

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

**FORM 8-K
CURRENT REPORT**

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

September 25, 2023
(Date of earliest event reported)

APPLIED DIGITAL CORPORATION
(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction
of incorporation)

001-31968
(Commission File Number)

95-4863690
(IRS Employer
Identification No.)

3811 Turtle Creek Blvd., Suite 2100,
(Address of principal executive offices)

Dallas, TX

75219
(Zip Code)

214-427-1704
(Registrant's telephone number, including area code)

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

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

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.

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	APLD	Nasdaq Global Select Market

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

Cummins and Rench Amendments

On September 25, 2023, the Company and Wes Cummins entered into Amendment No. 1 (the "Cummins Amendment") to the Executive Employment Agreement, dated as of November 1, 2021, by and between the Company and Mr. Cummins (the "Cummins Agreement"). On September 25, 2023 Company and David Rench also entered into Amendment No. 1 (the "Rench Amendment" and, together with the Cummins Amendment, the "Amendments") to the Executive Employment Agreement, dated as of November 1, 2021, by and between the Company and Mr. Rench (the "Rench Agreement" and, together with the Cummins Agreement, the "Employment Agreements"). Each of the Amendments removes the base salary amount and provides that each the Company and Mr. Cummins or Mr. Rench (each an "Employee"), as applicable, may from time to time during the Term of the relevant Employment Agreement, review and adjust (but not downward) the base salary of the Employee, without the need for a formal amendment to the Employment Agreement. The Amendments also remove the cap on the Employee's bonus and provide that if the Employee's employment is terminated without Cause or the Employee resigns with Good Reason (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan (the "Plan")) during the 24-month period following a Change in Control (as defined in the Plan), the Employee shall be entitled to a severance payment (a "Severance Payment") equal to two times the following amount: the Employee's Base Salary plus the Employee's target bonus, each for the year in which the termination of employment occurs. The Severance Payments may be reduced under certain circumstances.

Maniscalco Employment Agreement

On September 25, 2023, the Company and Michael Maniscalco entered into an Executive Employment Agreement (the "Maniscalco Employment Agreement"), pursuant to which Mr. Maniscalco will serve as the Chief Technology Officer of the Company. Mr. Maniscalco will be entitled to receive an annual base salary of \$275,000 per annum, subject to annual review, and shall also be eligible for an annual bonus, to be determined at the Company's sole discretion. Pursuant to the Maniscalco Employment Agreement, the Company may review and adjust (but not downward) Mr. Maniscalco's base salary from time to time, based upon his performance. The term of the Maniscalco Employment Agreement ends on October 31, 2024, with automatic one (1) year extensions unless notice not to renew is given by either party at least 60 days prior to the relevant end date. If

Mr. Maniscalco's employment is terminated without Cause or he resigns with Good Reason (as such terms are defined in the Plan) during the 24-month period following a Change in Control, Mr. Maniscalco will receive a Severance Payment. Mr. Maniscalco's Severance Payment may be reduced under certain circumstances.

Award Amendments

On September 25, 2023, the April 4, 2023 Restricted Stock Unit Award and each Performance Stock Unit Award to each of Mr. Cummins, Mr. Rench and Mr. Maniscalco were amended (collectively, the "Award Amendments") to provide that if, during the 24-month period following a Change in Control, the Company terminates Employee's employment without Cause or Employee resigns with Good Reason, the unvested portion of this Award shall become vested and payable immediately upon the termination of the Employee's employment.

The foregoing descriptions of the Cummins Amendment, the Rench Amendment, the Maniscalco Employment Agreement and the Award Amendments are qualified in their entirety by reference to the Cummins Amendment, the Rench Amendment, the Maniscalco Employment Agreement, the Form of Amendment No. 1 to Restricted Stock Unit Award and the Form of Amendment No. 1 to Performance Stock Unit Award, which are filed as Exhibits 10.1, 10.2, 10.3 10.4, and 10.5 respectively, and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Amendment No. 1 to Executive Employment Agreement, dated as of September 25, 2023, by and between the Company and Wes Cummins.
10.2	Amendment No. 1 to Executive Employment Agreement, dated as of September 25, 2023, by and between the Company and David Rench.

