection with the denial of a claim regarding Disability, even if the advice was not relied upon.

Before issuing any decision with respect to a claim involving Disability, the Administrator will provide to the person, free of charge, the following information as soon as possible and sufficiently in advance of the date on which the response is required to be provided to the person to allow the person a reasonable opportunity to respond prior to the due date of the response:

- (i) Any new or additional evidence considered, relied upon, or generated by the Administrator or other person making the decision; and
  - (ii) A new or addition rationale if the decision will be based on that rationale.
- (c) Exhaustion of Claims Procedures and Right to Bring Legal Claim. No action at law or equity shall be brought more than one year after the Administrator's affirmation of a denial of a claim, or, if earlier, more than four years after the facts or events giving rising to the claimant's allegation(s) or claim(s) first occurred.

### **12.3. Plan Administrative Costs**

All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator in administering the Plan shall be paid by the Plan to the extent not paid by the Employer.

## **Article 13 - Miscellaneous**

### ***13.1. Unsecured General Creditor of the Employer***

Participants and their Beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Employer. For purposes of the payment of benefits under the Plan, any and all of the Employer's assets shall be, and shall remain, the general, unpledged, unrestricted assets of the Employer. Each Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

### ***13.2. Employer's Liability***

Each Employer's liability for the payment of benefits under the Plan shall be defined only by the Plan and by the deferral agreements entered into between a Participant and the Employer. An Employer shall have no obligation or liability to a Participant under the Plan except as provided by the Plan and a deferral agreement or agreements. An Employer shall have no liability to Participants employed by other Employers.

### ***13.3. Limitation of Rights***

Neither the establishment of the Plan, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to the Participant or any other person any legal or equitable right against the Employer, the Plan or the Administrator, except as provided herein; and in no event will the terms of employment or service of the Participant be modified or in any way affected hereby.

### ***13.4. Anti-Assignment***

Except as may be necessary to fulfill a domestic relations order within the meaning of Code Section 414(p), none of the benefits or rights of a Participant or any Beneficiary of a Participant shall be subject to the claim of any creditor. In particular, to the fullest extent permitted by law, all such benefits and rights shall be free from attachment, garnishment, or any other legal or equitable process available to any creditor of the Participant and his or her Beneficiary. Neither the Participant nor his or her Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the payments which he or she may expect to receive, contingently or otherwise, under the Plan, except the right to designate a Beneficiary to receive death benefits provided hereunder. Notwithstanding the preceding, the benefit payable from a Participant's Account may be reduced, at the discretion of the Administrator, to satisfy any debt or liability to the Employer.

### **13.5. Facility of Payment**

If the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his or her affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Employer to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under State law for the care and control of such recipient. The receipt by such person or institution of any such payments therefore, and any such payment to the extent thereof, shall discharge the liability of the Employer, the Plan and the Administrator for the payment of benefits hereunder to such recipient.

### **13.6. Notices**

Any notice or other communication to the Employer or Administrator in connection with the Plan shall be deemed delivered in writing if addressed to the Plan Sponsor at the address specified in Section 1.03 of the Adoption Agreement and if either actually delivered at said address or, in the case of a letter, five business days shall have elapsed after the same shall have been deposited in the United States mails, first-class postage prepaid and registered or certified.

### **13.7. Tax Withholding**

If the Employer concludes that tax is owing with respect to any deferral or payment hereunder, the Employer shall withhold such amounts from any payments due the Participant or from amounts deferred, as permitted by law, or otherwise make appropriate arrangements with the Participant or his or her Beneficiary for satisfaction of such obligation. Tax, for purposes of this Section 13.7 means any federal, state, local or any other governmental income tax, employment or payroll tax, excise tax, or any other tax or assessment owing with respect to amounts deferred, any earnings thereon, and any payments made to Participants under the Plan.

### 13.8. Indemnification

- (a) Each Indemnitee (as defined in Section 13.8 (e)) shall be indemnified and held harmless by the Employer for all actions taken by him or her and for all failures to take action (regardless of the date of any such action or failure to take action), to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated, against all expense, liability, and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined in subsection (e)). No indemnification pursuant to this Section shall be made, however, in any case where (1) the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness or (2) there is a settlement to which the Employer does not consent.
- (b) The right to indemnification provided in this Section shall include the right to have the expenses incurred by the Indemnitee in defending any Proceeding paid by the Employer in advance of the final disposition of the Proceeding, to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated; provided that, if such law requires, the payment of such expenses incurred by the Indemnitee in advance of the final disposition of a Proceeding shall be made only on delivery to the Employer of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced without interest if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section or otherwise.
- (c) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be such and shall inure to the benefit of his or her heirs, executors, and administrators. The Employer agrees that the undertakings made in this Section shall be binding on its successors or assigns and shall survive the termination, amendment, or restatement of the Plan.
- (d) The foregoing right to indemnification shall be in addition to such other rights as the Indemnitee may enjoy as a matter of law or by reason of insurance coverage of any kind and is in addition to and not in lieu of any rights to indemnification to which the Indemnitee may be entitled pursuant to the by-laws of the Employer.
- (e) For the purposes of this Section, the following definitions shall apply:
  - (i) "Indemnitee" shall mean each person serving as an Administrator (or any other person who is an employee, Director, or officer of the Employer) who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that he or she is or was performing administrative functions under the Plan.
  - (ii) "Proceeding" shall mean any threatened, pending, or completed action, suit, or proceeding (including, without limitation, an action, suit, or proceeding by or in the right of the Employer), whether civil, criminal, administrative, investigative, or through arbitration.

