

FOUNDRY AGREEMENT

THIS FOUNDRY AGREEMENT (the “Agreement”) is made as of February 23, 2004 (the “Effective Date”), by and between **FASL LLC**, having its principal office at One AMD Place, Sunnyvale, California 94088-3453, U.S.A. (“FASL”), and **FASL JAPAN LIMITED**, having its registered place of business at 6, Mondenmachi-Kogyodanchi, Aizuwakamatsu 965, Japan (“FASL JAPAN”).

WHEREAS, FASL JAPAN has been engaged in the manufacturing and processing of integrated circuits and has acquired significant knowledge and manufacturing experience at its foundries and is willing to provide foundry services for the production of Flash memory products to FASL;

WHEREAS, FASL JAPAN has provided such foundry services to FASL since July 1, 2003;

WHEREAS, the parties have determined that it would be helpful to set forth the policies and procedures actually used by the parties with regard to such foundry services since July 1, 2003, in order to establish definitively the terms and conditions on which the foundry services have been and will be rendered;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1. “*Aizu*” shall mean FASL JAPAN’s manufacturing facilities located in Aizu-Wakamatsu, Japan and currently referred to by the parties as JV1, JV2, JV3 and JV4.

1.2. “*Confidential Information*” shall mean any and all technical and non-technical information one party provides the other hereunder that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including trade secret, know-how and proprietary information, firmware, mask works, designs, schematics, techniques, software code, technical documentation, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plan or financial or personnel matter relating to the disclosing party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in written, oral, graphic or electronic form.

1.3. “*Die*” shall mean one of the semiconductor devices on a Wafer (defined below) which is produced by FASL JAPAN for FASL using the Qualified Process (defined below) following Qualification (as defined below) as provided under this Agreement and set forth in Exhibit A, as amended from time to time by the mutual consent of the parties. The Die is to be provided to FASL by FASL JAPAN as Wafers containing tested die.

1.4. “**Engineering Wafers**” shall mean those wafers required for testing and Qualification purposes.

1.5. “**FASL Technology**” shall mean, collectively, the design, manufacturing and process know-how provided to FASL JAPAN from time to time and any Intellectual Property Rights related thereto.

1.6. “**Flash**” shall mean that type of non-volatile computer memory that is in-circuit programmable with the use of embedded algorithms and standard system voltages for programming, reading and erasing.

1.7. “**Intellectual Property Rights**” shall mean any patent, copyright, trade name, trademark, trade secret, know-how, or any other intellectual property right or proprietary right whether registered or unregistered, and whether now known or hereafter recognized in any jurisdiction.

1.8. “**Manufacturing Costs**” shall mean, for the quarter for which Per Die Prices (as defined below) are being determined, all forecasted overhead and direct material expenses of FASL JAPAN included in Cost of Sales, as determined in accordance with past practices and changes in generally accepted accounting principles in Japan, adjusted to include inventory change and reticle amortization, but excluding variance adjustments. It is specifically agreed by the parties that Manufacturing Costs shall include taxes (other than income taxes) and other charges not normally considered manufacturing costs (including costs specifically included as part of Manufacturing Costs pursuant to this Agreement), but excluding financing expenses.

1.9. “**Per Die Price**” shall mean the transfer prices for the purchase of the Die to be agreed upon by the parties as set forth in Section 5 below.

1.10. “**Purchase Agreement**” shall mean the Purchase and Sale Agreement, dated as of February 23, 2004, by and between FASL JAPAN and Fujitsu Limited.

1.11. “**QBP**” shall have the meaning specified in Section 4.2 below.

1.12. “**Qualification Plan**” shall mean the plan and process to be agreed upon by the parties under which the Qualified Process is brought up at Aizu and the Die is manufactured using the Qualified Process to meet FASL’s objective reliability and quality specifications, as may be amended for each Qualified Process.

1.13. “**Qualification**” shall mean the determination performed and made by FASL that die meet FASL’s objective reliability/quality specification in accordance with the Qualification Plan, as more fully described in Section 2.7.

1.14. “**Qualified Process**” shall mean the process which is derived from FASL’s proprietary wafer process, including sort testing with modifications, if any, and which is made by FASL JAPAN with the agreement of FASL and which is brought up at Aizu and approved by FASL for production of Die, as more fully detailed in Section 2.7.

1.15. “*SubDistributor Appointment Agreement*” shall mean the SubDistributor Appointment Agreement, dated as of February 23, 2004, by and among FASL, FASL JAPAN and Fujitsu Limited.

1.16. “*Wafers*” shall mean silicon wafers for Die manufactured by FASL JAPAN using the Qualified Process agreed upon by the parties under Section 2 below.

2. PROCESS IMPLEMENTATION

2.1. FASL JAPAN will bear all the capital investment required by it to produce Flash memory products under this Agreement, including the investment for future Flash memory capacity, through the life of this Agreement. Any capital investment project related to the production of Flash memory products under this Agreement shall only be undertaken with the agreement of FASL. The installed capacity shall be sufficient to produce the required sorted wafer outs per week to satisfy the relevant QBP as described in Section 4.2, including Engineering Wafers.

2.2. FASL JAPAN will produce Flash memory products for FASL utilizing a Qualified Process technology up to the production capacity; provided however, FASL JAPAN may use subcontractors to produce such products beyond FASL JAPAN’s capacity.

2.3. The parties will discuss in good faith the details of the introduction of new process technologies at FASL JAPAN, such discussions to include but not be limited to necessary capital investment, production capacity and/or wafer prices.

2.4. FASL shall provide the set of specifications, including but not limited to the specifications listed below, required with respect to manufacturing the Die at FASL JAPAN with necessary modifications made upon mutual agreement between the parties. FASL JAPAN’s original specification may be utilized when it is approved by FASL.

- Wafer process Specification (Process Flow, PCM Specification)
- Design Data / mask for Die
- WLR/WLB program
- WET test Program/WET test specification
- Sort test Program / Sort test specification for the Die/Sort Related Program
- Correlation wafer for WET/SORT
- Packing / Packaging specification for Wafers
- Purchase Specifications for materials
- ECN Procedure
- Lot Disposition Procedure

2.5. In case FASL JAPAN or FASL finds that there needs to be any change or addition to the agreed specifications, such party shall notify the other party in writing of such change and obtain the other party's written approval.

2.6. Based on the agreed specifications, FASL JAPAN shall establish a certain manufacturing process at its facilities, fabricate Die with such manufacturing process and deliver Die to FASL in accordance with the Qualification Plan agreed upon between the parties.

2.7. FASL shall evaluate the die provided by FASL JAPAN in accordance with the Qualification Plan. If FASL determines that the die meet and satisfy its quality and reliability specifications, FASL shall notify FASL JAPAN of such determination. Such notice shall serve as the official notification that the manufacturing process established and the die produced by FASL JAPAN are fully qualified by FASL and FASL JAPAN, and such manufacturing process shall constitute a "Qualified Process."

2.8. If the parties agree to add new Die to Exhibit A, in accordance with Section 1.3 of this Agreement, FASL and FASL JAPAN shall agree on the specifications described in Section 2.4 above for such new Die. FASL and FASL JAPAN shall further agree on the Qualification Plan for such new Die.

3. PRODUCTION

3.1. Upon the successful completion of Qualification, FASL JAPAN shall manufacture the Die utilizing the Qualified Process for FASL.

3.2. FASL JAPAN shall establish a production capability for FASL of producing Wafers in accordance with the schedule to be agreed upon between the parties.

3.3. Unless otherwise specifically provided herein, FASL JAPAN shall, at its own responsibility and cost, purchase or procure raw or indirect materials or labor including any masks for wear out or breakage required by it to manufacture the Die under this Agreement. These costs shall be included as part of the Manufacturing Costs.

3.4. FASL shall provide FASL JAPAN with technical support and assistance required by FASL JAPAN to manufacture the Die for FASL as FASL JAPAN may reasonably request from time to time.

3.5. FASL will provide FASL JAPAN with the technical information with regard to Flash memory process technology and Flash memory products necessary for FASL JAPAN to implement the appropriate process technology and produce Flash memory products with such technology.

3.6. FASL JAPAN shall manufacture the Die only at Aizu, and shall not have any third party manufacture the Die without obtaining prior consent of FASL, unless otherwise agreed by the parties. Notwithstanding the foregoing, FASL JAPAN shall have the right to subcontract out to third parties a discrete portion of the

manufacturing process for the short term only and only due to FASL JAPAN's lack of capacity, and only with notice to FASL in each such case.

3.7. FASL JAPAN shall not supply the Die to any third party, use the Die for any purpose other than those permitted under this Agreement or use the Qualified Process to produce products for itself or for any third party, unless otherwise agreed by the parties; *provided, however*, that FASL JAPAN shall have the right to manufacture Die for, and to supply such Die as manufactured or as part of finished products to, Fujitsu in accordance with its obligations under the SubDistributor Appointment Agreement and the Purchase Agreement.

3.8. FASL JAPAN shall provide FASL technical support and assistance as reasonably requested by FASL for the manufacture of die and flash memory products at other FASL production facilities. Any such support and assistance shall be included as part of the Manufacturing Costs.

4. ORDERING PROCEDURE

4.1. For every FASL fiscal quarter (a "Quarter"), FASL JAPAN shall provide FASL in writing the information listed below which is required by FASL to make its production plan for the next five (5) Quarters, in the format and by the date designated by FASL.

- Weekly Wafer starts capacity
- Weekly sorted Wafer outs capacity
- Cycle time for Wafer fabrication and Wafer sorting
- Line yield
- Sort test (Die) yield
- Weekly operation rate
- Risk input start schedule for new Die

4.2. FASL shall make a production plan for FASL JAPAN for the current Quarter plus the next five (5) Quarters based on the information provided by FASL JAPAN and the demand forecast from FASL's customers. This production plan, described in this Section 4, is the Quarterly Beginning Plan ("QBP").

4.3. Once FASL has completed the production plan as described, FASL will submit the plan in writing to FASL JAPAN. The QBP shall become the official production plan for FASL and FASL JAPAN for the immediately following fiscal quarter, and FASL JAPAN shall take commercially reasonable efforts to allocate the production capacity sufficient to sustain the QBP for such Quarter; provided however, that on a weekly basis FASL will notify FASL JAPAN of FASL's demand requirements for the following week, and FASL JAPAN shall take commercially reasonable efforts to increase or decrease its production, as applicable, to meet such requirements.

5. PRICING

Prices will be calculated in accordance with the formulae set forth in Exhibit B attached hereto and will be established during the QBP process in the middle month of each quarter for the following quarter. Additionally, an estimated wafer price will be established for the remaining three quarters in the QBP process.

6. PURCHASE ORDER PROCESS

6.1. FASL will purchase Die from FASL JAPAN pursuant to valid purchase orders referencing this Agreement and sent to FASL JAPAN by confirmed facsimile, electronic transmission, or other mutually-agreed means.

6.2. In the event that FASL JAPAN provides more Die than the quantity under a particular purchase order, the parties will mutually agree what to do with such excess Die.

7. PAYMENT FOR WAFERS

7.1. FASL JAPAN will invoice FASL on a shipment-by-shipment basis for all products purchased by FASL hereunder. In the event the Die are shipped from Aizu to another location for the assembly, test, marking and packing process, the date of shipment shall be that date on which such Die are shipped from Aizu.

7.2. Payment from FASL to FASL JAPAN shall be made in Japanese Yen through wire transfer, or other means agreed upon by the parties, within sixty (60) days after the shipping date. Upon any discrepancy between the invoiced quantity and the actual quantity that FASL accepts, FASL shall inform FASL JAPAN of the discrepancy in a timely manner, and FASL and FASL JAPAN shall adjust such amount immediately after receipt of such notice.

7.3. Unless otherwise explicitly stated, the prices specified in this Agreement are exclusive of any sales, use, excise, consumption or similar taxes, and of any export and import duties, which may be levied upon or collectible by FASL JAPAN as a result of the sale or shipment of the products to FASL or its customers. FASL agrees to pay and otherwise be fully responsible for any such taxes and duties, unless in lieu thereof FASL provides FASL JAPAN with an exemption certificate acceptable to the relevant governmental authorities. FASL JAPAN shall have the right, but shall not be obligated, to pay any such taxes or duties directly, in which event FASL shall immediately reimburse FASL JAPAN in the amount thereof upon presentation by FASL JAPAN of evidence of payment.

7.4. FASL JAPAN shall deliver all products covered by this Agreement to FASL on a *FCA* (Incoterms 2000) Narita Airport basis. Title and all risk of loss or damage to the Products shall transfer from FASL JAPAN to FASL immediately after those Products leave the Customs territory of the country of Japan. FASL JAPAN shall pay for freight and insurance up to Narita Airport and FASL shall be responsible for all freight and insurance beyond that point. All Products will be deemed irrevocably accepted upon delivery.

8. LIMITED WARRANTY; WARRANTY DISCLAIMER

8.1. FASL JAPAN warrants that the Die delivered hereunder shall meet the applicable specifications which are agreed upon by FASL and shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of shipment from FASL JAPAN. If, during such twelve (12) month period, FASL notifies FASL JAPAN of any defect in Die, FASL JAPAN will reasonably assist FASL in connection with FASL's compliance with and fulfillment of its warranty policies.

8.2. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FASL JAPAN EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS REGARDING THE PRODUCTS PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

8.3. FASL JAPAN grants no warranties to FASL's customers hereunder. Unless otherwise agreed by the parties, FASL will not pass through to its end users or any other third party any warranties or representations made by FASL JAPAN hereunder and will expressly indicate to its customers that they must look solely to FASL in connection with any problems, warranty claims or other matters concerning the products.

9. RECORDS; AUDIT

9.1. FASL JAPAN will keep complete and accurate records pertaining to sales calculations for products sold to FASL hereunder. FASL JAPAN will maintain such records for at least a five (5) year period following the year in which any such payments were made hereunder.

9.2. FASL will have the right to engage at its own expense an auditor reasonably acceptable to FASL JAPAN to examine FASL JAPAN's records pertaining to sales of products and the calculation of Per Die Prices charged to FASL. FASL will provide FASL JAPAN at least fifteen (15) days' prior written notice of such audit and may conduct audits no more than once every six (6) months.

9.3. In the event adjustments are recommended as a result of any such audit, FASL and FASL JAPAN shall meet to discuss such recommendation and agree on corrective actions.

10. CONFIDENTIAL INFORMATION

10.1. Both parties will maintain in confidence all Confidential Information disclosed by the other party (the "Disclosing Party"). A receiving party hereunder (the "Receiving Party") will not use, disclose or grant use of such Confidential Information except as expressly authorized by this Agreement. To the extent that disclosure to a third party is authorized by this Agreement, a Receiving Party will obtain prior agreement from such third party to whom disclosure is to be made to hold

in confidence and not make use of such information for any purpose other than those permitted by this Agreement. A Receiving Party will use at least the same standard of care as it uses to protect its own information of comparable importance to ensure that its employees, agents and/or consultants do not disclose or make any unauthorized use of such Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of such Confidential Information. Notwithstanding any other provision in this Agreement to the contrary, the obligations set forth in this Section 10 shall survive any termination or expiration of this Agreement in perpetuity.

10.2. The obligations of confidentiality contained in Section 10.1 will not apply to the extent that such Confidential Information: (a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party; (c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a third party who had no obligation to the other party not to disclose such information to others; (e) was developed independently by the Receiving Party without any use of Confidential Information; or (f) is required to be disclosed by applicable law.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Subject to the terms and conditions of this Agreement, FASL grants FASL JAPAN a non-exclusive, non-transferable license under the FASL Technology during the term of this Agreement solely to use, reproduce, import, export, make, offer to sell, and sell the Die and products incorporating the Die as set forth in this Agreement to FASL, and to Fujitsu in accordance with the SubDistributor Appointment Agreement. FASL JAPAN agrees that it will not reverse engineer any technology it receives and will not distribute, sell, transfer or disclose any Intellectual Property Rights of FASL to any third party. All other rights are reserved by FASL.

11.2. FASL JAPAN acknowledges that any and all Intellectual Property Rights relating to the Die or Qualified Process are and shall remain the property of FASL or FASL's suppliers, and nothing in this Agreement shall be deemed a transfer of any ownership rights in the Die or Qualified Process to FASL JAPAN.

12. TERM AND TERMINATION

12.1. This Agreement shall continue in full force and effect until terminated by mutual written agreement of the parties.

12.2. Notwithstanding any termination of this Agreement, the provisions of Sections 7, 8, 9 (for a period of five (5) years commencing on such termination), 10, 11, 12.2, and 13 shall survive any termination of this Agreement.

13. GENERAL

13.1. No party shall be liable for failure to perform, in whole or in material part, its obligations under this Agreement if such failure is caused by any event or condition not existing as of the Effective Date and not reasonably within the control of the affected party, including, without limitation, by fire, flood, typhoon, earthquake, explosion, strikes, labor troubles or other industrial disturbances, unavoidable accidents, war (declared or undeclared), acts of terrorism, sabotage, embargoes, blockage, acts of governmental authorities, riots, insurrections, or any other cause beyond the control of the parties; provided, that the affected party promptly notifies the other parties of the occurrence of the event of force majeure set forth above and takes all reasonable steps necessary to resume performance of its obligations so interfered with.

13.2. It is agreed and understood that neither party is the agent, representative or partner of the other party and neither party has any authority or power to bind or contract in the name of or to create any liability against the other party in any way or for any purpose pursuant to this Agreement. It is understood that FASL JAPAN is an independent contractor. Each party expressly reserves the right to enter other similar agreements with other parties on the same or on different terms.

13.3. This Agreement shall not be assigned by either party whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without the prior written consent of the other party.

13.4. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such party's rights to take subsequent action.

13.5. All notices required or permitted to be given hereunder shall be in writing by first class certified or registered airmail, postage prepaid, if confirmed or acknowledged, to the addresses specified below or to such other address as may be specified in writing by the addressed party to other party in accordance with this Section 13:

if to FASL:

One AMD Place
Sunnyvale, California 94088-3453, U.S.A
Tel. 408-962-2500
1-866-SPANSION

if to FASL JAPAN:

FASL JAPAN LIMITED
4-33-4 Nishi Shinjuku
Shinjuku, Tokyo, 160-0023, Japan
Tel. +81-3-5302-2200
Fax. +81-3-5302-2674

Each such notice or other communication shall for all purposes be treated as effective or as having been given as follows (i) if delivered in person, when delivered;

(ii) if sent by airmail, at the earlier of its receipt or at 5 p.m., local time of the recipient, on the seventh day after deposit in a regularly maintained receptacle for the disposition of mail or air mail, as the case may be; and (iii) if sent by recognized courier service, on the date shown in the written confirmation of delivery issued by such delivery service. Either party may change the address and/or addressee(s) to whom notice must be given by giving appropriate written notice at least fourteen (14) days prior to the date the change becomes effective.

13.6. In the event that any clause, sub-clause or other provision contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such clause, sub-clause or other provision shall to that extent be severed from the remaining clauses and provisions, or the remaining part of the clause in question, which shall continue to be valid and enforceable to the fullest extent permitted by law.

13.7. The headings to the clauses, sub-clause and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms “this Agreement,” “hereof,” “hereunder” and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words “include” and “including,” and variations thereof, will be deemed to be followed by the words “without limitation” and “discretion” means sole discretion. The official text of this Agreement shall be in the English language, and any interpretation or construction of this Agreement shall be based solely on the English-language text.

13.8. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended; rather, these rights and obligations shall be governed in all respects by the laws of California exclusively, as such laws apply to contracts between California residents performed entirely within California.

13.9. In performing its duties under this Agreement, each party hereto shall at all times comply with all applicable international, federal, state and local laws and shall not engage in any illegal or unethical practices, including without limitation the Foreign Corrupt Practices Act of 1977 and any anti-boycott laws, as amended, and any implementing regulations.

13.10. This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties. It is acknowledged that the terms of this Agreement have been negotiated between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly signed and executed on the date and year first above written.