- 10.3 Executive Employment Agreement, dated as of September 25, 2023, by and between the Company and Michael Maniscalco
 - 10.4 Form of Amendment No. 1 to Restricted Stock Unit Award
 - 10.5 Form of Amendment No. 1 to Performance Stock Unit Award
 - 104 Cover Page Interactive Data File (embedded within the Inline XBRL document).
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SIGNATURE

Pursuant to the requirements of Section 13 or 15 (d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: September 28, 2023

By: /s/ David Rench
Name: David Rench
Title: Chief Financial Officer

**AMENDMENT NO. 1 TO
EXECUTIVE EMPLOYMENT CONTRACT**

This Amendment to the Executive Employment Contract (“Agreement”) is made as of September 25, 2023 by and between **Applied Digital Corporation** (the “Employer”) and **Wes Cummins** (the “Employee”).

WITNESSETH:

WHEREAS, the Employer and the Employee entered into an Executive Employment Contract on November 1, 2021 (the “Agreement”);

WHEREAS, the Employer and Employee desire to revise certain terms of the Agreement as discussed more fully in this Amendment (“Amendment”);

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereby agree as follows:

1. All terms and conditions of the Agreement between the Employee and the Employer shall remain in full force and effect except as expressly modified herein, and there shall be no modification of such terms and conditions except as expressly made herein.
2. Paragraph 8 of the Agreement is hereby amended effective April 4, 2023, to remove the reference to the amount of the base annual salary and to further provide that the Employer and Employee may from time to time during the Term of the Agreement, review and adjust (but not downward) the base salary based upon Employee's performance, without the need for a formal Amendment to this Agreement.
3. Paragraph 9 of the Agreement is hereby amended effective April 4, 2023 to delete the phrase “of up to 100% of the base salary” therefrom.
4. The Agreement is amended effective September 25, 2023 to add a new Paragraph 44 to read in its entirety as follows and to renumber the subsequent Paragraphs accordingly:

“Termination of Employment Following a Change in Control

44. If Employee’s employment is terminated by the Employer without Cause or Employee resigns with Good Reason (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan) during the 24-month period following a Change in Control (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan), the Employee shall be entitled to a severance payment equal to two times (2x) the following amount: the Employee’s Base Salary plus the Employee’s target bonus, each for the year in which the termination of employment occurs.”
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5. The Agreement is amended effective September 25, 2023 to add a new Paragraph 45 to read in its entirety as follows and to renumber the subsequent Paragraphs accordingly:

“45. If, in connection with a Change of Control, Employee’s severance payment under this Agreement will cause Employee to be liable for federal excise tax under Section 4999 of the Internal Revenue Code (the “Code”) levied on certain "excess parachute payments" as defined in Code Section 280G ("Excise Tax"), then the payments made pursuant to this Agreement shall be reduced (or repaid to the Employer, if previously paid or provided) as provided below:

- a. If the payments due upon a Change of Control pursuant to this Agreement and any other agreement between Employee and the Company, exceed 2.99 times Employee's "base amount," as defined in Code Section 280G, a reduced payment amount shall be calculated by reducing the payments to the minimum extent necessary so that no portion of any payment, as so reduced or repaid, constitutes an excess parachute payment. If it is determined that any Excise Tax is payable by Employee, Employee shall receive either (i) all payments otherwise due; or (ii) the reduced payment amount described in the preceding sentence, whichever will provide Employee with the greater after-tax economic benefit taking into account for these purposes any applicable excise tax.
 - b. Whether payments are to be reduced pursuant to this subparagraph, and the extent to which they are to be so reduced, will be determined solely by the Employer in good faith and the Employer will notify Employee in writing of its determination.
 - c. In no event shall Employee be entitled to receive any kind of gross-up payment or excise tax reimbursement from the Employer.”
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6. The Agreement is amended effective September 25, 2023 to add a new Paragraph 50 to read in its entirety as follows and to renumber the subsequent Paragraphs accordingly:

“Arbitration

50. The Parties agree that any dispute, controversy, or claim arising out of or related to this Agreement, or any alleged breach of this Agreement, shall be governed by the Federal Arbitration Act (FAA) and submitted to and decided by binding arbitration in Dallas, Texas. Arbitration shall be conducted by JAMS arbitration services. Each Party shall pay its own costs of arbitration. Any arbitral award determination shall be final and binding on the Parties and may be entered as a judgment in a court of competent jurisdiction. **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.”**

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment to the Agreement as of the date first written above.