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**13.9. Successors**

The provisions of the Plan shall bind and inure to the benefit of the Plan Sponsor, the Employer and their successors and assigns and the Participant and the Participant's designated Beneficiaries.

**13.10. Disclaimer**

It is the Plan Sponsor's intention that the Plan comply with the requirements of Code Section 409A. Neither the Plan Sponsor nor the Employer shall have any liability to any Participant should any provision of the Plan fail to satisfy the requirements of Code Section 409A.

**13.11. Governing Law**

The Plan will be construed, administered, and enforced according to the laws of the State specified by the Plan Sponsor in Section 8.01 of the Adoption Agreement.

Array Tech, Inc.  
Deferred Compensation Plan

Article 13-4

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**Array Tech, Inc. Deferred Compensation Plan  
Adoption Agreement**

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	June 1, 2024	i



**1.01 Preamble**

By the execution of this Adoption Agreement the Plan Sponsor hereby [complete (a) or (b)]

- (a)  adopts a new plan as of June 1, 2024
- (b)  amends and restates its existing plan as of [month, day, year] which is the Amendment Effective Date. Except as otherwise provided in Appendix A, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.

Original Effective Date: [month, day, year]

Pre-409A Grandfathering:  Yes  No

By executing this Adoption Agreement, the Plan Sponsor (as defined below) has adopted the Plan (as defined below) consisting of the Basic Plan Document along with this Adoption Agreement (and any exhibits or scheduled attached hereto). The Plan Sponsor, by completing this Adoption Agreement has made the specific choices regarding plan design as set forth in the Adoption Agreement together with the detailed additional provisions set out in the Basic Plan Document. All capitalized terms used in this Adoption Agreement have the same meaning given in the Basic Plan Document.

**1.02 Plan**

Plan Name: Array Tech, Inc. Deferred Compensation Plan

Plan Year: Calendar Year

**1.03 Plan Sponsor**

Name: Array Tech, Inc.

Address: 3901 Midway Place NE, Albuquerque, NM 87109

Phone #: 505-881-7567

EIN #: 83-2747826

Fiscal Year: 2024

**1.04 Employer**

The following entities have been authorized by the Plan Sponsor to participate in and have adopted the Plan [insert “Not Applicable” if none have been authorized]:

<u>Entity</u>	<u>Publicly Traded on Est. Securities Market</u>	
	<u>Yes</u>	<u>No</u>
<u>Not Applicable</u>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

**1.05 Administrator**

The Plan Sponsor has designated the following party or parties to be responsible for the administration of the Plan:

Name: Array Tech, Inc. Retirement Plan Committee

Address: 3901 Midway Place NE, Albuquerque, NM 87109

Note: The Administrator is the person or persons designated by the Plan Sponsor to be responsible for the administration of the Plan. Neither Fidelity Employer Services Company nor any other Fidelity affiliate can be the Administrator.

**2.01 Compensation**

For purposes of determining Participant contributions under Article 4 of the Plan and Section 3.01 of this Adoption Agreement and Employer contributions under Article 5 of the Plan and Section 4.01 of this Adoption Agreement, Compensation shall be defined in the following manner [complete (a) or (b), or select (c), if applicable]:

(a)  Compensation is defined as:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b)  Compensation as defined in the Array Tech, Inc. 401(k) Plan without regard to the limitation in Section 401(a)(17) of the Code for such Plan Year.

(c)  Not Applicable.

**2.02 Bonuses**

Compensation, as defined in Section 2.01 of this Adoption Agreement, includes the following type of bonuses that will be the subject of a separate deferral election:

<u>Type</u>	<u>[Will be treated as]</u>	
	<u>Performance Based Compensation</u>	
	Yes	No
<u>Leadership Incentive Plan</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

Not Applicable.

### 3.01 Participant Contributions

If Participant contributions are permitted, complete (a)(i) and/or (a)(ii). Otherwise complete (c).

(a) **Amount of Deferrals**

A Participant may elect to defer the following amounts of remuneration.

(i) Compensation other than Bonuses

Type of Remuneration	% Amount		Increment
	Min	Max	
Base Salary	1%	50%	1%

(ii) Bonuses

Type of Bonus	% Amount		Increment
	Min	Max	
Leadership Incentive Plan	1%	100%	1%

(b) **Election Period for Performance Based Compensation**

A special election period

- Does  
 Does Not

apply to each eligible type of performance based compensation referenced in Section 2.02 of this Adoption Agreement.

The special election period, if applicable, will be determined by the Employer.