FASL JAPAN

FASL

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A: DIE

Part Numbers (OPNs) (OPNs)

27C010
27C020
27C040
27C128
27C256
27C512
27C64
28F010
28F020
28F020A
28F512
29BD6408
29BD6408GB
29BD6408GT
29BD640AGB
29BDD160
29BDD160GB
29BDS128
29BDS1282
29BDS128HD
29BDS640
29BDS640GT
29BDS640HN
29BDS64BGT
29BL162
29BL162CB
29BL802
29BL802CB
29BS12
29BS64
29BT32
29D9608H
29D9608HGT
29DD162
29DD640
29DL128B
29DL128BG
29DL128BGA
29DL128BH
29DL128C
29DL128CG
29DL128CH
29DL161
29DL1612

Part Numbers (OPNs)

29DL1612DB
29DL1612DT
29DL161DB
29DL161DT
29DL162
29DL1622DT
29DL1624
29DL1624DT
29DL162DB
29DL162DT
29DL163
29DL1632
29DL1632DB
29DL1632DT
29DL1634
29DL1634DB
29DL1634DT
29DL163DB
29DL163DT
29DL164
29DL1642
29DL1642DB
29DL1644
29DL1644DB
29DL1644DT
29DL164DB
29DL164DT
29DL320
29DL3208
29DL320GB
29DL320GT
29DL322
29DL3224
29DL3224GB
29DL3224GT
29DL3228
29DL3228GT
29DL322DB
29DL322DT
29DL322GB
29DL322GT
29DL323
29DL3234
29DL3234GB

Part Numbers

29DL3234GT
29DL3238
29DL3238GB
29DL3238GT
29DL323DB
29DL323DT
29DL323GB
29DL323GT
29DL324
29DL3244
29DL3244GB
29DL3244GT
29DL3248
29DL3248GB
29DL3248GT
29DL324GB
29DL324GT
29DL400
29DL400BB
29DL400BT
29DL64
29DL640
29DL6404
29DL6404G
29DL6408
29DL6408G
29DL6408H
29DL640A
29DL640AG
29DL640B
29DL640BG
29DL640D
29DL640G
29DL640H
29DL642
29DL642G
29DL800
29DL800BB
29DL800BT
29DL9608
29DL9608GT

Part Numbers (OPNs)
(OPNs)

29DS163
29DS163DB
29DS163DT
29DS323
29DS323DB
29DS323DT
29DS42712
29F002
29F002BB
29F002BT
29F002N
29F002NBB
29F002NBT
29F004
29F004BB
29F004BT
29F010
29F010A
29F010B
29F016
29F016D
29F017
29F017D
29F032
29F032B
29F033
29F040
29F040B
29F080
29F080B
29F160
29F160DB
29F160DT
29F200
29F200BB
29F200BT
29F400
29F400AB
29F400BB
29F400BT
29F800
29F800BB
29F800BT
29JL064H
29JL064H8
29JL064H80

Part Numbers (OPNs)

29JL064HA0
29JL128H
29JL128HB0
29LV001
29LV001BB
29LV001BT
29LV002
29LV002BB
29LV002BT
29LV004
29LV004BB
29LV004BT
29LV008
29LV008BB
29LV008BT
29LV010
29LV010B
29LV016
29LV017
29LV017D
29LV033
29LV033C
29LV033M
29LV033MU
29LV040
29LV040B
29LV065
29LV065DU
29LV065MU
29LV080
29LV081
29LV081B
29LV116
29LV116DB
29LV116DT
29LV128
29LV128MH
29LV128MH/L
29LV128ML
29LV128MS
29LV160
29LV160BB
29LV160BT
29LV160DB
29LV160DT
29LV160MB

Part Numbers

29LV160MT
29LV160MT/B
29LV200
29LV200BB
29LV200BT
29LV256
29LV2562
29LV2562MH/L
29LV256MH
29LV256MH/L
29LV256ML
29LV320
29LV3204
29LV3204MT
29LV320DB
29LV320DT
29LV320MB
29LV320MH
29LV320MH/L
29LV320ML
29LV320MT
29LV320MT/B
29LV400
29LV400BB
29LV400BT
29LV640
29LV640DH
29LV640DL
29LV640DU
29LV640MB
29LV640MH
29LV640MH/L
29LV640ML
29LV640MT
29LV640MT/B
29LV640MU
29LV641
29LV641DH
29LV641DL
29LV641GT
29LV641MH
29LV641MH/L
29LV641ML

Part Numbers (OPNs)
(OPNs)

29LV642
29LV642D
29LV652
29LV652D
29LV800
29LV800BB
29LV800BT
29N128
29N128HT
29N163
29N163DT
29N323
29N323DT
29N323GT
29N643
29N643GT
29N643HT
29P193BH
29P193BHHA
29PDL12
29PDL127
29PDL127BH
29PDL127H
29PDL128
29PDL128G
29PDL129
29PDL129BH
29PDL192BH
29PDL193
29PDL193BH
29PDL193CH
29PDL29C
29PDL29CDH
29PDL640
29PDL640AG
29PDL640G

Part Numbers (OPNs)

29PDS322
29PDS322DT
29PL12
29PL127
29PL160
29PL160CB
29PL193C
29PL193CHH
29PL25
29PL32
29PL320
29PL320DB
29PL320DT
29PL64
29PL65
29QD64
29QM/R
29QM12
29QM64
29QM96
29RM12
29SL160
29SL160CB
29SL160CT
29SL400
29SL400CB
29SL800
29SL800CT
29SL800DB
29SL800DT
30LV006
30LV0064
41DL162/4
41DL163/4
41DL164/4
41DL320/8

Part Numbers

41DL322/4
41DL322/8
41DL323/4
41DL323/8
41DL324/4
41DL324/8
41DL640/8
41LV320/4
42BDS640/16
42BDS640/8
42DL161/2
42DL162/2
42DL163/2
42DL164/2
42DL640/16
42DL640/4
42DL640/8
49DL640/32
49PDL127/32
49PDL129/32
49PDL640/16
50DL128/32
50DL128/64
50DL960/8
50PDL192/32
50PDL193/32
50PDL193/64
71JL064/16
71JL064/8
71JL128/32
75DL960/8
75PDL193/32
75PDL193/64
84VP24481

Exhibit B: Per Die Price

Definitions

- 1) “JV#1” means the first fabrication plant operated by FASL Japan.
- 2) “JV#2” means the second fabrication plant operated by FASL Japan.
- 3) “JV#3” means the third fabrication plant operated by FASL Japan.
- 4) “JV#4” means the fourth fabrication plant operated by FASL Japan.
- 5) “Monden Plant” means JV#1 and JV#2.
- 6) “Takaku Plant” means JV#3 and JV#4.
- 7) “Wafer Output” means for the Quarter for which Per Device Prices are being determined, the amount of Wafers expected to be produced in Aizu.
- 8) “Net Die per Wafer” means the amount of gross Die per Wafer for a Product multiplied by the yield projection for such Product.

Summary

Transfer Prices for the purchase of Products shall be negotiated and agreed upon by the parties every Quarter using the formulae described below. Products shall be priced on a per device manufacturing cost based model (the “Per Device Price”).

References in any formula below to any of (a) through (m) refer to the amount referenced in such lettered paragraph.

Determination of Manufacturing Cost

(a) Manufacturing Cost

Manufacturing Cost is determined for Monden Plant and Takaku Plant separately.

(b) Adjusted Manufacturing Costs (with profit margin) = (a) * 1.06

Adjusted Manufacturing Costs is determined for Monden Plant and Takaku Plant separately.

(c) Wafer Outputs

Wafer Output capacity plan for the subsequent Quarter shall be summarized (by Plant, by Technology). Wafer Outputs is determined for Monden Plant and Takaku Plant separately.

(d) Relative Cost Index (for each Technology)

Relative Cost Index (for each Technology) is determined based on the number of processing steps and the total manufacturing equipment cost using the formula shown on the following table. The number of processing steps is used to determine the

relative non-depreciation cost to manufacture. The purchase cost of equipment required to manufacture 2,500 Wafers per week is used to determine the relative depreciation cost to manufacture. Both non-depreciation and depreciation expenses are assumed to represent 50% of the long term total Manufacturing Cost. The Relative Cost Index applies to Wafers produced from all manufacturing plants.

	No. of Process Steps	Non-depreciation Weighting Factor	(2)*50%	Cap. for 2500w/w (mil yen)	Depreciation Weighting Factor	(5)*50%	Relative Cost Index (3)+(6)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
CS39s	122	1.000	0.500	28,760	1.000	0.500	1.00
CS49s	143	1.172	0.586	41,680	1.449	0.725	1.31

- (e) Equivalent Wafer Output Capacity (by plant) = (c) * (d)
 e.g., JV#1 Equivalent Wafer Output =
 JV#1 CS39s Wafer Output * 1.00 + JV#1 CS49s Wafer Output * 1.31

Determination of Technology Cost Per Wafer

- (f) Cost per Equivalent Wafer Output Capacity = (b) / (e)

Cost per Equivalent Wafer Output is determined for Monden Plant and Takaku Plant separately.

- (g) Technology Cost per Wafer (by Technology) = (f) * (d)

Technology Cost per Wafer is determined for Monden Plant and Takaku Plant separately.

Determination of Per Device Price

- (h) Per Device Price = Technology Cost per Wafer (by Technology) (g) / Net Die per Wafer for each Product (gross die per Wafer for each Product * yield projection for each Product). The gross die per Wafer and yield projection comes from the QBP.

Contingency Cases

The Per Device Price paid by FASL as calculated in accordance with the formula set forth immediately above may be increased in the event that the parties agree that a contingency case (i.e. a drop in demand below agreed level) is deemed to apply.

- (i) Wafer Output Plan (by Technology) = Die output plan for the subsequent fiscal Quarter / Net Die per Wafer for each Product (gross die per Wafer * yield projection for each Product).

Wafer Output Plan is calculated for Monden Plant and Takaku Plant separately. The Die output plan comes from the QBP.

- (j) Equivalent Wafer Output Plan = (i) * (d)

- (k) Demand Ratio to Equivalent Wafer Output Capacity = (j) / (e).

Demand Ratio is calculated for Monden Plant and Takaku Plant separately.

- For Monden Plant, if (k) is less than 90%, then the contingency case does apply.
- For Takaku Plant, if (k) is less than 95%, then the contingency case does apply.

(l) Contingency Minimum Demand Requirement (CMDR)

- For Monden Plant: 90%
- For Takaku Plant: 95%

(m) Contingency Multiplier (CM) = (l) / (k).

Contingency Multiplier is determined for Monden Plant and Takaku Plant separately.

(n) Per Device Price = (m) * (h)

Retro Adjustment for Depreciation

The amount of any variance of forecasted depreciation expenses (such expenses being “Depreciation Expenses”) for the preceding Quarter from actual Depreciation Expenses for such Quarter shall be subtracted from (or if forecasted Depreciation Expenses are less than actual Depreciation Expenses, such amount of variance shall be added to) the projected Depreciation Expenses for the next Quarter; provided, however, that no such subtraction or addition shall be made hereunder if the positive or negative difference between actual and forecasted Depreciation Expenses is less than two percent (2%) of such forecasted amount.

EXHIBIT B

SECOND AMENDED AND RESTATED FOUNDRY AGREEMENT

THIS SECOND AMENDED AND RESTATED FOUNDRY AGREEMENT (the "Agreement") is revised as of March ~~30~~, 2007 (the "Effective Date"), by and between Spansion LLC, having its principal office at 915 DeGuigne Drive, Sunnyvale, California 94088-3453, U.S.A. ("Spansion"), and Spansion Japan Limited, having its registered place of business at 6, Mondenmachi-Kogyodanchi, Aizuwakamatsu-shi 965-0845, Japan ("Spansion Japan").

WHEREAS, Spansion Japan has been engaged in the manufacturing and processing of integrated circuits and has acquired significant knowledge and manufacturing experience at its foundries and is willing to provide foundry services for the production of Flash memory products to Spansion;

WHEREAS, Spansion Japan has provided such foundry services to Spansion since July 1, 2003;

WHEREAS, the parties entered into the original Foundry Agreement ("Original Agreement") effective as of February 23, 2004 to set forth the policies and procedures actually used by the parties with regard to such foundry services since July 1, 2003, in order to establish definitively the terms and conditions on which the foundry services have been and will be rendered;

WHEREAS, the parties amended and restated the Original Agreement to reflect agreed to arrangements between the parties beginning January 1, 2005 (the "Restated Agreement"); and

WHEREAS, the parties have determined to amend and restate the Restated Agreement in connection with a financing being consummated by Spansion Japan.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1. "*Aizu*" shall mean Spansion Japan's manufacturing facilities located in Aizu-Wakamatsu, Japan and currently referred to by the parties as JV1, JV2, JV3 and SP1.

1.2. "*Confidential Information*" shall mean any and all technical and non-technical information one party provides the other hereunder that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including trade secret, know-how and proprietary information, firmware, mask works, designs, schematics, techniques, software code, technical documentation, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plan or financial or personnel matter relating to



the disclosing party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in written, oral, graphic or electronic form.

1.3. "*Die*" shall mean one of the semiconductor devices on a Wafer (defined below) which is produced by Spansion Japan for Spansion using the Qualified Process (defined below) following Qualification (as defined below) as provided under this Agreement and set forth in Exhibit A, as amended from time to time by the mutual consent of the parties. The Die is to be provided to Spansion by Spansion Japan as Wafers containing tested die.

1.4. "*Engineering Wafers*" shall mean those wafers required for testing and Qualification purposes.

1.5. "*Spansion Technology*" shall mean, collectively, the design, manufacturing and process know-how provided to Spansion Japan from time to time and any Intellectual Property Rights related thereto.

1.6. "*Flash*" shall mean that type of non-volatile computer memory that is in-circuit programmable with the use of embedded algorithms and standard system voltages for programming, reading and erasing.

1.7. "*Intellectual Property Rights*" shall mean any patent, copyright, trade name, trademark, trade secret, know-how, or any other intellectual property right or proprietary right whether registered or unregistered, and whether now known or hereafter recognized in any jurisdiction.

1.8. "*Manufacturing Costs*" shall mean, for the quarter for which Per Die Prices (as defined below) are being determined, all forecasted overhead and direct material expenses of Spansion Japan included in Cost of Sales, as determined in accordance with past practices and changes in generally accepted accounting principles in Japan, adjusted to include inventory change, reticle amortization, and cost variance adjustments. It is specifically agreed by the parties that Manufacturing Costs shall include taxes (other than income taxes) and other charges not normally considered manufacturing costs (including costs specifically included as part of Manufacturing Costs pursuant to this Agreement), but excluding financing expenses.

1.9. "*Per Die Price*" shall mean the transfer prices for the purchase of the Die to be agreed upon by the parties as set forth in Section 5 below.

1.10. "*Purchase Agreement*" shall mean the Purchase and Sale Agreement, dated as of February 23, 2004, by and between Spansion Japan and Fujitsu Limited.

1.11. "*QBP*" shall have the meaning specified in Section 4.2 below.

1.12. "*Qualification Plan*" shall mean the plan and process to be agreed upon by the parties under which the Qualified Process is brought up at Aizu and the Die is manufactured using the Qualified Process to meet Spansion's objective reliability and quality specifications, as may be amended for each Qualified Process.

1.13. "*Qualification*" shall mean the determination performed and made by Spansion that die meet Spansion's objective reliability/quality specification in accordance with the Qualification Plan, as more fully described in Section 2.7.

1.14. "*Qualified Process*" shall mean the process which is derived from SPANSION's proprietary wafer process, including sort testing with modifications, if any, and which is made by Spansion Japan with the agreement of Spansion and which is brought up at Aizu and approved by Spansion for production of Die, as more fully detailed in Section 2.7.

1.15. "*SubDistributor Appointment Agreement*" shall mean the SubDistributor Appointment Agreement, dated as of February 23, 2004, by and among Spansion, Spansion Japan and Fujitsu Limited.

1.16. "*Wafers*" shall mean silicon wafers for Die manufactured by Spansion Japan using the Qualified Process agreed upon by the parties under Section 2 below.

2. PROCESS IMPLEMENTATION

2.1. Spansion Japan will bear all the capital investment required by it to produce Flash memory products under this Agreement, including the investment for future Flash memory capacity, through the life of this Agreement. Any capital investment project related to the production of Flash memory products under this Agreement shall only be undertaken with the agreement of Spansion. The installed capacity shall be sufficient to produce the required sorted wafer outs per week to satisfy the relevant QBP as described in Section 4.2, including Engineering Wafers.

2.2. Spansion Japan will produce Flash memory products for Spansion utilizing a Qualified Process technology up to the production capacity; provided however, Spansion Japan may use subcontractors to produce such products beyond Spansion Japan's capacity.

2.3. The parties will discuss in good faith the details of the introduction of new process technologies at Spansion Japan, such discussions to include but not be limited to necessary capital investment, production capacity and/or wafer prices.

2.4. Spansion shall provide the set of specifications, including but not limited to the specifications listed below, required with respect to manufacturing the Die at Spansion Japan with necessary modifications made upon mutual agreement between the parties. Spansion Japan's original specification may be utilized when it is approved by Spansion.

- Wafer process Specification (Process Flow, PCM Specification)
- Design Data / mask for Die
- WLR/WLB program
- WET test Program/WET test specification
- Sort test Program / Sort test specification for the Die/Sort Related Program



- Correlation wafer for WET/SORT
- Packing / Packaging specification for Wafers
- Purchase Specifications for materials
- ECN Procedure
- Lot Disposition Procedure

2.5. In case Spansion Japan or Spansion finds that there needs to be any change or addition to the agreed specifications, such party shall notify the other party in writing of such change and obtain the other party's written approval.

2.6. Based on the agreed specifications, Spansion Japan shall establish a certain manufacturing process at its facilities, fabricate Die with such manufacturing process and deliver Die to Spansion in accordance with the Qualification Plan agreed upon between the parties.

2.7. Spansion shall evaluate the die provided by Spansion Japan in accordance with the Qualification Plan. If Spansion determines that the die meet and satisfy its quality and reliability specifications, Spansion shall notify Spansion Japan of such determination. Such notice shall serve as the official notification that the manufacturing process established and the die produced by Spansion Japan are fully qualified by Spansion and Spansion Japan, and such manufacturing process shall constitute a "Qualified Process."

2.8. If the parties agree to add new Die to Exhibit A, in accordance with Section 1.3 of this Agreement, Spansion and Spansion Japan shall agree on the specifications described in Section 2.4 above for such new Die. Spansion and Spansion Japan shall further agree on the Qualification Plan for such new Die.

3. PRODUCTION

3.1. Upon the successful completion of Qualification, Spansion Japan shall manufacture the Die utilizing the Qualified Process for Spansion.

3.2. Spansion Japan shall establish a production capability for Spansion of producing Wafers in accordance with the schedule to be agreed upon between the parties.

3.3. Unless otherwise specifically provided herein, Spansion Japan shall, at its own responsibility and cost, purchase or procure raw or indirect materials or labor including any masks for wear out or breakage required by it to manufacture the Die under this Agreement. These costs shall be included as part of the Manufacturing Costs.

3.4. Spansion shall provide Spansion Japan with technical support and assistance required by Spansion Japan to manufacture the Die for Spansion as Spansion-Japan may reasonably request from time to time.

3.5. Spansion will provide Spansion Japan with the technical information with regard to Flash memory process technology and Flash memory products



necessary for Spansion Japan to implement the appropriate process technology and produce Flash memory products with such technology.

3.6. Spansion Japan shall manufacture the Die only at Aizu, and shall not have any third party manufacture the Die without obtaining prior consent of Spansion, unless otherwise agreed by the parties. Notwithstanding the foregoing, Spansion Japan shall have the right to subcontract out to third parties a discrete portion of the manufacturing process for the short term only and only due to Spansion Japan's lack of capacity, and only with notice to Spansion in each such case.

3.7. Spansion Japan shall provide Spansion technical support and assistance as reasonably requested by Spansion for the manufacture of die and flash memory products at other Spansion production facilities. Any such support and assistance shall be included as part of the Manufacturing Costs.

4. ORDERING PROCEDURE

4.1. For every Spansion fiscal quarter (a "Quarter"), Spansion Japan shall provide Spansion in writing the information listed below which is required by Spansion to make its production plan for the next five (5) Quarters, in the format and by the date designated by Spansion.

- Weekly Wafer starts capacity
- Weekly sorted Wafer outs capacity
- Cycle time for Wafer fabrication and Wafer sorting
- Line yield
- Sort test (Die) yield
- Weekly operation rate
- Risk input start schedule for new Die

4.2. Spansion shall make a production plan for Spansion Japan for the current Quarter plus the next five (5) Quarters based on the information provided by Spansion Japan and the demand forecast from Spansion's customers. This production plan, described in this Section 4, is the Quarterly Beginning Plan ("QBP").

4.3. Once Spansion has completed the production plan as described, Spansion will submit the plan in writing to Spansion Japan. The QBP shall become the official production plan for Spansion and Spansion Japan for the immediately following fiscal quarter, and Spansion Japan shall take commercially reasonable efforts to allocate the production capacity sufficient to sustain the QBP for such Quarter; provided however, that on a weekly basis Spansion will notify Spansion Japan of Spansion's demand requirements for the following week, and Spansion Japan shall take commercially reasonable efforts to increase or decrease its production, as applicable, to meet such requirements. Notwithstanding anything else contained in this Section 4.3, Spansion commits to purchase the entire amount provided on each QBP in each quarter on the terms provided herein; provided that, in the event that Spansion shall notify Spansion Japan, in writing at least 14 days in advance, that Spansion shall not require the minimum amount specified in the QBP,



Spansion shall use reasonable effort to find an alternative purchaser acceptable to Spansion Japan. If an alternative purchaser is obtained, Spansion shall pay the shortfall, if any, between the amount paid by the alternative purchaser and the amount that would have been payable by Spansion had Spansion purchased the products in accordance with the QBP.

Spansion hereby covenants and agrees that Spansion shall purchase at least 95% of the total capacity of Spansion Japan in each Quarter.

5. PRICING

Prices will be calculated in accordance with the formulae set forth in Exhibit B attached hereto and will be established during the QBP process in the middle month of each quarter for the following quarter. Additionally, an estimated wafer price will be established for the remaining three quarters in the QBP process. At the end of every quarter, the Aizu die sales price from Spansion Japan to Spansion shall be recalculated, using the actual manufacturing cost, including inventory change, reticle amortization, cost variance adjustment, and the actual wafer output quantity. The variance between the original sales price based on the estimated cost and the recalculated sales based on the actual cost shall be settled in a lump sum amount within that quarter.

6. PURCHASE ORDER PROCESS

6.1. Spansion will purchase Die from Spansion Japan pursuant to valid purchase orders referencing this Agreement and sent to Spansion Japan by confirmed facsimile, electronic transmission, or other mutually-agreed means.

6.2. Subject to Section 4.3 above, in the event that Spansion Japan provides more Die than the quantity under a particular purchase order, the parties will mutually agree what to do with such excess Die.