APPLIED DIGITAL CORPORATION WES CUMMINS

By: /s/ David Rench /s/ Wes Cummins
Name: David Rench
Title: CFO

**AMENDMENT NO. 1 TO
EXECUTIVE EMPLOYMENT CONTRACT**

This Amendment to the Executive Employment Contract (“Agreement”) is made as of September 25, 2023 by and between **Applied Digital Corporation** (the “Employer”) and **David Rench** (the “Employee”).

WITNESSETH:

WHEREAS, the Employer and the Employee entered into an Executive Employment Contract on November 1, 2021 (the “Agreement”);

WHEREAS, the Employer and Employee desire to revise certain terms of the Agreement as discussed more fully in this Amendment (“Amendment”);

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereby agree as follows:

1. All terms and conditions of the Agreement between the Employee and the Employer shall remain in full force and effect except as expressly modified herein, and there shall be no modification of such terms and conditions except as expressly made herein.
2. Paragraph 8 of the Agreement is hereby amended effective April 4, 2023, to remove the reference to the amount of the base annual salary and to further provide that the Employer and Employee may from time to time during the Term of the Agreement, review and adjust (but not downward) the base salary based upon Employee's performance, without the need for a formal Amendment to this Agreement.
3. Paragraph 9 of the Agreement is hereby amended effective April 4, 2023 to delete the phrase “of up to 75% of the base salary” therefrom.
4. The Agreement is amended effective September 25, 2023 to add a new Paragraph 44 to read in its entirety as follows and to renumber the subsequent Paragraphs accordingly:

“Termination of Employment Following a Change in Control

44. If Employee’s employment is terminated by the Employer without Cause or Employee resigns with Good Reason (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan) during the 24-month period following a Change in Control (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan), the Employee shall be entitled to a severance payment equal to two times (2x) the following amount: the Employee’s Base Salary plus the Employee’s target bonus, each for the year in which the termination of employment occurs.”
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- a. If the payments due upon a Change of Control pursuant to this Agreement and any other agreement between Employee and the Company, exceed 2.99 times Employee's "base amount," as defined in Code Section 280G, a reduced payment amount shall be calculated by reducing the payments to the minimum extent necessary so that no portion of any payment, as so reduced or repaid, constitutes an excess parachute payment. If it is determined that any Excise Tax is payable by Employee, Employee shall receive either (i) all payments otherwise due; or (ii) the reduced payment amount described in the preceding sentence, whichever will provide Employee with the greater after-tax economic benefit taking into account for these purposes any applicable excise tax.
 - b. Whether payments are to be reduced pursuant to this subparagraph, and the extent to which they are to be so reduced, will be determined solely by the Employer in good faith and the Employer will notify Employee in writing of its determination.
 - c. In no event shall Employee be entitled to receive any kind of gross-up payment or excise tax reimbursement from the Employer.”
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50. The Parties agree that any dispute, controversy, or claim arising out of or related to this Agreement, or any alleged breach of this Agreement, shall be governed by the Federal Arbitration Act (FAA) and submitted to and decided by binding arbitration in Dallas, Texas. Arbitration shall be conducted by JAMS arbitration services. Each Party shall pay its own costs of arbitration. Any arbitral award determination shall be final and binding on the Parties and may be entered as a judgment in a court of competent jurisdiction. **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.”**

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment to the Agreement as of the date first written above.

APPLIED DIGITAL CORPORATION DAVID RENCH

By: /s/ Wes Cummins /s/ David Rench
Name: Wes Cummins
Title: CEO

EXECUTIVE EMPLOYMENT CONTRACT

THIS EXECUTIVE EMPLOYMENT CONTRACT (“Agreement”) is dated the 25th day of September, 2023, and shall be

BETWEEN:

Applied Digital Corporation of 3811 Turtle Creek Blvd, Suite 2100, Dallas, TX 75219, USA
(the “Employer”)

OF THE FIRST PART

- AND -

Michael Maniscalco
(the “Employee”)

OF THE SECOND PART

(the Employer and Employee referred to herein as the “Parties”).

BACKGROUND:

- A. The Employer is of the opinion that the Employee has the necessary qualifications, experience and abilities to assist and benefit the Employer in its business.