(c) **No Participant Contributions**

- Participant contributions are not permitted under the Plan.

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#### 4.01 *Employer Contributions*

If Employer contributions are permitted, complete (a) or (b). Otherwise complete (c). If (a) or (b) are selected, any Employer contributions may be made in an amount determined by the Employer in its sole discretion, allocated in a manner determined by the Employer in its sole discretion, and at such times as determined by the Employer in its sole discretion.

(a) **Employer Matching Contributions**

Employer matching contributions are permitted under the Plan.

(b) **Other Employer Contributions**

Other Employer contributions are permitted under the Plan.

(c) **No Employer Contributions**

Employer contributions are not permitted under the Plan.

June 1, 2024

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**5.01 Distributions**

The timing and form of payment of distributions made from the Participant's vested Account shall be made in accordance with the elections in this Section 5.01 of the Adoption Agreement. Notwithstanding the above, if the checkbox below indicates that stock of the Plan Sponsor, any Employer or any Related Employer, is publicly traded on an established securities market, a Participant's distribution on account of a Separation from Service shall be delayed by six months whether or not such Participant is a Key Employee.

Is stock of the Plan Sponsor, any Employer or any Related Employer publicly traded on an established securities market?  Yes  No

(a) **Timing of Distributions**

- (i) All distributions shall commence Monthly on specified day 1<sup>st</sup> business day of the month.
- (ii) The timing of distributions as determined in Section 5.01(a)(i) shall be modified by the adoption of:
  - Hold Until Next Year – Separation from Service distribution events will be treated as not having occurred for twelve months from the date of the event.

(b) **Distribution Events**

- (i) Participant Contributions under Article 4 of the Plan and Section 3.01 of this Adoption Agreement

Participants may elect the following payment events and the associated form or forms of payment. If multiple events for each year are selected, the earliest to occur will trigger payment.

(A)	<input checked="" type="checkbox"/>	Specified Date	<u>Lump Sum</u>	<u>Annual Installments</u>
(B)	<input checked="" type="checkbox"/>	Separation from Service	<input checked="" type="checkbox"/>	2-5 years
			<input checked="" type="checkbox"/>	2-10 years

The minimum deferral period for Specified Date event shall be 2 years.

- (ii) Employer contributions under Article 5 of the Plan and Section 4.01 of this Adoption Agreement  
 Participants may elect the following payment events and the associated form or forms of payment.

	<u>Lump Sum</u>	<u>Annual Installments</u>
(C) <input checked="" type="checkbox"/> Separation from Service	<input checked="" type="checkbox"/>	2-10 years

(c) **Payment Election Override**

Payment of the remaining vested balance of the Participant's Account will automatically occur at the time specified in Section 5.01(a) of this Adoption Agreement in the form indicated upon the earliest to occur of the following events [check each event that applies]:

<u>Events</u>	<u>Form of Payment</u>
	<u>Lump Sum</u>
<input checked="" type="checkbox"/> Death	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Disability	<input checked="" type="checkbox"/>

(d) **Retirement**

- Retirement shall be defined as a Separation from Service that occurs on or after the Participant [insert description of requirements]:

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- No special definition of Retirement applies.

(e) **Disability**

For Purposes of Section 2.11 of the Plan, Disability shall be defined as

- Total disability as determined by the Social Security Administration or the Railroad Retirement Board.
- As determined by the Employer's long term disability insurance policy.
- As follows [insert description of requirements]:

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- Not applicable.



**6.01 Vesting**

**(a) Employer Contributions**

The Participant's vested interest in the amount credited to his or her Account attributable to Employer contributions shall be based on the following schedule:

- (i)  Immediately 100% vested
- (ii)  Cliff vesting: 100% vested after   2   (2-5) Years of Service

**(b) Acceleration of Vesting**

The Participant's vested interest in his or her Account will be 100% automatically upon the occurrence of the following events [select each event that is applicable]:

- (i)  Death.
- (ii)  Disability
- (iii)  Eligibility for Retirement

**7.01 Unforeseeable Emergency**

(a) A withdrawal due to an Unforeseeable Emergency as defined in Section 2.24:

Will

Will Not [if Unforeseeable Emergency withdrawals are not permitted, proceed to Section 8.01]  
be allowed.

(b) Upon a withdrawal due to an Unforeseeable Emergency, a Participant's deferral election for the remainder of the Plan Year:

Will

Will Not

be cancelled. If cancellation occurs, the Participant may resume participation in accordance with Article 4 of the Plan and Section 3.01 of this Adoption Agreement.

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**8.01 Governing State Law**

The laws of New Mexico shall apply in the administration of the Plan to the extent not preempted by ERISA.

June 1, 2024

**Execution Page**

The Plan Sponsor has caused this Adoption Agreement to be executed this 1 day of May, 2024.

Plan Sponsor: Array Tech, Inc.

By: /s/ Terrance Collins  
Title: Chief Human Resources Officer

June 1, 2024

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**Appendix A**  
**Special Effective Dates**  
Not Applicable

June 1, 2024