7. PAYMENT FOR WAFERS

7.1. Spansion Japan will invoice Spansion on a shipment-by-shipment basis for all products purchased by Spansion hereunder. In the event the Die are shipped from Aizu to another location for the assembly, test, marking and packing process, the date of shipment shall be that date on which such Die are shipped from Aizu.

7.2. Payment from Spansion to Spansion Japan shall be made in Japanese Yen through wire transfer, or other means agreed upon by the parties, within ninety (90) days after the shipping date. Upon any discrepancy between the invoiced quantity and the actual quantity that Spansion accepts, Spansion shall inform Spansion Japan of the discrepancy in a timely manner, and Spansion and Spansion Japan shall adjust such amount immediately after receipt of such notice.

7.3. Unless otherwise explicitly stated, the prices specified in this Agreement are exclusive of any sales, use, excise, consumption or similar taxes, and of any export and import duties, which may be levied upon or collectible by Spansion Japan as a result of the sale or shipment of the products to Spansion or its customers. Spansion agrees to pay and otherwise be fully responsible for any such taxes and



duties, unless in lieu thereof Spansion provides Spansion Japan with an exemption certificate acceptable to the relevant governmental authorities. Spansion Japan shall have the right, but shall not be obligated, to pay any such taxes or duties directly, in which event Spansion shall immediately reimburse Spansion Japan in the amount thereof upon presentation by Spansion Japan of evidence of payment.

7.4. Spansion Japan shall deliver all products covered by this Agreement to Spansion on a *FCA* (Incoterms 2000) Narita Airport basis. Title and all risk of loss or damage to the Products shall transfer from Spansion Japan to Spansion immediately after those Products leave the Customs territory of the country of Japan. Spansion Japan shall pay for freight and insurance up to Narita Airport and Spansion shall be responsible for all freight and insurance beyond that point. All Products will be deemed irrevocably accepted upon delivery.

8. LIMITED WARRANTY; WARRANTY DISCLAIMER

8.1. Spansion Japan warrants that the Die delivered hereunder shall meet the applicable specifications which are agreed upon by Spansion and shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of shipment from Spansion Japan. If, during such twelve (12) month period, Spansion notifies Spansion Japan of any defect in Die, Spansion Japan will reasonably assist Spansion in connection with Spansion's compliance with and fulfillment of its warranty policies.

8.2. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SPANSION JAPAN EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS REGARDING THE PRODUCTS PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

8.3. Spansion Japan grants no warranties to Spansion's customers hereunder. Unless otherwise agreed by the parties, Spansion will not pass through to its end users or any other third party any warranties or representations made by Spansion Japan hereunder and will expressly indicate to its customers that they must look solely to Spansion in connection with any problems, warranty claims or other matters concerning the products.

9. RECORDS; AUDIT

9.1. Spansion Japan will keep complete and accurate records pertaining to sales calculations for products sold to Spansion hereunder. Spansion Japan will maintain such records for at least a five (5) year period following the year in which any such payments were made hereunder.

9.2. Spansion will have the right to engage at its own expense an auditor reasonably acceptable to Spansion Japan to examine Spansion Japan's records pertaining to sales of products and the calculation of Per Die Prices charged to Spansion. Spansion will provide Spansion Japan at least fifteen (15) days' prior



written notice of such audit and may conduct audits no more than once every six (6) months.

9.3. In the event adjustments are recommended as a result of any such audit, Spansion and Spansion Japan shall meet to discuss such recommendation and agree on corrective actions.

10. CONFIDENTIAL INFORMATION

10.1. Both parties will maintain in confidence all Confidential Information disclosed by the other party (the "Disclosing Party"). A receiving party hereunder (the "Receiving Party") will not use, disclose or grant use of such Confidential Information except as expressly authorized by this Agreement. To the extent that disclosure to a third party is authorized by this Agreement, a Receiving Party will obtain prior agreement from such third party to whom disclosure is to be made to hold in confidence and not make use of such information for any purpose other than those permitted by this Agreement. A Receiving Party will use at least the same standard of care as it uses to protect its own information of comparable importance to ensure that its employees, agents and/or consultants do not disclose or make any unauthorized use of such Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of such Confidential Information. Notwithstanding any other provision in this Agreement to the contrary, the obligations set forth in this Section 10 shall survive any termination or expiration of this Agreement in perpetuity.

10.2. The obligations of confidentiality contained in Section 10.1 will not apply to the extent that such Confidential Information: (a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party; (c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a third party who had no obligation to the other party not to disclose such information to others; (e) was developed independently by the Receiving Party without any use of Confidential Information; or (f) is required to be disclosed by applicable law.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. Subject to the terms and conditions of this Agreement, Spansion grants Spansion Japan a non-exclusive, non-transferable license under the Spansion Technology during the term of this Agreement solely to use, reproduce, import, export, make, offer to sell, and sell the Die and products incorporating the Die as set forth in this Agreement to Spansion, and to Fujitsu in accordance with the SubDistributor Appointment Agreement. Spansion Japan agrees that it will not reverse engineer any technology it receives and will not distribute, sell, transfer or disclose any Intellectual Property Rights of Spansion to any third party. All other rights are reserved by Spansion.



11.2. Spansion Japan acknowledges that any and all Intellectual Property Rights relating to the Die or Qualified Process are and shall remain the property of Spansion or Spansion's suppliers, and nothing in this Agreement shall be deemed a transfer of any ownership rights in the Die or Qualified Process to Spansion Japan.

12. TERM AND TERMINATION

12.1. This Agreement shall continue in full force and effect until terminated by mutual written agreement of the parties.

12.2. Notwithstanding any termination of this Agreement, the provisions of Sections 7, 8, 9 (for a period of five (5) years commencing on such termination), 10, 11, 12.2, and 13 shall survive any termination of this Agreement.

13. NO SETOFF

All payments to be made by Spansion under this Agreement shall be calculated and made without (and free and clear of any deduction for) setoff or counterclaims.

14. EVENTS OF DEFAULT

Spansion shall be in default under this Agreement upon the occurrence of any of the following (each an Event of Default," and collectively, the "Events of Default"):

- (i) Spansion fails to pay within 10 days after its due date, any amounts due under this Agreement;
- (ii) Spansion becomes insolvent or ceases to do business as a going concern;
- (iii) a receiver is appointed for all or of any part of the property of Spansion or Spansion makes any assignment for the benefit of its creditors;
- (iv) Spansion files a petition under any bankruptcy, insolvency or similar law, or in the event an involuntary petition is filed against Spansion under any bankruptcy or insolvency laws and in the event of an involuntary petition, such petition is not dismissed within forty five (45) days of the filing date;
- (v) Spansion breaches any of its material obligations under this Agreement (other than those covered in Section 15(i)-15(iv) above) and fails to cure such breach within thirty (30) days.

15. GENERAL

15.1. No party shall be liable for failure to perform, in whole or in material part, its obligations under this Agreement if such failure is caused by any event or condition not existing as of the Effective Date and not reasonably within the control of the affected party, including, without limitation, by fire, flood, typhoon, earthquake, explosion, strikes, labor troubles or other industrial disturbances, unavoidable accidents, war (declared or undeclared), acts of terrorism, sabotage, embargoes, blockage, acts of governmental authorities, riots, insurrections, or any other cause beyond the control of the parties; provided, that the affected party



promptly notifies the other parties of the occurrence of the event of force majeure set forth above and takes all reasonable steps necessary to resume performance of its obligations so interfered with.

15.2. It is agreed and understood that neither party is the agent, representative or partner of the other party and neither party has any authority or power to bind or contract in the name of or to create any liability against the other party in any way or for any purpose pursuant to this Agreement. It is understood that Spansion Japan is an independent contractor. Each party expressly reserves the right to enter other similar agreements with other parties on the same or on different terms.

15.3. This Agreement shall not be assigned by either party whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without the prior written consent of the other party, provided that the parties hereby acknowledge and consent to the assignment by Spansion Japan of all of its rights and interest hereunder, as security, to GE Capital Leasing, as Security Agent, under the Facility Agreement, dated March 30, 2007, for Spansion Japan Limited with GE Capital Leasing Corporation as Administrative Agent and GE Capital Leasing as Security Agent.

15.4. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such party's rights to take subsequent action.

15.5. All notices required or permitted to be given hereunder shall be in writing by first class certified or registered airmail, postage prepaid, if confirmed or acknowledged, to the addresses specified below or to such other address as may be specified in writing by the addressed party to other party in accordance with this Section 15:

if to Spansion:

915 DeGuigne Drive,
Sunnyvale, California 94088-3453, U.S.A
Tel. 408-962-2500
1-866-SPANSION

if to Spansion Japan:

Spansion Japan Limited
1-4 Nisshin-cho, Kawasaki-ku
Kawasaki-shi, Kanagawa, 210-0024, Japan
Tel. +81-44-223-1700
Fax. +81-44-223-1800

Each such notice or other communication shall for all purposes be treated as effective or as having been given as follows (i) if delivered in person, when delivered; (ii) if sent by airmail, at the earlier of its receipt or at 5 p.m., local time of the recipient, on the seventh day after deposit in a regularly maintained receptacle for the disposition of mail or air mail, as the case may be; and (iii) if sent by recognized courier service, on the date shown in the written confirmation of delivery issued by



such delivery service. Either party may change the address and/or addressee(s) to whom notice must be given by giving appropriate written notice at least fourteen (14) days prior to the date the change becomes effective.

15.6. In the event that any clause, sub-clause or other provision contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such clause, sub-clause or other provision shall to that extent be severed from the remaining clauses and provisions, or the remaining part of the clause in question, which shall continue to be valid and enforceable to the fullest extent permitted by law.

15.7. The headings to the clauses, sub-clause and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation" and "discretion" means sole discretion. The official text of this Agreement shall be in the English language, and any interpretation or construction of this Agreement shall be based solely on the English-language text.

15.8. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended; rather, these rights and obligations shall be governed in all respects by the laws of California exclusively, as such laws apply to contracts between California residents performed entirely within California.

15.9. In performing its duties under this Agreement, each party hereto shall at all times comply with all applicable international, federal, state and local laws and shall not engage in any illegal or unethical practices, including without limitation the Foreign Corrupt Practices Act of 1977 and any anti-boycott laws, as amended, and any implementing regulations.

15.10. This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties. It is acknowledged that the terms of this Agreement have been negotiated between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly signed and executed.



Spansion Japan Limited

Spansion LLC

By: 福島県会津若松市門田町工業団地6番 By: [Signature]

Print: Spansion Japan 株式会社 Mark Mohler

Title: 代表取締役社長 田口 眞 Corporate Treasurer



Exhibit A: DIE

<u>Part Numbers (OPNs)</u>	<u>Part Numbers (OPNs)</u>	<u>Part Numbers (OPNs)</u>
27C010	29DL1612DB	29DL3234GT
27C020	29DL1612DT	29DL3238
27C040	29DL161DB	29DL3238GB
27C128	29DL161DT	29DL3238GT
27C256	29DL162	29DL323DB
27C512	29DL1622DT	29DL323DT
27C64	29DL1624	29DL323GB
28F010	29DL1624DT	29DL323GT
28F020	29DL162DB	29DL324
28F020A	29DL162DT	29DL3244
28F512	29DL163	29DL3244GB
29BD6408	29DL1632	29DL3244GT
29BD6408GB	29DL1632DB	29DL3248
29BD6408GT	29DL1632DT	29DL3248GB
29BD640AGB	29DL1634	29DL3248GT
29BDD160	29DL1634DB	29DL324GB
29BDD160GB	29DL1634DT	29DL324GT
29BDS128	29DL163DB	29DL400
29BDS1282	29DL163DT	29DL400BB
29BDS128HD	29DL164	29DL400BT
29BDS640	29DL1642	29DL64
29BDS640GT	29DL1642DB	29DL640
29BDS640HN	29DL1644	29DL6404
29BDS64BGT	29DL1644DB	29DL6404G
29BL162	29DL1644DT	29DL6408
29BL162CB	29DL164DB	29DL6408G
29BL802	29DL164DT	29DL6408H
29BL802CB	29DL320	29DL640A
29BS12	29DL3208	29DL640AG
29BS64	29DL320GB	29DL640B
29BT32	29DL320GT	29DL640BG
29D9608H	29DL322	29DL640D
29D9608HGT	29DL3224	29DL640G
29DD162	29DL3224GB	29DL640H
29DD640	29DL3224GT	29DL642
29DL128B	29DL3228	29DL642G
29DL128BG	29DL3228GT	29DL800
29DL128BGA	29DL322DB	29DL800BB
29DL128BH	29DL322DT	29DL800BT
29DL128C	29DL322GB	29DL9608
29DL128CG	29DL322GT	29DL9608GT
29DL128CH	29DL323	
29DL161	29DL3234	
29DL1612	29DL3234GB	



Part Numbers (OPNs)

29DS163
29DS163DB
29DS163DT
29DS323
29DS323DB
29DS323DT
29DS42712
29F002
29F002BB
29F002BT
29F002N
29F002NBB
29F002NBT
29F004
29F004BB
29F004BT
29F010
29F010A
29F010B
29F016
29F016D
29F017
29F017D
29F032
29F032B
29F033
29F040
29F040B
29F080
29F080B
29F160
29F160DB
29F160DT
29F200
29F200BB
29F200BT
29F400
29F400AB
29F400BB
29F400BT
29F800
29F800BB
29F800BT
29JL064H
29JL064H8
29JL064H80

Part Numbers (OPNs)

29JL064HA0
29JL128H
29JL128HB0
29LV001
29LV001BB
29LV001BT
29LV002
29LV002BB
29LV002BT
29LV004
29LV004BB
29LV004BT
29LV008
29LV008BB
29LV008BT
29LV010
29LV010B
29LV016
29LV017
29LV017D
29LV033
29LV033C
29LV033M
29LV033MU
29LV040
29LV040B
29LV065
29LV065DU
29LV065MU
29LV080
29LV081
29LV081B
29LV116
29LV116DB
29LV116DT
29LV128
29LV128MH
29LV128MH/L
29LV128ML
29LV128MS
29LV160
29LV160BB
29LV160BT
29LV160DB
29LV160DT
29LV160MB

Part Numbers (OPNs)

29LV160MT
29LV160MT/B
29LV200
29LV200BB
29LV200BT
29LV256
29LV2562
29LV2562MH/L
29LV256MH
29LV256MH/L
29LV256ML
29LV320
29LV3204
29LV3204MT
29LV320DB
29LV320DT
29LV320MB
29LV320MH
29LV320MH/L
29LV320ML
29LV320MT
29LV320MT/B
29LV400
29LV400BB
29LV400BT
29LV640
29LV640DH
29LV640DL
29LV640DU
29LV640MB
29LV640MH
29LV640MH/L
29LV640ML
29LV640MT
29LV640MT/B
29LV640MU
29LV641
29LV641DH
29LV641DL
29LV641GT
29LV641MH
29LV641MH/L
29LV641ML



Part Numbers (OPNs)

29LV642
29LV642D
29LV652
29LV652D
29LV800
29LV800BB
29LV800BT
29N128
29N128HT
29N163
29N163DT
29N323
29N323DT
29N323GT
29N643
29N643GT
29N643HT
29P193BH
29P193BHHA
29PDL12
29PDL127
29PDL127BH
29PDL127H
29PDL128
29PDL128G
29PDL129
29PDL129BH
29PDL192BH
29PDL193
29PDL193BH
29PDL193CH
29PDL29C
29PDL29CDH
29PDL640
29PDL640AG
29PDL640G

Part Numbers (OPNs)

29PDS322
29PDS322DT
29PL12
29PL127
29PL160
29PL160CB
29PL193C
29PL193CHH
29PL25
29PL32
29PL320
29PL320DB
29PL320DT
29PL64
29PL65
29QD64
29QM/R
29QM12
29QM64
29QM96
29RM12
29SL160
29SL160CB
29SL160CT
29SL400
29SL400CB
29SL800
29SL800CT
29SL800DB
29SL800DT
30LV006
30LV0064
41DL162/4
41DL163/4
41DL164/4
41DL320/8

Part Numbers (OPNs)

41DL322/4
41DL322/8
41DL323/4
41DL323/8
41DL324/4
41DL324/8
41DL640/8
41LV320/4
42BDS640/16
42BDS640/8
42DL161/2
42DL162/2
42DL163/2
42DL164/2
42DL640/16
42DL640/4
42DL640/8
49DL640/32
49PDL127/32
49PDL129/32
49PDL640/16
50DL128/32
50DL128/64
50DL960/8
50PDL192/32
50PDL193/32
50PDL193/64
71JL064/16
71JL064/8
71JL128/32
75DL960/8
75PDL193/32
75PDL193/64
84VP24481



Exhibit B: Per Die Price

Definitions

- 1) "JV#1" means the first fabrication plant operated by Spansion Japan.
- 2) "JV#2" means the second fabrication plant operated by Spansion Japan.
- 3) "JV#3" means the third fabrication plant operated by Spansion Japan.
- 4) "JV#4" means the fourth fabrication plant operated by Spansion Japan.
- 5) "Monden Plant" means JV#1 and JV#2.
- 6) "Takaku Plant" means JV#3 and JV#4.
- 7) "Wafer Output" means for the Quarter for which Per Device Prices are being determined, the amount of Wafers expected to be produced in Aizu.
- 8) "Net Die per Wafer" means the amount of gross Die per Wafer for a Product multiplied by the yield projection for such Product.

Summary

Transfer Prices for the purchase of Products shall be negotiated and agreed upon by the parties every Quarter using the formulae described below. Products shall be priced on a per device manufacturing cost based model (the "Per Device Price").

References in any formula below to any of (a) through (m) refer to the amount referenced in such lettered paragraph.

Determination of Manufacturing Cost

(a) Manufacturing Cost

Manufacturing Cost is determined for Monden Plant and Takaku Plant separately.

(b) Adjusted Manufacturing Costs (with profit margin) = (a) * 1.06

Adjusted Manufacturing Costs is determined for Monden Plant and Takaku Plant separately.

(c) Wafer Outputs

Wafer Output capacity plan for the subsequent Quarter shall be summarized (by Plant, by Technology). Wafer Outputs is determined for Monden Plant and Takaku Plant separately.

(d) Relative Cost Index (for each Technology)



Relative Cost Index (for each Technology) is determined based on the number of processing steps and the total manufacturing equipment cost using the formula shown on the following table. The number of processing steps is used to determine the relative non-depreciation cost to manufacture. The purchase cost of equipment required to manufacture 2,500 Wafers per week is used to determine the relative depreciation cost to manufacture. Both non-depreciation and depreciation expenses are assumed to represent 50% of the long term total Manufacturing Cost. The Relative Cost Index applies to Wafers produced from all manufacturing plants.

	No. of Process Steps	Non-depreciation Weighting Factor	(2)*50%	Cap. for 2500w/w (mil yen)	Depreciation Weighting Factor	(5)*50%	Relative Cost Index (3)+(6)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
CS39s	122	1.000	0.500	28,760	1.000	0.500	1.00
CS49s	143	1.172	0.586	41,680	1.449	0.725	1.31

- (e) Equivalent Wafer Output Capacity (by plant) = (c) * (d)
 e.g., JV#1 Equivalent Wafer Output =
 JV#1 CS39s Wafer Output * 1.00 + JV#1 CS49s Wafer Output * 1.31

Determination of Technology Cost Per Wafer

- (f) Cost per Equivalent Wafer Output Capacity = (b) / (e)

Cost per Equivalent Wafer Output is determined for Monden Plant and Takaku Plant separately.

- (g) Technology Cost per Wafer (by Technology) = (f) * (d)

Technology Cost per Wafer is determined for Monden Plant and Takaku Plant separately.

Determination of Per Device Price

- (h) Per Device Price = Technology Cost per Wafer (by Technology) (g) / Net Die per Wafer for each Product (gross die per Wafer for each Product * yield projection for each Product). The gross die per Wafer and yield projection comes from the QBP.

Contingency Cases

The Per Device Price paid by Spansion as calculated in accordance with the formula set forth immediately above may be increased in the event that the parties agree that a contingency case (i.e. a drop in demand below agreed level) is deemed to apply.

- (i) Wafer Output Plan (by Technology) = Die output plan for the subsequent fiscal Quarter / Net Die per Wafer for each Product (gross die per Wafer * yield projection for each Product).



Wafer Output Plan is calculated for Monden Plant and Takaku Plant separately. The Die output plan comes from the QBP.

(j) Equivalent Wafer Output Plan = (i) * (d)

(k) Demand Ratio to Equivalent Wafer Output Capacity = (j) / (e).

Demand Ratio is calculated for Monden Plant and Takaku Plant separately.

- For Monden Plant, if (k) is less than 90%, then the contingency case does apply.
- For Takaku Plant, if (k) is less than 95%, then the contingency case does apply.

(l) Contingency Minimum Demand Requirement (CMDR)

- For Monden Plant: 90%
- For Takaku Plant: 95%

(m) Contingency Multiplier (CM) = (l) / (k).

Contingency Multiplier is determined for Monden Plant and Takaku Plant separately.