- B. The Employer desires to continue to employ the Employee and the Employee has agreed to continue such employment upon the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Agreement agree as follows:

Commencement Date and Term

1. The Employee will continue permanent full-time employment with the Employer. The Employee’s employment shall be pursuant to the terms of this Agreement as of September ___, 2023 (the “Commencement Date”).
2. Except as otherwise provided in this Agreement, the Employee’s term of employment under this Agreement shall commence on the Commencement Date and continue until October 31, 2024 (the “Term”). Thereafter, this Agreement shall automatically renew for subsequent periods of one (1) year (“Renewal Term”), unless either party provides written notice to the other at least 60 days prior to the end of the Term (or any Renewal Term thereafter) of its intention not to renew this Agreement or unless this Agreement is otherwise terminated as set forth in this Agreement. The period during which Employee is employed by the Employer under this Agreement is hereinafter referred to as the “Employment Term.” The Employee’s continued employment after the Employment Term, if any, will be on an at will basis until terminated by either party for any reason.

Job Title and Description

3. The Employer agrees to employ the Employee as Chief Technology Officer for 40 hours per week.
4. The Employee agrees to be employed on the terms and conditions set out in this Agreement. The Employee agrees to be subject to the general supervision of, and act pursuant to the orders, advice and direction of, the Employer and shall report to the Chief Executive Officer of the Employer.
5. The Employee will perform any and all duties that are reasonable and that are customarily performed by a person holding a similar position in the industry or business of the Employer.
6. The Employer may make changes to the job title or duties of the Employee where the changes would be considered reasonable for a similar position in the industry or business of the

Employer. The Employee's job title or duties may be changed by agreement and with the approval of both the Employee and the Employer.

7. The Employee agrees to abide by the Employer's rules, regulations, and practices, including those concerning work schedules, vacation and sick leave, as they may from time to time be adopted or modified.

Employee Compensation

8. Compensation paid to the Employee for the services rendered by the Employee as required by this Agreement (the "Compensation") will include an annual salary (the "Base Salary"), which shall be payable twice per month while this Agreement is in force. The Employer and Employee may from time to time during the Term of the Agreement, review and adjust (but not downward) the Base Salary based upon Employee's performance, without the need for a formal Amendment to this Agreement. The Employer shall deduct from the Employee's Compensation and from any other compensation in whatever form, any applicable deductions and remittances as required by law.
9. The Employee understands and agrees that any additional remuneration paid to the Employee in the form of bonuses or other similar incentive compensation will rest in the sole discretion of the Employer. The Employee shall be eligible for an annual cash bonus, with such eligibility, terms, and the amount of such bonus to be determined solely at the discretion of the Employer.
10. [Reserved.]
11. The Employer will reimburse the Employee for all reasonable expenses, in accordance with the Employer's policy as in effect from time to time, including but not limited to, any travel and entertainment expenses incurred by the Employee in connection with the business of the Employer. Expenses will be paid within a reasonable time after submission of acceptable supporting documentation.

Place of Work

12. Until such time as the Employer shall determine otherwise, the Employee's primary place of work will be at the following location:

a. 3811 Turtle Creek Blvd, Suite 2100, Dallas, TX 75219, USA.

Except that for purposes of applying the definition of Good Reason in the Applied Digital Corporation 2022 Incentive Plan, the Employee's principal place of employment shall be the Employee's address then currently on file with the Employer.

Employee Benefits

13. The Employee will be entitled to only those additional benefits that may come available as described in the Employer's employment handbook and plan documents or as required by law.

14. Employer discretionary benefits are subject to change, without compensation, upon the Employer providing the Employee with 60 days written notice of that change and providing that any change to those benefits is taken generally with respect to other employees and does not single out the Employee.

Paid Time Off

15. The Employee will be entitled to unlimited paid time off each year during the term of this Agreement, or as entitled by law, whichever is greater, with the understanding that if the Employer determines, in its sole discretion, that the Employee's standards of work are not at an acceptable performance level, the Employer may deny a request for paid time off with no additional reason required to be given.

16. The times and dates for any paid time off will be determined by mutual agreement between the Employer and the Employee.

17. Upon termination of employment, the Employer will not be required to pay compensation to the Employee for any unused scheduled days of paid time off.

Duty to Devote Full Time

18. The Employee agrees to devote full-time efforts, as an employee of the Employer, to the employment duties and obligations as described in this Agreement.

Conflict of Interest

19. During the term of the Employee's active employment with the Employer, it is understood and agreed that any business opportunity relating to or similar to the Employer's actual or reasonably anticipated business opportunities (with the exception of personal investments in less than 5% of the equity of a business, investments in established family businesses, real estate, or investments in stocks and bonds traded on public stock exchanges) coming to the attention of the Employee, is an opportunity belonging to the Employer. Therefore, the Employee will advise the Employer of the opportunity and may not pursue the opportunity, directly or indirectly, without the written consent of the Employer.

20. During the term of the Employee's active employment with the Employer, the Employee will not, directly or indirectly, engage or participate in any other business activities that the Employer, in its sole discretion, determines to be in conflict with the best interests of the Employer without the written consent of the Employer.

Non-Competition

21. The Employee agrees that during the Employee's term of active employment with the Employer, the Employee will not, directly or indirectly, as employee, owner, sole proprietor, partner, director, member, consultant, agent, founder, co-venturer or otherwise, solely or jointly with others engage in any business that is in competition with the business of the Employer within any geographic area in which the Employer conducts its business, or give advice or lend credit,

money or the Employee's reputation to any natural person or business entity engaged in a competing business in any geographic area in which the Employer conducts its business.

Non-Solicitation

22. The Employee understands and agrees that any attempt on the part of the Employee to induce other employees or contractors to leave the Employer's employ, or any effort by the Employee to interfere with the Employer's relationship with its other employees and contractors would be harmful and damaging to the Employer. The Employee agrees that during the Employee's term of employment with the Employer, and for a period of one (1) year after the end of that term, the Employee will not in any way, directly or indirectly:
- a. Induce or attempt to induce any employee or contractor of the Employer to quit employment or retainer with the Employer;
 - b. Otherwise interfere with or disrupt the Employer's relationship with its employees and contractors;
 - c. Discuss employment opportunities or provide information about competitive employment to any of the Employer's employees or contractors; or
 - d. Solicit, entice, or hire away any employee or contractor of the Employer for the purpose of an employment opportunity that is in competition with the Employer.
23. This non-solicitation obligation as described in this section will be limited to employees or contractors who were employees or contractors of the Employer during the period that the Employee was employed by the Employer.
24. During the term of the Employee's active employment with the Employer, and for one (1) year thereafter, the Employee will not divert or attempt to divert from the Employer any business the Employer had enjoyed, solicited, or attempted to solicit, from its customers, prior to termination or expiration, as the case may be, of the Employee's employment with the Employer.

Confidential Information

25. The Employee acknowledges that, in any position the Employee may hold, in and as a result of the Employee's employment by the Employer, the Employee will, or may, be making use of, acquiring or adding to information which is confidential to the Employer (the "Confidential Information") and the Confidential Information is the exclusive property of the Employer.
26. The Confidential Information will include all data and information relating to the business and management of the Employer, including but not limited to, proprietary and trade secret technology and accounting records to which access is obtained by the Employee, including Work Product, Computer Software, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Customer Information.
27. The Confidential Information will also include any information that has been disclosed by a third party to the Employer and is governed by a non-disclosure agreement entered into between that third party and the Employer.
28. The Confidential Information will not include information that:
- a. Is generally known in the industry of the Employer;
 - b. Is now or subsequently becomes generally available to the public through no wrongful act of the Employee;
 - c. Was rightfully in the possession of the Employee prior to the disclosure to the Employee by the Employer;
 - d. Is independently created by the Employee without direct or indirect use of the Confidential Information; or
 - e. The Employee rightfully obtains from a third party who has the right to transfer or disclose it.

Duties and Obligations Concerning Confidential Information

29. The Employee agrees that a material term of the Employee's contract with the Employer is to keep all Confidential Information absolutely confidential and protect it from release to the public. The Employee agrees not to divulge, reveal, report or use, for any purpose, any of the Confidential Information which the Employee has obtained or which was disclosed to the Employee by the Employer as a result of the Employee's employment by the Employer. The Employee agrees that if there is any question as to such disclosure then the Employee will seek out senior management of the Employer prior to making any disclosure of the Employer's information that may be covered by this Agreement.
30. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Employee in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and will continue after such expiration or termination.
31. The Employee may disclose any of the Confidential Information:
- a. To a third party where Employer has consented in writing to such disclosure; and
 - b. To the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body.
32. If the Employee loses or makes unauthorized disclosure of any of the Confidential Information, the Employee will immediately notify the Employer and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.