(n) Per Device Price = (m) * (h)



EXHIBIT C

FOUNDRY AGREEMENT

THIS FOUNDRY AGREEMENT (the “**Agreement**”) is made and entered into as of the 28th day of September, 2006 by and between Fujitsu Limited, a corporation organized and existing under the laws of Japan, with a registered office at 1-1, Kamikodanaka 4-chome, Nakahara-ku, Kawasaki 211-8588 Japan (“**Fujitsu**”); Spansion Inc., a corporation organized and existing under the laws of Delaware, with a registered office at 915 DeGuigne Drive, Sunnyvale, California 94088-3453, Spansion Technology, Inc., a corporation organized and existing under the laws of Delaware (“**STI**”), with a registered office at 915 DeGuigne Drive, Sunnyvale, California 94088-3453, and Spansion LLC, a limited liability company organized and existing under the laws of Delaware (“**Spansion LLC**”), with a registered office at 915 DeGuigne Drive, Sunnyvale, California 94088-3453, solely in their capacities as guarantors of Spansion’s obligations hereunder (collectively “**Guarantors**”); and Spansion Japan Limited, a corporation organized and existing under the laws of Japan, with a registered office at 1-14 Nisshin-Cho, Kawasaki-ku, Kawasaki-shi, Kanagawa 210-0024 Japan (“**Spansion**”).

WHEREAS, Fujitsu has agreed to purchase certain assets of Spansion related to Spansion’s JV1 and JV2 semiconductor fabrication facilities located in Aizu-Wakamatsu, Japan pursuant to an Asset Purchase Agreement of even date herewith by and among Fujitsu, Spansion and the Guarantors (the “**Asset Purchase Agreement**”);

WHEREAS, in consideration of the foregoing purchase by Fujitsu, and as a condition to Fujitsu’s obligation to effect such purchase, Spansion is willing to commit to purchase specified quantities of Spansion’s products from Fujitsu, on the terms and conditions set forth in this Agreement; and

WHEREAS, Fujitsu is willing to provide such foundry services to Spansion, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, Fujitsu and Spansion hereby agree as follows:

1. DEFINITIONS

When used in this Agreement, the following capitalized terms shall have the respective meanings set forth below:

1.1 “**Affiliates**” of a Party means any other person or entity which, directly or indirectly, controls, is controlled by, or is under common control with, such Party. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise. A person or entity shall be deemed an Affiliate of a Party only so long as such control relationship exists. For purposes of this Agreement, Fujitsu and its Affiliates shall not be deemed to be Affiliates of Spansion

1.2 “**Agreed Die Yield**” is defined in Section 6.1.

1.3 “**Asset Purchase Agreement**” means the Asset Purchase Agreement dated September 28, 2006 between Fujitsu and Spansion.

1.4 “**Background IP Rights**” means any Intellectual Property Rights which are (a) owned by Spansion or any of its Affiliates as of the Effective Date, or (b) conceived, developed, written, or otherwise created (other than by any Seconded Employee) or acquired by Spansion or any of its Affiliates on or after the Effective Date.

1.5 “**Best Efforts**” shall mean the efforts that a prudent Person desiring to achieve a particular result would use in order to achieve such result reasonably expeditiously. An obligation to use “Best Efforts” does not require the Person subject to such obligation to take actions that would result in a materially adverse change in the benefits to such Person under this Agreement.

1.6 “**Confidential Information**” shall mean information or materials disclosed to a Party by the other Party that are identified as, or provided under circumstances indicating the information or materials are, confidential or proprietary.

1.7 “**Development**” means any Intellectual Property Rights or Technology conceived, developed, written, or otherwise created by any employees or contractors of a Party, whether solely or jointly with others, after the Effective Date and during the Term, but expressly excluding Background IP Rights. For purposes of this definition and Section 13: (i) all Seconded Employees who are to be transferred to Fujitsu pursuant to Section 3.1 of the Secondment Agreement shall be deemed to be employees of Fujitsu; and (ii) all Seconded Employees who are to return to Spansion pursuant to Section 2 and Section 3.1.2 of the Secondment Agreement shall be deemed to be employees of Spansion.

1.8 “**Die**” means an individual integrated circuit or components which when completed create an integrated circuit.

1.9 “**Effective Date**” means the date of the closing of the transactions contemplated by the Asset Purchase Agreement.

1.10 “**Equipment Lease Agreement**” means the Master Lease Agreement dated September 28, 2006 between Fujitsu and Spansion.

1.11 “**Gross Die per Wafer**” or “**GDW**” means the total quantity of Die candidates on each Wafer, whether or not the Die is operational when the Wafer has completed the manufacturing process.

1.12 “**Initial Period**” is defined in Section 2.1.

1.13 “**Intellectual Property Rights**” means, on a world-wide basis, any and all now known or existing, or hereafter known or existing, tangible and intangible (a) rights associated with works of authorship, including copyrights, moral rights and mask-works, (b) rights associated with trademarks, service marks, trade names, logos and similar rights, (c) trade secret rights, including rights in know-how and confidential and proprietary information, (d) rights in patents, designs and utility models and other industrial property rights, (e) rights in domain names; (f) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract,

license or otherwise, and (g) all registrations, applications, renewals, extensions, continuations (including continuations in part), divisions, reexaminations or reissues thereof now or hereafter existing, made or in force (including any rights in any of the foregoing).

1.14 “**Jointly Developed Technology**” shall have the meaning set forth in Section 13.2.

1.15 “**JV1/JV2**” shall mean, collectively, the Fujitsu semiconductor fabrication facilities located in Aizu-Wakamatsu, Japan, known as JV1 and JV2.

1.16 “**JV3**” shall mean the Spansion semiconductor fabrication facilities located in Aizu-Wakamatsu, Japan known as JV3.

1.17 “**Net Die per Wafer**” or “**NDW**” means the total quantity of Die on a Wafer that pass the Probe Program applicable to that Wafer.

1.18 “**Party**” means either of Fujitsu or Spansion, and “**Parties**” means both Fujitsu and Spansion.

1.19 “**Person**” shall mean any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or governmental authority.

1.20 “**Probe Program**” means the specific set of electrical and mechanical tests as set forth in Exhibit C attached hereto which test the electrical operational characteristics for each Die on a Wafer.

1.21 “**Process Technology**” shall mean the Technology used to manufacture semiconductor wafers, but not any Technology related to integrated circuit design, sort, testing, circuitry or other Technology specific to the integrated circuits being manufactured.

1.22 “**Qualified Process**” shall mean Spansion’s proprietary wafer fabrication processes, excluding (i) sort testing and (ii) any technology related to the circuitry contained within, or the functionality of the Spansion product.

1.23 “**Quarter**” shall mean the three month accounting period that Spansion uses for financial accounting and reporting purposes.

1.24 “**Seconded Employee**” has the meaning ascribed to such term in the Secondment and Transfer Agreement dated September 28, 2006, between Fujitsu and Spansion.

1.25 “**Secondment Agreement**” means that certain Secondment and Transfer Agreement, dated September 28, 2006 by and between Spansion and Fujitsu.

1.26 “**Secondment Period**” has the meaning ascribed to such term in the Secondment Agreement.

1.27 “**Specifications**” shall mean the written specifications for Wafers as set forth in Exhibit C attached hereto. Spansion represents that all of the Wafers can be manufactured

in conformity with the Specifications at JV1/JV2 using the Qualified Process and the equipment purchased or leased by Fujitsu pursuant to the Asset Purchase Agreement, the Assigned Leases (as defined therein) or the Master Lease Agreement attached to the Asset Purchase Agreement.

1.28 “**Technology**” means all computer software (in source code or object code form), documentation, works of authorship, mask works, know-how, data and data bases, formulas, algorithms, processes, inventions and discoveries (whether or not patented), ideas, concepts, techniques, methods, content, technical information, engineering, production and other designs, drawings, schematics, specifications, confidential information, and all other information, technology and materials, tangible or otherwise

1.29 “**Term**” has the meaning set forth in subsection 16.1.1.

1.30 “**Wafer Price**” is defined in Section 6.3.

1.31 “**Wafers**” shall mean unsorted eight inch (8”) diameter silicon wafers listed on Exhibit A attached hereto manufactured by Fujitsu for Spansion hereunder using a Qualified Process. Spansion represents that all of the Wafers can be manufactured at JV1/JV2 using the Qualified Process and the equipment purchased or leased by Fujitsu pursuant to the Asset Purchase Agreement, the Assigned Leases (as defined therein) or the Master Lease Agreement attached to the Asset Purchase Agreement.

2. CAPACITY AND PURCHASE COMMITMENTS

2.1 The initial period for Wafer purchases under this Agreement (the “**Initial Period**”) shall begin on the Closing Date (as defined in the Asset Purchase Agreement) and end on the final day of the second Quarter of 2008, inclusive. Spansion shall purchase, on a quarterly basis, the numbers of Wafers corresponding to the ranges for each Quarter during the Initial Period set forth on Exhibit D attached hereto. If the foregoing Closing Date falls within, but not at the start of, a Quarter listed on Exhibit D attached hereto, the numbers of Wafers for that Quarter set forth on Exhibit D shall be reduced pro rata in proportion to the number of days remaining in that Quarter relative to the total number of days in that Quarter. Fujitsu shall make available to Spansion, manufacturing capacity sufficient to permit Spansion to satisfy the foregoing purchase commitment.

2.2 If, for any Quarter during the Initial Period, Spansion fails to purchase hereunder the minimum number of Wafers for that Quarter, as set forth on Exhibit D (the “**Minimum Purchase Commitment**”), then Spansion shall pay Fujitsu an amount equal to the product obtained by multiplying (i) .66, by (ii) the average Wafer Price in effect for that Quarter, by (iii) the difference between (x) the Minimum Purchase Commitment, and (y) the number of Wafers actually purchased by Spansion hereunder during that Quarter. Spansion shall not be obligated to make any payment to Fujitsu pursuant to this Section 2.2 with respect to any Quarter during the Initial Period in which Fujitsu fails to make available to Spansion, manufacturing capacity sufficient to permit Spansion to satisfy the Minimum Purchase Commitment for that Quarter.

2.3 If, for any Quarter during the Initial Period, (a) Spansion has submitted a Wafer Demand Plan (as defined below) for Wafers to be manufactured and delivered during that Quarter in accordance with Section 5.2 and in an amount that equals or exceeds the

Minimum Purchase Commitment for that Quarter, and (b) Fujitsu fails to make available to Spansion, the Minimum Purchase Commitment, then Fujitsu shall pay Spansion an amount equal to the product obtained by multiplying (i).66, by (ii) the average Wafer Price in effect for that Quarter, by (iii) the difference between (x) the Minimum Purchase Commitment, and (y) the number of Wafers actually manufactured by Fujitsu for Spansion hereunder during that Quarter.

2.4 Any payment due under Section 2.2 or 2.3 shall be fully offset by the amount, if any, of all salary and benefit costs to be reimbursed by Fujitsu or its designated Affiliate pursuant to Sections 2.3 and 2.4 of the Secondment Agreement and associated with any Seconded Employee returned early to Spansion pursuant to Section 2.1.4(v) of the Secondment Agreement for the period beginning on the date of such Seconded Employee's early return to Spansion and ending on the expiration date of such Seconded Employee's Secondment Period (as set forth on Schedule 2.1.1 of the Secondment Agreement). The amounts, if any, payable pursuant to Section 2.2 and Section 2.3 shall be computed by Fujitsu on a Quarterly basis during the Initial Period. Fujitsu shall provide a statement, in reasonable detail, to Spansion within thirty (30) days after the end of any Quarter during the Initial Period for which Fujitsu believes such a payment may be due. If Spansion disagrees with Fujitsu's statement, Spansion shall so notify Fujitsu in writing within thirty (30) days of its receipt of the statement. If Spansion does not dispute the statement within the foregoing thirty (30) day period, the statement shall be deemed accepted, and Fujitsu or Spansion, as the case may be, will make the payment called for by the statement within thirty (30) days of the end of Spansion's review period. If Spansion disputes the statement in writing during the foregoing review period, then the matter shall be resolved in accordance with the procedures set forth in Section 21 below.

2.5 If Spansion's requirements for Wafers during the Initial Period exceed the ranges set forth on Exhibit D attached hereto, Fujitsu and Spansion will address the issue as provided in Section 5.3.

2.6 The second period for Wafer purchases under this Agreement (the "**Subsequent Period**") shall be comprised of the third Quarter of 2008 through the fourth Quarter of 2009, inclusive. Fujitsu and Spansion will negotiate in good faith to agree by December 31, 2007 upon (i) Spansion's purchase commitment for the Subsequent Period (the "**Subsequent Period Commitment**"), (ii) Wafer prices for the Subsequent Period (the "**Subsequent Period Price**"), and (iii) any remedy available to (x) Fujitsu in case of failure by Spansion to satisfy its minimum purchase commitment, and (y) Spansion in case of failure by Fujitsu to make available to Spansion the corresponding minimum manufacturing capacity (the "**Subsequent Period Remedies**"). Notwithstanding the foregoing, it is agreed as follows with respect to the Subsequent Period:

2.6.1 Each of Fujitsu and Spansion shall prepare in writing and deliver to the other, by no later than November 6, 2007, with respect to Spansion, a good faith Wafer Demand Plan for the Subsequent Period in accordance with **Section 5.2**, and with respect to Fujitsu, its own wafer demand plan (collectively, the "**Subsequent Period Wafer Demand Plan**").

2.6.2 If, by no later than December 31, 2007, Spansion agrees to the Fujitsu requested minimum purchase commitments for the Subsequent Period as set forth on

Exhibit E attached hereto, then the Subsequent Period Price will remain as set forth in Exhibit B and the Subsequent Period Remedies will remain as set forth in **Section 2.2** and **2.3**, subject to adjustment as provided in **Section 6.4**, Spansion shall not terminate leases early as set forth in **Section 2.6.5** below, and such Fujitsu requested minimum purchase commitments shall thereafter constitute the Minimum Purchase Commitments for purpose of this Agreement. In the event that the parties cannot agree by December 31, 2007, on the Subsequent Period Commitment under this **Section 2.6.2**, then, subject to **Section 2.6.3** and **2.6.4**, Fujitsu shall not be required to provide the Spansion desired minimum purchase commitments set forth on Exhibit E attached hereto and Spansion shall not be required to make the minimum purchase commitments set forth on Exhibit E attached hereto.

2.6.3 Even if Spansion does not agree to the Fujitsu requested minimum purchase commitments on Exhibit E attached hereto, so long as the parties can agree on the Subsequent Period Price, Fujitsu will provide the Spansion desired minimum purchase commitments on Exhibit E attached hereto during the Subsequent Period, *provided, however*, that it is agreed that (x) Spansion shall not terminate leases early as set forth in **Section 2.6.5** below if such termination would impair Fujitsu's ability to satisfy both its minimum manufacturing capacity commitment to Spansion at any time during the Subsequent Period and Fujitsu's own manufacturing capacity needs at any time during the Subsequent Period, (y) Subsequent Period Remedies shall remain as set forth in **Section 2.2** and **2.3**, and (z) such Spansion desired minimum purchase commitments shall thereafter constitute the Minimum Purchase Commitments for purposes of this Agreement. In the event that the parties cannot agree by December 31, 2007, on the Subsequent Period Price under this **Section 2.6.3**, then, subject to **Section 2.6.2** and **2.6.4**, Fujitsu shall not be required to provide the Spansion desired minimum purchase commitments set forth on Exhibit E attached hereto and Spansion shall not be required to make the minimum purchase commitments set forth on Exhibit E attached hereto.

2.6.4 If the projected combined demand for wafers by Spansion and Fujitsu as set forth in the Subsequent Period Wafer Demand Plan is less than 30,000 wafers per month for the Subsequent Period, then Fujitsu will develop and provide to Spansion a revised Fujitsu requested minimum purchase commitment for the Subsequent Period in lieu of the Fujitsu requested minimum purchase commitment set forth on Exhibit E attached hereto. If Spansion agrees to that proposal, then the parties will negotiate the Subsequent Period Price pursuant to **Section 6**, but the manufacturing capacity of JV1/JV2 may be limited to 30,000 unsorted wafers per month in total for the combined Spansion and Fujitsu demand during the entire Subsequent Period. In the event that the parties cannot agree by December 31, 2007, on the Subsequent Period Price, the Subsequent Period Commitment, and the Subsequent Period Remedies under this **Section 2.6.4**, then, subject to **Section 2.6.2** and **2.6.3**, Fujitsu shall not be required to provide the Spansion desired minimum purchase commitments set forth on Exhibit E attached hereto and Spansion shall not be required to make the minimum purchase commitments set forth on Exhibit E attached hereto.

2.6.5 Subject to **Section 2.6.2** and **2.6.3**, if (A) the projected combined demand for wafers by Spansion and Fujitsu as set forth in the Subsequent Period Wafer Demand Plan is less than 30,000 wafers per month for the Subsequent Period or (B) the actual agreed upon Subsequent Period Commitment together with Fujitsu's projected demand is less than 30,000 wafers per month for the Subsequent Period, then each of Spansion and Fujitsu shall have a right, in accordance with the terms of the Equipment Lease Agreement, to

terminate the Equipment Lease Agreement for some or all of the leased equipment effective June 30, 2008, by giving notice to the other party prior to December 31, 2007 (an “**Early Termination**”); *provided, however*, that (a) in the event of a partial lease termination by either party, Fujitsu may select the specific equipment as to which the Equipment Lease Agreement will be terminated, subject to Spansion’s consent, not to be unreasonably withheld or delayed, and (b) the manufacturing capacity of JV1/JV2 during the Subsequent Period, including, without limitation, during calendar year 2009, may be limited to 30,000 unsorted wafers per month in total for the combined Spansion and Fujitsu demand.

2.6.6 Further in the event of an Early Termination, it is understood and agreed that (i) in fulfilling a total manufacturing capacity of 30,000 unsorted wafers per month in total at JV1/JV2, Fujitsu will have reasonable discretion to utilize or close any portion of the JV1/JV2 buildings or other facilities in order to avoid incurring unnecessary costs, so long as Fujitsu continues to meet its obligations as set forth in this Agreement, and (ii) Fujitsu may at any time terminate the leases under the Equipment Lease Agreement with respect to any leased equipment that Fujitsu reasonably determines is no longer required so long as the termination is in accordance with the Equipment Lease Agreement.

2.7 The payments provided for in Section 2.2 and Section 2.3 above shall be Fujitsu’s and Spansion’s, respectively, sole remedies for (i) Spansion’s failure to satisfy the Minimum Purchase Commitment for the Initial Period or any minimum purchase commitment applicable to the Subsequent Period, and (ii) Fujitsu’s failure to make available to Spansion the Minimum Purchase Commitment for the Initial Period or any minimum manufacturing capacity applicable to the Subsequent Period. Notwithstanding anything to the contrary set forth in this Agreement, Fujitsu shall have no liability or payment obligations whatsoever for failure to make manufacturing capacity available to Spansion if such failure results from (x) the equipment purchased or leased by Fujitsu from Spansion pursuant to the Asset Purchase Agreement or the Equipment Lease Agreement failing to conform to the representations and warranties set forth in the foregoing agreements during the period such representations and warranties remain in effect, or (y) with respect to the initial forty-five (45) days of the Initial Period, breach of Spansion’s covenant set forth in Section 5.7 of the Asset Purchase Agreement.

3. PRODUCTION

3.1 Fujitsu shall manufacture the Wafers for Spansion utilizing the Qualified Process.

3.2 Fujitsu shall maintain a Wafer production capacity adequate to produce, for Spansion, the minimum number of Wafers per Quarter reflected on Exhibit D attached hereto, which is expressed as unsorted wafer outs per Quarter.

3.3 Unless otherwise specifically provided herein, Fujitsu shall, at its own responsibility and cost, purchase or procure raw or indirect materials or labor required by it to manufacture the Wafers under this Agreement. Notwithstanding the foregoing, Spansion shall be responsible for purchasing or otherwise procuring masks as required due to wear-out or breakage as required by Fujitsu to manufacture the Wafers under this Agreement during at least the Initial Period. Fujitsu shall promptly return all Spansion-owned masks to Spansion upon wear-out, breakage, cease of intended use, or the termination of this Agreement.

3.4 Spansion shall provide Fujitsu with technical assistance as reasonably requested by Fujitsu to manufacture the Wafers for Spansion. Without limiting the generality of the foregoing, Spansion agrees to provide such technical assistance as reasonably requested by Fujitsu to address any yield issues. The initial 1,000 hours of Spansion personnel time (excluding travel time) provided for the foregoing assistance shall be provided by Spansion at no cost to Fujitsu. The cost of any additional assistance shall be borne by Fujitsu in accordance with Section 4.1. Fujitsu and Spansion shall each bear the travel, housing and meal-related expenses of their respective personnel in connection with such assistance.

4. DISPATCH OF PERSONNEL

4.1 On-site Training.

4.1.1 In addition to the technical assistance provided for in Section 3.4, Fujitsu may request Spansion to provide on-site training of Fujitsu employees subject to Fujitsu's prior written request and Spansion's written acceptance thereof.

4.1.2 Spansion shall be responsible for causing its engineers or employees to comply with the working rules and security instructions designated by Fujitsu.

4.1.3 All costs incurred for such engineers or employees, such as travel, meals and housing, and including Spansion's charges for such training, shall be borne by Fujitsu.

4.1.4 Fujitsu shall provide Spansion's engineers and employees with an appropriate working environment.

4.2 Inspection and Review.

4.2.1 Presence of Spansion employees and customers at JV1/JV2

(a) Spansion may, with Fujitsu's prior consent, which shall not be unreasonably withheld, send specified employees to visit JV1/JV2 to inspect the fabrication of Wafers. Such visits shall be conducted during Fujitsu's normal working hours and upon reasonable notice. While visiting in JV1/JV2, Spansion employees shall at all times fully comply with Fujitsu's plant rules and regulations, as well as with all reasonable instructions that may be issued by Fujitsu's employees or personnel. Each Party shall, at its own expense, indemnify and hold harmless the other party and its employees from and against any and all direct loss or damage (including, without limitation, loss or damage to property, personal health or life) caused by the indemnifying party's employees during any such visit.

(b) It is understood and agreed that Spansion may be required, under its agreements with its customers for the sale of Spansion products manufactured using Wafers, to allow such customers to inspect the JV1/JV2 facilities for quality assurance purposes. Fujitsu agrees to permit such inspections for such purposes, on the same terms as apply to Spansion employee visits pursuant to subsection (a) above. Spansion shall be responsible for supervising any such customer employees and for their conduct while at JV1/JV2. Without limiting the generality of the foregoing, Spansion's indemnification

obligations pursuant to subsection (a) above shall apply to any such customer employees to the same extent as if they were Spansion employees.

(c) Spansion and Fujitsu may, from time to time, arrange for Spansion employees to work at JV1/JV2 on mutually-agreed terms and conditions. At a minimum, Fujitsu will grant these employees access to JV1/JV2 to the extent necessary for them to perform their duties, as well as access to standard employee facilities. Fujitsu will allow any such Spansion employees to be active participants on problem solving teams with respect to the manufacture of Wafers. Such Spansion employees shall abide by the policies and regulations of Fujitsu, and Spansion shall, at Fujitsu's request, remove or replace any Spansion employee who fails to do so.

4.2.2 System Review. Fujitsu agrees to participate in regular quality system reviews for all Wafers. Spansion shall provide the details of such reviews to Fujitsu in writing at least one month in advance.

4.2.3 Business Review Meetings. The Parties will plan and schedule business reviews at least quarterly. The review will focus on current and forecast business activities, feedback on performance and factory metrics, key improvement programs and activities focused on enabling the relationship between the Parties and will review the status of open issues and action items.

5. PRODUCTION PLANS

5.1 For every Quarter during the term of this Agreement, Fujitsu shall provide Spansion with the following information which is required by Spansion to make its production plan for the next four Quarters:

- Weekly Wafer starts capacity
- Weekly unsorted Wafer outs capacity
- Cycle time for Wafer fabrication
- Line yield
- Weekly operation rate
- Risk input start schedule for new Wafers

5.2 Spansion shall prepare in writing and deliver to Fujitsu, by no later than fifty-five (55) days before the start of each Quarter, a good faith Wafer demand forecast for the four Quarters immediately following the then-current Quarter, based on the information provided by Fujitsu under Section 5.1 above and demand forecasts from Spansion's customers (the "**Wafer Demand Plan**"). Within five (5) business days after Fujitsu's receipt of a Wafer Demand Plan, Fujitsu shall either accept or reject the portion of the Wafer Demand Plan for the Quarter immediately following the then-current Quarter, which shall be referred to as the "**Quarter Beginning Plan**" or "**QBP**". Fujitsu may not reject a proposed QBP within the range specified in Exhibit D for the Initial Period or Exhibit E or such other range

as is applicable to the Subsequent Period. QBP's shall also specify the delivery dates for the Wafers specified in that QBP and the preliminary mix of Spansion products for the Wafers.

5.3 Fujitsu shall use Best Efforts to allocate production capacity sufficient to sustain QBP's it has accepted and to manufacture the Wafers in accordance with such QBP's. Further, in any Quarter, Fujitsu will use commercially reasonable efforts to provide manufacturing capacity for up to one hundred twenty percent (120%) of the number of Wafers specified in the QBP for that Quarter, as reasonably requested by Spansion; provided, however, that in no event will Fujitsu be required to provide additional capacity if it would result in Fujitsu not being able to meet its own manufacturing needs.

5.4 QBP's shall be firm and binding on Spansion for the overall number of Wafers specified therein. Spansion may request, on a weekly basis, reasonable changes to a QBP already accepted by Fujitsu pursuant to Section 5.2. Fujitsu shall not unreasonably withhold its consent to such requests, provided that (i) Spansion may not request any alterations in the overall number of Wafers to be produced; and (ii) Spansion may not request any changes in product mix if production of the relevant Wafers has either already commenced or is scheduled to commence within three (3) business days of the applicable QBP update request.

5.5 Notwithstanding anything to the contrary in this Section 5, and further notwithstanding Fujitsu's acceptance of any Wafer Demand Plan, the Parties shall remain liable for their minimum purchase and capacity commitments as set forth in Section 2 above.

6. YIELD METRICS AND DIE PRICING

6.1 Agreed Die Yield. For each Quarter, Fujitsu and Spansion shall discuss and mutually agree upon the target NDW yield for that Quarter on a Spansion process-by-process basis (the "**Agreed Die Yield**"). The Agreed Die Yield for the first Quarter of the Initial Period is set forth on Exhibit G attached hereto. The Agreed Die Yield shall be revised and mutually agreed upon by the Parties every Quarter based on the actual NDW yields achieved by Fujitsu in the previous Quarter. In the event that the Parties do not agree on an Agreed Die Yield for a given Quarter, the Agreed Die Yield for the previous Quarter shall apply.

6.2 Yield Improvement. Fujitsu shall perform yield improvement activities when necessary to improve Die yields to equal or exceed agreed-upon NDW's, and shall bear the cost associated with such Die yield improvement. The sole liability of Fujitsu for failure to attain the Agreed Die Yield in any Quarter shall be the Wafer Price Adjustment provided for in Section 6.2.1 below.

6.3 Wafer Price. Spansion shall pay Fujitsu a price per Wafer manufactured by Fujitsu for Spansion hereunder (the "**Wafer Price**"). The Wafer Price shall be in Japanese Yen. For the Initial Period, the Wafer Price shall be as set forth on Exhibit B attached hereto and subject to adjustment pursuant to Section 6.4. For the Subsequent Period, the Parties shall negotiate the Wafer Price in good faith based on the principle that the Wafer Price shall be sufficient to cover (i) all costs incurred by Fujitsu in manufacturing the Wafers for Spansion, and (ii) a commercially reasonable margin. If Fujitsu provided manufacturing capacity to Spansion during the Initial Period in excess of the ranges set forth on Exhibit D attached hereto pursuant to Section 5.3, then notwithstanding the foregoing provisions of this Section 6.3, the Wafer Price for those Wafers manufactured in excess of the upper end of the

ranges set forth on Exhibit D shall be as follows: (a) during each Quarter of 2007, 27,000 Yen; and (b) during the first and second Quarters of 2008, 25,000 Yen.

6.4 Yield Based Adjustment to Wafer Price set forth in Exhibit B. The actual price paid by Spansion to Fujitsu for Wafers during the Initial Period will be adjusted as follows:

6.4.1 If the Net Die per Wafer for all Wafers delivered during a Quarter of the Initial Period is less than the product obtained by multiplying (i) the Gross Die per Wafer for all such Wafers, by (ii) the Agreed Die Yield, by (iii) .97, then the actual price to be paid by Spansion to Fujitsu for those Wafers will be determined using the following formula:

$$\text{Wafer Price} \times \frac{\text{NDW}}{\text{Agreed Die Yield} \times \text{GDW}}$$

where “**Wafer Price**” is as set forth in Exhibit B and “ \times ” stands for the arithmetic multiplication operator.

6.4.2 If the Net Die per Wafer for all Wafers delivered during a Quarter of the Initial Period is greater than the product obtained by multiplying (i) the Gross Die per Wafer for all such Wafers, by (ii) the Agreed Die Yield, by (iii) 1.03, then the actual price to be paid by Spansion to Fujitsu for those Wafers will be determined using the following formula (definitions in Section 6.4.1 apply here):

$$\text{Wafer Price} \times \frac{\text{NDW}}{\text{Agreed Die Yield} \times \text{GDW}}$$

Any adjustments arising from the operation of this Section 6.4 shall be computed by Fujitsu on a Quarterly basis during the Initial Period. Fujitsu shall provide a written statement, in reasonable detail, to Spansion within thirty (30) days after the end of any Quarter during the Initial Period for which Fujitsu believes a yield-based adjustment is present. If Spansion disagrees with Fujitsu’s statement, Spansion shall so notify Fujitsu in writing within thirty (30) days of its receipt of the statement. If Spansion does not dispute the statement within the foregoing thirty (30) day period, the statement shall be deemed accepted, and Fujitsu or Spansion, as the case may be, will make the payment called for by the statement within thirty (30) days of the end of Spansion’s review period. If Spansion disputes the statement in writing during the foregoing review period, then the matter shall be resolved in accordance with the procedures set forth in Section 21 below. The foregoing shall apply only to price adjustments pursuant to this Section 6.4 and shall not be deemed to modify Spansion’s obligation to pay Fujitsu’s invoices for Wafers in accordance with Section 9.

Notwithstanding anything to the contrary in this Section 6.4, the yield-based adjustment to price will be calculated separately for each Spansion process.

7. PURCHASE ORDERS

7.1 Spansion shall place purchase orders with Fujitsu by no less than forty-five (45) days before the applicable delivery dates for the quantities of Wafers set forth on the applicable QBP. Each purchase order shall specify the purchase order number, part numbers,

quantities, unit prices, total prices, delivery dates and any other items to be agreed upon between the Parties.

7.2 In the event a change in the product composition of Wafers is agreed to by the Parties in accordance with Section 5.4 above, Spansion shall immediately place an amended purchase order to reflect the change. Neither Spansion's submission of any purchase order nor Fujitsu's manufacture and delivery of Wafers in accordance therewith shall in any way alter the Parties' minimum purchase and capacity commitments as set forth in Section 2 above.

8. DELIVERY

8.1 Unless otherwise agreed upon by both Parties, Fujitsu shall deliver the Wafers to Spansion Ex-Factory JV1/JV2. Title and risk of loss shall pass from Fujitsu to Spansion upon Fujitsu's placement of the Wafers at Spansion's disposal at JV1/JV2.

8.2 Partial deliveries are allowed, so long as full delivery of the appropriate quantities is made by the delivery dates specified in the respective purchase orders. Such partial deliveries may be invoiced individually or in combination with all other partial delivery(s) made for the same purchase orders.

8.3 In the event Fujitsu believes that it may not be able to deliver the Wafers in accordance with the agreed QBP, Fujitsu shall notify Spansion as soon as possible in writing of the potential delay and provide further updated delivery schedules. If Fujitsu notifies Spansion of a confirmed delay in delivery which is equal to or greater than five (5) working days, Fujitsu shall use reasonable efforts to minimize or prevent further delays in delivery occurring as a result of such delay, and shall provide Spansion with details of such efforts.

8.4 Within ten (10) working days after a delivery of unsorted Wafers, and within twenty-one (21) working days after delivery of Wafers sorted by Fujitsu in accordance with the Sort Services Agreement between Fujitsu and Spansion, in each case in accordance with Section 8.1, Spansion shall perform acceptance testing in accordance with mutually agreed upon acceptance criteria. Spansion shall notify Fujitsu in writing of the results of such acceptance testing within the foregoing period. Spansion's failure to notify Fujitsu in writing of rejection of any Spansion product during the foregoing period shall be deemed acceptance by Spansion of the Spansion products in question.

9. PAYMENT

All payments from Spansion to Fujitsu shall be made in Japanese Yen by telegraphic transfer to a bank account notified by Fujitsu to Spansion within sixty (60) days after the invoice date. In the event of any discrepancy between actual amounts paid to Fujitsu by Spansion and actual quantities of Spansion products delivered by Fujitsu to Spansion, the Party claiming a discrepancy shall inform the other Party in writing in a timely manner, and the Parties shall adjust the relevant payment amount promptly after receipt of such notice. Spansion shall be responsible for and shall pay all consumption taxes and other taxes based on Fujitsu's provision of foundry services hereunder, other than taxes imposed on Fujitsu based on Fujitsu's net income.

10. WARRANTY

10.1 Fujitsu warrants that the Wafers delivered hereunder shall (1) conform to the applicable Specifications, (2) be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months from the date of delivery by Fujitsu, (3) conform to Spansion's current manufacturing conditions and production standards, and (4) be clear of any liens, restrictions, encumbrances, and other claims. If, during such twelve (12) month period, (i) Spansion notifies Fujitsu in writing within two (2) weeks of discovery of any defect in the Wafers, and provides a detailed description of the alleged defect, and Fujitsu determines, to its reasonable satisfaction, that such Wafers are in fact defective and that such defect was not caused by accident, abuse, misuse, neglect, improper installation, repair or alteration by someone other than Fujitsu, or by any other reason not attributable to Fujitsu, then Fujitsu shall either replace such defective Wafers within eight (8) weeks pursuant to mutually agreed upon RMA procedures, or credit their purchase price to Spansion, at Spansion's option.

10.2 Persistent Failure. In the event repeated field failures occur with respect to Wafers, or a significant field failure occurs which requires immediate attention, Fujitsu and Spansion will discuss a solution in good faith.

10.3 THE FOREGOING WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

11. QUALITY CONTROL

11.1 Fujitsu shall maintain an ISO/TS 16949:2002 compliant quality control system in order to ensure that the Wafers to be manufactured by Fujitsu shall conform to the applicable Specifications in all material respects.

11.2 Fujitsu shall provide information regarding its quality control system when Spansion reasonably requests in writing that any such information be provided to Spansion. Any such information shall be deemed Confidential Information of Fujitsu

11.3 Fujitsu shall keep and maintain the quality records of Wafer processing and outgoing test results for each lot for five (5) years after the delivery of such lot to Spansion. Fujitsu shall provide Spansion with such records upon Spansion's reasonable request. Such records will be considered Confidential Information of both Parties.

11.4 Subject to Fujitsu's reasonable security and confidentiality requirements, Spansion may conduct an inspection and audit of the quality and test results records relevant to Wafers upon reasonable advance notice of at least three (3) weeks to Fujitsu. These audits will occur no more often than annually, unless there is good cause for Spansion to conduct an additional inspection or audit.

11.5 Spansion and Fujitsu shall hold meetings to exchange or discuss information regarding quality and reliability of the Wafers.

11.6 Fujitsu shall promptly notify Spansion in writing whenever Fujitsu has reason to believe that the Wafers may not conform to the Specifications, and both Parties agree to discuss and agree on the means to fix the problem.

12. CONFIDENTIAL INFORMATION

12.1 During the term of this Agreement, each Party may disclose its Confidential Information to the other Party in furtherance of the purposes of this Agreement. Confidential Information may be used solely for the express purpose of this Agreement.

12.2 Other than for the express purpose of this Agreement each Party agrees not to disclose, use or permit the disclosure or use by others of any Confidential Information of the other Party unless and to the extent such Confidential Information (i) is not marked or designated in writing as confidential and is provided for a purpose that reasonably contemplates disclosure to or use by others, (ii) becomes a matter of public knowledge through no action or inaction of the Party receiving the Confidential Information, (iii) was in the receiving Party's possession before reception from the Party providing such Confidential Information, (iv) is rightfully received by the receiving Party from a third party without any duty of confidentiality, (v) is disclosed to a third party by the Party providing the Confidential Information without a duty of confidentiality on the third party, (vi) is disclosed with the prior written approval of the Party providing such Confidential Information, or (vii) is independently developed by the receiving Party without any use of the other Party's Confidential Information. Information shall not be deemed to be available to the general public for the purpose of exclusion (ii) above with respect to each Party (x) merely because it is embraced by more general information in the prior possession of recipient or others, or (y) merely because it is expressed in public literature in general terms not specifically in accordance with the Confidential Information.

12.3 In furtherance, and not in limitation, of the foregoing Section, each Party agrees to do the following with respect to any such Confidential Information: (i) exercise the same degree of care to safeguard the confidentiality of, and prevent the unauthorized use of, such information as that Party exercises to safeguard the confidentiality of its own confidential and proprietary information; (ii) restrict disclosure of such information to those of its employees and agents who have a "need to know"; and (iii) instruct and require such employees and agents to maintain the confidentiality of such information and not to use such information except as expressly permitted herein. Each Party further agrees not to remove or destroy any proprietary or confidential legends or markings placed upon any documentation or other materials.

12.4 The foregoing confidentiality obligation shall also apply to the contents of this Agreement.

12.5 The obligations under this Section shall not prevent the Parties from disclosing the Confidential Information to any court or government agency as required by law (provided that the Party intending to make such disclosure in such circumstances has given prompt notice to the other Party prior to making such disclosure so that such other Party may seek a protective order or other appropriate remedy prior to such disclosure and cooperates with such other Party in seeking such order or remedy). Nothing in this Section shall prevent Spansion from complying with any disclosure requirements of the Securities and Exchange

Commission with prior notice to Fujitsu sufficient for Fujitsu to seek a protective order or confidential treatment for any of its Confidential Information.

12.6 The obligations under this Section shall apply with respect to any Confidential Information for a period of ten (10) years from the date of disclosure of such Confidential Information to the receiving Party, unless, with respect to any particular Confidential Information, the providing Party in good faith notifies the receiving Party that a longer period shall apply, in which case the obligations under this Section with respect to such Confidential Information shall apply for such longer period.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 Nothing in this Agreement shall be deemed to grant either Party, by implication, estoppel or otherwise, any licenses or other rights under or with respect to the Intellectual Property Rights of the other Party, provided that nothing herein shall be interpreted to limit Spansion's right to export, import, offer to sell, sell, use or otherwise dispose of any Wafers purchased pursuant to this Agreement.

13.2 Jointly Developed Technology shall mean any Process Technology-related Development that is conceived, developed, written or otherwise created, either (i) jointly by employees or contractors of Spansion together with employees or contractors of Fujitsu, (ii) solely by employees or contractors of Fujitsu using or embodying Spansion Confidential Information or Spansion Intellectual Property Rights, or (iii) solely by employees or contractors of Spansion using or embodying Fujitsu Confidential Information or Fujitsu Intellectual Property Rights, in each case during and in the course of the transactions contemplated by this Agreement. The ownership of and the right to file for any patent or utility model ("**Patent**"), copyrights, trade secret rights or other intellectual property rights (excluding mask work rights) for any Jointly Developed Technology shall be jointly owned by Spansion and Fujitsu. The Parties agree to cooperate in applying for, prosecuting and maintaining any jointly owned Patent and in protecting jointly owned other intellectual property rights and shall equally share the expenses thereof. Each Party shall have the right to make, have made, use, sell, offer to sell, export, import or otherwise dispose of products and processes using the jointly owned Patent and other intellectual property rights (excluding mask work rights) and to license third parties without accounting to the other Party unless otherwise mutually agreed upon in writing.

13.3 When any Development is conceived, developed, written or otherwise created solely by employees or contractors of a Party, without using or embodying the other Party's Confidential Information or Intellectual Property Rights, the ownership of all Intellectual Property Rights covering such Development shall rest solely with that Party. The Party owning any such Developments shall have the sole right to obtain and hold in its own name copyrights, mask work registrations and similar protections which may be available with respect to such Developments and to prepare, file and prosecute patent applications and to obtain, and maintain and enforce patents covering such Developments.

13.4 Spansion shall retain all ownership rights in all Background IP.

13.5 Spansion hereby assigns and agrees to assign, and will cause its Affiliates, as applicable, to assign, to Fujitsu or its designated Affiliate an undivided one-half interest in any Jointly Developed Technology conceived, developed, written or otherwise created solely

by employees or contractors of Spansion using or embodying Fujitsu Confidential Information or Fujitsu Intellectual Property Rights, so that such Jointly Developed Technology is owned one-half by Fujitsu or its designated Affiliate. Spansion will, and will cause its relevant Affiliates to, provide Fujitsu or its designated Affiliate with reasonable assistance and cooperation (which may include executing written instruments as may be reasonably requested by Fujitsu or its designated Affiliate) in applying for, prosecuting, obtaining, perfecting and enforcing its Intellectual Property Rights in such Jointly Developed Technology; *provided* that the out-of-pocket expenses reasonably incurred by Spansion and its Affiliates in providing such assistance and cooperation are reimbursed by Fujitsu or its designated Affiliate. Fujitsu hereby assigns and agrees to assign, and will cause its Affiliates, as applicable, to assign, to Spansion or its designated Affiliate an undivided one-half interest in any Jointly Developed Technology conceived, developed, written or otherwise created solely by employees or contractors of Fujitsu using or embodying Spansion Confidential Information or Spansion Intellectual Property Rights, so that such Jointly Developed Technology is owned one-half by Spansion or its designated Affiliate. Fujitsu will, and will cause its relevant Affiliates to, provide Spansion or its designated Affiliate with reasonable assistance and cooperation (which may include executing written instruments as may be reasonably requested by Spansion or its designated Affiliate) in applying for, prosecuting, obtaining, perfecting and enforcing its Intellectual Property Rights in such Jointly Developed Technology; *provided* that the out-of-pocket expenses reasonably incurred by Fujitsu and its Affiliates in providing such assistance and cooperation are reimbursed by Spansion or its designated Affiliate. Each Party agrees, and agrees to cause its respective affiliates, not to enforce against any Seconded Employee any right such Party may have under its applicable policies and agreements regarding confidential information and inventions to prohibit such Seconded Employees from disclosing and assigning Developments and Jointly Developed Technology solely as authorized above in this Section 13.

13.6 Each Party agrees to cause its employees (including Seconded Employees) and contractors to execute any assignments or other documents reasonably necessary to effectuate the provisions of this Section 13.

14. THIRD PARTY CLAIMS

14.1 Indemnity. Spansion shall at its own expense defend Fujitsu from and against any third party claim, action or proceeding to the extent that it relates to or results from the Wafers and/or the Spansion products that include such Wafers allegedly infringing, violating or misappropriating any Intellectual Property Right of any third party (singly, a “**Claim**” and collectively, “**Claims**”). For purposes of this Agreement, a Claim includes not only a formal action or proceeding, but also a written assertion or accusation of any violation or infringement of a third party’s rights or interests and/or a demand that Fujitsu pay money, whether as a licensee fee or royalty for Intellectual Property Rights or otherwise, and/or take or refrain from taking any action. For purposes of this Section 14, the term Intellectual Property Rights shall be limited to patents, copyrights, mask work rights, trade secrets and trademarks; *provided, however*, that for purposes of this Section 14, the term “trademarks” shall be limited to those trademarks where Spansion (or its subcontractors or agents), and not Fujitsu, has performed the research and registration work to validate the availability of the trademark in the applicable jurisdictions. Spansion agrees to indemnify Fujitsu and hold it harmless from and against any damages, costs and expenses (including without limitation any reasonable attorneys’ fees and costs) finally awarded against Fujitsu by a court of competent

jurisdiction or in a settlement that may result from any such Claim; provided that (i) Fujitsu notifies Spansion promptly in writing of the Claim; and (ii) Fujitsu provides Spansion, at Spansion's expense, with all reasonable assistance, information, and authority to perform these duties. Any delay by Fujitsu in notifying Spansion of a Claim shall not relieve Spansion of its obligations under this Section 14, except to the extent (and only to the extent) that Spansion's ability to defend such Claim is materially prejudiced by such delay. Spansion shall have sole control of the defense and all related settlement negotiations related to a Claim, provided that if the Claim is brought by a customer of Fujitsu, Spansion shall consult with Fujitsu on the handling of such Claim, and provided further that Spansion will not settle the Claim without Fujitsu's prior written consent (such consent not to be unreasonably withheld or delayed) where the Claim or the defense thereof could give rise to criminal liability of Fujitsu, could reasonably be expected to have a material adverse effect on Fujitsu's business or involves a material risk of the sale, forfeiture or loss of, or the creation of any material lien on, Fujitsu's property. Fujitsu will have the right to have its own counsel participate in the defense of any such Claim at Fujitsu's own expense.

14.2 Sole Obligation. THE FOREGOING SPANSION INDEMNITIES STATE THE SOLE OBLIGATION AND EXCLUSIVE LIABILITY OF SPANSION TO FUJITSU, AND FUJITSU'S SOLE RECOURSE AND REMEDY AGAINST SPANSION, FOR ANY CLAIMS.

15. LIMITATION OF LIABILITY

15.1 EXCEPT FOR INFRINGEMENT OR VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, SPANSION'S OBLIGATIONS UNDER SECTION 14, OR A BREACH OF OBLIGATIONS RELATING TO CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE PROVISION OF FOUNDRY SERVICES HEREUNDER, EVEN IF THE PARTY KNEW, SHOULD HAVE KNOWN OR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 Except for infringement or violation of a Party's Intellectual Property Rights, Spansion's obligations under Section 14, or a breach of obligations relating to Confidential Information, in no event shall either Party's liability arising in any way out of this Agreement or the provision of foundry services hereunder exceed the amounts paid to Fujitsu under this Agreement within the twelve (12) months preceding the date of notice of the applicable claim.

16. TERM AND TERMINATION

16.1 Term.

16.1.1 This Agreement shall become effective as of the Effective Date and shall remain in effect until December 31, 2009 (the "**Term**"), unless extended pursuant to Section 16.1.2 below. Notwithstanding the foregoing, it is understood and agreed that Sections 3.4, 4.1, 5.1, 5.2, 7.1, 12, 22 and 28 hereof shall be effective as of February 1, 2007; provided, however, that if the closing under the Asset Purchase Agreement does not occur,

any purchase orders placed by Spansion pursuant to Section 7.1 shall be terminated and of no force or effect.

16.1.2 Unless this Agreement has been earlier terminated, Fujitsu and Spansion agree to enter into discussions prior to December 31, 2008 with the aim of determining, by December 31, 2008, whether or not Fujitsu will continue to provide foundry services to Spansion after the expiry of the Term, and the terms and conditions applicable to any such continuation. During the Term, Fujitsu agrees to give Spansion at least twelve (12) months prior notice of its intent to cease providing foundry services hereunder to Spansion following December 31, 2009; provided, however, that Fujitsu and Spansion shall negotiate in good faith to agree upon Spansion's purchase commitment and Wafer Prices for any period following December 31, 2009 during which this Agreement remains in effect.

16.2 Notwithstanding the provisions of Section 16.1, either Party may at its option terminate this Agreement, without liability to the other Party, in the event that the other Party fails to correct or cure any material breach by such other Party of any covenant or obligation under this Agreement within sixty (60) days after receipt by such other Party of a written notice from the non-defaulting Party specifying such breach.

16.3 If this Agreement is terminated in accordance with Section 16.2 above, any effective purchase order at the time of termination shall continue to be effective and this Agreement shall govern such purchase order until it expires. Fujitsu may utilize the Confidential Information of Spansion to the extent it is required for Fujitsu to fulfill its obligations under such purchase order. Disposition of Confidential Information of Spansion when such purchase order expires shall be subject to the following section.

16.4 Each Party shall cease the usage of Confidential Information provided by the other Party hereunder after the termination or expiration of this Agreement. After expiration or termination of this Agreement, each Party shall without delay, return to the other Party all Confidential Information provided by the other Party hereunder, including any copies and extracts thereof.

16.5 The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 21, 22 and 24 shall survive the termination or expiration of this Agreement. Any termination or expiration of this Agreement shall not affect any payment obligations existing under this Agreement at the time of such termination or expiration.

17. FORCE MAJEURE

Neither Party shall be liable for failure to perform, in whole or in part, its obligations under this Agreement if such failure is caused by any event or condition not reasonably within the control of the affected Party, including, without limitation, by fire, flood, typhoon, earthquake, explosion, strikes, labor troubles or other industrial disturbances, unavoidable accidents, war (declared or undeclared), acts of terrorism, sabotage, embargoes, blockage, acts of governmental authorities, riots, insurrections, or any other cause beyond the reasonable control of a Party; provided that the affected Party promptly notifies the other Party of the occurrence of the event of force majeure set forth above and takes all reasonable steps necessary to resume performance of its obligations so interfered with.

18. NOTICE

All notices required or permitted to be given hereunder shall be in writing by first class certified or registered airmail, or by recognized courier service, postage prepaid or facsimile or e-mail, if confirmed or acknowledged, to the address specified in the first paragraph of this Agreement or to such other address as may be specified in writing by the addressed Party to other Party in accordance with this Section 18. All notices shall be provided to each Party's Chief Executive Officer or President and each Party's Legal Department.

Each such notice or other communication shall for all purposes be treated as effective or as having been given as follows: (i) if delivered in person, when delivered; (ii) if sent by airmail, at the earlier of its receipt or at 5 p.m., local time of the recipient, on the seventh (7th) day after deposit in a regularly maintained receptacle for the disposition of mail or air mail, as the case may be; (iii) if sent by recognized courier service, on the date shown in the written confirmation of delivery issued by such delivery service; and (iv) if sent by facsimile/e-mail, on the next business day following date which proves its sending. Either Party may change the address and/or addressee(s) to whom notice must be given by giving appropriate written notice at least seven (7) days prior to the date the change becomes effective.

19. MODIFICATIONS

This Agreement shall not be modified or amended, in whole or part, except by a writing executed by duly authorized representatives of the Parties.

20. SEVERABILITY

If any term or provision of this Agreement shall be determined to be invalid or unenforceable under the applicable law, such provision shall be deemed severed from this Agreement, and a reasonable valid provision to be mutually agreed upon shall be substituted. In the event that no reasonable valid provision can be so substituted, the remaining provisions of this Agreement shall remain in full force and effect, and shall be construed and interpreted in a manner that corresponds as far as possible with the intentions of the Parties as expressed in this Agreement.

21. RESOLUTION OF DISPUTES

The Parties shall use their best efforts to resolve by mutual agreement any disputes, controversies or differences which may arise from, under, out of or in connection with this Agreement. If such disputes, controversies or differences cannot be resolved, the dispute resolution set forth on Exhibit E shall control.

22. GOVERNING LAW

The validity, construction, performance and enforceability of this Agreement shall be governed in all respect by the laws of Japan.

23. HEADINGS

The Section and other headings contained in this Agreement are for convenience of reference only and shall not be deemed to be a part of this Agreement or to affect the meaning or interpretation of this Agreement.

24. EXPORT CONTROL

Without in any way limiting the provisions of this Agreement, each of the Parties agrees that no Wafers procured from or technical information disclosed by the other Party under this Agreement are intended to or shall be exported or re-exported, directly or indirectly, to any destination restricted or prohibited by applicable laws of the U.S.A. and Japan without necessary authorization by the applicable governmental authorities.

25. ASSIGNMENT

Neither this Agreement nor any of the rights and obligations created hereunder may be assigned, transferred, pledged, or otherwise encumbered or disposed of, in whole or in part, whether voluntarily or by operation of law or otherwise, by any Party without the prior written consent of the other Party; provided, however, that either Party may assign its rights and obligations under this Agreement to any of its majority-owned subsidiaries. This Agreement shall inure to the benefit of and be binding upon the Parties' permitted successors and assignees.

26. GUARANTEE

26.1 Spansion U.S., as the sole stockholder of STI and the owner of a sixty percent (60%) membership interest in Spansion LLC, STI, as the owner of a forty percent (40%) membership interest in Spansion LLC, and Spansion LLC, as the sole stockholder of Spansion, are parties to this Agreement solely in their capacities as Guarantors. Spansion LLC hereby agrees to take all actions necessary to cause Spansion to comply with the terms and conditions of this Agreement. Spansion LLC further hereby guarantees, and shall be fully liable for, Spansion's performance of all of Spansion's obligations hereunder. Spansion U.S. and STI each hereby agrees to take all actions necessary to cause Spansion LLC to comply with the terms of this Section 26. Spansion U.S. hereby agrees to take all actions necessary to cause STI to comply with the terms of this Section 26.

27. ENTIRE AGREEMENT

This Agreement and its Exhibits attached hereto set forth the entire understanding between Spansion and Fujitsu with respect to the subject matter hereof and merges all prior agreements, dealings, and negotiations. This Agreement shall govern any sales and/or purchase contract between Spansion and Fujitsu for the sale and purchase of the Wafers. Any terms or conditions printed on the face or the reverse side of any Spansion purchase order, confirmation or other instrument that conflict with or purport to supplement those of this Agreement shall be of no force or effect.

28. PUBLIC ANNOUNCEMENT

The Parties agree that the details connected with this Agreement shall not be published or disclosed without written agreement between the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly signed and executed on the date and year first above written.

Fujitsu Limited

By: 黒川 博昭
Hiroaki Kurokawa
President

Spansion Japan Limited

By: _____
Title: _____

Spansion Inc.

By: _____
Title: _____

Spansion Technology, Inc.

By: _____
Title: _____

Spansion LLC

By: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly signed and executed on the date and year first above written.

Fujitsu Limited

By: _____

Name: _____

Title: _____

Spansion Japan Limited

By: K. Imaoka

Name: Kazunori Imaoka

Title: president

Spansion Inc.

By: _____

Name: _____

Title: _____

Spansion Technology Inc.

By: _____

Name: _____

Title: _____

Spansion LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly signed and executed on the date and year first above written.

Fujitsu Limited

By: _____

Name: _____

Title: _____

Spancion Japan Limited

By: _____

Name: _____

Title: _____

Spancion Inc.

By: [Signature]

Name: Robert C. Melendres

Title: EVP & GC

Spancion Technology Inc.

By: [Signature]

Name: Robert C. Melendres

Title: EVP & GC

Spancion LLC

By: [Signature]

Name: Robert C. Melendres

Title: EVP & GC

EXHIBIT A

Wafers

SPANSION CONFIDENTIAL		
TECH	FAB DEVICE	EXTERNAL DEVICE
CS39LS	98849	29BL162
CS39LS	98H11	29BL802
CS39LS	98K14	29DD162
CS39LS	98320	29DL033
CS39LS	98K05	29DL162
CS39LS	98K06	29DL164
CS39LS	98842	29PL160
CS39LS	98844	29PL160
CS39LS	98K08	29SL160
CS39LS	98F08	29SL400
CS39S	98960	29DL400
CS39S	98H03	29DL800
CS39S	98C08	29F002
CS39S	98E15	29F004
CS39S	98A01	29F010
CS39S	98J04	29F016
CS39S	98325	29F033
CS39S	98E07	29F040
CS39S	98G03	29F080
CS39S	98480	29F200
CS39S	98F02	29F400
CS39S	98H05	29F800
CS39S	98A04	29LV001
CS39S	98C02	29LV002
CS39S	98E08	29LV004
CS39S	98J06	29LV016
CS39S	98J07	29LV017
CS39S	98E02	29LV040
CS39S	98G07	29LV080
CS39S	98A03	29LV100
CS39S	98K01	29LV160
CS39S	98488	29LV200
CS39S	98F03	29LV400
CS39S	98G06	29LV800
CS39S	98H02	29LV800
CS39S	98C09	9F002NBB
CS39S	98G15	9LV008BB
CS49	98K28	9DS163DB
CS49HS	98J32	29F016
CS49HS	98K11	29F160
CS49N	98641	30LV0064D

SPANSION CONFIDENTIAL		
TECH	FAB DEVICE	EXTERNAL DEVICE
CS49NS	98644	30LV0064
CS49S	98K22	29DL161
CS49S	98K12	29DL162
CS49S	98K03	29DL163
CS49S	98K21	29DL164
CS49S	98M03	29DL322
CS49S	98682	29DL323
CS49S	98M14	29DL323
CS49S	98M05	29DL324
CS49S	98366	29DL640
CS49S	98J33	29F017D
CS49S	98J19	29LV017
CS49S	98642	29LV064
CS49S	98J18	29LV116
CS49S	98K09	29LV160
CS49S	98M22	29LV321
CS49S	98363	29LV640
CS49S	98H10	29LV800
CS49S	98M20	29PDD322
CS49S	98N01	29PL3200
CS49S	98F09	29SL400
CS49S	98H18	29SL800
CS49S	98K28	9DS163DB
CS49S	98M19	PDS322DB
CS49SS	98K33	29LV160
CS49SS	98L20	29LV320
CS49SS	98M57	29LV320
CS49SS	98M59	29LV320
CS49SS	98F10	29LV400
CS49SS	98H19	29LV800
CS99DB	98722	29LP128UM
CS99DB	98722	29LP128UM
CS99DB	98U02	29LP128UM
CS99DB	98443	29LP256UM
CS99DB	98L19	29LP320UM
CS99DB	98M39	29LP320UM
CS99DB	98M43	29LP320UM
CS99DB	98M44	29LP320UM
CS99DB	98364	29LP640UM
CS99DB	98364	29LP640UM
CS99DB	98646	29LP640UM

SPANSION CONFIDENTIAL		
TECH	FAB DEVICE	EXTERNAL DEVICE
CS99DB	98646	29LP640UM
CS99DB	98K31	29LV160TM/BM
CS99DB	98K31	29LV160TM/BM
CS99DB	98R12	29PL64LM
CS99DB	98R12	29PL64LM
CS99DB	98R10	29PL65LM
CS99DB	98R10	29PL65LM
CS99DB	98R20	29PL69T/BM
CS99DB	98U02	9LV128ML
CS99S	98K35	29GL016A
CS99S	98K35	29GL016A
CS99S	98M58	29GL032A
CS99S	98M58	29GL032A
CS99S	98M60	29GL032A
CS99S	98M60	29GL032A
CS99S	98M61	29GL032A
CS99S	98M61	29GL032A
CS99S	98M73	29GL032A
CS99S	98M73	29GL032A

SPANSION CONFIDENTIAL		
TECH	FAB DEVICE	EXTERNAL DEVICE
CS99S	98452	29GL256M
CS99S	98452	29GL256M
CS99S	98R47	9GL064AF
CS99S	98R47	9GL064AF
CS99S	98R31	9GL064AL
CS99S	98R31	9GL064AL
CS99S	98R32	9GL641AL
CS99S	98R32	9GL641AL
CS99S	98R29	GL064AA0
CS99S	98R29	GL064AA0
CS99S	98R45	S99-50148
CS99S	98R45	S99-50148
SPI	98GZ1	25FL008A
SPI	98JZ1	25FL016A
SPI	98LZ1	25FL032A
SPI	98LZ1	25FL032A
SPI	98EZ1	25FL040A
SPI	98EZ1	25FL040A
SPI	98RZ1	25FL064A

Any other device within the above technologies or processes.

EXHIBIT B

Wafer Price

Product	Wafer Price
Weighted Average	45000 Yen

EXHIBIT C

Specifications

EXHIBIT D

Spansion Initial Purchase Commitment

Wafers Per Quarter				
Q2 CY07	Q3 CY07	Q4 CY07	Q1 CY08	Q2 CY08
114,000-126,000	114,000-126,000	114,000-126,000	99,000-111,000	99,000-111,000

EXHIBIT E

Spancion Subsequent Purchase Commitment

Fujitsu requested minimum purchase commitments

Wafers Per Quarter					
Q3 CY08	Q4 CY08	Q1 CY09	Q2 CY09	Q3 CY09	Q4 CY09
99,000-111,000	63,000-66,000	51,000-57,000	51,000-57,000	36,000-42,000	36,000-42,000

Spancion desired minimum purchase commitments

Wafers Per Quarter					
Q3 CY08	Q4 CY08	Q1 CY09	Q2 CY09	Q3 CY09	Q4 CY09
45,000-57,000	45,000-57,000	39,000-51,000	39,000-51,000	24,000-36,000	24,000-36,000

EXHIBIT F

Dispute Resolution Procedures

1. Scope of Procedures. This Schedule will govern any and all disputes, claims, demands, causes of action, controversies, and other matters in question between or among the Parties hereto, whether based on contract, tort, common law, statutory law or other legal or equitable bases, arising out of or relating to this Agreement (“Disputes”). Each Party irrevocably waives any right to a jury trial with respect to any and all Disputes.

2. Informal Dispute Resolution Procedures. The parties to a Dispute initially will attempt to resolve the Dispute informally, in accordance with the following:

a. Upon written notice by a party (“**Notice of Dispute**”) to the other party or parties of a Dispute, each party will appoint an executive officer or officers (each a “**Representative**”) with authority to resolve the Dispute.

b. The designated Representatives will gather relevant information and meet in person or confer by telephone as often as the parties reasonably deem necessary to discuss such information and attempt to resolve the Dispute without the necessity of any formal proceeding.

c. If the parties are unable to resolve the Dispute informally within forty-five (45) days after receiving the Notice of Dispute, any party to the Dispute may initiate arbitration as described in paragraph 3 below.

d. All negotiations pursuant to this paragraph 2 above concerning informal dispute resolution will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

3. Arbitration.

Any Dispute not settled pursuant to the informal Dispute resolution procedures set forth in paragraph 2 above will be finally settled by binding arbitration in the city specified in paragraph 5(a) below. The arbitration shall be conducted in accordance with the then current Rules of Arbitration (the “**Rules**”) of the International Chamber of Commerce (the “**ICC**”) and administered by the International Court of Arbitration of the ICC. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Except as set forth in paragraph 4 below, the arbitrator(s) will have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve the Dispute. Such arbitration will be conducted by a single arbitrator chosen by mutual agreement of the parties; *provided, however*, that if the parties cannot agree upon a single arbitrator within thirty (30) days, the arbitration shall be conducted by a panel of three (3) independent arbitrators, none of whom will have any competitive interests with any of the parties, selected by the ICC in accordance with the Rules. Any decision of the arbitrator(s) will constitute a conclusive determination of the issue(s) in question, be binding on all of the parties to the arbitration and will not be contested by any of them, except on the bases set forth in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the statute specified in paragraph 3(d) below. The parties

further agree to use reasonable efforts to cause the arbitration hearing to be conducted within the Time Period (as defined below).

Each party will pay its own costs and expenses (including counsel fees) of any such arbitration (and each party shall equally share in (i) any translation costs and (ii) the costs and expenses of the arbitrator(s) (including related fees and expenses, such as arbitration meeting room expenses and translator and court reporter fees) except that, where the arbitrator(s) have made a determination that a party had no substantial basis for its position asserted during the arbitration, the arbitrator(s) may compel such party to pay all or a portion of the other party's or parties' costs and expenses, including administrative fees, arbitrator fees, attorney's fees, expert fees, witness fees, travel expenses and out-of-pocket expenses.

After appointment of the arbitrator(s), the arbitrator(s) will have exclusive authority to order provisional or interim relief. Prior to the appointment of the arbitrator(s), any party may seek provisional, interim or *pendente lite* injunctive or other temporary equitable relief with respect to a Dispute in any court of competent jurisdiction. In the event that any party seeks provisional, interim or *pendente lite* injunctive or other provisional or interim equitable relief, the party against whom such relief is sought agrees to waive and hereby does waive any requirement that the party seeking injunctive or equitable relief post a bond or any other security.

This Schedule and any proceedings pursuant hereto shall be governed by (i) the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and (ii) (A) if the arbitration is conducted in the United States, the Federal Arbitration Act (9 U.S.C. sections 1 et seq.), including the portion thereof commencing at section 201, or (B) if the arbitration is conducted in Japan, the Japan Arbitration Law.

4. Limitations on the Authority of the Arbitrator(s). The arbitrator(s) will not have any power or authority to award indirect, special, consequential, treble, exemplary, or punitive damages or lost profits regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made (provided, however, that (a) diminution in value of ownership interests shall not be considered to fall within any such category of damages and (b) the power and authority of the arbitrator(s) with respect to a claim seeking to recover diminution in value of ownership interest shall not be so limited).

5. Other Provisions.

(a) Location. The arbitration of a Dispute will be conducted and awards shall be deemed to be made in (i) Tokyo, Japan, if the arbitration is initiated by Spansion against Fujitsu or any of Fujitsu's Affiliates, or (ii) San Francisco, California, if the arbitration is initiated by Fujitsu against Spansion or any of Spansion's Affiliates.

(b) Time Period. The time period for the arbitration will commence upon appointment of the last appointed arbitrator and will last for a period of nine (9) months thereafter, unless extended pursuant to paragraphs 5(b)(v) or 5(b)(vi) below (the "**Time Period**").

(i) The arbitrator(s) will issue their decision within the Time Period.

(ii) The parties will use reasonable efforts to cause the arbitration hearing to commence within six (6) months of the commencement of the Time Period. The hearing will be transcribed by a certified court reporter.

(iii) Discovery will close at least one (1) month prior to the commencement of the hearing. The arbitrator(s) will have wide discretion to streamline discovery procedures in order to resolve Disputes in a full and fair manner within the Time Period.

(iv) Each party will voluntarily produce a list of all documents that such party intends to use at the hearing and a list of intended witnesses before the close of discovery subject to supplementation for purposes of rebuttal or good cause shown.

(v) The arbitrator(s) will, upon a finding that it is impracticable to meet one or more of the deadlines set forth in this subsection consistent with its primary obligation justly to determine the controversy before it, have discretion to extend or alter the deadlines set forth above to the extent necessary to prevent injustice or preserve the enforceability of its decision.

(vi) The Time Period is not intended to apply to or bar a rehearing pursuant to 9 U.S.C. section 10(a) if it would otherwise be appropriate, to the extent that the arbitration is governed by the Federal Arbitration Act pursuant to section 2(d) or similar provisions under the Japan Arbitration Law. In such case, the Time Period shall commence anew upon entry of the order vacating the award and directing a rehearing.

(c) Discovery.

(i) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party or parties, promptly provide copies of documents relevant to the issues raised by any claim or counterclaim or upon which the producing party may rely in support of or in opposition to any claim or defense. Such documents will be provided within sixty (60) days of the appointment of the arbitrator(s).

(ii) Thereafter, each party will be entitled to serve up to two requests for production of documents, provided that a party may not request more than 35 individual categories of documents, including subparts, in total.

(iii) The parties will be required to supplement their discovery responses with documents as and when it discovers additional information within the scope of subparagraph 5(c)(i) and (ii) above.

(iv) Each party will be entitled to take up to four (4) percipient witness depositions and will be entitled to depose each of the testifying experts of the other parties. One such percipient witness deposition may be of

a party representative most knowledgeable about one or more relevant topics. All objections are reserved for the arbitration hearing except for objections based on privilege.

(v) No other forms of discovery (e.g. requests for admissions, interrogatories) will be permitted. Additional document requests, or additional depositions, or additional time for permitted depositions, may be scheduled only with the permission of the chair of the arbitrator(s), and only upon a clear and convincing showing of good cause therefore. Any dispute regarding discovery, or the relevance or scope thereof, will be determined by the arbitrator(s), which determination will be conclusive.

(d) Form of Decision. The decision of the arbitrator(s) will be in writing signed by the arbitrator or, if applicable, the majority of the arbitrators. The decision will state the findings of fact and conclusions of law upon which the decision is based. A dissenting arbitrator may file a separate dissenting opinion setting forth the findings of fact and conclusions of law upon which his or her dissent is based.

EXHIBIT G

Initial Agreed Die Yield

CS 39: 95%

CS 49: 94%

CS 99: 94%

EXHIBIT D

TECHNOLOGY LICENSE AGREEMENT

THIS TECHNOLOGY LICENSE AGREEMENT (the “Agreement”) is entered into as of February 23, 2004 (the “Effective Date”), by and between **FASL JAPAN LIMITED**, having its registered place of business at 6, Mondenmachi-Kogyodanchi, Aizuwakamatsu 965, Japan (“FASL JAPAN”) and **FASL LLC**, having its principal office at One AMD Place, Sunnyvale, California 94088-3453, U.S.A. (“FASL”), and sets forth the terms and conditions by which FASL JAPAN receives a technology license from FASL and in return pays FASL an agreed upon royalty based on FASL JAPAN’s resulting manufacturing and sales activities.

1. DEFINITIONS.

Whenever used in this Agreement, the terms set forth in this Section 1 shall have the meanings ascribed to them below.

1.1 “ATMP Process” means the assembly, test, marking and packing processes to transform die into finished goods ready to be shipped to end customers.

1.2 “Confidential Information” means any and all technical and non-technical information one party provides the other hereunder that is either indicated to be proprietary or confidential information of the disclosing party or which by its nature the receiving party would reasonably deem such information to be confidential or proprietary, regardless of marking, including trade secret, know-how and proprietary information, firmware, mask works, designs, schematics, techniques, software code, technical documentation, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plan or financial or personnel matter relating to the disclosing party, its present or future products, sales, suppliers, customers, employees, investors or business, whether in written, oral, graphic or electronic form.

1.3 “FASL Technology” means collectively, the design, manufacturing and process know-how provided to FASL JAPAN from time to time and any Intellectual Property Rights related thereto.

1.4 “Fujitsu” means Fujitsu Limited, a Japanese corporation.

1.5 “FASL JAPAN Distribution Agreement” means the FASL JAPAN Distribution Agreement, dated as of February 23, 2004, by and between FASL and FASL JAPAN.

1.6 “Intellectual Property Right” means any patent, copyright, trade name, trademark, trade secret, know-how, or any other intellectual property right or proprietary right whether registered or unregistered, and whether now known or hereafter recognized in any jurisdiction.

1.7 “Net Sales” means the gross amount actually received by FASL JAPAN for the sale of a Product to Fujitsu, less taxes (including sales, use and consumption taxes), accepted returns of Products and bona fide price adjustments (including distributor price adjustments).

1.8 “Products” means the FASL JAPAN integrated circuits, devices or other products based upon the FASL Technology and manufactured by or for FASL JAPAN in whole or in part in Japan and sold to Fujitsu as permitted under this Agreement.

1.9 “Trademarks” means any trademarks, trade names, service marks and logos used by FASL in connection with the marketing and/or sale of the Products, or which it owns or has the right to sub-license in connection with the marketing and/or sale of the Products.

2. KNOWLEDGE TRANSFER.

2.1 Delivery. FASL will provide FASL JAPAN with written and/or electronic documentation describing the technology and know-how described in Exhibit A and will provide written updates of that information from time to time during the term of this Agreement.

2.2 Training. FASL will provide FASL JAPAN training from time to time regarding the FASL Technology. In addition, FASL will provide FASL JAPAN with support for the FASL Technology in a manner and in accordance with a schedule to be mutually agreed. FASL will not charge FASL JAPAN a fee for any such training or support and FASL JAPAN shall bear its own expenses to attend any such training classes.

3. LICENSE GRANTS; OWNERSHIP.

3.1 License by FASL. Subject to the terms and conditions of this Agreement, FASL hereby grants to FASL JAPAN, effective as of June 30, 2003, a royalty-bearing, non-exclusive, worldwide, non-transferable license, without right to sublicense, to use, reproduce, modify, adapt, translate, prepare derivative works of, and otherwise exploit the FASL Technology solely to design, develop, import, make (including fabrication, assembly, testing, marking and packaging), use, offer to sell, and sell Products, and to support such Products. Nothing in this Agreement shall preclude FASL from designing, manufacturing, marketing, selling, or maintaining any FASL Products to or for any other customer.

3.2 License Restrictions. FASL JAPAN shall not modify, adapt, translate or prepare derivative works of the FASL Technology except as may be expressly set forth in this Agreement. FASL JAPAN shall not remove, obscure, or alter any FASL or other proprietary rights notice affixed to or contained within the FASL Technology. All rights not expressly granted herein are reserved.

3.3 Trademark License. Subject to the terms and conditions of this Agreement, FASL hereby grants to FASL JAPAN a non-exclusive license to use and display the Trademarks, in all cases solely in connection with the marketing, promotion, advertisement, sale and distribution of Products. FASL JAPAN agrees to abide by FASL’s guidelines regarding the Trademarks, provided that such guidelines are provided to FASL JAPAN in writing. From time to time upon FASL’s request, FASL JAPAN shall submit to FASL samples of all FASL JAPAN materials bearing the Trademarks. If FASL discovers any use of the Trademarks inconsistent with the guidelines on any such submitted samples, and delivers to FASL JAPAN a writing describing in reasonable detail the improper use, FASL JAPAN shall promptly cease or remedy such use.

3.4 Ownership. FASL JAPAN acknowledges that any and all Intellectual Property Rights in the FASL Technology are and shall remain the property of FASL or

FASL's suppliers, and FASL JAPAN shall not at any time during or after the expiration or termination of this Agreement in any way question or dispute the ownership thereof by FASL or FASL's suppliers. Nothing in this Agreement shall be deemed a transfer of any ownership rights in FASL Technology to FASL JAPAN.

4. PAYMENTS AND TAXES.

4.1 Royalties. FASL JAPAN shall pay FASL non-refundable royalties on Products based on FASL JAPAN's Net Sales therefrom as set forth in Exhibit B. FASL JAPAN shall pay such royalties within sixty (60) days after the end of each FASL fiscal quarter beginning with the quarter in which FASL JAPAN first ships a Product.

4.2 Payment. All royalty payments shall be accompanied by a report detailing the basis for and calculation of the applicable payment. All payments shall be made in Japanese Yen.

4.3 Taxes. The prices specified in this Agreement are exclusive of any sales, use, excise, value added or similar taxes, and of any export and import duties, which may be levied upon or collectible by FASL (excluding taxes based on FASL's net income) as a result of the licensing and delivery of the FASL Technology or the provision of services hereunder. FASL JAPAN agrees to pay and otherwise be fully responsible for any such taxes and duties, or penalties relating thereto, unless in lieu thereof FASL JAPAN provides FASL with an exemption certificate acceptable to the relevant governmental authorities. Further, in the event that FASL JAPAN is required to withhold taxes imposed upon FASL for any payment under this Agreement by virtue of the statutes, laws, codes or governmental regulations of a country in which Products are sold, then such payments will be made by FASL JAPAN on behalf of FASL by deducting them from the payment then due FASL and remitting such taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted appropriately, provided that FASL JAPAN supplies FASL with official documentation and/or tax receipts on such withholdings supporting such taxes and such payments as may be required by FASL for its tax records as soon as practical after the date on which such payment is due FASL under this Agreement.

5. REPORTING; AUDITS.

5.1 Record Retention. FASL JAPAN will keep complete and accurate records pertaining to sales of and royalty calculations for Products. FASL JAPAN will maintain such records for at least a five (5) year period following the year in which any such payments were made hereunder.

5.2 Audit Request. FASL will have the right to engage at its own expense an auditor reasonably acceptable to FASL JAPAN to examine FASL JAPAN's records pertaining to sales of Products and the calculation of royalties owed to FASL under this Agreement. FASL will provide FASL JAPAN at least fifteen (15) days' prior written notice of such audit and may conduct audits no more than once every six (6) months.

6. WARRANTY DISCLAIMER; INDEMNIFICATION.

6.1 Disclaimer of Warranty. EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO THE FASL TECHNOLOGY OR

THE PRODUCTS, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Nothing contained in this Agreement shall be construed as either a warranty or representation by FASL as to the validity or scope of any FASL patents.

6.2 No Warranty Pass Through. Except for warranties to Fujitsu under the Fujitsu Distribution Agreement, (a) FASL grants no warranties to FASL JAPAN's customers hereunder and (b) unless otherwise agreed by the parties, FASL JAPAN will not pass through to its end users or any other third party any warranties or representations made by FASL hereunder and will not indicate to its customers that they can look to FASL in connection with any problems, warranty claims or other matters concerning the Products.

7. CONFIDENTIALITY.

7.1 Confidential Information. Both parties will maintain in confidence all Confidential Information disclosed by the other party (the "Disclosing Party"). A receiving party hereunder (the "Receiving Party") will not use, disclose or grant use of such Confidential Information except as expressly authorized by this Agreement. To the extent that disclosure to a third party is authorized by this Agreement, a Receiving Party will obtain prior agreement from such third party to whom disclosure is to be made to hold in confidence and not make use of such information for any purpose other than those permitted by this Agreement. A Receiving Party will use at least the same standard of care as it uses to protect its own information of comparable importance to ensure that its employees, agents and consultants do not disclose or make any unauthorized use of such Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of such Confidential Information. Notwithstanding any other provision in this Agreement to the contrary, the obligations set forth in this Section 7 shall survive any termination of this Agreement in perpetuity.

7.2 Exceptions. The obligations of confidentiality contained in Section 7.1 will not apply to the extent such Confidential Information:

(a) was already known to the Receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the Disclosing Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party in breach of this Agreement;

(d) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a third party who had no obligation to the other party not to disclose such information to others;

(e) was developed independently by the Receiving Party without any use of Confidential Information; or

(f) is required to be disclosed by applicable law.

8. TERM AND TERMINATION.

8.1 Term. This Agreement shall continue in full force and effect until terminated by mutual written agreement of the parties.

8.2 Consequences of Termination. Upon any termination of this Agreement, the licenses granted herein shall terminate and FASL Japan shall immediately cease to use all FASL Technology or other FASL Confidential Information. Termination of this Agreement shall not affect any payment rights accrued hereunder as of the date of termination.

8.3 Survival. Notwithstanding any termination of this Agreement, the provisions of Sections 1, 3.4, 4, 5 (for a period of five (5) years commencing on such termination), 6, 7, 8.2, 8.3 and 9 shall survive any termination of this Agreement.

9. GENERAL

9.1 Relationship. It is agreed and understood that neither party is the agent, representative or partner of the other party and neither party has any authority or power to bind or contract in the name of or to create any liability against the other party in any way or for any purpose pursuant to this Agreement. It is understood that FASL JAPAN is an independent contractor. Each party expressly reserves the right to enter other similar agreements with other parties on the same or on different terms.

9.2 Assignment. This Agreement shall not be assigned by either party whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without the prior written consent of the other party.

9.3 Waiver. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such party's rights to take subsequent action.

9.4 Notices. All notices required or permitted to be given hereunder shall be in writing by first class certified or registered airmail, postage prepaid, if confirmed or acknowledged, to the addresses specified below or to such other address as may be specified in writing by the addressed party to other party in accordance with this Section 9:

if to FASL:

One AMD Place
Sunnyvale, California 94088-3453, U.S.A
Tel. 408-962-2500
1-866-SPANSION

if to FASL JAPAN:

FASL JAPAN LIMITED
4-33-4 Nishi Shinjuku
Shinjuku, Tokyo, 160-0023, Japan
Tel. +81-3-5302-2200
Fax. +81-3-5302-2674

Each such notice or other communication shall for all purposes be treated as effective or as having been given as follows (i) if delivered in person, when delivered; (ii) if sent by airmail, at the earlier of its receipt or at 5 p.m., local time of the recipient, on the seventh day after deposit in a regularly maintained receptacle for the disposition of mail or air mail, as the case may be; and (iii) if sent by recognized courier service, on the date shown in the written confirmation of delivery issued by such delivery service. Either party may change the address and/or addressee(s) to whom notice must be given by giving appropriate written notice at least fourteen (14) days prior to the date the change becomes effective.

9.5 Severability. In the event that any clause, sub-clause or other provision contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such clause, sub-clause or other provision shall to that extent be severed from the remaining clauses and provisions, or the remaining part of the clause in question, which shall continue to be valid and enforceable to the fullest extent permitted by law.

9.6 Headings; Construction. The headings to the clauses, sub-clause and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms “this Agreement,” “hereof,” “hereunder” and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words “include” and “including,” and variations thereof, will be deemed to be followed by the words “without limitation” and “discretion” means sole discretion.

9.7 Governing Law. The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California.

9.8 Compliance with Law. In performing its duties under this Agreement, each party shall at all times comply with all applicable international, federal, state and local laws and shall not engage in any illegal or unethical practices, including without limitation the Foreign Corrupt Practices Act of 1977 and any anti-boycott laws, as amended, and any implementing regulations.

9.9 Entire Agreement. This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement and constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties. It is acknowledged that the terms of this Agreement have been negotiated between the parties.

IN WITNESS WHEREOF, this Agreement is hereby executed by a duly authorized representative of each party.

FASL JAPAN

FASL

By: _____

By: _____

Print: _____

Print: _____

Title _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

FASL TECHNOLOGY AND PRODUCT DESCRIPTION

FASL Technology includes the product designs for Spansion™ nonvolatile memory devices, including floating gate and MirrorBit™ NOR Flash memory devices, and multi-chip packages (MCPs) incorporating such devices. The FASL portfolio of Spansion™ memory devices includes burst mode, page mode and standard asynchronous access memory semiconductor chips which operate at a variety of voltages (e.g., 5 volts, 3 volts, 2 volts and 1.8 volts) and designed for operation in general environments as well as designed for operation in specific operational environments, such as cellular telephones, consumer electronics, automotive electronics, networking equipment. These memory devices are designed at a variety of densities from 1 Megabit to 192 Megabits and have a variety of features, such as Advanced Sector Protection and Simultaneous Read/Write.

FASL Technology also includes the processing technologies for forming wafers of memory die on silicon substrates, including 320nm, 230nm, 170nm, 130nm and 110nm processing technologies. The processing technologies include the lithographic masks as well as the wafer formation and testing processes, such as gate and trench formation and die on wafer testing.

EXHIBIT B

ROYALTY CALCULATION

Principle

Royalty is charged on the FASL JAPAN Net Sales for Products which undergo the ATMP Process in Japan and which contain die manufactured at FASL JAPAN's facility in Aizu ("Aizu Die").

Royalty Rate

Royalty rate is seven percent (7%) on the Net Sales of Products which contain only Aizu Die.

Royalty rate is three and one-half percent (3.5%) on the Net Sales of Products which contain both Aizu Die and die manufactured at FASL's facility at Fab 25 in Texas ("Fab 25 Die").

Royalty is not charged on Net Sales of Products which only contain Fab 25 Die.

Royalty Calculation Formula

Royalty Amount = FASL JAPAN Net Sales for the Products subject to royalties multiplied by the applicable royalty rate, as set forth above.

EXHIBIT E

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
For the fiscal year ended December 28, 2008

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
For the transition period from _____ to _____

Commission File Number 000-51666

SPANSION INC.
(DEBTOR-IN-POSSESSION as of March 1, 2009)
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

20-3898239
(I.R.S. Employer
Identification No.)

**915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, CA 94088
(408) 962-2500**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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

None

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

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.001 Par Value Per Share	NASDAQ Stock Market LLC

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of Common Stock held by non-affiliates of the registrant based upon the closing sale price on the NASDAQ Global Select Market on June 29, 2008 was approximately \$308.6 million. Shares held by each executive officer, director and by each person who owns 10 percent or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

The number of shares outstanding of each of the registrant's classes of common stock as of the close of business on May 11, 2009:

<u>Class</u>	<u>Number of Shares</u>
Class A Common Stock, \$0.001 par value	161,956,210

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As required under the U.S. Bankruptcy Code, the United States Trustee for the District of Delaware (Trustee) appointed an official committee of unsecured creditors on March 12, 2009 (U.S. Creditors' Committee). In addition, a group purporting to hold substantial amounts of our publicly traded Senior Secured Floating Rate Notes due 2013 has organized (the Floating Rate Noteholders). The role of the U.S. Creditors' Committee and the Floating Rate Noteholders in the Creditor Protection Proceedings may develop and change over the course of such proceedings.

The U.S. Bankruptcy Court has approved payment of certain of the Debtors' pre-petition obligations, including, among other things, employee wages, salaries and benefits, and other business-related payments necessary to maintain the operation of our businesses. The Debtors have retained, with U.S. Bankruptcy Court approval, legal and financial professionals to advise the Debtors on the Chapter 11 Cases and certain other "ordinary course" professionals. From time to time, the Debtors may seek U.S. Bankruptcy Court approval for the retention of additional professionals.

Spansion Japan Proceeding

Unlike a Chapter 11 proceeding in the United States, the Spansion Japan Proceeding conducted under the Corporate Reorganization Law is a receivership proceeding, meaning that a court-appointed trustee takes over the operation of the company. The Japanese Court accepted Spansion Japan's proposal to appoint Mr. Masao Taguchi, Spansion Japan's incumbent representative director, as the trustee.

The Corporate Reorganization Law creates protections that Spansion Japan would not have under ordinary circumstances. For example, subject to the applicable laws, Spansion Japan may at its discretion assume or reject certain executory contracts in existence as of the Commencement Date, including unexpired leases, while the counterparty's termination rights on grounds that Spansion Japan has filed the reorganization proceeding are restricted. In addition, any liquidated damages arising from the rejection of such executory contracts will be treated as pre-petition obligations, so they are subject to the stay imposed pursuant to the Spansion Japan Proceeding. Thus, any reference to any such agreements, termination rights or a quantification of our obligations under any such agreements may be qualified by such overriding rejection or repudiation rights as Spansion Japan may have in connection with the Spansion Japan Proceeding.

The Japanese Court has approved payment by Spansion Japan of certain of its pre-petition obligations, including, among other things, business-related payments that fall within the scope of Spansion Japan's ordinary course of business. Spansion Japan has retained in the trustee's name, with the Japanese Court's approval, legal and financial professionals to advise the company on issues relating to the Spansion Japan Proceeding. However, Spansion Japan is subject to the general supervision of the Japanese Court and the court-appointed supervisory attorney (*chosa i'in*) and is required to seek approvals, from time to time, from them on various issues relating to the proceeding. However, at any point during the Creditor Protection Proceedings, actions taken by either (i) Spansion Japan (at the direction of the Spansion Japan trustee or pursuant to orders of the Japanese Court or otherwise) or (ii) Spansion Inc. or Spansion LLC (pursuant to the order of the U.S. Bankruptcy Court or otherwise), may adversely affect the ability of Spansion LLC and Spansion Japan to continue operating as a globally integrated unit from an operational perspective. For example, if Spansion LLC was required to transfer wafer production from the fabrication facilities owned and operated by Spansion Japan to Spansion LLC's Fab 25 or to a third party, or if sales of Spansion Products in Japan were no longer to be able to be conducted by Spansion Japan, our business would be materially adversely affected.

Circumstances Leading to the Commencement of Creditor Protection Proceedings

A variety of external economic factors have contributed to the decline in our operating performance, such as persistent oversupply in the Flash memory industry compounded by the global economic recession, which significantly reduced demand for our products in the fourth quarter of 2008 and continues to negatively impact current demand. These two factors are further complicated by our inability to obtain the additional external financing necessary to meet capital expenditure needs and operational costs in a market characterized by swift technological advances and constantly changing manufacturing processes.

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- sales of our products to Fujitsu are denominated in both US dollars and Japanese yen; and
- some fixed asset purchases are denominated in Japanese yen and European Union euros.

Consequently, movements in exchange rates could cause our net sales and expenses to fluctuate, affecting our profitability and cash flows.

Worldwide economic and political conditions may adversely affect demand for our products.

We operate in more than ten countries and we derive a majority of our net sales outside the United States. Our business depends on the overall worldwide economic conditions and the economic and business conditions within our customers' industries. Our business may also be affected by economic factors that are beyond our control, such as downturns in economic activity in a specific country or region. A further weakening of the worldwide economy or the economy of individual countries or the demand for our customers' products may cause a greater decrease in demand for our products, which could materially adversely affect us.

Our consolidated financial results could also be significantly and adversely affected by geopolitical concerns and world events, such as wars and terrorist attacks. Our net sales and financial results have been and could be negatively affected to the extent geopolitical concerns continue and similar events occur or are anticipated to occur. In particular, consequences of military action in the Middle East have in the past, and may in the future, adversely affect demand for our products and our relationship with various third parties with which we collaborate. In addition, terrorist attacks may negatively affect our operations, directly or indirectly, and such attacks or related armed conflicts may directly impact our physical facilities or those of our suppliers or customers. Furthermore, these attacks may make travel and the transportation of our products more difficult and more expensive, which could materially adversely affect us.

The United States has been and may continue to be involved in armed conflicts that could have a further impact on our sales and our supply chain. Political and economic instability in some regions of the world may also result and could negatively impact our business. The consequences of armed conflicts are unpredictable, and we may not be able to foresee events that could have a material adverse effect on us. More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. economy and worldwide financial markets. Any of these occurrences could have a material adverse effect on us.

Our operations in foreign countries are subject to political and economic risks, which could have a material adverse effect on us.

The majority of our wafer fabrication capacity is located in Japan, which is subject to the Spansion Japan Proceeding, and nearly all final test and assembly of our products is performed at our facilities in China, Malaysia and Thailand and by third parties in Taiwan and Japan. In addition, we have international sales operations and, as part of our business strategy, we are continuing to seek to expand our product sales in high growth markets. The political and economic risks associated with our sales to, and operations in, foreign countries include:

- expropriation;
- changes in political or economic conditions;
- changes in tax laws, trade protection measures and import or export licensing requirements;
- difficulties in protecting our intellectual property;
- difficulties in achieving headcount reductions;
- changes in foreign currency exchange rates;
- restrictions on transfers of funds and other assets of our subsidiaries between jurisdictions;

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- changes in freight and interest rates;
- disruption in air transportation between the United States and our overseas facilities; and
- loss or modification of exemptions for taxes and tariffs.

We manufacture wafers in our JV3 and SP1 fabrication facilities in Japan. If we are required for any reason to transfer wafer production from our Japan facilities to our Fab 25 facility in Austin, Texas or to third party foundries, we may not be able to make this transition in a timely manner or find third-party manufacturers with sufficient capacity to produce wafers of acceptable quality at acceptable manufacturing yields and prices or to deliver wafers in a timely manner. If we are not able to successfully transition this manufacturing to other facilities, we may be materially adversely affected. In addition, our sales in Japan, and certain other locations throughout the world, are made through Spansion Japan. If Spansion Japan no longer manages these sales for us, we would be required to develop alternative methods of distributing and selling our products. To sell our products in Japan, we would have to establish a separate sales force and administrative support in Japan and continue to rely on Fujitsu as a distributor, or rely on another distributor. If we are unsuccessful in establishing alternative sales channels, our sales in Japan may decline and we may be materially adversely affected.

Our subsidiary, Saifun, conducts business in Israel, which is affected and surrounded by unstable political, economic and military conditions. We cannot predict the effect of continued or increased violence in Lebanon or Gaza, or the effect of military action elsewhere in the Middle East. Continued armed conflicts or political instability in the region would harm business conditions and could adversely affect the combined company's results of operations. Furthermore, several countries continue to restrict or ban business with Israel and Israeli companies. These restrictive laws and policies may limit the combined company's ability to make sales in those countries, and, as a global company, may limit our own ability to efficiently administer our worldwide resources.

Any conflict or uncertainty in the countries in which we operate, including public health or safety concerns, natural disasters or general economic factors, could have a material adverse effect on our business. Any of the above risks, should they occur, could have a material adverse effect on us.

We are subject to a variety of environmental laws that could result in liabilities.

Our properties and many aspects of our business operations are subject to various domestic and international environmental laws and regulations, including those relating to materials used in our products and manufacturing processes; chemical use and handling; waste minimization; discharge of pollutants into the environment; the treatment, transport, storage and disposal of solid and hazardous wastes; and remediation of contamination. Certain of these laws and regulations require us to obtain permits for our operations, including permits related to the discharge of air pollutants and wastewater. From time to time, our facilities are subject to investigation by governmental regulators. Environmental compliance obligations and liability risks are inherent in many of our manufacturing and other activities. Any failure to comply with applicable environmental laws, regulations or permits may subject us to a range of consequences, including fines, suspension of production, alteration of manufacturing processes, sales limitations, and criminal and civil liabilities or other sanctions. We could also be held liable for any and all consequences arising out of exposure to hazardous materials used, stored, released, disposed of by us or located at or under our facilities, or for other environmental or natural resource damage. Certain environmental laws, including the U.S. Comprehensive, Environmental Response, Compensation and Liability Act of 1980, or the Superfund Act, impose joint and several liability on current and previous owners or operators of real property for the cost of removal or remediation of hazardous substances and costs related to damages to natural resources. Liability can attach even if the owner or operator did not know of, or was not responsible for, the release of such hazardous substances. These environmental laws also can result in liability for persons, like us, who arrange for hazardous substances to be sent to disposal or treatment facilities, in the event such facilities are found to be contaminated. Such persons can be responsible for cleanup costs at a disposal or treatment facility, even if they never owned or operated the contaminated facility. One property where we currently conduct research and development operations is listed on the U.S. Environmental Protection Agency's

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ITEM 6. SELECTED FINANCIAL DATA

The following summary historical financial data should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K.

Fiscal years in the table below included 52 weeks each, except for fiscal 2006 which included 53 weeks.

	Year Ended December 28, 2008	Year Ended December 30, 2007	Year Ended December 31, 2006	Year Ended December 25, 2005	Year Ended December 26, 2004
	(in thousands, except per share amounts)				
Statement of Operations Data:					
Net sales	\$ 1,630,573	\$1,627,253	\$1,310,479	\$ —	\$ —
Net sales to related parties/members	651,230	873,560	1,268,795	2,002,805	2,262,227
Total net sales	2,281,803	2,500,813	2,579,274	2,002,805	2,262,227
Cost of sales	2,193,345	2,065,143	2,063,639	1,809,929	1,840,862
Gross profit	88,458	435,670	515,635	192,876	421,365
Research and development	431,808	436,785	342,033	292,926	280,954
Sales, general and administrative	253,878	239,317	264,358	184,833	137,159
Acquisition related in-process research and development	10,800	—	—	—	—
Restructuring charges	11,161	—	—	—	—
Asset impairment charges ⁽²⁾	1,652,622	—	—	—	—
Operating income (loss)	(2,271,811)	(240,432)	(90,756)	(284,883)	3,252
Interest and other income	5,200	32,595	11,681	3,173	3,198
Interest expense	(97,843)	(80,803)	(70,903)	(45,032)	(40,165)
Loss before income taxes	(2,364,454)	(288,640)	(149,978)	(326,742)	(33,715)
(Provision) benefit for income taxes ⁽³⁾	(62,865)	25,144	2,215	22,626	14,013
Net loss	\$(2,427,319)	\$ (263,496)	\$ (147,763)	\$ (304,116)	\$ (19,702)
Net loss per share					
Basic and diluted ⁽¹⁾	\$ (15.64)	\$ (1.95)	\$ (1.15)	\$ (4.15)	\$ (0.27)
Shares used in per share calculation:					
Basic and diluted ⁽¹⁾	155,162	134,924	128,965	73,311	72,549
		December 30,	December 31,	December 25,	December 26,
	December 28, 2008	2007	2006	2005	2004
Balance Sheet Data:					
Cash, cash equivalents and marketable securities	\$ 116,387	\$ 415,742	\$ 885,769	\$ 725,816	\$ 196,138
Working capital (deficit)	(1,282,578)	592,518	1,085,027	881,902	359,420
Total assets	1,775,444	3,815,645	3,549,717	3,301,965	2,919,515
Long-term debt and capital lease obligations, including current portion, and notes payable to banks under revolving loans	1,542,023	1,401,333	1,118,047	759,613	773,597
Total stockholders’ equity (deficit) /members’ capital	(548,316)	1,632,448	1,845,760	1,921,977	1,647,207

(1) Diluted net loss per share is computed using the weighted-average number of common shares and excludes potential common shares, as their effect is antidilutive. The potential common shares that were antidilutive for fiscal 2008, fiscal 2007 fiscal 2006 and fiscal 2005 were approximately 24.8 million, 18.4 million, 16.8 million and 5.5 million shares, respectively, issuable upon exercise of outstanding stock options, upon vesting of outstanding restricted stock units and upon exchange of Spansion LLC’s 2.25% Exchangeable Senior Subordinated Debentures.

(2) Includes pre-tax impairment charges related to long-lived assets held for use of \$1.6 billion and pre-tax impairment charges related to goodwill and definite-lived intangibles assets of \$20.8 million and \$53.5 million, respectively, in fiscal 2008.

(3) The provision for income taxes in fiscal 2008 includes an increase of \$462.6 million in valuation allowances against deferred tax assets in foreign jurisdictions. This increase occurred because we do not believe it is more likely than not that these deferred tax assets will be realized in these jurisdictions.

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ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes as of December 28, 2008 and December 30, 2007 and for the fiscal years ended December 28, 2008, December 30, 2007 and December 31, 2006, which are elsewhere in this Annual Report on Form10-K.

Creditor Protection Proceedings

On February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC (Spansion Japan), filed a proceeding under the Corporate Reorganization Law (*Kaisha Kosei Ho*) of Japan to obtain protection from Spansion Japan's creditors (the Spansion Japan Proceeding) and successively the Spansion Japan Proceeding was formally commenced on March 3, 2009 (the Commencement Date), when the Tokyo District Court entered the commencement order and appointed the incumbent representative director of Spansion Japan as trustee. On March 1, 2009 (the Petition Date), Spansion Inc., Spansion Technology LLC, Spansion LLC, Spansion International, Inc. and Cerium Laboratories LLC (the Debtors), each filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the Chapter 11 Cases). The Chapter 11 Cases, together with the Spansion Japan Proceeding are referred to collectively as the Creditor Protection Proceedings. Non-U.S subsidiaries that are not included in the Creditor Protection Proceedings continue to operate outside these Creditor Protection Proceedings.

Chapter 11 Cases

The Debtors continue to operate their businesses as "debtors-in-possession" under jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court. Under the Bankruptcy Code, the Debtors may assume, assume and assign, or reject certain executory contracts including unexpired leases, subject to the approval of the Bankruptcy Court and certain other conditions. Any reference to any such agreements or instruments and termination rights or a quantification of our obligations under any such agreements or instruments is qualified by any overriding rejection, repudiation or other rights the Debtors may have as a result of or in connection with the Creditor Protection Proceedings.

As required under the U.S. Bankruptcy Code, the United States Trustee for the District of Delaware (Trustee) appointed an official committee of unsecured creditors on March 12, 2009 (U.S. Creditors' Committee). In addition, a group purporting to hold substantial amounts of our publicly traded Senior Secured Floating Rate Notes due 2013 has organized (the Floating Rate Noteholders). The role of the U.S. Creditors' Committee and the Floating Rate Noteholders in the Creditor Protection Proceedings may develop and change over the course of such proceedings.

The Bankruptcy Court has approved payment of certain of the Debtors' pre-petition obligations, including, among other things, employee wages, salaries and benefits, and certain business related payments like claims of transport companies and certain contractors in satisfaction of liens or interests. The Debtors have retained, with Bankruptcy Court approval, legal and financial professionals to advise the Debtors on the Chapter 11 Cases and certain other "ordinary course" professionals. From time to time, the Debtors may seek Bankruptcy Court approval for the retention of additional professionals.

Spansion Japan Proceeding

Unlike a Chapter 11 proceeding in the United States, the Spansion Japan Proceeding conducted under the Corporate Reorganization Law is a receivership proceeding, meaning that a court-appointed trustee takes over the operation of the company. The Japanese Court accepted Spansion Japan's proposal to appoint Mr. Masao Taguchi, Spansion Japan's incumbent representative director, as the trustee.

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The Corporate Reorganization Law creates protections that Spansion Japan would not have under ordinary circumstances. For example, subject to the applicable laws Spansion Japan may at its discretion assume or reject certain executory contracts in existence as of the Commencement Date, including unexpired leases, while the counterparty's termination rights on grounds that Spansion Japan has filed the reorganization proceeding are restricted. In addition, any liquidated damages arising from the rejection of such executory contracts will be treated as pre-petition obligations, so they are subject to the stay imposed pursuant to the Spansion Japan Proceeding. Thus, any reference to any such agreements, termination rights or a quantification of our obligations under any such agreements may be qualified by such overriding rejection or repudiation rights as Spansion Japan may have in connection with the Spansion Japan Proceeding.

The Japanese Court has approved payment by Spansion Japan of certain of its pre-petition obligations, including, among other things, business-related payments that fall within the scope of Spansion Japan's ordinary course of business. Spansion Japan has retained in the trustee's name, with the Japanese Court's approval, legal and financial professionals to advise the company on issues relating to the Spansion Japan Proceeding. However, Spansion Japan is subject to the general supervision of the Japanese Court and the court-appointed supervisory attorney (*chosa i'in*) and is required to seek approvals, from time to time, from them on various issues relating to the proceeding. However, at any point during the Creditor Protection Proceedings, actions taken by either (i) Spansion Japan (at the direction of the Spansion Japan trustee or pursuant to orders of the Japanese Court or otherwise) or (ii) Spansion Inc. or Spansion LLC (pursuant to the order of the U.S. Bankruptcy Court or otherwise), may adversely affect the ability of Spansion LLC and Spansion Japan to continue operating as a globally integrated unit from an operational perspective. For example, if Spansion LLC was required to transfer wafer production from the fabrication facilities owned and operated by Spansion Japan to Spansion LLC's Fab 25 or to a third party, or if sales of Spansion Products in Japan were no longer to be able to be conducted by Spansion Japan, our business would be materially adversely affected.

Circumstances Leading to the Commencement of Creditor Protection Proceedings

A variety of external economic factors have contributed to the decline in our operating performance, such as persistent oversupply in the Flash memory industry, compounded by the global economic recession, which significantly reduced demand for our products in the fourth quarter of 2008 and continues to negatively impact current demand. These two factors are further complicated by our inability to obtain the additional external financing necessary to meet capital expenditure needs and operational costs in a market characterized by swift technological advances and constantly changing manufacturing processes.

Our strategy was historically based on aggressive revenue and market share growth, leveraging superior technology, and low cost, high-volume manufacturing. In our 2006 long range planning cycle, forecasted revenue growth supported the construction of a \$1.2 billion advanced wafer fabrication facility (SP1). Debt financing was arranged and construction on SP1 commenced in early 2007.

Although we continued to increase our NOR memory market segment share according to third-party industry sources, steep average selling price (ASP) declines during the first half of 2007 negatively affected revenue, profitability, and operating cash flow. At that time, we anticipated an improvement in the market environment for the second half of 2007 and aggressively continued the construction of SP1 and incurred associated capital expenditures with the ultimate goal of significant cost reductions that would enhance our competitive advantage.

During the second half of 2007, the ASP environment stabilized relative to earlier in the year. However, we faced customer qualification issues resulting in a shortfall of anticipated revenue and increased inventory levels, which contributed to our failure to meet financial performance targets in the second half of 2007. For fiscal 2007, cash flow from operations was \$216.3 million, which was significantly lower than anticipated. Driven by the facilitization of SP1 and investments in our research and development facilities, our capital spending in 2007 was approximately \$1.1 billion.

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Our 2008 operating plan included capital expenditures of approximately \$535 million, of which approximately 80% were expected to occur in the first half of the year in order to complete the phase 1 facilitization of SP1. Upon completion of the first phase, SP1 was anticipated to generate approximately \$300 million in revenue in 2008.

In the first quarter of 2008, we lost liquidity in our investment in \$121.9 million of AAA/Aaa rated auction rate securities (ARS) because the auctions in which these ARS were traded had failed. Throughout the second and third quarters of 2008, the credit markets continued to deteriorate and we intensified our cash management process. Operationally, the ramp-up of SP1 was delayed due to slower than expected customer qualifications and a sharp decline in the Japanese wireless market. Consequently, the revenue generated by SP1 was lower than expected in the third quarter of 2008, and we engaged investment bankers and capital restructuring advisors to evaluate the situation and to accelerate plans to improve liquidity. Multiple initiatives were launched and/or accelerated, including efforts to sell production facilities, raise capital, and seek liquidity options for the ARS.

In the fourth quarter of 2008, the macroeconomic environment deteriorated significantly, causing a sharp decline in worldwide demand for consumer goods, and consequently a sharp reduction of demand for our products. Furthermore, continued tightening of credit availability and general market liquidity initiatives curtailed our ability to execute the liquidity initiatives launched in the third quarter of 2008. As these events unfolded, we intensified our strategic restructuring efforts to include, among other things, pursuing a potential sale of some or all of the Company's assets. The sharp decline in demand, coupled with our inability to execute liquidity initiatives limited our ability to generate sufficient funding for our operations and meet our debt servicing requirements, ultimately leading to the Creditor Protection Proceedings.

The Creditor Protection Proceedings allows the Debtors to continue operating our business while continuing to pursue a sale process or a standalone restructuring plan. There is no assurance that the Debtors will be successful in completing a sale or reorganization.

Developments Related to our Creditor Protection Proceedings

- The Spansion Japan Proceeding and the Chapter 11 Cases constituted events of default under the instruments governing substantially all of the indebtedness issued or guaranteed by us, Spansion LLC, Spansion Technology LLC and Spansion Japan. In addition, we may not be in compliance with certain other covenants under the indentures related to certain of our debt or lease instruments.
- In February 2009, we implemented a workforce reduction of approximately 2,400 employees or 28 percent of the existing employees, in an effort to further reduce costs as we continued our restructuring efforts and explored various strategic alternatives.
- On March 4, 2009, we received notice of a determination of the NASDAQ Listing Qualifications Department to delist our common stock from trading on The NASDAQ Stock Market because of the Chapter 11 Cases. On March 16, 2009, we received an additional notice of a determination for our failure to timely file our Annual Report on Form 10-K for the fiscal year ended December 28, 2008. On April 16, 2009, we received an additional notice of a determination that our failure to pay certain fees in accordance with NASDAQ Marketplace Rule 5210(d) is an additional basis for delisting our securities from The NASDAQ Stock Market. On April 23, 2009, we attended a hearing to contest these delisting determinations. On May 5, 2009, NASDAQ denied our request for continued listing on The NASDAQ Stock Market and informed us that trading of shares of our common stock will be suspended effective at the open of business on Thursday, May 7, 2009. We do not intend to request a review of this decision, and expect NASDAQ to file an application on Form 25-NSE with the Securities and Exchange Commission to effect the delisting of our common stock. We expect that our common stock will be publicly traded on the Pink Sheets with ticker symbol "SPSN.PK." However, because trading on the Pink Sheets requires a market maker to quote our common stock, trading on the Pink Sheets is not within our control and could be discontinued at any time if no market maker is willing to offer a quote.