Ownership and Title to Confidential Information

33. The Employee acknowledges and agrees that all rights, title and interest in any Confidential Information will remain the exclusive property of the Employer. Accordingly, the Employee specifically agrees and acknowledges that the Employee will have no interest in the Confidential

Information, including, without limitation, no interest in know-how, copyright, trade-marks or trade names, notwithstanding the fact that the Employee may have created or contributed to the creation of the Confidential Information.

34. The Employee waives any moral rights that the Employee may have with respect to the Confidential Information.
35. The Employee agrees to immediately disclose to the Employer all Confidential Information developed in whole or in part by the Employee during the Employee's term of employment with the Employer and to assign to the Employer any right, title or interest the Employee may have in the Confidential Information. The Employee agrees to execute any instruments and to do all other things reasonably requested by the Employer, both during and after the Employee's employment with the Employer, in order to vest more fully in the Employer all ownership rights in those items transferred by the Employee to the Employer.

Return of Confidential Information

36. The Employee agrees that, upon request of the Employer or upon termination or expiration, as the case may be, of his employment, the Employee will turn over to the Employer all Confidential Information belonging to the Employer, including but not limited to, all documents, plans, specifications, disks or other computer media, as well as any duplicates or backups made of that Confidential Information in whatever form or media, in the possession or control of the Employee that:
 - a. May contain or be derived from ideas, concepts, creations, or trade secrets and other proprietary and Confidential Information as defined in this Agreement; or
 - b. Is connected with or derived from the Employee's employment with the Employer.

Termination Due to Discontinuance of Business

37. Notwithstanding any other term or condition expressed or implied in this Agreement, in the event that the Employer will discontinue operating its business at the location where the Employee is employed, then, at the Employer's sole option, and as permitted by law, this Agreement will terminate as of the last day of the month in which the Employer ceases operations at such location with the same force and effect as if such last day of the month were originally set as the Termination Date of this Agreement.

Termination of Employment

38. Where the Employee has breached any term of this Agreement or where there is just Cause for termination, the Employer may immediately terminate the Employee's employment without notice, unless such termination is prohibited under applicable law. For purposes of this Agreement, Cause shall mean any of the following events with respect to the Employee, as determined by the Employer in its sole discretion:

- a. willful refusal to follow the lawful directions of the Employer or the Employee's supervisor, which directions are consistent with normal business practice;
- b. indictment or conviction of, or plea of nolo contendere to, (i) any felony, or (ii) another crime involving dishonesty or moral turpitude, or the Employee's engaging in any embezzlement, financial misappropriation or fraud, related to their employment with, or provision of services to, the Employer or any subsidiary or affiliate;
- c. engaging in any willful misconduct or gross negligence or willful act of dishonesty, including any violation of federal securities laws, or violence or threat of violence, which is materially injurious to the Employer or any subsidiary or affiliate;
- d. repeated abuse of alcohol or drugs (legal or illegal) that, in the Employer's reasonable judgment, materially impairs Employee's ability to perform their duties; or
- e. Employee's willful and knowing breach or violation of any material provision of this Agreement, including, but not limited to, any Restrictive Covenant Provision as defined herein.

39. The Employee and the Employer agree that reasonable and sufficient notice of termination of employment by the Employer is the greater of four (4) weeks and any minimum notice required by law.

40. If the Employee wishes to terminate their employment with the Employer, the Employee will provide the Employer with notice of a minimum of two (2) weeks. Instead of providing this notice, if agreed to by the Employer, and in such event, the Employee will cooperate with the training and development of a replacement.
41. Except as provided in paragraph 38 hereof, the Termination Date specified by either the Employee or the Employer may fall on any day of the month and upon the Termination Date the Employer will forthwith pay to the Employee any accrued but unpaid wages calculated to the Termination Date.
42. Except as provided in paragraph 38 hereof, once notice has been given by either party for any reason, the Employee and the Employer agree to execute their duties and obligations under this Agreement diligently and in good faith through to the end of the notice period. The Employer may not make any changes to wages, wage rate, or any other term or condition of this Agreement between the time termination notice is given through to the end of the notice period.
43. Except as may be provided for in the Award Agreement, in the event of the Employee's termination for any reason prior to the vesting of the Restricted Stock, the Employee shall immediately forfeit any and all rights to the Restricted Stock.

Termination of Employment Following a Change in Control

44. If Employee's employment is terminated by the Employer without Cause or the Employee resigns with Good Reason (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan) during the 24-month period following a Change in Control (as such term is defined in the Applied Digital Corporation 2022 Incentive Plan), the Employee shall be entitled to a severance payment equal to two times (2x) the following amount: the Employee's Base Salary plus the Employee's target bonus, each for the year in which the termination of employment occurs.
45. If, in connection with a Change of Control, Employee's severance payment under this Agreement will cause Employee to be liable for federal excise tax under Section 4999 of the

Internal Revenue Code (the “Code”) levied on certain “excess parachute payments” as defined in Code Section 280G (“Excise Tax”), then the payments made pursuant to this Agreement shall be reduced (or repaid to the Employer, if previously paid or provided) as provided below:

- a. If the payments due upon a Change of Control pursuant to this Agreement and any other agreement between Employee and the Company, exceed 2.99 times Employee’s “base amount,” as defined in Code Section 280G, a reduced payment amount shall be calculated by reducing the payments to the minimum extent necessary so that no portion of any payment, as so reduced or repaid, constitutes an excess parachute payment. If it is determined that any Excise Tax is payable by Employee, Employee shall receive either (i) all payments otherwise due; or (ii) the reduced payment amount described in the preceding sentence, whichever will provide Employee with the greater after-tax economic benefit taking into account for these purposes any applicable excise tax.
- b. Whether payments are to be reduced pursuant to this subparagraph, and the extent to which they are to be so reduced, will be determined solely by the Employer in good faith and the Employer will notify Employee in writing of its determination.
- c. In no event shall Employee be entitled to receive any kind of gross-up payment or excise tax reimbursement from the Employer.

Remedies

46. The Employee further agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party, or violation of the Non-Competition and/or Non-Solicitation provisions in this Agreement (all referred to herein as the “Restrictive Covenant Provisions”), in breach of this Agreement cannot be reasonably or adequately compensated for in money damages, would cause irreparable injury to Employer, would gravely affect the effective and successful conduct of the Employer’s business and goodwill, and would be a material breach of this Agreement. Accordingly, in the event of a breach or threatened breach by the Employee of any of the provisions of this Agreement, including, but not limited to, the Restrictive Covenant Provisions,

the Employee agrees that the Employer is entitled to a permanent injunction, in addition to and not in limitation of any other rights and remedies available to the Employer at law or in equity, in order to prevent or restrain any such breach by the Employee or by the Employee's partners, agents, representatives, servants, employees, and/or any and all persons directly or indirectly acting for or with the Employee.

Severability

47. The Employer and the Employee acknowledge that this Agreement is reasonable, valid and enforceable. However, if any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the Parties' intent that such provision be changed in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

Modification of Agreement

48. Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

Governing Law

49. This Agreement will be construed in accordance with and governed by the laws of the state of Texas without regard to choice-of-law principles. All disputes arising under this Agreement shall be adjudicated solely within the State or Federal courts located within the State of Texas, Dallas County.

Arbitration

50. The Parties agree that any dispute, controversy, or claim arising out of or related to this Agreement, or any alleged breach of this Agreement, shall be governed by the Federal Arbitration Act (FAA) and submitted to and decided by binding arbitration in Dallas, Texas.

Arbitration shall be conducted by JAMS arbitration services. Each Party shall pay its own costs of arbitration. Any arbitral award determination shall be final and binding on the Parties and may be entered as a judgment in a court of competent jurisdiction. **EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

Definitions

51. For the purpose of this Agreement the following definitions will apply:

- a. 'Work Product' means work product information, including but not limited to, work product resulting from or related to work or projects performed or to be performed for the Employer or for clients of the Employer, of any type or form in any stage of actual or anticipated research and development.
- b. 'Computer Software' means computer software resulting from or related to work or projects performed or to be performed for the Employer or for clients of the Employer, of any type or form in any stage of actual or anticipated research and development, including but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches and system designs.
- c. 'Other Proprietary Data' means information relating to the Employer's proprietary rights prior to any public disclosure of such information, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets).

- d. 'Business Operations' means operational information, including but not limited to, internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the Employer's business.
- e. 'Marketing and Development Operations' means marketing and development information, including but not limited to, marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the Employer which have been or are being considered.
- f. 'Customer Information' means customer information, including but not limited to, names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by customers of the Employer.
- g. 'Termination Date' means the date specified in this Agreement or in a subsequent notice by either the Employee or the Employer to be the last day of employment under this Agreement. The Parties acknowledge, however, that certain provisions of this Agreement shall survive to the extent expressly provided for in a specific provision and also as necessary to give effect to the intent of the Parties, including, but not limited to, the provisions in Paragraphs 22, 30, 35 and 36 of this Agreement.

General Provisions

52. Time is of the essence in this Agreement.

53. Headings are inserted for the convenience of the Parties, and cross-reference hereunder, only and are not to be considered when interpreting this Agreement. Words in the singular mean and

include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

54. No failure or delay by either party to this Agreement in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.
55. This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the Employer and the Employee.
56. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
57. This Agreement contains the entire understanding between the Parties hereto and supersedes any and all prior understandings regarding the employment of the Employee, including, but not limited to, any pre-existing agreement between the Employee and the Employer.
58. Any notice required to be given by the Employer hereunder to the Employee shall be in proper form if signed by a proper representative of the Employer. Until one party shall advise the other in writing to the contrary, notices shall be deemed delivered:
- to the Employer if delivered to the Employer in person, by email or, if mailed, by certified, registered or overnight mail, postage prepaid to:

Applied Digital Corporation
3811 Turtle Creek Blvd, Suite 2100
Dallas, TX 75219, USA
 - to the Employee if delivered to the Employee in person, by email, or, if mailed, by certified, registered or overnight mail, postage prepaid, to the Employee's address then currently on file with the Employer.

EMPLOYER:

Applied Digital Corporation

/s/ David Rench_____

David Rench_____ (Print)

EMPLOYEE:

/s/ Michael Maniscalco_____

Michael Maniscalco_____ (Print)

**FORM AMENDMENT NO. 1 TO
RESTRICTED STOCK UNIT AWARD**

This Amendment to the Restricted Stock Unit Award (the "Award") is made as of September 25, 2023 by and between **Applied Digital Corporation** (the "Company") and _____ (the "Employee").

WITNESSETH:

WHEREAS, the Company and the Employee entered into a Restricted Stock Unit Award on April 4, 2023 (the "Award");

WHEREAS, the Company and Employee desire to revise certain terms of the Award as discussed more fully in this Amendment (the "Amendment");

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereby agree as follows:

1. All terms and conditions of the Award between the Company and the Employee shall remain in full force and effect except as expressly modified herein, and there shall be no modification of such terms and conditions except as expressly made herein.

2. Article 5.1 of the Award is hereby amended effective September 25, 2023 to add a new subparagraph (f) to the end thereof, to read in its entirety as follows:

“(f) If, during the 24-month period following a Change in Control, the Company terminates Employee’s employment without Cause or Employee resigns with Good Reason, the unvested portion of this Award shall become vested and payable immediately upon the termination of the Employee’s employment.”

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment to the Agreement as of the date first written above.

APPLIED DIGITAL CORPORATION [EMPLOYEE]

By: _____
Name:
Title:

**FORM AMENDMENT NO. 1 TO
PERFORMANCE STOCK UNIT AWARD**

This Amendment to the Performance Stock Unit Award (the "Award") is made as of September 25, 2023 by and between **Applied Digital Corporation** (the "Company") and _____ (the "Employee").

WITNESSETH:

WHEREAS, the Company and the Employee entered into a Performance Stock Unit Award on April 4, 2023 (the "Award");

WHEREAS, the Company and Employee desire to revise certain terms of the Award as discussed more fully in this Amendment (the "Amendment");

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereby agree as follows:

1. All terms and conditions of the Award between the Company and the Employee shall remain in full force and effect except as expressly modified herein, and there shall be no modification of such terms and conditions except as expressly made herein.

2. Article 5.1(e) of the Award is hereby amended effective September 25, 2023 to read in its entirety as follows:

"(e) If, during the 24-month period following a Change in Control, the Company terminates Employee's employment without Cause or Employee resigns with Good Reason, a portion of this Award shall be immediately earned, vested, and payable. The Award amount that will be considered earned, vested, and payable will be the higher of (i) 100% of the Target Units or (ii) the PSUs due based on actual performance measured as of the termination of Employee's employment."

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment to the Agreement as of the date first written above.

APPLIED DIGITAL CORPORATION [EMPLOYEE]

By: _____
Name:
Title: