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

FORM 8-K

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

March 2, 2009
Date of Report (Date of earliest event reported)

ADVANCED MICRO DEVICES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

001-07882
(Commission File Number)

94-1692300
(IRS Employer
Identification Number)

One AMD Place
P.O. Box 3453
Sunnyvale, California 94088-3453
(Address of principal executive offices) (Zip Code)

(408) 749-4000
(Registrant's telephone number, including area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01	Entry into a Material Definitive Agreement.
Item 2.01	Completion of Acquisition or Disposition of Assets.
Item 3.02	Unregistered Sales of Equity Securities.

On October 6, 2008, Advanced Micro Devices, Inc. (the “*Company*”) entered into a Master Transaction Agreement (as amended on December 5, 2008, the “*Master Transaction Agreement*”) with Advanced Technology Investment Company LLC, a limited liability company established under the laws of the Emirate of Abu Dhabi and wholly owned by the Government of the Emirate of Abu Dhabi (“*ATIC*”), and West Coast Hitech L.P., an exempted limited partnership organized under the laws of the Cayman Islands (“*WCH*”), acting through its general partner, West Coast Hitech G.P., Ltd., a corporation organized under the laws of the Cayman Islands, pursuant to which ATIC and the Company agreed to form a manufacturing joint venture, The Foundry Company, an exempted company to be incorporated under the laws of the Cayman Islands (“*The Foundry Company*”). The Foundry Company will manufacture semiconductor products and will provide certain foundry services to the Company and in the future to other third-party customers. On March 4, 2009, The Foundry Company changed its name to “GLOBALFOUNDRIES Inc.”

On March 2, 2009, the Company, ATIC and WCH consummated the transactions contemplated by the Master Transaction Agreement (the “*Closing*”). At the Closing, the Company contributed certain assets and liabilities to The Foundry Company, including, among other things, shares of the groups of German subsidiaries owning Fab 30/38 and Fab 36 (the “*Dresden Subsidiaries*”), certain manufacturing assets, owned real property, tangible personal property, employees, inventories, books and records, a portion of the Company’s patent portfolio and intellectual property and technology, rights under certain material contracts and authorizations necessary for The Foundry Company to carry on its business, in exchange for Foundry Company securities, consisting of one Class A Ordinary Share, 1,090,950 Class A Preferred Shares and 700,000 Class B Preferred Shares, and the assumption of certain liabilities by The Foundry Company. ATIC contributed \$1.4 billion of cash to The Foundry Company in exchange for Foundry Company securities, consisting of one Class A Ordinary Share, 218,190 Class A Preferred Shares, 172,760 Class B Preferred Shares, \$201,810,000 aggregate principal amount of Class A Subordinated Convertible Notes and \$807,240,000 aggregate principal amount of Class B Subordinated Convertible Notes, and transferred \$700 million of cash to the Company in exchange for the transfer by the Company of 700,000 Class B Preferred Shares of The Foundry Company to ATIC.

At the Closing, the Company also issued to WCH, for an aggregate purchase price of \$124,700,000, 58 million shares of the Company’s common stock (the “*Shares*”) and warrants to purchase 35 million shares of the Company’s common stock (the “*Warrants*”) at an exercise price of \$0.01 per share. The Warrants are exercisable after the earlier of (i) public ground-breaking of The Foundry Company’s planned manufacturing facility in New York and (ii) March 2, 2011, and the Warrants expire on March 2, 2019. In the Master Transaction Agreement, WCH represented to the Company that WCH was an “accredited investor” as such term is defined under the Securities Act of 1933, as amended (the “*Securities Act*”), and the Company has relied on the exemption provided by Section 4(2) of the Securities Act from the registration requirements of the Securities Act with respect to the sale and issuance of the Shares and the Warrants to WCH.

In connection with the Closing, the terms of the €700,000,000 Term Loan Facility Agreement, dated as of April 21, 2004, as amended by amendment agreements dated October 10, 2006 and February 25, 2009, among AMD Fab 36 Limited Liability Company & Co. KG (“**AMD Fab 36 KG**”), certain affiliates of AMD Fab 36 KG (collectively, the “**Fab 36 German Companies**”), the banks and financial institutions party thereto as Mandated Lead Arrangers or Lenders, Dresdner Bank AG in Berlin, as Security Agent and Reporting Agent, and Dresdner Bank AG, Niederlassung Luxemburg, as Facility Agent (collectively, the “**Facility Agreement**”) and related agreements were amended to allow for the transfer of the Fab 36 German Companies (including the Facility Agreement and related agreements and the indebtedness outstanding thereunder) to The Foundry Company, whose financial results will continue to be consolidated in the Company’s financial statements.

In connection with the Closing, the Company also amended the terms of its Guarantee Agreement, dated as of April 21, 2004, as amended by amendment agreements dated October 10, 2006 and February 25, 2009, among the Company and The Foundry Company, as guarantors, AMD Fab 36 KG, as Borrower, Dresdner Bank AG in Berlin, as Security Agent, Dresdner Bank AG, Niederlassung Luxemburg, as Facility Agent, and AMD Netherlands Technologies BV, a subsidiary of The Foundry Company (the “**Guarantee Agreement**”). Pursuant to the Guarantee Agreement, the Company and The Foundry Company are joint guarantors, including with respect to the amounts payable by AMD Fab 36 KG under the Facility Agreement and the related agreements. However, if the Company is called upon to make any payments under the Guarantee Agreement, The Foundry Company has separately agreed to indemnify the Company for the full amount of such payments. The Company must continue to comply with the covenants set forth in the Guarantee Agreement, including specified adjusted tangible net worth and EBITDA financial covenants if group consolidated cash declines below the following amounts:

Amount (in millions)	if Moody’s Rating is at least	and	if Standard & Poor’s Rating is at least
\$500	B1 or lower	and	B+ or lower
425	Ba3	and	BB-
400	Ba2	and	BB
350	Ba1	and	BB+
300	Baa3 or better	and	BBB-or better

Pursuant to the Facility Agreement and the Guarantee Agreement, for as long as the Company consolidates the operations of The Foundry Company for financial reporting purposes, any group consolidated cash requirements will be considered on a consolidated basis, including both the Company’s and The Foundry Company’s cash, cash equivalents and short-term investments.

At the Closing, the Company, ATIC and The Foundry Company also entered into a Shareholders’ Agreement (the “**Shareholders’ Agreement**”), a Funding Agreement (the “**Funding Agreement**”), and a Wafer Supply Agreement (the “**Wafer Supply Agreement**”), the material terms of each of which are summarized below.

Shareholders' Agreement

The Shareholders' Agreement sets forth the rights and obligations of the Company and ATIC as shareholders of The Foundry Company. The initial Foundry Company board of directors (the "**Foundry Company Board**") consists of eight directors, and the Company and ATIC each designated four directors for nomination. The number of directors a Foundry Company shareholder may designate may decrease in the future according to the percentage of The Foundry Company shares it owns on a fully diluted basis. Doug Grose is the initial Foundry Company Chief Executive Officer and Bruce McDougall is the initial Foundry Company Chief Financial Officer. Hector de J. Ruiz will not be a director of The Foundry Company but will serve as Chairman of the Foundry Company Board.

Pursuant to the Shareholders' Agreement, The Foundry Company is not allowed to take certain corporate actions without unanimous Foundry Company Board approval, including, among other things: (i) entering into any transaction resulting in a change of control of The Foundry Company or any sale of all or substantially all of the assets of The Foundry Company and its subsidiaries; (ii) approving any annual business plan or any material amendment, modification or revision of any annual business plan; (iii) authorizing, issuing, selling, acquiring, converting, repurchasing or redeeming any Foundry Company shares or other equity interest not reflected in the annual business plan, its Articles of Association or any incentive plan; (iv) making certain capital expenditures not reflected in the annual business plan; (v) incurring indebtedness over a specified level; and (vi) prosecuting, commencing or settling litigation in excess of \$10 million. The Shareholders' Agreement also sets forth procedures by which any deadlock with respect to matters requiring Foundry Company Board approval are to be resolved, which allows a shareholder to break specified Foundry Company Board deadlocks if it owns more than 75% or, for certain additional matters, 90% of The Foundry Company shares on a fully diluted basis.

The Shareholders' Agreement restricts the ability of each shareholder to sell any Foundry Company securities, subject to certain exceptions, including the sale of specified percentages of a shareholder's fully diluted shares of The Foundry Company in the event of a Foundry Company initial public offering. In the event of a change of control of the Company without ATIC's prior written consent, among other things, all transfer restrictions with respect to Foundry Company securities held by ATIC will cease and ATIC will have the right to require any acquirer of the Company to guarantee all of the Company's obligations under the transaction documents. If a change of control of the Company occurs within two years of Closing, ATIC will have the right to put any or all of the Foundry Company securities (valued at their fair market value) held by ATIC and its permitted transferees to the Company in exchange for cash, or if a change of control of the Company occurs after a specified event, ATIC will have the option to purchase in cash any or all of The Foundry Company securities (valued at their fair market value) held by the Company and its permitted transferees.

The Shareholders' Agreement may be terminated (i) upon dissolution of The Foundry Company, (ii) by written agreement of all parties possessing rights under the Shareholders' Agreement, (iii) at the election of a shareholder upon a bankruptcy event of the other shareholder, or (iv) for any shareholder, at such time the shareholder ceases to own any Foundry Company securities.

Funding Agreement

The Funding Agreement provides for the future funding of The Foundry Company and governs the terms and conditions under which ATIC is obligated to provide such funding. Pursuant to the Funding Agreement, ATIC has committed to additional equity funding of a minimum of \$3.6 billion and up to \$6.0 billion over the next five years. The Company has the right, but not the obligation, to provide additional future capital to the Foundry Company in an amount pro rata to the Company's interest in the fully converted common stock of The Foundry Company.

At each equity funding, the equity securities to be issued by The Foundry Company will consist of 20% of Class A Preferred Shares and 80% of Class B Preferred Shares. The aggregate amount of equity funding to be provided by the shareholders in any fiscal year depends on the time period of such funding (Phase I, II or III) and the amounts set forth in the five-year capital plan of The Foundry Company. The Phases are defined as follows:

- Phase I: the period commencing on March 2, 2009 and ending on the last day of the fiscal year ending in 2010.
- Phase II: the period commencing on the first day of the fiscal year ending in 2011 and ending on the last day of the fiscal year ending in 2013.
- Phase III: the period commencing on the first day of the fiscal year ending in 2014 and ending on the date the Funding Agreement is terminated pursuant to the terms thereof.

The Foundry Company is required to obtain specified third-party debt in any given fiscal year, as set forth in the five-year capital plan. To the extent that The Foundry Company obtains more than the specified amount of third-party debt, ATIC is able to reduce its funding commitment accordingly. To the extent that The Foundry Company is not able to obtain the full amount of third-party debt, ATIC is not obligated to make up the difference. To the extent the Company chooses not to participate in an equity financing of The Foundry Company, ATIC is obligated to purchase such Foundry Company securities in such equity financing, subject to ATIC's funding commitments under the Funding Agreement.

ATIC's obligations to provide funding are subject to certain conditions, including the accuracy of The Foundry Company's representations and warranties in the Funding Agreement, the absence of a material adverse effect on The Foundry Company or the Company and the absence of a material breach or default by The Foundry Company or the Company under the provisions of any transaction document. There are additional funding conditions for each of the Phases.

The Funding Agreement will terminate upon the termination of a transition period beginning on the date of notice of ATIC's election to have The Foundry Company enter into such a period if certain terms and conditions contained in the Funding Agreement are satisfied and ending on the later of (A) 12 months after such date and (B) the last day of the fiscal year ending in 2013.

Wafer Supply Agreement

The Wafer Supply Agreement governs the terms by which the Company will purchase products manufactured by The Foundry Company. Pursuant to the Wafer Supply Agreement, the Company will, subject to limited exceptions, purchase all of its microprocessor unit (“*MPU*”) product requirements from The Foundry Company. If the Company acquires a third-party business that manufactures MPU products, the Company will have up to two years to transition the manufacture of such MPU products to The Foundry Company. In addition, once The Foundry Company establishes a 32nm-qualified process, the Company will purchase from Foundry Company sales entities, where competitive, specified percentages of its graphics processor unit (“*GPU*”) requirements at all process nodes, which percentages will increase linearly over a five-year period. At the Company’s request, The Foundry Company will also provide sort services to the Company on a product-by-product basis.

The Company will provide The Foundry Company with product forecasts of its MPU and GPU product requirements. The price for MPU products is related to the percentage of the Company’s MPU-specific total cost of goods sold. The price for GPU products will be determined by the parties when The Foundry Company is able to begin manufacturing GPU products for the Company.

The Wafer Supply Agreement will be in effect no longer than May 2, 2024. The Wafer Supply Agreement may also be terminated if and when a business plan deadlock exists and ATIC elects to enter into a transition period pursuant to the Funding Agreement. The Foundry Company will agree to use commercially reasonable efforts to assist the Company to transition the supply of products to another provider, and continue to fulfill purchase orders for up to two years following the termination or expiration of the Wafer Supply Agreement. During such transition period, pricing for MPU products will remain as set forth in the Wafer Supply Agreement, but the Company’s purchase commitments to The Foundry Company will no longer apply.

The foregoing summaries of the Facility Agreement, the Guarantee Agreement, the Shareholders’ Agreement, the Funding Agreement and the Wafer Supply Agreement are qualified in their entirety by reference to the Facility Agreement, the Guarantee Agreement, the Shareholders’ Agreement, the Funding Agreement and the Wafer Supply Agreement attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively, which are incorporated herein by reference.

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

In connection with the Closing, on March 2, 2009, Hector de J. Ruiz resigned from the Company’s board of directors and the remaining members of the Company’s board of directors appointed Waleed Ahmed Al Mokarrab Al Muhairi, who is an affiliate of WCH and ATIC, to fill the vacancy created by Mr. Ruiz’s resignation. Mr. Al Muhairi was appointed to the Company’s board of directors pursuant to Section 9.01 of the Master Transaction Agreement, which provides that until such time as WCH and its permitted transferees beneficially own, in the aggregate, less

than 10% of the outstanding shares of the Company's common stock, WCH has the right to designate a representative to the Company's board of directors. The compensation and benefits that Mr. Al Muhairi will receive as a director will be described in the definitive proxy statement that the Company files with the Securities and Exchange Commission in connection with the Company's 2009 annual meeting of stockholders.

On March 2, 2009, Bruce Claflin was appointed chairman of the Company's board of directors.

Item 8.01 Other Events.

In connection with the Closing, on March 2, 2009, AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH, two of the Fab 36 German Companies, repurchased the limited and silent partnership interests in AMD Fab 36 KG held by the remaining unaffiliated limited partner, Leipziger Messe Gesellschaft mbH ("*Leipziger Messe*"), for the Euro-equivalent of approximately \$190 million in cash, and Leipziger Messe withdrew as a partner of AMD Fab 36 KG.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Term Loan Facility Agreement, dated as of April 21, 2004, as amended by amendment agreements dated October 10, 2006 and February 25, 2009, among AMD Fab 36 Limited Liability Company & Co. KG, certain affiliates of AMD Fab 36 Limited Liability Company & Co. KG, the banks and financial institutions party thereto as Mandated Lead Arrangers or Lenders, Dresdner Bank AG in Berlin, as Security Agent and Reporting Agent, and Dresdner Bank AG, Niederlassung Luxemburg, as Facility Agent.
10.2	Guarantee Agreement, dated as of April 21, 2004, as amended by amendment agreements dated October 10, 2006 and February 25, 2009, among the Company and The Foundry Company, as guarantors, AMD Fab 36 Limited Liability Company & Co. KG, as Borrower, Dresdner Bank AG in Berlin, as Security Agent, Dresdner Bank AG, Niederlassung Luxemburg, as Facility Agent, and AMD Netherlands Technologies BV, a subsidiary of The Foundry Company.
10.3	Shareholders' Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., Advanced Technology Investment Company LLC, and The Foundry Company.

10.4 Funding Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., Advanced Technology Investment Company LLC, and The Foundry Company.

10.5* Wafer Supply Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., The Foundry Company, and AMD Fab Technologies US, Inc.

* Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the Securities and Exchange Commission.

SIGNATURES

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

Date: March 5, 2009

ADVANCED MICRO DEVICES, INC.

By: /s/ Faina Medzonsky

Name: Faina Medzonsky

Title: Assistant Secretary

Exhibit Index.

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10.3	Shareholders' Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., Advanced Technology Investment Company LLC, and The Foundry Company.
10.4	Funding Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., Advanced Technology Investment Company LLC, and The Foundry Company.
10.5*	Wafer Supply Agreement, dated as of March 2, 2009, by and among Advanced Micro Devices, Inc., The Foundry Company, and AMD Fab Technologies US, Inc.

* Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the Securities and Exchange Commission.

**EUR700,000,000
TERM LOAN FACILITY
AGREEMENT**

dated 21 April 2004

as amended by Amendment Agreements dated 10 October 2006 and 25 February 2009

for

AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG
the Borrower

**ABN AMRO BANK N.V.,
COMMERZBANK AKTIENGESELLSCHAFT, DEUTSCHE BANK
LUXEMBOURG S.A., DRESDNER KLEINWORT, KFW, LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE**
and

LANDESBANK BADEN-WÜRTTEMBERG
(as legal successor of Landesbank Sachsen-Girozentrale)
as Mandated Lead Arrangers

DRESDNER BANK AG, NIEDERLASSUNG LUXEMBURG
as Facility Agent

with

DRESDNER BANK AG in Berlin
as Security Agent and Reporting Agent

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THIS AGREEMENT is made between:

- (1) **AMD Fab 36 Limited Liability Company & Co. KG**, a German limited partnership with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRA 5255 (the "**Borrower**");
- (2) **ABN AMRO Bank N.V., Commerzbank Aktiengesellschaft, Deutsche Bank Luxembourg S.A., Dresdner Kleinwort**, the investment banking division of **Dresdner Bank AG, KfW, Landesbank Hessen-Thüringen Girozentrale** and **Landesbank Baden-Württemberg** as legal successor of **Landesbank Sachsen-Girozentrale**, as Mandated Lead Arrangers (the "**Mandated Lead Arrangers**");
- (3) **The financial institutions** listed on the signature pages hereof;
- (4) **Dresdner Bank AG, Niederlassung Luxemburg** as Facility Agent for the Lenders (the "**Facility Agent**"); and
- (5) **Dresdner Bank AG in Berlin** as Security Agent for the Lenders (the "**Security Agent**") and as Reporting Agent for the Lenders (the "**Reporting Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Account Pledges**" means the following agreements providing for first ranking pledges over:

- (a) all bank accounts of the Borrower dated 20 April 2004;
- (b) all bank accounts of AMD Fab 36 Holding GmbH dated 20 April 2004;
- (c) all bank accounts of AMD Fab 36 Admin GmbH dated 20 April 2004;
- (d) the Escrow Account; and
- (e) the Cash Reserve Account.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agent**" means the Facility Agent, the Security Agent and/or the Reporting Agent, as the context requires.

“**AMD Fab 36 Admin GmbH**” means a German limited liability company (*Gesellschaft mit beschränkter Haftung*) with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRB 22350.

“**AMD Fab 36 Holding GmbH**” means a German limited liability company (*Gesellschaft mit beschränkter Haftung*) with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRB 21270.

“**AMD Fab 36 Holding’s Assignment of Receivables**” means the assignment agreement dated 20 April 2004, as amended by the Security Amendment Agreement, providing for the assignment to the Security Agent of the claims of AMD Fab 36 Holding GmbH under the Cost Plus Reimbursement Agreement.

“**AMD Fab 36 LLC**” means a Delaware limited liability company with its business address at One AMD Place, Sunnyvale, CA 94088, United States, registered with the State of Delaware on 18 July 2003 and having its registered business address at 1209 Orange Street, Wilmington, 19801 Delaware, United States, of which the organizational identification number in the State of Delaware assigned by the Division of Corporations, as of the date hereof, is 3683217.

“**AMD Inc.**” means Advanced Micro Devices, Inc., a corporation organised under the laws of the state of Delaware, United States of America, having its principal place of business in Sunnyvale, California, United States of America.

“**Amendment Agreement**” means the amendment agreement dated 25 February 2009 relating to changes of this Agreement, the Guarantee Agreement, the Subordination Agreement and the Security Agency Agreement entered into between the Borrower, the Lenders, the Security Agent, the Reporting Agent, AMD Inc., FoundryCo, New German KG and others.

“**Amendment Date**” means the date of the Amendment Agreement.

“**Assignment of the AMD Call Options**” means the assignment agreements dated 20 April 2004, as amended by the Security Amendment Agreement, providing for the assignment to the Security Agent of rights under the Purchase Agreements over all the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower.

“**Assignments of Claims**” means the following assignment agreements providing for the assignment to the Security Agent of all the claims against the Borrower of:

- (a) AMD Inc. dated 20 April 2004 (as amended by the Security Amendment Agreement);
- (b) FoundryCo dated on or about the Amendment Date;
- (c) New German KG dated on or about the Amendment Date;
- (d) AMD Fab 36 Holding GmbH dated 20 April 2004;
- (e) AMD Fab 36 Admin GmbH dated 20 April 2004;
- (f) the General Partner dated 20 April 2004; and

(g) LM Beteiligungsgesellschaft mbH dated 20 April 2004.

“**Assignment of Insurance Claims**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of all of the Borrower’s claims under any insurance policies (with the exception of personal liability insurances and contractors’ all risks insurances until completion of the building phase) it has taken out in relation to the Project.

“**Assignment of Material German Contracts**” means the assignment agreement dated 20 April 2004, as amended by the Security Amendment Agreement, providing for the assignment to the Security Agent of all the Material Contracts governed by German law entered into by the Borrower (but excluding the Partnership Agreement).

“**Assignment of Material US Contracts**” means the assignment agreement dated 20 April 2004, as amended on or about the Amendment Date, providing for the assignment to the Security Agent of claims and contractual rights under all the Material Contracts governed by the law of a state of the United States of America entered into by the Borrower.

“**Assignments of Receivables**” means the Borrower’s Assignment of Receivables, AMD Fab 36 Holding’s Assignment of Receivables and the Dutch BV 1 Assignment of Receivables, and “**Assignment of Receivables**” shall mean any of them.

“**Assignment of Service Agreement Claims**” means the assignment agreement dated on or about the Amendment Date, providing for the Assignment to the Security Agent of all claims of New German KG against AMD Fab 36 Holding GmbH under the Service Agreement.

“**Assignment of Warranties**” means the assignment agreement dated 20 April 2004 providing for the assignment to the Security Agent of warranty claims (including any underlying Security) under the warranty provided by the Project Engineer.

“**ATIC**” means Advanced Technology Investment Company, a company organised under the laws of the Emirate of Abu Dhabi, having its registered and principal office at P.O. Box 45005, Abu Dhabi, United Arab Emirates.

“**Auditors**” means Ernst & Young or another international auditing firm of similar repute and standing.

“**Authorisation**” means an authorisation, consent, approval, resolution, license, exemption, filing or registration.

“**Availability Period**” means the period from and including the Signing Date to and including 28 September 2007.

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in any Outstandings; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**Base Currency**” means EUR.

“**Base Currency Amount**” means in relation to a Loan, the amount specified in the Utilisation Request delivered by the Borrower for that Utilisation (or, if the amount requested is denominated in USD, the amount converted into the Base Currency at the Facility Agent’s Spot Rate of Exchange on the date which is four (4) Business Days before the Utilisation Date or, if later, the date the Facility Agent receives the Utilisation Request), as adjusted to reflect any repayment, prepayment, consolidation or division of such Loan.

“**Base Financial Statements**” means:

- (a) the audited financial statements of the Borrower for the financial year ended 31 December 2003 audited by Ernst & Young AG;
- (b) the audited consolidated financial statements of AMD Inc. for the financial year ended 28 December 2003 audited by Ernst & Young LLP; and
- (c) the opening balance sheet of FoundryCo as per 7 October 2008.

“**Borrower’s Assignment of Receivables**” means the assignment agreement dated 20 April 2004, as amended by the Security Amendment Agreement, providing for the assignment to the Security Agent of the Borrower’s claims under the Cost Plus Reimbursement Agreement.

“**Break Costs**” means the amount (if any) by which:

- (a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period,

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the European interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main, Berlin, Dresden, London, Luxembourg, and

- (a) (in relation to any date for payment or purchase of Euro) any Target Day; or
- (b) (in relation to any date for payment or purchase of Dollar) a day (other than a Saturday or Sunday) on which banks are open for general business in New York.

“**Business Plan**” means the financial model dated 4 November 2003 for the period beginning on 1 January 2003 and ending on 31 December 2012, including profit and loss accounts, balance sheets and cash flow projections relating to the Project, in the agreed form set out in Schedule 7 (*The Business Plan*), together with a favourable opinion of Arthur D. Little dated 4 November 2003.

“**Call Option**” means an agreement dated 20 April 2004, as amended by amendment agreement dated 19 April 2005, providing for call options in favour of the Security Agent in respect of the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations held by Leipziger Messe GmbH and LM Beteiligungsgesellschaft mbH.

“**Cash**” has the meaning ascribed to such term in paragraph (a) of Clause 19.1 (*Financial Definitions*).

“**Cash Equivalents**” has the meaning ascribed to such term in paragraph (a) of Clause 19.1 (*Financial Definitions*).

“**Cash Reserve Account**” means an interest-bearing escrow account maintained by the Borrower with the Security Agent into which amounts are to be paid pursuant to Clause 20.35 (*Balancing Payments to and from Cash Reserve Account*) in the currency and in the amounts set out therein which are to be utilized exclusively for the purpose described therein.

“**Cash Reserve Account Pledge**” means an agreement providing for a first ranking pledge over the Cash Reserve Account.

“**Cash Shortfall**” means a Cash shortfall of the Borrower (whether in respect of operating or non-operating costs), including without limitation a Cash shortfall from cost overruns from capital expenditures or arising from reclamations of public allowances or grants (*Investitionszulagen / Investitionszuschüsse*) by the Federal/State Guarantor.

“**Change of Control**” means:

- (a) the direct or indirect acquisition by any person (as such term is used in Section 13 (d) and Section 14 (d) (2) of the Exchange Act) or related persons constituting a group (as such term is used in Rule 13d-5 under the Exchange Act) other than the Abu Dhabi government, ATIC or a direct or indirect wholly-owned Subsidiary of ATIC of:
 - (i) beneficial ownership of issued and outstanding shares of voting stock of any Guarantor, the result of which acquisition is that such person or such group possesses in excess of thirty-five (35) *per cent.* of the combined voting power of all then-issued and outstanding voting stock of such Guarantor; or
 - (ii) the power to elect, appoint or cause the election or appointment of at least a majority of the members of the board of directors of a Guarantor; or
- (b) AMD Inc., ATIC or the Abu Dhabi Government, directly or indirectly, together or any of them individually cease to own 50.1 *per cent.* or more of the combined voting stock or voting power attributable to all issued and outstanding voting stock of FoundryCo.; or
- (c) the direct or indirect acquisition by any person or a group of persons of beneficial ownership of issued and outstanding shares of voting stock of ATIC, the result of which acquisition is that the Abu Dhabi Government possesses less than 50.1 *per cent.* of the combined voting power of all then-issued and outstanding voting stock of ATIC; or

- (d) the Abu Dhabi Government ceases to maintain the power to elect, appoint or cause the election or appointment of at least a majority of the members of the board of directors of ATIC.

For the purpose of this definition, “**Abu Dhabi Government**” means the Government of the Emirate of Abu Dhabi, and any political subdivision or agency thereof, or any legal entity which is a separate legal person, sovereign, corporate or otherwise, and which is an organ of the Government of the Emirate of Abu Dhabi or political subdivision thereof, or, with respect to any corporate person, a (directly or indirectly) wholly-owned Subsidiary of the Government of the Emirate of Abu Dhabi or political subdivision thereof.

“**Charged Assets**” means any assets of the Borrower that are secured in favour of the Security Agent pursuant to the Security Documents or any of them.

“**Closing**” means the date on which all of the initial conditions precedent set forth in Part I (*Initial Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) are satisfied, or waived, in accordance with Clause 4.1 (*Initial Conditions Precedent*).

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Schedule 1 (*The Original Lenders*) and the amount of any other such Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 8 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Facility Agent.

“**Cost Plus Reimbursement Agreement**” means the following agreements:

- (a) Cost Plus Reimbursement Agreement dated 21 April 2004 entered into between the Borrower and AMD Fab 36 Holding GmbH, as amended by amendment agreement dated 28 September 2006 and on or about the Amendment Date; and
- (b) Cost Plus Reimbursement Agreement dated 21 April 2004 entered into between AMD Fab 36 Holding GmbH and AMD Inc., as amended by amendment agreement dated 28 September 2006 and as amended and entered into between AMD Fab 36 Holding GmbH and Dutch BV 1 on or about the Amendment Date.

“**Credit Rating**” means any corporate credit rating/corporate family rating assigned to AMD Inc. by Standard & Poor’s or Moody’s, respectively.

“**Dangerous Substance**” means any radioactive emissions and any natural or artificial substance (in whatever form) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing substantial harm to man or any other living organism or damaging the Environment or public health or welfare, including (without limitation) any controlled, special, hazardous, toxic, radioactive or dangerous waste.

“**Debt Issue**” means any issue after the Signing Date of public or privately placed debt securities of the Borrower.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) that would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**Dutch BV 1**” means AMD Netherlands Technologies B.V., a limited liability company organized under the laws of The Netherlands with its business address at Locatellikade 1, 1076AZ Amsterdam, The Netherlands, registered at the Chamber of Commerce (*Kamer van Koophandel*) of Amsterdam under number file number 34316285.

“**Dutch BV 1 Assignment of Receivables**” means the assignment agreement dated on or about the Amendment Date, providing for the assignment to the Security Agent of the rights and claims of Dutch BV 1 against FoundryCo under the Guarantee Agreement.

“**EPC Contract**” means the agreement (*Generalübernehmervertrag*) dated 20 November 2003 made between the Borrower and the Project Engineer pertaining to the design and construction of the Project.

“**Environment**” means the media of air, water and land (wherever occurring) and in relation to the media of air and water includes, without limitation, the air and water within buildings and the air and water within other natural or man-made structures above or below ground and any water contained in any underground strata.

“**Environmental Claim**” means any claim by any person:

- (a) in respect of any loss or liability suffered or incurred by that person as a result of or in connection with any violation of Environmental Law; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private legal action or public legal action or administrative order or proceedings including, without limitation, any such claim that arises from injury to persons or property.

“**Environmental Contamination**” means each of the following and their consequences:

- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any site owned, leased, occupied or used by the Borrower into any part of the Environment; or
- (b) any accident, fire, explosion or sudden event at any site owned, leased, occupied or used by the Borrower which is directly or indirectly caused by or attributable to any Dangerous Substance; or
- (c) any other pollution of the Environment arising at or from any site owned or occupied by the Borrower.

“**Environmental Law**” means all laws, regulations, directives, codes of practice, circulars, guidance notices, instructions and the like issued by a governmental authority and having legal effect concerning the protection of human health, the Environment, the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances.

“**Environmental License**” means any permit, license, authorisation, consent or other approval required by any Environmental Law.

“**Equipment**” means any equipment and tools (including any information technology software or hardware which is embedded or installed in, or essential for the working of, that equipment) to be owned by the Borrower and to be installed on the Site for the development and production of microprocessors on silicon wafers and which is required by the Borrower to implement the Project in accordance with the Business Plan.

“**Equity Issue**” means any issue of partnership interests or shares by the Borrower or any issue or grant of rights to subscribe for, or to convert any security into, partnership interests or shares in the Borrower.

“**Escrow Account**” means an interest-bearing escrow account (with two sub-accounts denominated in EUR and USD, respectively) to be maintained by the Borrower with the Security Agent (alternatively Cash Equivalents may be invested into a non-interest-bearing deposit account with the Security Agent), funded by Utilisations and utilised solely for the purpose set out in Clause 3 (*Purpose*) and Clause 7.4 (*Mandatory Prepayment from the Escrow Account*).

“**EU Notification Approval**” means the unconditional approval of the European Union in respect of the Federal/State Guarantee and in connection with any public allowances or grants (*Investitionszulagen/Investitionszuschüsse*) provided to the Borrower pursuant to a Subsidy Agreement, including a written confirmation by the European Union regarding its approval in respect of the Reorganisation.

“**EURIBOR**” means, in relation to any Loan:

- (a) the Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the Reference Banks to leading banks in the European interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in Euro for a period comparable to the Interest Period of the relevant Loan.

“**EUR Outstandings**” means, at any time, the aggregate of the amounts of the outstanding Loans denominated in EUR.

“**Event of Default**” has the meaning ascribed to such term in Clause 21.1 (*Acceleration*).

“**Excess Contributed Capital Amount**” means the amount, from time to time, of capital in the Borrower contributed by FoundryCo or its Affiliates in excess of the amount required to be contributed prior to first Utilisation pursuant to Part II (*Conditions Precedent to first Utilisation*) of Schedule 2 (*Conditions Precedent*).

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission from time to time promulgated thereunder.

“**Existing Indebtedness**” means the Financial Indebtedness or other indebtedness of the Borrower outstanding prior to the date of initial Utilisation, but does not include Financial Indebtedness arising under the Revolving Credit Agreement or a Subordinated Loan Agreement.

“**Existing Security**” means the Security granted or existing over the assets of the Obligors that is existing prior to the date of initial Utilisation.

“**Exit Agreement**” means the exit agreement (*Ausscheidensvereinbarung*) dated on or about the Amendment Date made between AMD Inc., the Free State of Saxony, LM Beteiligungsgesellschaft mbH, Leipziger Messe GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, AMD Fab 36 LLC and the Borrower providing for the transfer by Leipziger Messe GmbH and LM Beteiligungsgesellschaft mbH of their partnership interests in the Borrower to AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH and the General Partner, respectively, and of the interest of Leipziger Messe GmbH in the silent participation between the Borrower and the Limited Partners to AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH.

“**Extended Termination Date**” means a date up to three (3) years after the Termination Date proposed by the Borrower and approved by each Lender and the Federal/State Guarantors as the date by which all Loans must be repaid following an extension of the Termination Date for the Loans pursuant to Clause 6.3 (*Extension of Termination Date*) but not later than the date which is the tenth (10th) anniversary of the Signing Date or, if that is not a Business Day, the immediately preceding Business Day.

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Facility Agent’s Spot Rate of Exchange**” means the Facility Agent’s spot rate of exchange for the purchase of the relevant currency with the Base Currency in the European foreign exchange market at or about 12.00 noon on a particular day.

“**Facility Amount**” means the higher of (i) seven hundred million (700,000,000) EUR and (ii) the amount of the Outstandings.

“**Facility Office**” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“**Federal/State Guarantee**” means the guarantees granted by the Federal/State Guarantors for the benefit of the Lenders and the Agents (after realisation of all Transaction Security, subject however to a limited right of advance appropriation in favour of the Finance Parties in relation to the Security constituted by the Cash Reserve Account Pledge) in respect of eighty (80) *per cent.* of all losses (except certain currency-related losses) sustained by the Lenders and the Agents in respect of the Finance Documents in accordance with the terms set out in the Federal/State Guarantors Decision.

“**Federal/State Guarantors**” means:

- (a) the Federal Republic of Germany; and
- (b) the Free State of Saxony (*Freistaat Sachsen*).

“**Federal/State Guarantors Decision**” means the decision of the Federal/State Guarantors and of PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft (“**PwC**”) based on the inter-ministerial committee meetings (*interministerielle Sitzungen*) dated 6/17 November 2003 and based on the letters of PwC in connection therewith dated 17 March 2004, 7 April 2004 and 8 April 2004 (*Bürgschaftsentscheidung*), as set out in Schedule 12 (*Federal/State Guarantors Decision*), as further amended by the letters of PwC dated 3 and 20 January 2005, 20 and 22 December 2005, 6 February 2006, 11 October 2006, 10 February 2009 (in relation to the Reorganisation) and 10 February 2009 (in relation to the withdrawal of Leipziger Messe GmbH as limited partner in the Borrower and related matters).

“**Fee Letters**” means the letter dated 28 November 2003 made between the Mandated Lead Arrangers, the Borrower and the Guarantor and the letter dated 16 April 2004 made between the Facility Agent and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*), and “**Fee Letter**” means any of them.

“**Finance Documents**” means this Agreement, any Fee Letter, any Security Document and any other document designated as such by the Facility Agent and the Borrower and “**Finance Document**” means any of them.

“**Finance Parties**” means the Facility Agent, the Security Agent, the Reporting Agent, the Mandated Lead Arrangers and the Lenders and “**Finance Party**” means any of them.

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with German GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; however, for the avoidance of doubt, this does not include any deferred payment arrangements with trade creditors as customary in the industry or endorsement of negotiable instruments for deposit or collection;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Fiscal Quarter**” means each of those periods of approximately thirteen weeks ending on 31 March, 30 June, 30 September and 31 December in each financial year.

“**FoundryCo**” means The Foundry Company, an exempted company incorporated under the laws of the Cayman Islands, with its registered and principal office at Maple Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY-1104, Cayman Islands.

“**FoundryCo Group**” means FoundryCo and its Subsidiaries from time to time and “**member of the FoundryCo Group**” shall be construed accordingly.

“**Funding Agreement**” means the Funding Agreement dated on or about the Amendment Date of which a draft has been deposited with the SEC by AMD Inc.

“**General Partner**” means AMD Fab 36 LLC or, upon substitution of the former by AMD Fab 36 Admin GmbH as general partner of the Borrower, the latter.

“**German GAAP**” means generally accepted accounting principles generally used by the accounting profession and in effect in Germany from time to time (*Grundsätze ordnungsmässiger Buchführung*).

“**German Qualifying Lender**” means:

(a) a Lender which is:

(i) a company resident in Germany for German tax purposes;

(ii) a partnership each member of which is a company resident in Germany for German tax purposes; or

(iii) a company not so resident in Germany which carries on a trade or business in Germany through a branch or agency and which brings into account interest payable in respect of any relevant Loan in computing its chargeable profits (within the meaning given by Section 49(1) No. 2(a) of the German Income Tax Code),

but only if the Lender described in this paragraph (a) (and further, (A) in the case of a partnership, each member of the partnership, and (B) in the case of a company which carries on a trade or business in Germany through a branch or agency, the branch or agency) is entitled to receive any and all payments under the Finance Documents (subject to completion of any procedural formalities) without a Tax Deduction; or

(b) a German Treaty Lender.

“**German Treaty**” means a double taxation agreement with Germany which makes provision for full exemption of tax imposed by Germany on interest.

“**German Treaty Lender**” means a Lender which:

- (a) is treated as a resident of a German Treaty State for the purposes of the German Treaty;
- (b) does not carry on business in Germany through a permanent establishment with which that Lender’s participation in a Loan is effectively connected; and
- (c) is entitled under the German Treaty (subject to the completion of any necessary procedural formalities) to receive any and all payments under the Finance Documents without a Tax Deduction (as defined in Clause 12.1 (*Definitions*)).

“**German Treaty State**” means a jurisdiction to which a German Treaty applies.

“**Germany**” means the Federal Republic of Germany.

“**Global Assignment of Receivables**” means the assignment agreement dated 20 April 2004, as amended by the Security Amendment Agreement, providing for the assignment to the Security Agent of all existing and future claims of the Borrower for goods and services provided, or based on other legal grounds, that it holds against all of its debtors with the exception of such claims which have been assigned under the other Security Documents.

“**Group**” means AMD Inc., FoundryCo and their respective Subsidiaries from time to time, and “**member of the Group**” shall be construed accordingly.

“**Group Consolidated Cash**” means for any fiscal month of AMD Inc. the amount of all cash, cash equivalents and short-term investments of AMD Inc. (other than amounts which are “restricted cash” within the meaning of US GAAP, including cash and cash equivalents which are the subject of Security in favour of any party (other than Transaction Security); this exclusion shall however not apply to Security in favour of any relevant account bank constituted by (i) application of standard terms and conditions of financial institutions, (ii) other standard and customary terms and conditions or (iii) operation of law, in each case in respect of accounts which are not subject to any requirement to maintain a minimum balance on such accounts), FoundryCo and of all of their respective Subsidiaries for any periods during which the consolidated results of FoundryCo must be consolidated with those of AMD Inc. for the purposes of the financial statements referred to in paragraph (a) of Clause 18.1 (*Financial Statements*) in accordance with US GAAP, calculated employing the same method applied in calculating the annual audited and quarterly unaudited consolidated financial statements of AMD Inc. in accordance with the terms of the Guarantee Agreement, less the aggregate amount of all outstandings under any third-party revolving credit facility agreement (or third party term loan agreement for borrowed money with an original maturity of up to one (1) year) of AMD Inc. and any member of the Group.

“**Group Structure Chart**” means the chart entitled “The Foundry Company - Legal Structure (1)” showing all members of the FoundryCo Group and their respective shareholdings in each of their Subsidiaries, to be provided pursuant to the terms of the Amendment Agreement.

“**Guarantee Agreement**” means a guarantee agreement entered into on 21 April 2004, as amended on 10 October 2006 and as further amended on the Amendment Date and made between AMD Inc., FoundryCo, Dutch BV 1, the Borrower, the Security Agent and the Facility Agent (acting for the Lenders) containing the irrevocable and unconditional joint and several guarantee granted by the Guarantors for the benefit of each Finance Party in

respect of the punctual performance by the Borrower of all its payment obligations under the Finance Documents (up to the Facility Amount and all interest and other amounts payable under the Finance Documents to which the Borrower is a party), including an indemnity in relation to repayment claims made in connection with any public allowances or grants (*Investitionszulagen/Investitionszuschüsse*).

“**Guarantors**” means AMD Inc. and FoundryCo.

“**Holding Company**” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“**Information Memorandum**” means the information memorandum dated 10 February 2004 concerning the Borrower and certain members of the Group, prepared by Dresdner Kleinwort Wasserstein using information provided by the Borrower and the Guarantor in relation to the Project, agreed between the Mandated Lead Arrangers and the Borrower, approved by the Borrower and distributed by Dresdner Kleinwort Wasserstein on behalf of the Mandated Lead Arrangers and the Borrower prior to the Signing Date to the Original Lenders.

“**Initial Margin**” means two (2.00) *per cent. per annum*.

“**Insurance Adviser**” means Willis Limited, Aon Risk Services Inc. of Northern California Insurance Services or any person who replaces them as Insurance Adviser from time to time with the consent of the Majority Lenders and the Borrower.

“**Insurance Proceeds**” means the total cash proceeds of any insurance claim intended to compensate for damage to any asset of the Borrower (excluding proceeds received in respect of insurance claims for (i) interruption of business or (ii) loss of inventory) received by it in EUR (or if not received in EUR, it's equivalent in EUR based on the Facility Agent's Spot Rate of Exchange on the date of receipt), after deducting:

- (a) any reasonable out of pocket costs and expenses incurred by the Borrower or any other member of the FoundryCo Group acting on behalf of the Borrower in relation to such a claim;
- (b) any reasonable costs incurred by the Borrower or any other member of the FoundryCo Group acting on behalf of the Borrower in connection with the adjustment or settlement of any such claim;
- (c) the unpaid balance of any Permitted Indebtedness which must be repaid by the seller on such loss (together with any premium, interest, penalties or fees required to be paid in connection therewith);
- (d) proceeds relating to third party claims which are applied towards meeting such claims; and
- (e) Taxes paid (or reasonably estimated to be payable) by the Borrower or any other member of the FoundryCo Group acting on behalf of the Borrower in respect of such claims.

“**Insurance Report**” means the report referred to in paragraph (c) of the definition of “**Report**”.

“Intellectual Property” means any and all rights and interests existing now or in the future in any part of the world in or relating to registered and unregistered trade marks and service marks, domain names, patents, registered designs, utility models, trade names, business names, registered or unregistered copyrights in published works, inventions registered or unregistered, data base rights, know-how, any other intellectual property rights and any applications for any of the foregoing and any goodwill therein.

“Intellectual Property Rights” means any rights of an Obligor to Intellectual Property.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.6 (*Default Interest and Penalty*).

“Joint Venture” means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

“Land Charge” means all documents to be executed by the Borrower required for the creation of a first ranking land charge in chapter III over all real property of the Borrower located at Wilschdorfer Landstrasse, 01109 Dresden, partial area of approximately 199,000 square meters of the parcel (*Flurstück*) 121/5 in the communal district Wilschdorf, currently file 851 of the land register at the land registry Dresden for Wilschdorf and the security purpose agreement (*Zweckbestimmungserklärung*) in relation to such land charge.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 22 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

“LIBOR” means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Date for the offering of deposits in Dollar for a period comparable to the Interest Period of the Relevant Loan.

“License Agreement” means the perpetual license agreement dated on or about the Amendment Date and made amongst AMD Inc., FoundryCo, Dutch BV 1, AMD Fab 36 Holding GmbH and the Borrower, all listed in Schedule 13 (*Project Documents*).

“Limited Partners” means:

- (a) AMD Fab 36 Holding GmbH (an indirectly wholly-owned Subsidiary of FoundryCo) with a minimum holding of at least fifty point one (50.1) per cent. of the capital in the Borrower; and

(b) AMD Fab 36 Admin GmbH (a wholly-owned, direct Subsidiary of AMD Fab 36 Holding GmbH).

“**LMA**” means the Loan Market Association.

“**LMB Share Transfer Agreement**” means the notarial share sale and transfer agreement dated on or about the Amendment Date between Leipziger Messe GmbH as seller and New German KG as purchaser in respect of the sale and transfer of all shares in LM Beteiligungsgesellschaft mbH.

“**Loan**” means a loan made or to be made by way of a cash advance under the Facility or the principal amount outstanding for the time being of that loan.

“**Majority Lenders**” means:

(a) if there are no Outstandings, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}\%$ of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}\%$ of the Total Commitments immediately prior to the reduction); or

(b) at any other time, a Lender or Lenders whose participations in the Outstandings aggregate more than $66\frac{2}{3}\%$ of all the Outstandings.

“**Management Plan**” means each management plan delivered by the Borrower to the Facility Agent pursuant to paragraph (c) of Clause 18.1 (*Financial Statements*).

“**Management Service Agreement**” means the agreement dated 31 October 2003, as amended on or about the Amendment Date and made amongst the Borrower and AMD Saxony Limited Liability Company & Co. KG and listed in Schedule 13 (*Project Documents*).

“**Mandatory Cost**” means the percentage rate *per annum* calculated by the Facility Agent in accordance with Schedule 4 (*Mandatory Cost Formula*).

“**Margin**” means the percentage rate *per annum* determined in accordance with Clause 8.2 (*Margin Ratchets*) to Clause 8.4 (*No Margin Ratchets in Events of Default*).

“**Material Adverse Effect**” means a material adverse effect on:

(a) the business, assets, condition (financial or otherwise) or operation of any Obligor;

(b) the ability of any Obligor to perform or comply with its obligations under the Finance Documents; or

(c) the validity, legality or enforceability of the Finance Documents or any rights or remedies of any Finance Party under the Finance Documents (including the perfection or priority of any material part of any Security created pursuant to the Security Documents).

“**Material Contracts**” means the documents listed in Schedule 16 (*The Material Contracts*) as at the date of this Agreement, and any other documents designated as such by the Majority Lenders (acting through the Facility Agent) and the Borrower, and “**Material Contract**” means any of them.

“**Minimum Cash**” has the meaning ascribed to such term in Clause 20.18 (*Minimum Cash Balances*).

“**Minimum Reserve Cost**” means, in respect of a Lender, any Mandatory Cost, including the cost (if any) of its complying with any reserve asset, liquidity or other regulatory requirements affecting it, expressed as a percentage rate *per annum*.

“**Month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) for the purpose of determining the last day of an Interest Period, if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules (a) to (c) will only apply to the last Month of any period.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Net Proceeds**” means, in relation to:

- (a) any disposal of an asset by the Borrower, the total Cash or Cash Equivalent proceeds of such disposal in EUR (or if not received in EUR, its equivalent in EUR based on the Facility Agent’s Spot Rate of Exchange on the date of receipt) received by the Borrower, after deducting:
 - (i) any reasonable out of pocket costs and expenses incurred by the Borrower in respect of such disposal;
 - (ii) the unpaid balance on the date of such disposal of any Permitted Indebtedness which must be repaid by the Borrower on such disposal (together with any premium, interest, penalties or fees required to be paid in connection therewith); and
 - (iii) Taxes paid (or reasonably estimated to be payable) in connection with such disposal; and/or
- (b) any Debt Issue or any Equity Issue, the total Cash or Cash Equivalent proceeds of such Debt Issue or any Equity Issue received by the Borrower, after deducting:
 - (i) any reasonable out of pocket costs and expenses incurred by the Borrower in respect of such issue (including underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses); and

(ii) Taxes paid (or reasonably estimated to be payable) by the Borrower in connection with such issue.

“**New German KG**” means AMD Management Services Limited Liability Company & Co. KG, a German limited partnership with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRA 7256.

“**Obligor**” means the Borrower or any of the Guarantors.

“**Original Lender**” means any of the financial institutions listed in Schedule 1 (*The Original Lenders*).

“**Outstandings**” means, at any time, the sum of the EUR Outstandings and, converted for that purpose into EUR at the Facility Agent’s Spot Rate of Exchange at the relevant time, the USD Outstandings (which amounts will also include, without double-counting, any sums deposited into the Escrow Account).

“**Participating Member State**” means any member state of the European Communities that adopts or has adopted the EUR as its lawful currency in accordance with legislation of the European Union relating to European Monetary Union.

“**Participation**” means each of the interests of the silent partners in the silent participation (*stille Gesellschaft*) between the Borrower and the Limited Partners.

“**Participation Agreement**” means the agreement (*Vertrag über die Errichtung einer stillen Gesellschaft*) dated 21 April 2004, as amended on 19 April 2005 and by the Exit Agreement and as further amended by an amendment agreement dated on or about the Amendment Date, and made between the Borrower and Leipziger Messe GmbH and the Limited Partners.

“**Partnership Agreement**” means the partnership agreement (*Kommanditgesellschaftsvertrag*) of the Borrower dated 21 April 2004, as amended on 19 April 2005 and by the Exit Agreement and as further amended by an amendment agreement dated on or about the Amendment Date.

“**Partnership Interest Pledges**” means the agreements providing for first ranking pledges over the partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower granted by:

- (a) AMD Fab 36 Holding GmbH dated 20 April 2004;
- (b) AMD Fab 36 Admin GmbH dated 20 April 2004;
- (c) the General Partner dated 20 April 2004, as amended by the Security Amendment Agreement, and
- (d) LM Beteiligungsgesellschaft mbH dated 20 April 2004,

relating to all present and future partnership interests held by such partners.

“**Party**” means a party to this Agreement and includes its successors in title, permitted assigns and permitted transferees.

“Permitted Business” means, in relation to the Borrower, the business of a silicon foundry, including the design, development, manufacture, marketing and sales of integrated circuits, together with any activity which is ancillary or incidental to any of the above.

“Permitted Disposal” means:

- (a) disposals made on arm’s length terms in the ordinary course of trading of the disposing entity;
- (b) disposals of assets exchanged for or replaced by other assets comparable or superior as to type, value and quality;
- (c) disposals on arm’s length terms of any surplus or obsolete or worn-out assets which in the reasonable opinion of the Borrower are not required for the efficient operation of the business of the Borrower;
- (d) use of cash where such use is not otherwise prohibited by the Finance Documents;
- (e) disposals constituted by the creation of any Permitted Security;
- (f) disposals where the proceeds are applied in accordance with the terms of Clause 7.2 (Mandatory Prepayment from Asset Disposals); or
- (g) disposals, other than any permitted under paragraphs (a) to (f) above, where the higher of the book value or the consideration received (when aggregated with the higher of the book value or the consideration received for any other sale, lease, transfer or other disposal falling within this paragraph (g)) does not exceed twenty-five million (25,000,000) EUR (or its equivalent in another currency or currencies at the date of such disposal) in any financial year.

“Permitted Distributions” means:

- (a) provided that no:
 - (i) Default has occurred (only to the extent that the occurrence of such Default is not dependent on a determination under any of the Finance Documents); or
 - (ii) Event of Default has occurred,

and is continuing (unless otherwise determined by the Majority Lenders), (A) distributions by the Borrower in amounts necessary to permit the Limited Partners, or any Holding Company of the Limited Partners on their behalf, to pay when due and payable any amount of German income taxes required to be paid by the Limited Partners on their income on the annual profits of the partnership as partners of the Borrower and on the annual profits from the Participation and (B) provided that the Credit Rating at the date of such distribution is B3 or better by Moody’s and B- or better by Standard & Poor’s, distributions (by way of dividends, repurchase, redemption or otherwise) by the Borrower to AMD Fab 36 Holding GmbH or any Holding Company or Affiliate thereof on its behalf, in amounts not exceeding, in the aggregate, the Excess Contributed Capital Amount other than Excess Contributed Capital Amounts which have been made available pursuant to paragraph (b) (iv) below;

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- (b) provided that no Default or Event of Default has occurred and is continuing (unless otherwise determined by the Majority Lenders):
 - (i) payments of principal under the Revolving Credit Agreement made in compliance with the provisions of the Subordination Agreement, any payment in accordance therewith being subject to a Credit Rating at the date of such payment of B3 or better by Moody's and B- or better by Standard & Poor's, or other relevant payments permitted under the Subordination Agreement; and
 - (ii) payments made to the General Partner in an aggregate amount of up to the equivalent of USD75,000 per annum (plus applicable VAT).

"Permitted Indebtedness" means any Financial Indebtedness:

- (a) arising under or permitted pursuant to the Finance Documents or Project Documents;
- (b) to the extent that such Financial Indebtedness is subordinated on terms acceptable to the Majority Lenders (acting reasonably) or pursuant to the Subordination Agreement;
- (c) other indebtedness arising under any Existing Indebtedness, provided that such Financial Indebtedness and/or indebtedness is repaid or prepaid before the date of initial Utilisation;
- (d) arising under the Revolving Credit Agreement or a Subordinated Loan Agreement;
- (e) arising under and permitted by Clause 20.25 (Treasury Transactions);
- (f) to which the Majority Lenders shall have given their prior written consent;
- (g) in respect of current accounts payable and accrued expenses incurred in the ordinary course of business;
- (h) from the first Utilisation Date, incurred for leasing arrangements over assets in the ordinary course of business in an aggregate amount not exceeding in each case:
 - (i) twenty-five million (25,000,000) EUR up to and including 31 December 2007;
 - (ii) fifty million (50,000,000) EUR up to and including 31 December 2008; and
 - (iii) seventy-five million (75,000,000) EUR thereafter;
- (i) without double counting, arising under any guarantee or indemnity referred to in paragraph (b) of the definition of "Permitted Loans and Guarantees"; or
- (j) not falling within paragraphs (a) to (i) above provided that the aggregate amount of Financial Indebtedness, performance bonds, surety bonds and contingent obligations incurred in the ordinary course of business by the Borrower falling within this paragraph (j) does not exceed ten million (10,000,000) EUR (or its equivalent in another currency or currencies on the date it was incurred) at any time.

“Permitted Loans and Guarantees” means:

- (a) any loan, credit or other financial accommodation arising under or permitted pursuant to the Transaction Documents; and
- (b) any guarantee or indemnity given by the Borrower in the ordinary course of business in respect of indebtedness or Financial Indebtedness pursuant to paragraphs (c), (e) (to the extent not exceeding the ten million (10,000,000) EUR limit set out in paragraph (j), of the definition of “Permitted Indebtedness”) or (g), or any performance bonds, surety bonds or contingent obligations pursuant to paragraph (j), of the definition of “Permitted Indebtedness” with a term not exceeding the due date of any such indebtedness or Financial Indebtedness, performance bonds, surety bonds or contingent obligations, as applicable.

“Permitted Security” means:

- (a) any of the Security created pursuant to the Security Documents together with such other Security as the Facility Agent may by notice to the Borrower pursuant to this Agreement or a Security Document demand that the Borrower provides for all or any part of its obligations under the Finance Documents;
- (b) any Existing Security, **provided that** such Security is released before the date of initial Utilisation;
- (c) any Security arising by operation of law and in the ordinary course of trading, **provided that** any such Security is discharged within twenty (20) days after having arisen;
- (d) any Security imposed by court order, other than one applied for by the Borrower, **provided that** the amounts secured thereunder relate to:
 - (i) overdue amounts; and
 - (ii) for which the Borrower contests in good faith;
- (e) any retention of title arrangement entered into by the Borrower in the normal course of its trading activities on the counterparty’s standard or usual terms to the extent that such terms are customary;
- (f) any Security over or affecting any asset acquired by the Borrower after the date of this Agreement if:
 - (i) the Security was not created in contemplation of the acquisition of that asset by it;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by it; and
 - (iii) the Security is removed or discharged within two (2) months of the date of acquisition of such asset;
- (g) any pledge over a deposit or any guarantee (up to an aggregate amount not exceeding five (5) *per cent.* of the guaranteed maximum price under the EPC Contract) to collateralise the Borrower’s obligations under the EPC Contract; **provided that**, the Security Agent benefits from a second-ranking pledge over such deposit or from a similar second ranking security interest; and

(h) any Security created in relation to any indebtedness permitted pursuant to paragraph (j) of the definition of “**Permitted Indebtedness**”.

“**Prime Bank**” means a financial institution with a rating of not lower than A3 (Moody’s Investor Services, Inc.) or A- (Standard & Poor’s Corporation).

“**Project**” means the construction and operation of a 300mm silicon wafer microprocessor fabrication facility located at Wilschdorfer Landstrasse, 01109 Dresden to be owned and operated by the Borrower with a planned total capital expenditure (including, without limitation, construction costs) by 31 December 2007 of approximately two billion, four hundred million (2,400,000,000) EUR.

“**Project Documents**” means the documents listed in Schedule 13 (*The Project Documents*) as at the Amendment Date, and any other documents entered into by either Obligor that are not Finance Documents, are required in relation to the Project and are designated as such by the Facility Agent and the Borrower, and “**Project Document**” means any of them.

“**Project Engineer**” means M+W Zander Facility Engineering GmbH or any person who replaces them as Project Engineer from time to time with the consent of the Majority Lenders and the Borrower.

“**Project Works**” means the design, development and construction of the Project at the Site and any other works contemplated in the Project Documents in relation to the Project.

“**Purchase Agreement**” means the purchase agreement dated 21 April 2004, as amended on 19 April 2005 and , by the Exit Agreement, on or about the Amendment Date, made between Leipziger Messe GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH and FoundryCo, concerning partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower (“*Kaufvertrag über Kommanditgesellschaftsanteile*”) and the purchase agreement dated 21 April 2004, as amended on 19 April 2005 and , by the Exit Agreement, on or about the Amendment Date, made between Leipziger Messe GmbH, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, FoundryCo and the Borrower concerning the Participation (“*Kaufvertrag über stille Beteiligungen*”).

“**Qualifying Lender**” means in respect of any payment by the Borrower or any Guarantor which is capable of attracting a Tax Deduction (as defined in Clause 12.1 (*Definitions*)), a Lender which is beneficially entitled to a payment of interest under a Finance Document and which is both a German Qualifying Lender and a US Qualifying Lender.

“**Quarter Date**” means the last day of each Fiscal Quarter.

“**Quotation Date**” means, in relation to any period for which an interest rate is to be determined, (i) (if the currency is Euro) two TARGET Days before the first day of that period and (ii) (if the currency is Dollar) two Business Days before the first day of that period, in each case unless market practice differs in the European interbank market (or if the currency is Dollar, in the London interbank market), in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the relevant interbank market (and if quotations would normally be given by leading banks in the relevant interbank market on more than one day, the Quotation Day will be the last of those days).

“**Real Estate Appraiser**” means Angermann & Lüders GmbH & Co. KG or any person who replaces them as Real Estate Appraiser from time to time with the consent of the Majority Lenders and the Borrower.

“**Reference Banks**” means Commerzbank Aktiengesellschaft, Landesbank Baden-Württemberg and Dresdner Bank AG and the principal offices of such other banks as may be appointed by the Facility Agent in consultation with the Borrower.

“**Relevant Invoice**” means, in relation to a Utilisation Request, each invoice in relation to which that Utilisation Request has been given, as identified in such Utilisation Request and relating to the purchase of Equipment and the payment of costs for Services incurred by the Borrower for the purposes of implementing the Project (in accordance with the Business Plan).

“**Relevant Period**” has the meaning given to it in Clause 19.1 (*Financial Definitions*).

“**Reorganisation**” has the meaning ascribed to that term in the Amendment Agreement and made between, *inter alia*, the Borrower, the Guarantors, the Lenders, the Facility Agent and the Security Agent.

“**Repayment Date**” means each of the dates specified in the table in Clause 6.1 (*Repayment of the Loans*).

“**Repayment Instalment**” means, in relation to each Repayment Date, the amount by which the aggregate principal amount of the EUR Outstandings and the USD Outstandings is to be reduced on that Repayment Date in accordance with paragraph (a) of Clause 6.1 (*Repayment of the Loans*), as reduced, if applicable, in accordance with Clause 7.1 (*Illegality*) to Clause 7.4 (*Mandatory Prepayment from the Escrow Account*) (inclusive), or Clause 7.7 (*Voluntary Prepayment of the Loans*) to 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*) (inclusive).

“**Repeating Representations**” means each of the representations set out in Clause 17.2 (*Status*) to Clause 17.8 (*Governing Law and Enforcement*) (inclusive), Clause 17.11 (*No Default*) to Clause 17.23 (*No Security*) (inclusive) and Clause 17.27 (*Management Plans*) to Clause 17.31 (*Compliance with Laws and Regulations*) (inclusive).

“**Reports**” means:

- (a) the report of the Technical Appraiser dated 26 September 2003 concerning the projected fair market value of the Equipment;
- (b) the report of Arthur D. Little dated 4 November 2003 concerning Project costs, feasibility, state of technology and realisation;
- (c) the report of Willis Limited dated 5 April 2004 confirming that the contemplated insurance cover for the business and assets of the Borrower is sufficient, and the report of Aon Risk Services Inc. of Northern California Insurance Services dated 21 August 2006 setting out the insurance cover for the business and assets of the Borrower in accordance with the requirements of Schedule 17 (*Required Insurance*);
- (d) the market research report from Gartner Dataquest, Inc. dated 8 August 2003; and

(e) the report of the Real Estate Appraiser dated 10 September 2003 concerning the real estate/property and site of the Borrower, each such Report, other than that set out in paragraph (d) above, being addressed to, or permitted to be relied upon by, the Finance Parties, and “**Report**” shall be construed accordingly.

“**Required Insurance**” means the insurance cover under the policies taken out pursuant to the contracts set out in Schedule 17 (*Required Insurance*).

“**Revolving Credit Agreement**” means the revolving credit agreement in an amount of EUR 750,000,000 dated 21 April 2004, as amended on or about the Amendment Date, and made between FoundryCo and the Borrower.

“**Screen Rate**” means:

(a) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, and

(b) in relation to LIBOR, the British Bankers’ Association Interest Settlement Rate for the relevant currency and period,

displayed on the appropriate page of the Telerate screen. If the agreed page is replaced or service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

“**SEC**” means the United States Securities and Exchange Commission or other successor United States governmental authority.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Agency Agreement**” means the security agency agreement dated 20 April 2004, as amended on or about the Amendment Date, made, *inter alia*, between the Borrower, the Guarantors, the General Partner, LM Beteiligungsgesellschaft, AMD Fab 36 Admin GmbH, AMD Fab 36 Holding GmbH and the Finance Parties.

“**Security Amendment Agreement**” means the global amendment agreement dated on or about the Amendment Date made between, *inter alia*, the Borrower, AMD Inc., the General Partner, LM Beteiligungsgesellschaft mbH, AMD Fab 36 Admin GmbH, AMD Fab 36 Holding GmbH and the Finance Parties, in respect of certain changes made to the Security Documents.

“**Security Assignment**” means the assignment agreements dated 20 April 2004 providing for the assignment to the Security Agent of the fixed and current assets of the Borrower.

“**Security Documents**” means:

(a) the Guarantee Agreement;

(b) the Federal/State Guarantee;

(c) the Partnership Interest Pledges;

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- (d) the Share Pledges;
 - (e) the Land Charge;
 - (f) the Security Assignment;
 - (g) the Assignments of Receivables;
 - (h) the Global Assignment of Receivables;
 - (i) the Assignment of Warranties;
 - (j) the Assignment of Material German Contracts;
 - (k) the Assignment of Material US Contracts;
 - (l) the Assignment of Insurance Claims;
 - (m) the Account Pledges;
 - (n) the Assignments of Claims;
 - (o) the Call Option;
 - (p) the Assignment of the AMD Call Options;
 - (q) the Assignment of Service Agreement Claims;
 - (r) the Subordination Agreement;
 - (s) the Security Agency Agreement;
 - (t) the Security Amendment Agreement; and
 - (u) any other document evidencing or creating Security over any asset of the Borrower to secure any obligation of the Borrower to a Finance Party under the Finance Documents or any of them.

“**Security Providers**” means the Federal/State Guarantors and the Obligors (or Subsidiaries of the Obligors), and “**Security Provider**” means any of them.

“**Selection Notice**” means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

“**Services**” means the installation and commissioning of the Equipment and any additional building and installation services associated therewith.

“**Services Agreement**” means the service level agreement concerning certain administrative services to be provided by New German KG dated on or about the Amendment Date and made between New German KG, AMD Fab 36 Holding GmbH and the Borrower.

“**Share Pledges**” means the following agreements providing for (save for Permitted Security) first ranking pledges over:

- (a) the shares of AMD Fab 36 Holding GmbH dated 20 April 2004 and certain future shares of AMD Fab 36 Holding GmbH dated on or about the Amendment Date;
- (b) the shares of AMD Fab 36 Admin GmbH dated 20 April 2004, as amended on or about the Amendment Date;
- (c) the limited liability interests of the General Partner dated 20 April 2004, as amended on or about the Amendment Date; and
- (d) the shares of LM Beteiligungsgesellschaft mbH dated 20 April 2004 and certain future shares of LM Beteiligungsgesellschaft mbH dated on or about the Amendment Date,

relating to all present and future shares held by such partners.

“**Signing Date**” means the date of this Agreement.

“**Site**” means the real property purchased and buildings to be erected at Wilschdorfer Landstrasse, 01109 Dresden in relation to the Project, registered with the Wilschdorf land register at the Dresden local court, district (*Gemarkung*) of Wilschdorf, folio 1019, parcel (*Flurstück*) no. 121/6.

“**Specified Time**” means a time determined in accordance with Schedule 9 (*Timetables*).

“**Standard & Poor’s**” means Standard & Poor’s Corporation.

“**Step Plan**” means the step plan prepared by AMD Inc. in the agreed form, describing the measures to be implemented for the purposes of the Reorganisation, to be provided in accordance with the terms of the Amendment Agreement.

“**Subordinated Loan**” means any loan made to, or debt instrument issued by, the Borrower, under a Subordinated Loan Agreement, the Revolving Credit Agreement or any other document or instrument, which is subordinated to the rights and claims of the Finance Parties in accordance with the Subordination Agreement.

“**Subordinated Loan Agreement**” means any agreement pursuant to which FoundryCo (or a direct or indirect wholly-owned Subsidiary of FoundryCo) provides or has acquired a subordinated loan to the Borrower, which subordinated loan will be subject to the restrictions imposed by Clause 20.20 (*Subordinated Loans*) and Clause 20.21 (*Distributions*).

“**Subordination Agreement**” means the subordination agreement dated 20 April 2004, as amended on or about the Amendment Date, made amongst, *inter alia*, the Borrower, the Guarantors, the General Partner, the Limited Partners and the Finance Parties in relation to the equity and subordinated debt of the Borrower and other claims of the Affiliates of the Borrower.

“**Subsidiary**” means, in relation to any company, corporation or partnership:

- (a) a company, corporation or partnership which is “**controlled**”, directly or indirectly, by and therefore is a “**dependent enterprise**” (*abhängiges Unternehmen*) of the first

mentioned company, partnership or corporation, in the case of the latter, within the meaning of Sec. 17 Stock Corporation Act (*Aktiengesetz*), or which is a “**subsidiary**” (*Tochterunternehmen*) within the meaning of Sec. 290 Commercial Code (*Handelsgesetzbuch*) of such company, corporation or partnership;

- (b) a company, corporation or partnership more than half of the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company, corporation or partnership or more than half of the dividend of which is declared from time to time by the first mentioned company;
- (c) a partnership in which:
 - (i) there is a participation of more than fifty (50) *per cent.* in the assets of such partnership by the first mentioned company, corporation or partnership; or
 - (ii) the first mentioned company, corporation or partnership has the power to (A) cast, or control the casting of, more than fifty (50) *per cent.* of the maximum number of votes that might be cast at a general meeting, (B) appoint or remove all, or the majority of, the directors or other equivalent officers, or (C) give directions with respect to the operating and financial policies which the directors or other equivalent officers thereof are obliged to comply with; or
- (d) in the case of a limited partnership, a partnership in which the general partner has control and the first mentioned company, corporation or partnership has control of the general partner,

and, for this purpose, a company, corporation or partnership shall be treated as being controlled by another if that other company, corporation or partnership is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“**Subsidy Agreement**” means any agreement made by the Borrower or any administrative decision (*Bescheid*) addressed to the Borrower in relation to grants and/or allowances (*Investitionszulagen/Investitionszuschüsse*) in connection with the Project and any statutory or other obligations imposed on the Borrower associated therewith.

“**TARGET**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system commonly known as “TARGET2” which utilises a single shared platform and which was launched on 19 November 2007.

“**TARGET Day**” means any day on which TARGET is open for the settlement of payments in EUR.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Technical Adviser**” means Fraunhofer Institut Siliziumtechnologie (ISIT), Fraunhoferstraße 1, 25524 Itzehoe, or any person who replaces them as Technical Adviser from time to time with the consent of the Majority Lenders and the Borrower.

“**Technical Appraiser**” means Emerald Technology Valuations LLC or any person who replaces them as Technical Appraiser from time to time with the consent of the Majority Lenders and the Borrower.

“**Technical Completion**” means attainment of the following:

- (a) a certificate issued by the Technical Adviser confirming that the Borrower has in place a wafer fabrication process that is suitable for 300mm, high volume production of advanced, competitive microprocessors;
- (b) a certificate issued by the Technical Adviser confirming that the Borrower has achieved a minimum of 325 wafer starts per week on average over a period of four (4) consecutive weeks (the “**Average WSPW**”), and a seventy-five (75) *per cent.* average process yield over the same period of four (4) consecutive weeks (the “**Average Yield**”); and
- (c) cumulative capital expenditures (less write-offs for technically obsolete or unsuitable equipment) of the Borrower greater or equal to one billion (1,000,000,000) EUR, as confirmed by the Auditors.

“**Termination Date**” means 31 March 2011.

“**Total Commitments**” means the aggregate of the Commitments, being seven hundred million (700,000,000) EUR at the Signing Date.

“**Transaction Documents**” means the Finance Documents and the Project Documents and any other document designated as such by the Facility Agent and the Borrower, and “**Transaction Document**” means any of them.

“**Transaction Security**” means any Security for all or any part of the obligations of the Borrower under the Finance Documents or any of them expressed to be created by or pursuant to, or to be evidenced in, the Security Documents or any of them.

“**Transfer Certificate**” means a certificate substantially in one of the forms set out in Schedule 5 (*Form of Transfer Certificates*) or any other form agreed between the Facility Agent and the Borrower.

“**Transfer Date**” means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the Transfer Certificate; and
- (b) the date on which the Facility Agent executes the Transfer Certificate.

“**Treasury Transaction**” means any currency or interest purchase, cap or collar agreement, forward rate agreement, interest rate or currency future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement.

“**Treaties**” means the German Treaty and the US Treaty, and “**Treaty**” means any of them.

“**Treaty State**” means a jurisdiction having both a German Treaty and a US Treaty.

“**Unpaid Sum**” means any sum due and payable but unpaid by the Borrower under the Finance Documents.

“**US GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), as applicable.

“**USD Outstandings**” means, at any time, the aggregate of the outstanding Loans denominated in USD.

“**US Qualifying Lender**” means:

- (a) a Lender incorporated under the laws of the United States or any political sub-division thereof, but only if the Lender is entitled to receive any and all payments under the Finance Documents (subject to completion of any procedural formalities) without a Tax Deduction; or
- (b) a US Treaty Lender.

“**US Treaty**” means a double taxation agreement with the United States which makes provision for full exemption of tax imposed by the United States on interest.

“**US Treaty Lender**” means a Lender which:

- (a) is treated as a resident of a US Treaty State for the purposes of the US Treaty;
- (b) does not carry on business in the United States through a permanent establishment with which that Lender’s participation in a Loan is effectively connected; and
- (c) is entitled under the US Treaty (subject to the completion of any necessary procedural formalities) to receive any and all payments under the Finance Documents without a Tax Deduction (as defined in Clause 12.1 (*Definitions*)).

“**US Treaty State**” means a jurisdiction to which a US Treaty applies.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is made or to be made.

“**Utilisation Request**” means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

“**VAT**” means value added tax and any other tax of a similar nature.

1.2 Interpretation

- (a) Any reference in this Agreement to:
 - (i) **assets**” includes present and future properties, revenues and rights of every description;
 - (ii) the “**Facility Agent**”, any “**Mandated Lead Arranger**”, the “**Reporting Agent**”, the “**Security Agent**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**” or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

- (iii) “**Dresdner Kleinwort**” is a reference to Dresdner Kleinwort, the investment banking division of Dresdner Bank AG;
 - (iv) the “**European interbank market**” means the interbank market for EUR operating in Participating Member States;
 - (v) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, supplemented, modified, renewed, extended, restated or novated;
 - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - (viii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
 - (x) unless a contrary indication appears, a time of day is a reference to Frankfurt am Main time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) If there is any conflict between this Agreement and any other Finance Document, the provisions of this Agreement will prevail.
 - (e) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been remedied or waived.

1.3 **Currency definitions**

In this Agreement:

- (a) “**EUR**” and “**Euro**” denote the single currency of the Participating Member States;
- (b) “**USD**” and “**Dollar**” denote the lawful currency of the United States; and
- (c) “**GBP**” and “**Sterling**” denote the lawful currency of the United Kingdom.

SECTION 2
THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility to be utilised in either EUR or USD in an aggregate amount the Base Currency Amount of which is equal to the Total Commitments.

2.2 Finance Parties' Rights and Obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt. The creation of jointly held assets (*Gesamthandsvermögen*) is excluded.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. PURPOSE

The Borrower shall:

- (a) by way of Utilisations during the Availability Period; and/or
 - (b) for up to a twelve (12) Month period after the expiry of the Availability Period, by way of cash withdrawals from the Escrow Account,
- apply all amounts borrowed by it under the Facility in or towards the payment of the Relevant Invoices (unless the Utilisation(s) are made for the purposes of being deposited into the Escrow Account).

4. CONDITIONS OF UTILISATION

4.1 Initial Conditions Precedent

The Borrower will ensure that within five (5) Business Days of the Signing Date, the Facility Agent will have received all of the documents and other evidence listed in Part I (*Initial Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

4.2 **Conditions Precedent to First Utilisation**

- (a) The Borrower may not deliver the first Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part II (*Conditions Precedent to First Utilisation*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Unless the Borrower is also able to satisfy the requirements of paragraph (a) of Part III (*Further Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), it may only deliver the first Utilisation Request in respect of a Base Currency Amount of no more than four hundred million (400,000,000) EUR.

4.3 **Further Conditions Precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' Participation*) if on the date of any further Utilisation Request and on the proposed Utilisation Date, and the Facility Agent will only be obliged to permit a withdrawal from the Escrow Account (other than as required for investments in permitted Cash Equivalents) if on the date of a request for such withdrawal and on the date of such withdrawal:

- (a) the Facility Agent has received all of the documents and other evidence required by Part III (*Further Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), to the extent applicable, in form and substance satisfactory to the Facility Agent;
- (b) the sum of the (i) Base Currency Amount of the proposed Utilisation, (ii) the total EUR Outstandings and (iii) the total USD Outstandings (converted for that purpose into EUR at the Facility Agent's Spot Rate of Exchange on the date falling four (4) Business Days before the proposed Utilisation Date or, if later, the date on which the relevant Utilisation Request is submitted to the Facility Agent) of all prior Utilisations does not exceed seven hundred million (700,000,000) EUR (less the amount of any prepayments or cancellations);
- (c) no Default is continuing or would result from the proposed Loan; and
- (d) the Repeating Representations made or deemed to be made are true, accurate and correct in all material respects as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, accurate and correct in all material respects on the date originally made or deemed to be made.

4.4 **Maximum Number of Loans**

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than twenty (20) Loans would be outstanding.
- (b) The Borrower may not deliver more than two (2) Utilisation Requests in any single Month.
- (c) The Borrower may not request that a Loan be divided if, as a result of the proposed division, there would be outstanding more Loans than provided for in paragraph (a) above.

**SECTION 3
UTILISATION**

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than at the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period; however, on or before the expiry of the Availability Period, any portion or all of the undrawn Commitments may, at the option of the Borrower, either be:
 - (A) drawn down and deposited into the Escrow Account for future application solely towards the purpose set out in Clause 3 (*Purpose*); or
 - (B) cancelled;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and Amount*);
 - (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*); and
 - (iv) it provides payment instructions.
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and Amount

- (a) The currency specified in a Utilisation Request must be EUR or USD.
- (b) The amount of the proposed Loan must be an amount that is not more than that of the Available Facility and which is a minimum of seven and one half million (7,500,000) EUR (or ten million (10,000,000) USD if the currency selected is USD) and is an integral multiple of two and one half million (2,500,000) EUR (or five million (5,000,000) USD if the currency selected is USD) or, if less, the Available Facility (in case the currency specified in the Utilisation Request is USD, to be determined on the basis of the Facility Agent's Spot Rate of Exchange on the date falling four (4) Business Days before the proposed Utilisation Date), and in any event such that its Base Currency Amount is less or equal to the Available Facility.

5.4 **Lenders' Participation**

- (a) If the conditions set out in this Agreement have been met each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to the making of such Loan.
- (c) The Facility Agent shall determine the Base Currency Amount of each Loan which is to be made in USD and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan, in each case by the Specified Time.

5.5 **Cancellation of the Facility**

If, prior to the date on which it receives a Utilisation Request, the Facility Agent receives a notice of cancellation of the whole or part of the Available Facility which is to take effect under Clause 7.8 (*Voluntary Cancellation*) on a date falling on or after such date (but before the Loan requested in that Utilisation Request has been made), such Available Facility shall be treated, for the purpose of Clause 5.3 (*Currency and Amount*), as if it had already been reduced by the amount of such cancellation (as specified in such notice). Nothing in this Clause 5.5 shall be treated as reducing any Lender's Available Commitment under the Facility for the purposes of Clause 11.1 (*Commitment Fee*) prior to the date on which such cancellation would otherwise take effect pursuant to such cancellation notice.

5.6 **Cancellation of a Lender's Commitment**

If a Lender's Commitment is cancelled under Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*) after the Facility Agent has received a Utilisation Request but before the Loan requested in that Utilisation Request has been made, then, unless the commitment to advance an amount equal to the proportion which such Lender's Commitment bore to the Total Commitments immediately prior to such cancellation taking effect (the "**Affected/Subject Lender's Proportion**") is assumed by, either:

- (a) another Lender or other Lenders, to the extent not exceeding such Lender's or Lenders' Available Commitment; or
- (b) an Eligible Transferee (as defined in and in accordance with Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*), as the case may be) procured by the Borrower,

within one (1) day of receipt of such Utilisation Request, that Loan shall be reduced by the amount of the Affected/Subject Lender's Proportion.

5.7 Selection of Currency

The Borrower shall select the currency of a Loan in a Utilisation Request. A selection of USD as the currency for a Loan is not possible when

- (a) at the time of the selection, the Group Consolidated Cash, as shown in the most recent financial statements and certificates to be provided to the Facility Agent pursuant to the terms of the Guarantee Agreement amounts to less than five hundred million (500,000,000) USD; or
- (b) if the requirements for disapplying paragraph (a) of Clause 20.35 (*Balancing Payments to and from Cash Reserve Account*) pursuant to paragraph (b) of Clause 20.35 are not fulfilled, an amount of less than the equivalent (in USD) of 5 per cent of total USD Outstandings after the proposed Utilisation has been paid into and is standing to the credit of the Cash Reserve Account.

5.8 Unavailability of Currency

If before any Quotation Day:

- (a) a Lender notifies the Facility Agent that USD is not readily available to it in the amount required; or
- (b) a Lender notifies the Facility Agent that compliance with its obligation to participate in a Loan in USD would contravene a law or regulation applicable to it, the Facility Agent will give notice to the Borrower to that effect by 11 a.m. on that Quotation Day. In this event, any Lender that gives notice pursuant to this Clause 5.8 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

5.9 No Re-conversion

Loans denominated in USD cannot be reconverted to EUR, except as provided in Clause 20.36 (*Reconversion of USD Outstandings*).

5.10 Facility Agent's Calculations

Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of the Loans

- (a) Subject to the other provisions of this Agreement, the Borrower shall repay on each Repayment Date an amount or amounts such that the amount of all the EUR Outstandings and all the USD Outstandings is reduced by an amount equal to the percentage of the aggregate amount of all such Loans as calculated in paragraph (b) below.
- (b) The Borrower shall reduce the amount of all the EUR Outstandings and USD Outstandings by an amount equal to the percentage of the aggregate amount of all such Loans on 29 September 2007 which is specified in Column B and appears opposite the relevant Repayment Date in the table below:

<u>Column A</u>	<u>Column B</u>
<u>Repayment Date</u>	<u>Percentage Repaid</u> <u>(from the aggregate amount of</u> <u>all Loans as at the end of the</u> <u>Availability Period)</u>
30 September 2007	3.00%
30 December 2007	3.00%
31 March 2008	5.00%
30 June 2008	5.00%
30 September 2008	5.00%
30 December 2008	5.00%
31 March 2009	7.50%
30 June 2009	7.50%
30 September 2009	7.50%
30 December 2009	7.50%
31 March 2010	8.00%
30 June 2010	8.00%
30 September 2010	9.00%
30 December 2010	9.00%
31 March 2011	10.00%
	100.00%

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- (c) Each repayment which is to be made under paragraph (b) above on a Repayment Date shall be made:
 - (i) firstly, by repaying on such Repayment Date EUR Outstandings and USD Outstandings having Interest Periods ending on such Repayment Date in accordance with paragraph (d) below, if applicable; and
 - (ii) secondly, by repaying the other Loans in accordance with paragraph (d) below, if applicable.
 - (d) If the aggregate amount of all the Outstandings having an Interest Period ending on a Repayment Date exceeds the Repayment Instalment due on that date, then the Borrower may, by not less than four (4) Business Days' prior notice to the Facility Agent, select which of those Loans will be wholly or partially repaid to enable the repayment required under paragraph (b) above to occur; **provided that**, if the Borrower fails to give such notice, the Facility Agent shall select the Loans to be wholly or partially repaid as aforesaid.
 - (e) The Borrower may not reborrow any part of the Facility which is repaid.
 - (f) EUR Outstandings shall be repaid in EUR. USD Outstandings shall be repaid in USD. The same applies to prepayments and payments of interest.

6.2 Supplemental Cash Reserves

If on any scheduled Repayment Date the Credit Rating is Caa2 or lower by Moody's or CCC or lower by Standard & Poor's, the Borrower shall, in accordance with the directions of the Facility Agent (acting on the instructions of the Majority Lenders), ensure that the Cash reserves to be held in accordance with Clause 20.18 (*Minimum Cash Balances*) shall be increased as provided in paragraphs (a) and (b) of that Clause.

6.3 Extension of Termination Date

- (a) The Borrower may at any time after the end of the Availability Period, **provided that** the aggregate value of all Outstandings is no more than EUR420,000,000, by written notice (the "**Renewal Request**") request that the Termination Date be extended to the Extended Termination Date in accordance with a new proposed repayment schedule ("the **New Repayment Schedule**") replacing the table set out in paragraph (b) of Clause 6.1 (*Repayment of the Loans*) (the "**Extension**"), provided such Renewal Request is received by the Facility Agent no earlier than one hundred and twenty (120) days and no later than ninety (90) days prior to the date on which the Borrower wants the Extension to take effect (the "**Effective Date**").
- (b) The Facility Agent shall promptly notify each Lender and the Federal/State Guarantors of its receipt of a Renewal Request. Each Lender shall have the right, in its absolute discretion, to accept or decline any Renewal Request and the Federal/State Guarantors shall have the right to veto the Extension. A Lender and

the Federal/State Guarantors which agree(s) to the Extension as requested by a Renewal Request shall notify the Facility Agent of its agreement within sixty (60) days after the date on which the Facility Agent has notified the Lenders and the Federal/State Guarantors (the “**Renewal Decision Date**”). If a Lender or the Federal/State Guarantors do not so notify the Facility Agent, it/they will be deemed to have declined or vetoed the Extension.

- (c) If all the Lenders, together with the Federal/State Guarantors, agree to the Extension, then:
 - (i) on the Effective Date, the date for the repayment of the participations in the Loans of the Lenders as at the Termination Date will be extended to the Extended Termination Date in accordance with the New Repayment Schedule; and
 - (ii) the Borrower shall, on the first (1st) Business Day after the Effective Date, pay to the Facility Agent for each Lender an extension fee in an amount which shall have been agreed amongst the Borrower and the Lenders prior to the Renewal Decision Date.
- (d) If any Lender or the Federal/State Guarantors decline to agree to or vetoes the Extension, the Borrower shall, on the Termination Date, repay in full the Loans.
- (e) A Renewal Request is irrevocable and may not be withdrawn.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

- (a) A Lender must notify the Facility Agent promptly if it becomes aware that it is unlawful in any applicable jurisdiction for that Lender (an “**Affected Lender**”) to perform any of its obligations under a Finance Document or to fund or maintain its share in any Loan to the Borrower.
- (b) After notification under paragraph (a) above and upon the Facility Agent promptly notifying the Borrower:
 - (i) the Borrower must repay or prepay the share of the Affected Lender in each Loan made to it on the date specified in paragraph (c) below; and
 - (ii) the Commitment of the Affected Lender in the relevant Facility will be immediately cancelled.
- (c) The date for repayment or prepayment of an Affected Lender’s share in a Loan will be the earliest of the following dates:
 - (i) the last day of the Interest Period for that Loan occurring after the Facility Agent has notified the Borrower;
 - (ii) the date specified by the Affected Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law); and
 - (iii) the next Repayment Date.

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- (d) Upon the occurrence of the events set out in paragraphs (a) and (b) above, so long as:
- (i) no Event of Default shall have occurred and be continuing; and
 - (ii) the Borrower has obtained a commitment from another Lender or bank, financial institution, trust, fund or other entity which intends to become a Party in accordance with Clause 22 (*Changes to the Lenders*) that is a Qualifying Lender (an “**Eligible Transferee**”) to purchase at par the Affected Lender’s Loans and assume the Affected Lender’s Commitments and all other obligations of the Affected Lender under the relevant Finance Documents, the Borrower may request of the Affected Lender, and the Affected Lender shall in good faith consider such request, that it transfer all of its Loans and Commitments to such Eligible Transferee in accordance with Clause 22.5 (*Procedure for Transfer*); **provided that**, prior to or concurrently with such replacement:
 - (iii) the Borrower or the Eligible Transferee shall have paid to the Affected Lender all amounts due to it under this Agreement;
 - (iv) the Borrower or the Eligible Transferee shall have paid to the Facility Agent the transfer fee of two thousand (2,000) EUR required under Clause 22.3 (*Assignment and Transfer Fee*); and
 - (v) all the requirements for such transfer set out in Clause 22.5 (*Procedure for Transfer*) shall have been fulfilled.

7.2 **Mandatory Prepayment from Asset Disposals**

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall ensure that the Net Proceeds arising from the disposal of any asset (including Equipment) by the Borrower are paid to the Facility Agent promptly upon the receipt and applied in prepayment of the EUR Outstandings and the USD Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).
- (b) Paragraph (a) shall not apply to Net Proceeds arising from any disposal referred to in paragraph (a) above:
 - (i) to the extent that such Net Proceeds are promptly upon receipt re-invested in:
 - (A) similar or like assets (including Equipment) of a comparable or superior quality, type or value in the ordinary course of business; or
 - (B) other capital expenditure provided in the Business Plan (as modified by subsequent Management Plans),within a period of one hundred and eighty (180) days from the date of receipt of such Net Proceeds by the Borrower; **provided however**, that the Borrower shall be deemed to have applied Net Proceeds in accordance with this Clause 7.2 prior to the expiration of such one hundred and eighty (180) days if and to the extent it has presented to the Facility Agent one or more *bona fide* purchase orders for property or assets to be used in connection with the Project;

- (ii) to the extent arising from Permitted Disposals; or
 - (iii) if the Net Proceeds per disposal do not exceed ten million (10,000,000) EUR (or its equivalent in another currency on the date of such disposal) or, when aggregated with the Net Proceeds received from any other disposals of assets made in the immediately preceding twelve (12) calendar month period (excluding the Net Proceeds from disposals falling within sub-paragraphs (i) or (ii) above), do not exceed thirty million (30,000,000) EUR (or its equivalent in another currency on date of such disposals).
- (c) The Borrower shall be entitled, during the period of one hundred and eighty (180) days from the date of receipt of such Net Proceeds, to apply such Net Proceeds in accordance with paragraph (b)(i) above. Any amounts not so applied during such one hundred and eighty (180) day period shall thereafter be paid to the Facility Agent and applied in prepayment of the EUR Outstandings and the USD Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).

7.3 **Mandatory Prepayment from Insurance Proceeds**

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall ensure that any Insurance Proceeds received by it are paid to the Facility Agent promptly upon the receipt of such Insurance Proceeds and applied in prepayment of the EUR Outstandings and the USD Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).
- (b) Paragraph (a) shall not apply to any Insurance Proceeds unless the Insurance Proceeds exceed five million (5,000,000) EUR (or its equivalent in another currency upon the date of their receipt) or, when aggregated with the Insurance Proceeds received by it from claims made in the immediately preceding twelve (12) calendar month period (excluding the Insurance Proceeds from disposals falling within paragraphs (c) below), exceed twenty-five million (25,000,000) EUR (or its equivalent in another currency upon the date of their receipt).
- (c) Paragraph (a) shall not apply to any Insurance Proceeds to the extent that such Insurance Proceeds are applied towards:
- (i) the replacement and/or reinstatement of the assets with similar or like assets (including Equipment) of a comparable or superior quality, type or value and/or repair of the assets in respect of which the relevant insurance claim was made (or to refinance any expenditure incurred in the replacement, reinstatement and/or repair of such assets); or
 - (ii) other capital expenditure provided in the Business Plan (as modified by subsequent Management Plans),
- in either case, within a period of one hundred and eighty (180) days from the date of receipt of such Insurance Proceeds by the Borrower (or the Borrower has entered into binding agreements to apply such Insurance Proceeds within such one hundred and eighty (180) day period).

- (d) The Borrower shall be entitled, during the period of one hundred and eighty (180) days from the date of its receipt of such Insurance Proceeds, to apply such Insurance Proceeds in accordance with paragraph (c) above. Any sums not so applied during the one hundred and eighty (180) day period shall thereafter be paid to the Facility Agent and applied in prepayment of the EUR Outstandings and the USD Outstandings in accordance with Clause 7.5 (*Application of Prepayments*).

7.4 **Mandatory Prepayment from the Escrow Account**

On the date falling twelve (12) Months after the end of the Availability Period, any and all sums remaining in the Escrow Account shall be immediately applied in prepayment of the EUR Outstandings and the USD Outstandings in accordance with Clause 7.5 (*Application of Prepayments*), and the Facility Agent shall be entitled to take all action necessary to effect such application.

7.5 **Application of Prepayments**

- (a) Any amounts paid to the Facility Agent in accordance with Clause 7.2 (*Mandatory Prepayment from Asset Disposals*), Clause 7.3 (*Mandatory Prepayment from Insurance Proceeds*) and Clause 7.4 (*Mandatory Prepayment from the Escrow Account*) shall be applied in prepayment of the EUR Outstandings and the USD Outstandings and reduce the Borrower's repayment obligations in inverse order of maturity, and pro rata (the relevant ratio to be calculated on the basis of the Facility Agent's Spot Rate of Exchange) in respect of EUR Outstandings and USD Outstandings in each case.
- (b) Any mandatory prepayment of the Loans in accordance with this Clause 7 shall:
- (i) firstly, be applied to outstanding Loans in the order provided therefor in the applicable provision of this Clause 7; and
 - (ii) secondly, reduce (and there shall be a corresponding cancellation in) the Available Facility.
- (c) For the purpose of determining the Lenders' Available Commitments and for determining the Current Limit (as that term is defined in Clause 20.35 (*Balancing Payments to and from Cash Reserve Account*)) at any relevant time, prepayments as applied to USD Outstandings shall be taken into account with the EUR equivalent of the relevant amount to be prepaid converted into USD on the basis of the Facility Agent's Spot Rate of Exchange on the date of prepayment.

Any cancellation, except in the case of a cancellation pursuant to Clause 7.1 (*Illegality*) or Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*), shall reduce the Commitments of the Lenders rateably. No amount so cancelled may be reborrowed.

7.6 **Date for Prepayment**

If the provisions of Clause 7.1 (*Illegality*) (subject to the limitations of paragraph (c) of Clause 7.1) to Clause 7.3 (*Mandatory Prepayment from Insurance Proceeds*) (inclusive) would require the prepayment of a Loan otherwise than on the last day of an Interest Period relating to that Loan, the Borrower may, by written notice to the Facility Agent (to be received not less than five (5) Business Days prior to the date on which such prepayment

would be required to be made (but for this Clause 7.6)), request that the amount of such prepayment be applied by the Facility Agent in prepayment of the relevant Loan on the last day of the then current Interest Period relating to that Loan.

7.7 Voluntary Prepayment of the Loans

- (a) Effective from and after the date of Closing, the Borrower may prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the relevant Loan by a minimum amount of seven and one half million (7,500,000) EUR (or ten million (10,000,000) USD in case of Loans denominated in USD) and represents an integral multiple of two and one half million (2,500,000) EUR (or five million (5,000,000) USD in case of Loans denominated in USD), or, if less, the remaining amount of that Loan) on the last day of any Interest Period applicable to such Loan, upon at least ten (10) Business Days' irrevocable written notice to the Facility Agent and specifying the principal amount of such prepayment and the Business Day on which such prepayment shall occur, upon:
- (i) the payment of the prepayment fee set out in Clause 7.8 (*Prepayment Fee*); and
 - (ii) the payment of all accrued but unpaid interest in respect of the principal amount of the Loan prepaid.
- (b) Any prepayment under this Clause 7.7 made in EUR shall be immediately applied in satisfaction of the EUR Outstandings, and any prepayment made in USD shall be immediately applied in satisfaction of the USD Outstandings, in each case on a *pro rata* basis across all scheduled repayment amounts in the relevant currency.
- (c) For the purpose of determining the Lenders' Available Commitments and for determining the Current Limit (as that term is defined in Clause 20.35 (*Balancing Payments to and from Cash Reserve Account*)) at any relevant time, prepayments in respect of USD Outstandings shall be taken into account with the EUR equivalent of the relevant amount to be prepaid converted into USD on the basis of the Facility Agent's Spot Rate of Exchange on the date of prepayment.

7.8 Prepayment Fee

- (a) If the Borrower prepays for any reason (whether voluntarily or otherwise) any of the outstanding Loans prior to the scheduled date on which such principal amount falls due, the Borrower shall pay to the Facility Agent, for the account of the Lenders, a prepayment fee determined in accordance with the following table; provided that, no such prepayment fee will be required in respect of a prepayment pursuant to Clause 7.1 (*Illegality*):

Period during which prepayment occurs	Prepayment fee
On or prior to the first anniversary of the Utilisation Date of the applicable Loan	two (2) <i>per cent.</i> of the principal amount of the Loan(s) prepaid
after the first but on or prior to the second anniversary of the Utilisation Date of the applicable Loan	one (1) <i>per cent.</i> of the principal amount of the Loan(s) prepaid
after the second anniversary of the Utilisation Date of the applicable Loan	zero (0) <i>per cent.</i> of the principal amount of the Loan(s) prepaid

- (b) For the purposes of paragraph (a) above, the Utilisation Date of any Loans drawn under the Facility and paid into the Escrow Account shall be the date on which such funds are withdrawn from the Escrow Account; provided that, the total prepayment fee due in respect of any such Loan will be reduced by the aggregate amount of Margin paid in respect of that Loan while held in the Escrow Account.

7.9 **Voluntary Cancellation**

- (a) Effective from and after the date of Closing, the Borrower may cancel the whole or any part of the Available Facility (being a minimum amount of seven and one half million (7,500,000) EUR and representing an integral multiple of two and one half million (2,500,000) EUR or, if less, the remaining amount of the Available Facility) upon at least ten (10) Business Days' irrevocable written notice to the Facility Agent and upon payment of the cancellation fee set out in paragraph (b) below. Any amount so cancelled may not be reinstated.
- (b) If the Available Facility is cancelled at any time (whether pursuant to this Clause 7.8 or otherwise), the Borrower shall pay to the Facility Agent, for the account of the Lenders, a cancellation fee in EUR determined in accordance with the following table; **provided that**, no such cancellation fee will be required in respect of any portion of the Available Facility that is cancelled pursuant to Clause 7.1 (*Illegality*):

Period during which cancellation occurs	Cancellation fee
Following the date of Closing but prior to 1 January 2005	one half of one (0.5) <i>per cent.</i> of the principal amount of the Available Facility cancelled
on or after 1 January 2005 but prior to 1 January 2006	three quarters of one (0.75) <i>per cent.</i> of the principal amount of the Available Facility cancelled
on or after 1 January 2006	two (2) <i>per cent.</i> of the principal amount of the Available Facility cancelled

(c) Any cancellation under this Clause 7.9 shall reduce the Commitments of the Lenders rateably.

7.10 Right of Repayment and Cancellation in Particular Circumstances

- (a) If:
- (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax Gross-Up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax Indemnity*) or Clause 13.1 (*Increased Costs*); or
 - (iii) any Lender notifies the Facility Agent of its Minimum Reserve Cost,
- the Borrower may, whilst (in the case of paragraphs (i) and (ii) above) the circumstance giving rise to the requirement or indemnification continues or (in the case of paragraph (iii) above) that Minimum Reserve Cost is greater than zero, give the Facility Agent at least seven (7) Business Days' prior written notice of cancellation of the Commitments of that Lender (the "**Subject Lender**") and its intention to procure the repayment of the Subject Lender's participation in the Loans.
- (b) On receipt of a notice referred to in paragraph (a) above, any Available Commitment of the Subject Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the Subject Lender's participation in the Loan to which such Interest Period relates.
- (d) Upon the occurrence of the events set out in this Clause 7.10, so long as:
- (i) no Event of Default shall have occurred and be continuing; and
 - (ii) the Borrower has obtained a commitment from another Lender or bank, financial institution, trust, fund or other entity which intends to become a Party in accordance with Clause 22 (*Changes to the Lenders*) that is a Qualifying Lender (an "**Eligible Transferee**") to purchase at par the Subject Lender's Loans and assume the Subject Lender's Commitments and all other obligations of the Subject Lender under the relevant Finance Documents,

the Borrower may request of the Subject Lender, and the Subject Lender shall in good faith consider such request, that it transfer all of its Loans and Commitments to such Eligible Transferee in accordance with Clause 22.5 (*Procedure for Transfer*); **provided that**, prior to or concurrently with such replacement:

- (iii) the Borrower or the Eligible Transferee shall have paid to the Subject Lender all amounts due to it under this Agreement;
- (iv) the Borrower or the Eligible Transferee shall have paid to the Facility Agent the transfer fee of two thousand (2,000) EUR required under Clause 22.3 (*Assignment and Transfer Fee*); and

(v) all the requirements for such transfer set out in Clause 22.5 (*Procedure for Transfer*) shall have been fulfilled.

7.11 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and subject to Break Costs, if any.
- (c) The Borrower may not reborrow any part of the Facility that has been prepaid or repaid.
- (d) Subject to applicable laws, the Borrower shall not repay or prepay all or any part of the Loans and it shall not cancel all or any part of the Commitments, except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) Any reduction or cancellation of a Commitment under this Clause 7 shall reduce the Total Commitments by the amount of such reduction or cancellation.

**SECTION 5
COSTS OF UTILISATION**

8. INTEREST

8.1 Calculation of Interest

The rate of interest on each Loan for each Interest Period is the percentage rate *per annum* which is the aggregate of the applicable:

- (a) Margin;
- (b) EURIBOR or, in relation to a Loan denominated in USD, LIBOR; and
- (c) Minimum Reserve Cost, if any,

provided however that for Loans the proceeds of which are disbursed into the Escrow Account, interest on that portion of the Loans the proceeds of which are held in the Escrow Account from time to time shall be determined based on one half (50%) of the Margin *per annum*.

8.2 Margin Ratchets

- (a) Save as provided in paragraph (b) below, the Margin, in relation to a Loan, shall be the percentage rate *per annum* specified in the definition of “**Initial Margin**” in Clause 1.1 (*Definitions*).
- (b) Save as provided in Clause 8.4 (*No Margin Ratchets in Events of Default*) and in accordance with Clause 8.3 (*Margin Changes*), if after six (6) Months from the Signing Date the Credit Rating falls within any of the ranges specified in Column A and Column B below, the Margin, in respect of all Loans, shall be determined by reference to the lowest such Credit Rating allocated by either Moody’s or Standard & Poor’s as set out in the table below:

Column A Moody’s Rating	Column B Standard & Poor’s Rating	Column C Margin <i>per annum</i>
lower than B3	lower than B-	2.50%
B3	B-	2.00%
B2	B	1.875%
B1	B+	1.75%
Ba3	BB-	1.50%
Ba2	BB	1.375%
Ba1	BB+	1.25%
Baa3 or better	BBB- or better	1.00%

provided that, the Initial Margin shall apply to all periods until and including the first (1st) anniversary of the Signing Date; and **further provided that**, in respect of all other periods, in the event that neither Credit Rating is available for more than thirty (30) days, the Margin as calculated above will convert to two and a half (2.50) *per cent. per annum* (the “**Safety Margin**”) with retrospective effect from the date on which both Credit Ratings were no longer available.

8.3 Margin Changes

- (a) Save as provided in this Clause 8.3 and Clause 8.4 (*No Margin Ratchets in Events of Default*), any change in the Margin provided for by Clause 8.2 (*Margin Ratchets*) shall take effect, in relation to all existing and future Loans during the period:
 - (i) from (and including) the date on which the next subsequent Interest Period commences immediately after the conclusion of the current Interest Period during which the Facility Agent has received information of the change in Credit Rating or been informed of the same by the Borrower in accordance with paragraph (a) of Clause 18.4 (*Information: Miscellaneous*),
 - (ii) until (but excluding) the date on which the next subsequent Interest Period commences immediately after the conclusion of the Interest Period during which the Facility Agent receives information of a further change in the Credit Rating or is informed of the same by the Borrower in accordance with paragraph (f) of Clause 18.4 (*Information: Miscellaneous*).
- (b) If at any time:
 - (i) the Margin has been changed pursuant to this Clause 8.3; and
 - (ii) the Facility Agent thereafter discovers that the information or notification that it has received on the Credit Rating is inaccurate and that such change should not have been made,

that change shall be reversed with retrospective effect, the Margin applicable to the Facility shall be that justified by the correct Credit Rating, amounts of interest calculated by reference to the changed Margin (whether or not already paid) shall be recalculated by reference to the Margin applicable to such correct Credit Rating and the Borrower or the Lenders, as the case may be, shall be required to make a payment to the Facility Agent, in such amounts as the Facility Agent may specify, to cover any difference in amounts of interest which should have actually been received by the Lenders following any recalculation. The Facility Agent’s determination of any such difference shall, save in the case of manifest error, be conclusive and the Facility Agent shall provide the Borrower and the Lenders with reasonable details of the calculation of such difference in Margin.

8.4 **No Margin Ratchets in Events of Default**

- (a) No reduction in the Margin provided for by Clause 8.2 (*Margin Ratchets*) shall take effect immediately from the date determined by the Facility Agent as being the date on which an Event of Default has occurred or come into existence. The Margin shall thereafter immediately convert to the Safety Margin (if it is not already) until the date specified by the Facility Agent as being the date on which it has been demonstrated to its reasonable satisfaction that such Event of Default is no longer continuing. The Margin shall thereafter be determined in accordance with Clause 8.2 (*Margin Ratchets*) on the basis of the Credit Rating then applicable.
- (b) The Facility Agent shall promptly notify the Lenders and the Borrower of any determination that an Event of Default has occurred or exists or, as the case may be, that it has been demonstrated to its reasonable satisfaction that such Event of Default is no longer continuing.

8.5 **Payment of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than three (3) Months, on the dates falling at three (3) monthly intervals after the first day of the Interest Period).

8.6 **Default Interest and Penalty**

- (a) The Borrower shall be in payment default (*Verzug*) if it fails to pay any amount (other than in payment of interest and fees, other than the commitment fees under Clause 11.1 (*Commitment Fee*)) payable by it under a Finance Document on its due date. On the occurrence of such a payment default (*Verzug*), interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate one (1) *per cent.* higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 8.6 shall be immediately payable by the Borrower on demand by the Facility Agent.
- (b) If the Borrower fails to pay any amounts in payment of interest or fees under a Finance Document on its due date, the Borrower shall pay liquidated damages to the Facility Agent for the account of the relevant Lenders in an amount determined by the Facility Agent as being, in respect of the period from the due date of payment until receipt by the Facility Agent of the relevant amount, the equivalent of interest at a rate determined in accordance with paragraph (a) above applied to the relevant overdue amount.
- (c) In the circumstances described in paragraph (b) above, the Borrower shall be entitled to demonstrate that the damage actually suffered by the Lenders is inferior to the amounts determined in accordance therewith, and the Lenders shall be entitled to prove and claim for any higher damage.

8.7 **Notification of Rates of Interest**

The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

9. **INTEREST PERIODS**

9.1 **Selection of Interest Periods**

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*), be one (1) Month.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of one (1), two (2), or three (3) Month(s) or any other period agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders). In addition, the Borrower may select an Interest Period of a period of less than one (1) Month, if necessary to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) Subject to Clause 6.3 (*Extension of Termination Date*) and Clause 9.3 (*Non-Business Days*), an Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date relating to such Loan or (if already made) on the last day of its preceding Interest Period.

9.2 **Changes to Interest Periods**

- (a) Prior to determining the interest rate for a Loan, the Facility Agent may shorten an Interest Period for any Loan to ensure that there are sufficient Loans (with an aggregate Base Currency Amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (b) If the Facility Agent makes any of the changes to an Interest Period referred to in this Clause 9.2, it shall promptly notify the Borrower and the Lenders.

9.3 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.4 **Consolidation and Division of Loans**

- (a) Subject to paragraph (b) below, if two or more Interest Periods end on the same date, the Loans in relation thereto will, unless they are not denominated in the same currency or the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

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- (b) Subject to Clause 4.4 (*Maximum Number of Loans*) and Clause 5.3 (*Currency and Amount*), if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided with amounts specified in that Selection Notice, being an aggregate Base Currency Amount equal to the amount of the Loan immediately before its division, having taken into account any repayment to be made on that day.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of Quotations

Subject to Clause 10.2 (*Market Disruption*), if EURIBOR or, if applicable, LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR or LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 Market Disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate *per annum* which is the sum of:
- (i) the Margin;
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate *per annum* the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
 - (iii) the Minimum Reserve Cost, if any, applicable to that Lender's participation in the Loan.
- (b) In this Agreement "**Market Disruption Event**" means:
- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine EURIBOR or, if applicable, LIBOR for the relevant currency and Interest Period; or
 - (ii) before close of business in Luxembourg on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-five (35) *per cent.* of that Loan) that the cost to it of obtaining matching deposits in the European interbank market (in case of EUR) or the London interbank market (in case of any other currency) would be in excess of EURIBOR or, as the case may be, LIBOR.

10.3 Alternative Basis of Interest or Funding

- (a) If a Market Disruption Event occurs and the Facility Agent or the Borrower so requires, the Borrower and the Facility Agent must enter into negotiations for a period of not more than 30 days with a view to agreeing an alternative basis for

determining the rate of interest and/or funding for the affected Loan and any future Loan. The Facility Agent shall inform the Lenders within such thirty (30) day period of any proposal for an alternative basis, to the extent practicable.

- (b) Any alternative basis agreed pursuant to paragraph (a) above will be, with the prior consent of all the Lenders, binding on all the Parties. The Lenders shall use reasonable endeavours to respond to a request for consent by the Facility Agent under this Clause within three (3) Business Days of a request.

10.4 Break Costs

- (a) The Borrower shall, within three (3) Business Days of demand by the Facility Agent acting on behalf of a Lender, pay to the Facility Agent on demand for the account of that Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment Fee

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a commitment fee in EUR computed at the rate of fifty (50) *per cent.* of the Margin on that Lender's Available Commitment under the Facility. In determining the amount of the commitment fee, changes of the Margin pursuant to Clause 8.3 (*Margin Changes*) shall be taken into account from the date on which the Facility Agent has been informed by the Borrower about the relevant change in the Credit Rating pursuant to paragraph (f) of Clause 18.4 (*Information: Miscellaneous*).
- (b) Accrued commitment fees are payable:
 - (i) on the last day of each calendar quarter during the Availability Period;
 - (ii) on the last day of the Availability Period; and
 - (iii) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 Agency Fee

The Borrower shall pay to the Facility Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

11.3 Security Agent Fee

The Borrower shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

11.4 **Extension Fee**

In the event of an Extension under Clause 6.3 (*Extension of Termination Date*), an extension fee will be payable by the Borrower as provided in that Clause.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. **TAX GROSS UP AND INDEMNITIES**

12.1 **Definitions**

(a) In this Clause 12:

“**Protected Party**” means a Lender that is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of, any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“**Tax Payment**” means an increased payment made by the Borrower to a Lender under Clause 12.2 (*Tax Gross-up*) or a payment under Clause 12.3 (*Tax Indemnity*).

(b) In this Clause 12 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

12.2 **Tax Gross-up**

(a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower.

(c) If a Tax Deduction is required by law to be made by the Borrower in respect of a payment to a Lender, the amount of the payment due from the Borrower to that Lender shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) The Borrower is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of any payment which is capable of attracting a Tax Deduction, if on the date on which the payment falls due:

(i) the payment relates to a Tax referred to in paragraph (b), subparagraph (i) of Clause 12.3 (Tax Indemnity);

(ii) the payment could have been made to the relevant Lender without the Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not

or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or

- (iii) the Borrower is able to demonstrate that the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below, including timely providing the documents allowing the Borrower to make the payment without a Tax Deduction.
- (e) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.
- (g) A Lender and the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make a payment to that Lender without a Tax Deduction, and such Lender shall provide to the applicable party or parties on a timely basis the necessary documents allowing the Borrower to make the payment without a Tax Deduction.
- (h) Any difference in the amount which is owed by the Borrower under paragraph (c) above will not be covered by the Federal/State Guarantee. Any such amount which is paid by the Borrower and not recovered by it under Clause 12.4 (*Tax Credit*) is deemed to reduce the principal amount owed by the Borrower in relation to the Federal/State Guarantors.

12.3 Tax Indemnity

- (a) The Borrower shall (within three (3) Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost that that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of withholding Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Lender:
 - (A) under the law of the jurisdiction in which that Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if in either case that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*); or

(B) would have been compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax Gross-up*) applied.

(c) A Protected Party making, or intending to make, a claim pursuant to paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.

(d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Facility Agent.

12.4 Tax Credit

(a) If the Borrower makes a Tax Payment and the relevant Lender determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

(ii) that Lender has obtained, utilised and retained that Tax Credit, or could have obtained, utilised or retained that Tax Credit had it claimed such benefit according to the applicable procedural rules within the provisions of paragraph (c) below,

the Lender shall pay an amount to the Borrower which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower. Upon the request of the Borrower, the relevant Lender will use its reasonable endeavours (to the extent commercially practicable and legally permitted) to recover such Tax Credit.

(b) If such a Tax Credit by reference to which a Lender has made a payment to the Borrower under paragraph (a) above is subsequently disallowed or cancelled, the Borrower must reimburse any payment made under paragraph (a) above to the relevant Lender.

(c) If the Borrower makes a Tax Payment, the relevant Lender shall take reasonable steps to claim a Tax Credit unless in the opinion of that Lender the making of such claim might have an adverse effect on its business, operations, property, condition or prospects (financial or otherwise). The Borrower shall bear any costs incurred by a Lender in making such a claim.

12.5 Stamp Taxes

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 Value Added Tax

- (a) All consideration payable under a Finance Document by an Obligor to a Finance Party shall be deemed to be exclusive of any VAT. If any VAT is chargeable, the Borrower shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.
- (b) Where a Finance Document requires an Obligor to reimburse a Finance Party for any costs or expenses (which for the avoidance of doubt does not include any fees payable to a Finance Party pursuant to Clause 11 (Fees)), the Borrower shall also at the same time pay and indemnify that Finance Party against all VAT incurred by that Finance Party in respect of the costs or expenses save to the extent that that Finance Party is entitled to repayment or credit in respect of the VAT.

12.7 Original Lender's Confirmation

- (a) Each Original Lender confirms to the Borrower, the Facility Agent and each Mandated Lead Arranger on the date of this Agreement that it is a Qualifying Lender.
- (b) A Lender shall promptly give notice to the Borrower (through the Facility Agent) if it becomes aware of any change in the position from that set out in paragraph (a) above.

13. INCREASED COSTS

13.1 Increased Costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three (3) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation or application of) any law or regulation; or
- (ii) compliance with any law or regulation,

enacted or made after the Signing Date.

- (b) In this Agreement "**Increased Costs**" means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or

- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased Cost Claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (Increased Costs) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
 - (ii) compensated for by Clause 12.3 (*Tax Indemnity*) (or would have been compensated for under Clause 12.3 (*Tax Indemnity*) but was not so compensated solely because one of the exclusions in paragraph (b) of Clause 12.3 (*Tax Indemnity*) applied);
 - (iii) compensated for by the payment of the Minimum Reserve Cost; or
 - (iv) attributable to the breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency Indemnity

- (a) If any sum due from the Borrower under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against the Borrower;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other Indemnities

The Borrower shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 26 (*Sharing among the Finance Parties*) (save to the extent such Finance Party is otherwise compensated under this Agreement);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) any Loan (or part of any Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Facility Agent, the Security Agent and the Reporting Agent

The Borrower shall promptly indemnify the Facility Agent, the Security Agent and the Reporting Agent against any cost, loss or liability incurred by the Facility Agent, the Security Agent or the Reporting Agent (in each case acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax Gross-Up and Indemnities*) or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another:
 - (i) Affiliate or Facility Office; or
 - (ii) Eligible Transferee pursuant to either paragraph (e) of Clause 7.1 (*Illegality*) or paragraph (d) of Clause 7.10 (*Right of Repayment and Cancellation in Particular Circumstances*).

(b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 Limitation of Liability

- (a) The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it or any Affiliate or Facility Office in relation to paragraph (a)(i) of Clause 15.1 (*Mitigation*).

16. COSTS AND EXPENSES

16.1 Transaction Expenses

The Borrower shall promptly on demand pay to each Agent the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders' employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel (limited, until the Signing Date, to one external legal counsel for all the Agents and the Lenders) and any other third party advice) together with any VAT payable in respect thereof incurred by any of them in connection with the evaluation, development, negotiation, preparation, printing, execution and delivery of:

- (a) this Agreement and any other documents referred to herein (including the preparation of the term sheet relating to the Facility and the structuring of the debt financing of the Project); and
- (b) any other Finance Documents executed after the Signing Date.

16.2 Amendment Costs

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within three (3) Business Days of demand, reimburse each Agent for the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders' employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel) incurred by each Agent in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement Costs

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all documented costs and out-of-pocket expenses (including any documented costs and expenses of external legal counsel) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

16.4 Security Agent's Costs

The Borrower shall promptly on demand pay to the Security Agent the amount of all reasonable and documented costs (excluding the cost of management time of the Agent or the Lenders' employees) and out-of-pocket expenses (including any reasonable and documented costs and expenses of external legal counsel) incurred by the Security Agent (for its own account and that of any Finance Party) in connection with the administration or release of any of the Transaction Security.

16.5 **Federal/State Guarantors' Costs**

The Borrower will pay to the Federal/State Guarantors any costs in connection with the issue of the Federal/State Guarantee and any costs of any report (*Gutachten*) produced or inspections (*Prüfungen*) carried out in respect of the Federal/State Guarantee by or on behalf of the Federal/State Guarantors.

16.6 **Informing the Borrower**

In respect of Clause 16.1 (*Transaction Expenses*), 16.2 (*Amendment Costs*) and 16.4 (*Security Agent's Costs*), the relevant Agent shall inform the Borrower of its choice of external legal counsel before instructing such external legal counsel.

SECTION 7
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

17.1 Representations and Warranties

- (a) The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party on the Signing Date.
- (b) The Finance Parties have entered into this Agreement in reliance on these representations and warranties.

17.2 Status

- (a) It is a limited partnership (*KG*) and the General Partner is a limited liability company, each duly established or formed, as the case may be, and validly existing under the law of the jurisdiction of its place of incorporation, establishment or formation.
- (b) It and the General Partner each has the power to own its assets and carry on its business as it is currently being conducted.

17.3 No Winding-Up

Save as otherwise disclosed in writing to the Facility Agent, no administrator, receiver, insolvency trustee, bankruptcy examiner, liquidator or similar officer or official has been appointed with respect to itself or, as far as it is aware, any Guarantor or any of its assets or, as far as it is aware, any of the Guarantors' and (to the best of its knowledge and belief) no petition by a third party or proceeding for any such appointment is pending nor, has any resolution for any such appointment been passed in relation to itself or any of the Guarantors.

17.4 Binding Obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and the conditions precedent set forth in the Finance Documents, legal, valid, binding and enforceable obligations.

17.5 Non-Conflict with Other Obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any agreement or instrument binding upon it or any of its assets,

nor (except as provided in any Security Documents) result in the creation of, or oblige it to create, any Security (other than Permitted Security) over any of its assets.

17.6 Power and Authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

17.7 Validity and Admissibility in Evidence

All Authorisations (not including the EU Notification Approval) required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in Germany; and
- (c) to enable it to create any Security expressed to be created by it by or pursuant to, or as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document to which it is a party and to ensure that such Security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, save for (i) any filings, registrations or notarisations required in relation to the Security Documents, which filings, registrations or notarisations will be made promptly after execution of the relevant documents and in any event within applicable time limits, or (ii) such filings, registrations or notarisations which have been obtained and effected.

17.8 Governing Law and Enforcement

The choice of German law as the governing law of the Finance Documents which are expressed to be governed by German law (or, in respect of any Security Document to which it is a party, the choice of the relevant governing law of that Security Document) will be recognised and enforced in Germany.

17.9 Deduction of Tax

To the extent that a payment under a Finance Document is made to a Qualifying Lender and such Qualifying Lender has provided all the documentation required under applicable laws and regulations, it is not required under the law of Germany to make any deduction for or on account of Tax from any such payment.

17.10 No Filing or Stamp Taxes

Under the law of Germany, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in Germany or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated therein.

17.11 No Default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

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- (b) No other event or circumstance is outstanding which constitutes:
 - (i) on the Signing Date, any default whatsoever under any other agreement or instrument which is binding on the Borrower or to which its assets are subject; and
 - (ii) thereafter, any material default under any other agreement or instrument which is binding on the Borrower or to which its assets are subject which would amount to an aggregate liability of over five million (5,000,000) EUR arising under such agreement or instrument from such default (save to the extent that any liabilities are being contested in good faith).

17.12 Information

- (a) Any written information (excluding that referred to in Clause 17.24 (*Information Memorandum*)) and any financial information (including in relation to the Credit Ratings) provided by it on behalf of itself and/or any member of the Group or the FoundryCo Group to any Finance Party in connection with the Transaction Documents was true, accurate and complete in all material respects as at the date it was provided and was not misleading in any material respect.
- (b) To the extent that the information referred to in paragraph (a) above contained any opinions, forecasts, projections and/or conclusions, such opinions, forecasts, projections and/or conclusions were fair, based on reasonable assumptions and were made in good faith; **provided however**, that the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.

17.13 Good Title to Assets

- (a) It has, subject to Permitted Security, good title to or valid leases or licenses of or is otherwise entitled to use all material assets (including the Equipment acquired as at the date of this representation, but not including Intellectual Property which is subject to the provisions of Clause 17.14 (*Intellectual Property Rights*)) necessary to carry on its business as it is being conducted.
- (b) It has acquired and/or has vested in it:
 - (i) title to possess and use the Site; and
 - (ii) access to the Site.

17.14 Intellectual Property Rights

- (a) To the best of its knowledge and belief, it has legal rights to use all the Intellectual Property which is material to its business and, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, to the best of its knowledge and belief, it does not, in carrying on its business, infringe any Intellectual Property Rights of any third party in any material respect.
- (b) To the best of its knowledge and belief, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving

notice of its SEC filings, it has registered and has taken all requisite actions (including payment of fees) required to maintain in full force and effect any registered Intellectual Property Rights owned by it which are material in the context of its business or which are required to be registered under applicable law.

17.15 Creation of Security

- (a) It is, or upon the execution (and the fulfilment of any conditions included therein) of the Security Documents to which it is a party will be, subject to any Permitted Security, the absolute owner (*Eigentümer*) of all the material assets over which it purports to create Security by or pursuant to or as evidenced in the Security Documents.
- (b) Each Security Document to which it is or is to be a party creates, or upon such execution (and the fulfilment of any conditions included therein) will create, the Security which that Security Document purports to create or, if that Security Document purports to evidence Security, accurately evidences, or upon such execution (and the fulfilment of any conditions included therein) will so evidence, Security which has been validly created.
- (c) The partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower which are or are to be subject to any Security created by or pursuant to, or evidenced in, any of the Security Documents are all fully paid as at the date of first Utilisation and the constitutional documents of the Borrower do not and could not restrict or inhibit (whether absolutely, partially, under a discretionary power or otherwise) any transfer of such partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower upon or pursuant to any enforcement of any of the Security Documents to which it is or is to be a party.

17.16 Insurance

- (a) It maintains or is the beneficiary of the Required Insurance on and in relation to the Site, its business and assets and maintains or is the beneficiary of such other insurance with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany.
- (b) There has been no omission to disclose a fact which must be disclosed by applicable law or pursuant to contract, which might in either case entitle an insurer to avoid or otherwise reduce its liability under any policy relating to insurance as referred to in paragraph (a) above.

17.17 Pari Passu Ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

17.18 No Proceedings Pending or Threatened

Except as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, no material litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency in

relation to an Obligor, the Project or any Transaction Document which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of its knowledge and belief) threatened against it.

17.19 Environmental Compliance

- (a) Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, it has obtained all requisite Environmental Licenses as then required in relation to the Project and has at all times, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, complied in all material respects with:
- (i) all applicable Environmental Laws as then required in relation to the Project;
 - (ii) the terms and conditions of such Environmental Licenses; and
 - (iii) all other covenants, conditions, restrictions and agreements binding on the Borrower directly or indirectly concerned with any Environmental Contamination in relation to the Project,

in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.

- (b) Save otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, there are to its knowledge no events or circumstances that have occurred which may prevent or interfere with the compliance in any material respect in the future of it with all applicable Environmental Laws required in relation to the Project, the terms of all Environmental Licenses referred to in paragraph (a) above and all covenants, conditions, restrictions and agreements referred to in such paragraph.

17.20 Environmental Claims

Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through AMD Inc. giving notice of its SEC filings, no Environmental Claim in relation to the Project has been started or (to the best of its knowledge and belief) threatened against it which may reasonably be expected to have a Material Adverse Effect.

17.21 Taxation

- (a) It has duly and punctually paid and discharged all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
- (i) payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) payment can be lawfully withheld.
- (b) It is not materially overdue in the filing of any Tax returns.

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- (c) No claims are being asserted nor is it aware of any claims that are reasonably likely to be asserted against it with respect to Taxes which might have a Material Adverse Effect.

17.22 No Indebtedness

Save for any Permitted Indebtedness, it has:

- (a) no Financial Indebtedness; and
- (b) no other indebtedness, except for any which has been incurred in the ordinary course of its business.

17.23 No Security

Save for any Permitted Security:

- (a) no Security exists over all or any of its assets; and
- (b) no arrangement or transaction as described in paragraph (b) of Clause 20.3 (*Negative Pledge*) has been entered into by it and is outstanding.

17.24 Information Memorandum

- (a) The information in the Information Memorandum was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect and did not omit any material information relating to the Borrower or the Project as at that time.
- (b) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the Information Memorandum; and
 - (ii) no information has been given or withheld by the Borrower or on its behalf,

since the date of the Information Memorandum that results in the information contained therein being untrue or misleading in any material respect.

- (c) All opinions, forecasts, projections and conclusions contained in the Information Memorandum were fair, based on reasonable assumptions and were made in good faith.
- (d) Notwithstanding anything to the contrary contained in this Clause 17.24:
 - (i) the Borrower makes no representation or warranty in relation to:
 - (A) any information provided by a third party and denoted as such; and
 - (B) such information contained in the “Key Lending Considerations” section of the Information Memorandum; and

- (ii) in relation to the “Risks and Mitigants” section of the Information Memorandum, the Borrower only makes representations and warranties in relation to factual information set out therein.

17.25 **Base Financial Statements**

- (a) Its Base Financial Statements:
 - (i) were prepared in accordance with German GAAP consistently applied; and
 - (ii) (in the case of quarterly unaudited financial statements) fairly represent the financial condition and operations of the Borrower as at the date to which they were prepared and during the relevant financial period for which they were prepared, subject to normal year end adjustments, unless expressly disclosed to the Facility Agent in writing to the contrary before the date of this Agreement.
- (b) There has been no Material Adverse Effect since the date on which its latest Base Financial Statements were prepared.

17.26 **Business Plan**

- (a) The Business Plan has been prepared using accounting policies, practices and procedures consistent, in all material respects, with German GAAP as at the date of the Business Plan.
- (b) The information in the Business Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (c) It does not regard as unreasonable, or to any material extent, unattainable, any of the opinions, forecasts, projections or conclusions set out in the Business Plan as at the date thereof.
- (d) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the Business Plan; and
 - (ii) no information has been given or withheld by the Borrower or on its behalf,

since the date of the Business Plan that results in the information contained therein being untrue or misleading in any material respect; **provided however**, the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.

- (e) All the opinions, forecasts, projections and conclusions contained in the Business Plan were fair, based on reasonable assumptions and were made in good faith.

17.27 **Management Plans**

- (a) The information in the most recent Management Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.

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- (b) It regards (as at the date that the most recent Management Plan is delivered to the Facility Agent) as neither unreasonable, nor to any material extent unattainable, any of the opinions, forecasts, projections or conclusions set out in that Management Plan.
 - (c) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the most recent Management Plan; and
 - (ii) no information has been given or withheld by the Borrower or on its behalf,since the date that the most recent Management Plan was delivered to the Facility Agent that results in the information contained therein being untrue or misleading in any material respect; **provided however**, the Borrower makes no representation or warranty in relation to any information provided by a third party and denoted as such.
 - (d) As at the date that the most recent Management Plan was delivered to the Facility Agent, all the opinions, forecasts, projections and conclusions contained therein were fair, based on reasonable assumptions and were made in good faith.

17.28 Change in Business

It has not made, or taken any steps to make, any substantial change to the Permitted Business.

17.29 Material Adverse Effect

It has not entered into any agreement or obligation:

- (a) which could have a Material Adverse Effect; or
- (b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by either Obligor.

17.30 Material Disclosures

The Borrower has disclosed in writing, or by use of websites in accordance with Clause 18.6 (*Use of Websites*), to the Facility Agent all material information in its possession relating to the Project, including all Project Documents and other material agreements.

17.31 Compliance with Laws and Regulations

It has at all times complied in all material respects with any law or regulation applicable to it.

17.32 Time for Making Representations and Warranties

The Repeating Representations are deemed to be made by the Borrower to each Finance Party by reference to the facts and circumstances then existing (except as otherwise provided therein) on the Amendment Date, the first Utilisation Date, on the date of each Utilisation Request, on the first day of each Interest Period and, prior to the first Utilisation Date, on each Quarter Date.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Financial Statements

The Borrower shall supply to the Facility Agent and, in the case of paragraph (e) below, to the Reporting Agent in sufficient numbers for all the Lenders and the Federal/State Guarantors:

- (a) as soon as the same become available, but in any event within ninety (90) days after the end of each of its financial years,
 - (i) its audited financial statements for that financial year, comprising of its balance sheet, profit and loss account and cash flow statement, together with a description of the business, market and financial developments of the Borrower (*Lagebericht*) as well as the Auditor's audit report; and
 - (ii) a report comparing, in the case of the profit and loss account and cash flow statement, actual figures with the Management Plan for that financial year;
- (b) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last Fiscal Quarter of a financial year, within ninety (90) days) after the end of each Fiscal Quarter in each of its financial years, its unaudited unconsolidated financial statements for that Fiscal Quarter, comprising of its balance sheet, profit and loss account and cash flow statement;
- (c) as soon as the same become available, but in any event within ninety (90) days after the end of each of its financial years, an update of the Borrower's Management Plan, including:
 - (i) a forecast for the remaining tenor of the Facility;
 - (ii) projected EBIT and EBITDA as at the end of each Fiscal Quarter in that financial year; and
 - (iii) significant revisions to the projections set out in the Management Plan for the previous financial year, together with the main operating assumptions relating thereto, for that financial year, based on the financial condition and performance and prospects of the Borrower at such time;
- (d) commencing on the date of Technical Completion until the later of:
 - (i) the end of the Availability Period; and
 - (ii) the date on which any and all sums deposited into the Escrow Account have been utilised towards the purpose set out in Clause 3 (*Purpose*) and/or for prepayment of the Loans,

as soon as the same become available, but in any event within sixty (60) days after the end of each Fiscal Quarter in each of its financial years:

- (A) a statement of sources and uses in the form set out in Schedule 14 (*Form of Statement of Sources and Uses*) in respect of any Fiscal Quarter in which a Utilisation has been made, and, if requested by the Facility Agent, copies of Relevant Invoices received in periods up to the relevant Fiscal Quarter; and
 - (B) reports in the form set out in Schedule 15 (*Form of Status Reports*) setting out production wafer starts/outs per technology, the average development wafer in process and the average line yield for all technologies; and
- (e) any other financial information reasonably requested by a Lender (through the Facility Agent).

18.2 Compliance Certificate

- (a) From the date of first Utilisation, the Borrower shall supply to the Facility Agent, with each set of financial statements delivered pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail), in each case as at the date to which those financial statements were drawn up computations as to compliance with Clause 19 (*Financial Covenants*).
- (b) The Borrower shall ensure that each Compliance Certificate shall be signed by two directors of the Borrower or, as the case may be, by the General Partner and, if required to be delivered with the financial statements delivered pursuant to paragraph (a) of Clause 18.1 (*Financial Statements*), by the Auditors.

18.3 Requirements as to Financial Statements

- (a) Each set of financial statements and statements delivered by the Borrower pursuant to paragraph (a) (i) of Clause 18.1 (*Financial Statements*) shall be audited and certified without material qualification by the Auditors.
- (b) Each set of financial statements delivered by the Borrower pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*) shall be certified by two directors of the Borrower or, as the case may be, by the General Partner as fairly representing its financial condition as at the date as at which those financial statements were prepared (in the case of unaudited financial statements, subject to normal year end adjustments).
- (c) The Borrower will ensure that each set of financial statements supplied under this Agreement gives (if audited) a true and fair view of, or (if unaudited) fairly represents, its financial condition (consolidated or otherwise) as at the date to which those financial statements were prepared (in the case of unaudited financial statements, subject to normal year end adjustments).
- (d) Each set of financial statements delivered by the Borrower pursuant to paragraphs (a) and (b) of Clause 18.1 (*Financial Statements*) shall be prepared in accordance with the reporting requirements of large companies (*große Kapitalgesellschaften*) within the meaning of section 267 subsection 3 of the Commercial Code (*Handelsgesetzbuch*).

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- (e) The Borrower must notify the Facility Agent of any material change to the basis on which its audited or unaudited financial statements are prepared from those applied in the preparation of its Base Financial Statements (including, without limitation, any change in German GAAP but excluding any change resulting only from the exercise by the Borrower of a right to choose an alternative treatment under German GAAP).
 - (f) If the Borrower notifies the Facility Agent of a change in accordance with paragraph (e) above, then the Borrower and the Facility Agent shall enter into negotiations in good faith for a period of not more than thirty (30) days with a view to agreeing:
 - (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
 - (ii) if so, any amendments to this Agreement (including appropriate changes to the financial covenants set out in Clause 19.2 (*Loan to Fixed Asset Value*) and applicable definitions which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms, and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.
 - (g) The Borrower shall provide the Facility Agent with details of any material changes in the projections delivered under paragraph (c) of Clause 18.1 (*Financial Statements*) as soon as reasonably practicable after it decides to make or makes any such change.

18.4 **Information: Miscellaneous**

The Borrower shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) the following, in each case in respect of the Borrower (unless otherwise noted):

- (a) all material documents dispatched by the Borrower to its creditors generally, or to a class of its creditors generally, at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and which might, if adversely determined, reasonably be expected to involve potential or alleged liability in excess of one million (1,000,000) EUR (or its equivalent in other currencies on the date of their determination);
- (c) promptly upon becoming aware of them, the details of any insurance claims, claims made under the Project Documents or material changes to the Project which might reasonably be expected to involve potential or alleged liability of the Borrower in excess of five million (5,000,000) EUR (or its equivalent in other currencies on the date of their being determined or made);
- (d) promptly upon becoming aware of them, any material conflicts or breaches of any law or regulation applicable to it;

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- (e) promptly upon becoming aware of them, the details of any material collective labour dispute which is current, threatened or pending against the Borrower;
 - (f) promptly upon becoming aware of them, the details of any change in the Credit Rating or in the rating of the Facility (if any) or in the published outlook of either;
 - (g) promptly upon the Borrower becoming aware of any such filing, notice of any SEC filings by AMD Inc.;
 - (h) promptly, upon receipt thereof by the Borrower:
 - (i) periodic technical progress reports, including, copies of reports relating to “Fab Construction Weathertight” and “Clean Room Ready for Equipment” as received by the Borrower from the Project Engineer; and
 - (ii) a copy of the confirmation of “first silicon out” as provided by the Technical Adviser;
 - (i) promptly, details of any changes to the Borrower’s, the Guarantors’, the General Partner’s and/or (upon becoming aware of it) LM Beteiligungsgesellschaft mbH’s accounting periods and all changes of the Borrower’s, the General Partner’s and/or LM Beteiligungsgesellschaft mbH’s articles of association or equivalent constitutional documents;
 - (j) promptly, details of any material events or circumstances affecting its business (*wesentliche Geschäftsvorgänge*) and, promptly at the request of the Facility Agent, a report summarising its financial condition and operations;
 - (k) promptly, such further information regarding the financial condition, business and operations of the Borrower, the Guarantors, the General Partner and/or LM Beteiligungsgesellschaft mbH as any Finance Party (through the Facility Agent) may reasonably request; and
 - (l) promptly, the details of any amendments, variations, novations, supplements or terminations of any Transaction Document to which a Finance Party is not a party, and shall ensure that senior management is available once a year for the purpose of a meeting with the Lenders and the Facility Agent in relation thereto.

18.5 Notification of Default

- (a) The Borrower shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon the Borrower becoming aware of its occurrence.
- (b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.6 Use of Websites

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information (other than the financial statements required to be delivered under

Clause 18.1 (*Financial Statements*) in relation to those Lenders who accept this method of communication (the “**Website Lenders**”) by posting this information onto an electronic website designated by the Borrower and the Facility Agent (the “**Designated Website**”) if:

- (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) both the Borrower and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Borrower and the Facility Agent.
- (b) If any Lender does not agree to the delivery of information electronically then the Facility Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Facility Agent (in sufficient copies for each of any such Lender) in paper form. In any event the Borrower shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.
- (c) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Facility Agent.
- (d) The Borrower shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
- (e) If the Borrower notifies the Facility Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form, unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
- (f) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

19. FINANCIAL COVENANTS

The covenants in this Clause 19 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial Definitions

(a) In this Agreement:

“**Approved Bank**” means any bank which is an authorised banking institution under applicable legislation and whose short-term debt securities are rated at least P-1 by Moody’s or A-1 by Standard & Poor’s or as the Facility Agent may approve.

“**Cash**” means:

- (i) cash in hand; and
- (ii) any credit balance in EUR or any other currency on any current, savings or deposit account with any Approved Bank that is repayable on demand or upon not more than ninety (90) days’ notice, and any credit balance on the Cash Reserve Account.

“**Cash Equivalents**” means:

- (i) debt securities denominated in EUR or USD which are not convertible into any other form of security, rated or issued by any person rated Aa2 or better by Moody’s or AA or better by Standard & Poor’s and not issued or guaranteed by a Guarantor or an Affiliate of a Guarantor;
- (ii) debt securities denominated in EUR or USD which are not convertible into any other form of security, rated at least P-1 by Moody’s or A-1 by Standard & Poor’s and not issued or guaranteed by a Guarantor or an Affiliate of a Guarantor;
- (iii) certificates of deposit denominated in EUR or USD issued by, and acceptances so denominated by, banking institutions authorised under applicable legislation which at the time of making such issue or acceptances, have outstanding debt securities rated as provided in paragraph (ii) above; and
- (iv) such other securities (if any) as are approved as such in writing by the Facility Agent (acting on the instructions of the Majority Lenders), which, in each case, have no more than twelve (12) Months to final maturity.

“**EBIT**” means, in respect of any Relevant Period, the profit on ordinary activities of the Borrower but:

- (i) before taking into account Interest Payable;
- (ii) before deducting or providing for corporation tax or withholding tax (in each case whether current or deferred) or their equivalents in any Relevant Jurisdiction or any other taxes on income or gains (excluding, for the avoidance of doubt, taxes or duties in respect of sales);

- (iii) before taking into account any extraordinary items (whether positive or negative) but after taking into account all exceptional items (whether positive or negative);
- (iv) after taking into account any amount attributable to the depreciation of tangible assets;
- (v) after taking into account any amount attributable to the amortisation of subsidies, goodwill, intellectual property and other intangible assets; and
- (vi) after taking into account any amount attributable to net write-offs of tangible fixed assets from impairment tests or restructuring measures.

“**EBITDA**” means, in respect of any Relevant Period, EBIT for such Relevant Period before taking into account:

- (i) any amount attributable to the depreciation of tangible assets;
- (ii) any amount attributable to the amortisation of subsidies, goodwill, intellectual property and other intangible assets; and
- (iii) any amount attributable to net write-offs of tangible fixed assets from impairment tests or restructuring measures.

“**Fixed Assets**” means the aggregate net book value (based on the Borrower’s latest Fiscal Quarterly or audited annual financial statements, as applicable), as at the date of computation, of the following assets of the Borrower:

- (i) all the property, plant and equipment (including Equipment purchased at such time), excluding the remaining book value of any assets under capital lease agreements in respect thereof;
- (ii) the construction of the Project in progress;
- (iii) the full amount of all down payments up to an amount of two million five hundred thousand (2,500,000) EUR (or equivalent in another currency); and
- (iv) the excess, if any, of all Cash balances (and balances of Cash Equivalents) over the sum of:
 - (A) the amount of Minimum Cash (if and to the extent required);
 - (B) amounts on the Escrow Account;
 - (C) amounts outstanding under the Revolving Credit Agreement; and
 - (D) prepayments made under the Cost Plus Reimbursement Agreement (this does not apply to prepayments made when due under the Cost Plus Reimbursement Agreement).

“**Interest Payable**” means, in respect of any Relevant Period, the aggregate amount of the interest (including the interest element of leasing and hire purchase payments; but, excluding interest relating to Participations as permitted under paragraph (b)(i) of the definition of “**Permitted Distributions**”), interest accrued (excluding interest

on intercompany loans to the extent not payable), commission, fees, discounts and other finance charges of whatsoever nature payable by the Borrower (including any commission, fees, discounts and other finance charges payable by the Borrower under any interest rate hedging arrangement) but after deducting any commission, fees, discounts and other finance charges receivable by the Borrower under any interest rate hedging arrangement.

“**Loan to Fixed Asset Value**” means, the ratio of:

- (a) the aggregate amount of all EUR Outstandings and USD Outstandings less (i) the aggregate amount of any Loans the proceeds of which continue to be deposited in the Escrow Account and (ii) the amounts, if any, to be maintained in the Cash Reserve Account pursuant to Clauses 6.2 (*Supplemental Cash Reserves*) and 20.35 (*Balancing Payments to and from Cash Reserve Account*) in relation to the respective Relevant Period (not including any amounts paid or to be paid pursuant to Clause 5.7 (b)), it being understood that all USD amounts shall for the purpose of determining such amount be converted for that purpose into EUR at the Facility Agent’s Spot Rate of Exchange as per the end of any Relevant Period; to
- (b) Fixed Assets.

“**Relevant Jurisdiction**” means, in respect of any person, the jurisdiction of the country in which such person is incorporated and, if different, where it is resident or has its principal place of business, and each jurisdiction or state in which it owns or leases property or otherwise conducts its business.

“**Relevant Period**” means each period of twelve (12) months ending on the last day of each of the Borrower’s financial years and/or each period of twelve (12) months that corresponds with four consecutive Fiscal Quarters ending on the Quarter Date on which the relevant calculation falls to be made.

- (b) All accounting expressions which are not otherwise defined in this Agreement shall be construed in accordance with the German GAAP from time to time.

19.2 **Loan to Fixed Asset Value**

The Borrower shall ensure that the Loan to Fixed Asset Value as at the end of any Relevant Period specified in Column A below shall not exceed the percentage set out opposite such Relevant Period in Column B below:

Column A (Relevant Period)	Column B (Maximum Percentage of Loan to Fixed Asset Value)
up to and including 31 December 2008	50%
up to and including 31 December 2009	45%
thereafter	40%

19.3 Calculations

All calculations made for the purposes of the covenants set out in Clause 19.2 (*Loan to Fixed Asset Value*) shall be made by reference to the following:

- (a) where the Relevant Period to which such covenant relates ends on, or the Quarter Date to which such covenant relates falls on, the last day of any financial year of the Borrower, the unaudited financial statements of the Borrower for each of the four Fiscal Quarters within that Relevant Period or, as the case may be, the unaudited financial statements of the Borrower for the Fiscal Quarter ending on that Quarter Date, in each case as delivered pursuant to Clause 18 (*Information Undertakings*) or, when so delivered, the audited financial statements of the Borrower for that financial year; and
- (b) where the Relevant Period to which such covenant relates ends on, or the Quarter Date to which such covenant relates falls on, any other day, the unaudited financial statements of the Borrower for each of the four consecutive Fiscal Quarters within that Relevant Period or, as the case may be, the unaudited financial statements of the Borrower for the Fiscal Quarter ending on that Quarter Date, in each case as delivered pursuant to Clause 18 (*Information Undertakings*).

19.4 Financial Testing

The financial covenants set out in this Clause 19 shall be tested:

- (a) by reference to each of the financial statements and each Compliance Certificate delivered pursuant to Clause 18.1 (*Financial Statements*) and Clause 18.2 (*Compliance Certificate*); and
- (b) following the first full Fiscal Quarter of the Borrower after the date of Technical Completion.

20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Authorisations

- (a) The Borrower shall promptly:
 - (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
 - (ii) supply certified copies to the Facility Agent of,
any Authorisation required under any law or regulation of Germany to enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence in Germany.
- (b) The Borrower shall:
 - (i) ensure that it has the right and is duly qualified to conduct its business as it is conducted from time to time in Germany;

- (ii) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation which is necessary for the conduct of its business in Germany; and
- (iii) upon the Facility Agent's written request supply the Facility Agent with copies of any such Authorisations.

20.2 **Compliance with Laws**

The Borrower shall at all times comply in all material respects with any law or regulation applicable to it.

20.3 **Negative Pledge**

- (a) The Borrower shall not create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any member of the Group or the FoundryCo Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,
in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to Permitted Security.

20.4 **Disposals**

- (a) The Borrower shall not enter into any agreement to sell, lease, transfer or otherwise dispose of all or any part of its assets or enter into or permit to subsist any option or other arrangement (save as otherwise permitted by Clause 20.25 (*Treasury Transactions*) whereby any person has the right (whether or not exercisable only on a contingency) to require it to sell or otherwise dispose of all or any part of its assets.
- (b) The Borrower shall not assign or dispose of any material rights or interests under any of the Project Documents or consent to any other party assigning its rights or interests under any of the Project Documents other than under the Security Documents or to a person which is a party to the relevant Project Document where such assignment or disposal is provided for under the original terms of that Project Document.
- (c) Paragraphs (a) and (b) above does not apply to any Permitted Disposal.

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- (d) The Borrower will notify the Facility Agent within five (5) Business Days before the disposal of any Equipment whether in a single transaction or a series of transactions where the aggregate market value of such Equipment exceeds five million (5,000,000) EUR (or its equivalent on the date of such disposal).

20.5 Change of Business

- (a) The Borrower shall not make, or take any steps to make, any substantial change to the general nature of its business from that of engaging in the Permitted Business.
- (b) The Borrower shall not incur any expenditure other than in the ordinary course of its business or otherwise in accordance with the Project Documents or the Business Plan (as modified pursuant to the applicable Management Plan).

20.6 Year End

Commencing 1 January 2004, the Borrower shall ensure that each of its financial years and each Fiscal Quarter in each of its financial years shall end on a Quarter Date, unless such change is permitted by the requirements of Clause 18.3 (*Requirements as to Financial Statements*) and to the extent it complies with the requirements set out therein.

20.7 Record Keeping

The Borrower shall:

- (a) keep proper records and books of account in respect of its business in accordance with German GAAP; and
- (b) permit reasonable access to the Facility Agent and/or any professional advisers (who are each bound by professional or other confidentiality obligations) appointed by the Facility Agent to examine its records and books of account.

20.8 Constitutional Documents

The Borrower shall not request any change to its constitutional documents or request or permit any change to any Participation Agreement in relation to its partnership interests, without the prior written consent of the Facility Agent, where such change relates to:

- (a) the substitution, the role, the compensation or other rights to receive payments of the General Partner or a silent partner;
- (b) the voting rights of partners;
- (c) majority requirements;
- (d) the legal form of the Borrower; or
- (e) restrictions on pledges or transfers of partner or equity interests (*Gesellschaftsanteile*) in the partnership of the Borrower or in the Participations.

20.9 **Preservation of Assets**

The Borrower shall maintain and preserve all of its assets that are necessary in the conduct of the Permitted Business in good working order and condition, ordinary wear and tear excepted.

20.10 **Insurance**

- (a) The Borrower shall maintain the Required Insurance or ensure that the Required Insurance is maintained on and in relation to the Site, its business and its assets and shall maintain such insurance or ensure that all such insurance is maintained as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany.
- (b) Without limiting paragraph (a) above, the Borrower shall effect and maintain insurance or ensure that insurance is maintained as deemed sufficient by the Insurance Adviser and as described in the Insurance Report.
- (c) The Borrower shall pay or cause to be paid all premiums, do all other things necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany) to maintain all the insurances that it has taken out or has ensured have been taken out in relation to its business and assets and will procure that all insurance policies or certificates of insurance (with the exception of personal liability insurances and contractors' all risks insurances until completion of the building phase) shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee.
- (d) Required Insurance shall be contracted by either (i) the Borrower or (ii) a Guarantor in a way so that the Borrower is the sole loss payee of the Required Insurance among the members of the FoundryCo Group. The Borrower shall supply the Facility Agent on request with copies of each receipt or other evidence satisfactory to the Facility Agent for all premiums and other amounts payable by the Borrower or on behalf of the Borrower under the insurances effected and maintained pursuant to paragraphs (a) and (b) above and shall, in any event, use all reasonable endeavours to procure that the insurer in respect of such insurances undertakes to the Facility Agent to notify it should any renewal fee or other sum payable by the Borrower not be paid when due.
- (e) Upon request, the Borrower shall supply the Facility Agent with a copy of all insurance policies or certificates of insurance evidencing compliance with paragraphs (a) and (b) above or (in the absence of the same) such other evidence of the existence of any insurance referred to in paragraphs (a) and (b) above as may be reasonably acceptable to the Facility Agent and shall, in any event, notify the Facility Agent of any material changes to any such insurance made from time to time.
- (f) Notwithstanding the foregoing, the Borrower shall not be in breach of its obligations under this Clause 20.10 to the extent that insurances required to be taken out or maintained hereunder are not available due to lack of capacity in the insurance market or the premiums in respect of any such insurances are unreasonable in the opinion of the Security Agent (taking into account advice

received from the Insurance Adviser, and acting on the instructions of the Majority Lenders having regard to the risk being covered and the rights and obligations of the Majority Lenders under this Agreement). A letter from the Insurance Adviser with respect to the capacity of the insurance market shall be *prima facie* evidence of such capacity.

20.11 Intellectual Property

The Borrower shall:

- (a) make such registrations and pay such fees and other amounts as are necessary to keep those registered Intellectual Property Rights owned by or registered in the name of the Borrower which are material to its business or required by law in force, and to record its interest in those Intellectual Property Rights;
- (b) observe and comply with all material obligations and laws to which it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the Intellectual Property Rights (or any part thereof) is subject where failure to do so might reasonably be expected to have a Material Adverse Effect;
- (c) do all acts as are reasonably practicable (including, without limitation, the institution of legal proceedings) to maintain, protect and safeguard the Intellectual Property necessary for its business as a whole; and
- (d) enter into and maintain such license agreements, and obtain such authorisations, as are necessary for the Borrower to use all such Intellectual Property Rights which are material to its business where failure to do so, after having taken all reasonable actions to enter into and maintain such license agreements and obtain such authorisations, would or might reasonably be expected to have a Material Adverse Effect.

20.12 Environmental Compliance

The Borrower shall obtain and maintain all requisite Environmental Licenses required in relation to the Project and will comply in all material respects with:

- (a) all applicable Environmental Laws relating to the Project;
- (b) the terms and conditions of all Environmental Licenses required in relation to the Project and applicable to it; and
- (c) all other covenants, conditions, restrictions and agreements entered into by or binding on the Borrower directly or indirectly concerned with any Environmental Contamination required in relation to the Project,

in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.

20.13 **Environmental Claims**

The Borrower shall inform the Facility Agent in writing as soon as reasonably practicable upon its becoming aware of:

- (a) any Environmental Claim which has been commenced or threatened against the Borrower; or
- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against the Borrower, where the claim might, if determined against the Borrower, reasonably be expected to have a Material Adverse Effect.

20.14 **The Site, the Project Works and Rights of Access and Information**

- (a) The Borrower shall procure that the Project Works are maintained in all material respects in accordance with the requirements of the relevant Project Documents.
- (b) The Borrower shall maintain all easements, way leaves and other rights of access acquired and/or vested in it required to implement the Project in accordance with the Project Documents and will use best efforts to obtain any other easements, way leaves and other rights of access which it will require in the future in connection with the Project.
- (c) The Borrower shall give the Facility Agent, the Security Agent, the Lenders, the Project Engineer and the Technical Adviser reasonable access to the Site and the Equipment and permit the Facility Agent, the Security Agent, the Lenders, the Project Engineer and/or the Technical Adviser to inspect the same, in each case, during regular business hours upon the request of the Facility Agent; **provided that**, if no Default is continuing, such right of access and/or inspection shall not be exercised more than twice in any calendar year, or, in the case of the Security Agent, as permitted under any Security Document.
- (d) The Borrower agrees that the Federal/State Guarantors or any person acting on their behalf is entitled to access, upon prior written notice, to all property of the Borrower (including the Site and Equipment) at all times to investigate whether a claim (or any ground for making one) under the Federal/State Guarantee exists, existed or is reasonably foreseeable.
- (e) The Borrower must provide the Federal/State Guarantors with any information required by them in relation to the Federal/State Guarantee.
- (f) Each Finance Party is entitled to disclose any information in relation to the Facility and the Security granted under the Security Documents to the Federal/State Guarantors upon its request.
- (g) The Borrower will pay the costs of any inspection by or on behalf of the Federal/State Guarantors under this Clause 20.14.
- (h) The terms of paragraphs (d), (e), (f) and (g) above are for the benefit of, and may be relied on by, the third party which is contemplated by the relevant paragraph (*echter Vertrag zugunsten Dritter*).

20.15 **Taxation**

- (a) The Borrower shall duly and punctually pay and discharge all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties, save to the extent that:
 - (i) payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) payment can be lawfully withheld.
- (b) The Borrower shall not be materially overdue in the filing of any Tax returns.
- (c) The Borrower shall ensure that it continues to be resident for Tax purposes in Germany.

20.16 **Security**

- (a) Save as otherwise permitted by the terms of the Finance Documents, the Borrower shall ensure that any Security expressed to be created by it by or pursuant to, or, as the case may be, expressed to have been created by it and to be evidenced in, any Security Document to which it is a party remains in full force and effect with the ranking and priority it is expressed to have.
- (b) Save as otherwise permitted by the terms of the Finance Documents, the Borrower shall not do or omit to do anything or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by any Obligor by or pursuant to, or any Security expressed to have been created by any Obligor and to be evidenced in, any Security Document to which it is a party.
- (c) The Borrower shall take all such action as the Facility Agent or the Security Agent may reasonably request for the purpose of perfecting any such Security.
- (d) The Borrower shall, if the Security Agent lawfully and in accordance with the terms of the Finance Documents exercises any power (whether of sale or other disposal or otherwise) or right with respect to the Charged Assets, permit the exercise of such power or right.
- (e) The Borrower will ensure that all of its claims and contractual rights under all present and future Material Contracts, and all successor contracts, are assigned to the Security Agent.
- (f) The Borrower has granted or will grant the Security set out in No. 8 of the Federal/State Guarantors Decision to the Security Agent or the Finance Parties, as the case may be. This includes (but is not limited to) a security assignment of all claims under all insurance contracts taken out by the Borrower in relation to the Project (with the exception of personal liability insurances and contractors' all risks insurances until completion of the building phase) as well as a security assignment of all payment claims of the Borrower based on all legal grounds.
- (g) The Borrower shall ensure that all its obligations under the Finance Documents shall be secured (and remain secured until all such obligations have been discharged in full) by the Security it has created in favour of the Finance Parties over all the real property owned by it.

- (h) If any new Security is effectively granted to the Security Agent or the Finance Parties (as the case may be) otherwise than in the circumstances set out in paragraph (f) above, then the Security Agent must promptly notify the Federal/State Guarantors.
- (i) If the Federal/State Guarantors make a payment in respect of a claim by the Security Agent under the Federal/State Guarantee in accordance with its terms, then the Security Agent must transfer any remaining rights and claims that it has under the Security Documents to the Federal/State Guarantors to the extent of the amount of that payment unless that transfer automatically takes place by operation of law.

20.17 **Pari Passu Ranking**

The Borrower shall ensure that its payment obligations under the Finance Documents will rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

20.18 **Minimum Cash Balances**

- (a) The Borrower shall maintain in accounts held with Dresdner Bank AG during each Relevant Period specified in Column A below the minimum amount of freely available Cash (for the avoidance of doubt, excluding any amounts deposited in the Escrow Account) and Cash Equivalent balances set out opposite such Relevant Period in Column B below:

Column A (Relevant Period)	Column B (Balance)
From the date of initial Utilisation to 31 March 2006	EUR50,000,000

the later of:

- (i) the date of initial Utilisation; and
- (ii) 1 April 2006 through 30 June 2006

EUR75,000,000

the later of:

- (i) the date of initial Utilisation; and
- (ii) 1 July 2006 and thereafter

the lesser of:

- (i) EUR100,000,000; and
- (ii) 50% of Outstandings and undrawn Commitments.

(the “**Minimum Cash**”). The Borrower may elect to satisfy the Minimum Cash requirement by maintaining Cash balances and Cash Equivalent balances only in USD, in an aggregate amount equivalent to the relevant amounts as stated above, if and as long as the Group Consolidated Cash, as shown in the most recent financial statements and certificates to be provided to the Facility Agent pursuant to the terms of the Guarantee Agreement, amounts to no less than USD 500,000,000. If the

Borrower maintains such balances in USD, compliance with the Minimum Cash requirement shall be measured on the last Business Day of each Month by reference to the Facility Agent's Spot Rate of Exchange on that Business Day.

- (b) The amount of Minimum Cash shall be increased by five (5) *per cent.* of the total amount of the Outstandings at the end of the Availability Period within five (5) Business Days of the first time the Facility Agent (acting on the instructions of the Majority Lenders) directs the Borrower to increase the Cash reserves pursuant to Clause 6.2 (*Supplemental Cash Reserves*), unless the Federal/State Guarantors have vetoed such increase within seven (7) days after the Repayment Date following the lowering of the Credit Rating (as set out in Clause 6.2 (*Supplemental Cash Reserves*)) and by a further five (5) *per cent.* of the total amount of the Outstandings at the end of the Availability Period within five (5) Business Days of each subsequent time the Borrower is so directed by the Facility Agent (acting on the instructions of the Majority Lenders), unless the Federal/State Guarantors have vetoed such increase within seven (7) days after the Repayment Date following the lowering of the Credit Rating (as set out in Clause 6.2 (*Supplemental Cash Reserves*)); **provided that**, the obligation to hold such increased Minimum Cash amounts shall end upon the Credit Rating being at least Ba3 by Moody's and BB- by Standard & Poor's and at no time will the Borrower be required to maintain the Minimum Cash over and above the Outstandings at such time. In connection with the foregoing, the Facility Agent and the Borrower undertake to promptly inform the Federal/State Guarantors (if possible, together with any relevant documents in connection therewith) with respect to an expected downgrade of the Credit Rating (effort clause).
- (c) Provided that no Event of Default has occurred and is continuing, paragraph (a) above shall not apply when (i) the amount of Group Consolidated Cash (as shown in the financial statements and other financial information provided by the Guarantors in accordance with Clause 11 (*Information Undertakings*) of the Guarantee Agreement) is equal to or higher than one billion (1,000,000,000) USD and (ii) the Credit Rating is B3 or better by Moody's and B- or better by Standard & Poor's.

20.19 **Transaction Documents**

The Borrower shall comply in all material respects with and perform all of its obligations under the Transaction Documents to which it is a party.

20.20 **Subordinated Debt**

Other than as permitted pursuant to Clause 20.21 (*Distributions*), from the date of first Utilisation, the Borrower shall not:

- (a) pay, repay, prepay, redeem, purchase, return or otherwise retire the principal amount of any indebtedness; or
- (b) pay any interest or return on principal or repayment of principal or other distribution (whether in Cash or kind) or make any distribution of assets or other payments whatsoever in respect of any indebtedness,

in each case under any intra FoundryCo Group loan document and/or Subordinated Loan other than in accordance with the Subordination Agreement.

20.21 Distributions

- (a) From the date of first Utilisation, the Borrower shall ensure that no profit distribution, repayment of capital or other distribution (whether in Cash or in kind) is made in respect of:
- (i) its contributed capital to the Limited Partners; or
 - (ii) a Subordinated Loan, other than in accordance with the Subordination Agreement; or
 - (iii) a payment to a Guarantor or any Affiliate other than in respect of the amounts due to the relevant Guarantor or Affiliate under a transaction at arm's length, which transaction does not constitute Financial Indebtedness of the Borrower, or in accordance with the Project Documents,
- subject at all times to the maintenance of the Minimum Cash.
- (b) Paragraph (a) above does not apply to Permitted Distributions.

20.22 Merger

The Borrower shall not enter into any amalgamation, demerger or merger.

20.23 Indebtedness

From the date of first Utilisation, the Borrower shall not:

- (a) incur, create or permit to subsist or have outstanding any Financial Indebtedness or enter into any agreement or arrangement whereby it is entitled to incur, create or permit to subsist any Financial Indebtedness, other than, in either case, Permitted Indebtedness; or
- (b) any other indebtedness, except as incurred in the ordinary course of its business.

20.24 Loans Out, Guarantees and Contingent Liabilities

- (a) The Borrower shall not:
- (i) make any loans, grant any credit or provide any other financial accommodation to or for the benefit of any person, including any of its shareholders;
 - (ii) give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person; or
 - (iii) be or become directly or indirectly or actually or contingently liable for any loss, damage or expense resulting from the non-payment or breach of any obligation of any other person.
- (b) Paragraph (a) above does not apply to Permitted Loans and Guarantees and to Permitted Security.

20.25 Treasury Transactions

The Borrower shall not enter into any Treasury Transaction except for any foreign exchange transactions for spot or forward delivery entered into in the ordinary course of business (and not for investment or speculative purposes) to hedge currency and interest rate-related exposures incurred by it.

20.26 Fees and Commissions

The Borrower shall not pay any fees or commissions to any person other than:

- (a) any fees payable on arm's length terms to third parties who have rendered service or advice to it which were required by it in the ordinary course of business; or
- (b) as required under the Transaction Documents (including the Federal/State Guarantee), including, but not limited to, payments of the initial and current fees for the Federal/State Guarantee in accordance with the "*Hinweise*" attached hereto in Schedule 18.

20.27 Arm's Length Basis

The Borrower will not enter into any arrangement or contract with any of its Affiliates or any other member of the Group or the FoundryCo Group save where such arrangement or contract is entered into on an arm's length basis.

20.28 Acquisitions and Investments

The Borrower shall not:

- (a) purchase, subscribe for or otherwise acquire any shares (or other securities or any interest therein) in, or incorporate, any other company or agree to do any of the foregoing; or
- (b) purchase or otherwise acquire any assets (other than in the ordinary course of business) or (without limitation to any of the foregoing) acquire any business or interest therein or agree to do so.

20.29 Joint Ventures

The Borrower shall not :

- (i) form, or enter into, or permit to subsist;
- (ii) purchase, subscribe for or otherwise acquire any shares (or other securities or any interest therein) in; or
- (iii) transfer any assets to, or lend to, or guarantee or give Security for the obligations of,

any partnership, consortium or Joint Venture in which it has or will have an interest or agree to do any of the foregoing.

20.30 Amendments to Transaction Documents

The Borrower shall not amend, vary, novate, supplement or terminate any Transaction Document to which a Finance Party is not a party, or waive any right thereunder, except for:

- (a) any of the foregoing which is expressly consented to in writing by the Facility Agent acting on the instructions of the Majority Lenders or, pursuant to Clause 33.2 (*Exceptions*), all Lender consent; or
- (b) any amendment, variation or waiver which is of a minor or technical nature (including the change of the corporate name of any relevant entity) or would not adversely affect the rights of the Finance Parties under the Finance Documents.

20.31 Auditors

The Borrower shall at all times have its accounts audited by the Auditors.

20.32 Subsidiaries

The Borrower shall not own any shareholdings in any Subsidiaries.

20.33 Personnel

Following the date of Technical Completion, at least eighty (80) *per cent.* of the personnel not engaged in general or administrative activities of the Borrower will at all times be employees of the Borrower itself.

20.34 Subsidies

The Borrower undertakes to comply with and to fulfill all covenants and other ancillary requirements applicable to it in connection with the grant and/or allowance of subsidies (*Investitionszuschüsse/Investitionszulagen*) to it under the Subsidy Agreement. The Borrower also undertakes to ensure that all obligations (as the case may be, as amended from time to time) undertaken by it in connection with the granting of other state aid (in particular, investment allowances) are fulfilled.

20.35 Balancing Payments to and from Cash Reserve Account

- (a) On the last Business Day of each Month, the Facility Agent will determine the difference, if any, between (i) the USD equivalent of seven hundred million (700,000,000) EUR (or any relevant lesser amount pursuant to paragraph (a) of Part III (*Further Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), as the case may be), as reduced by repayments (calculated in each case in accordance with paragraph (b) of Clause 6.1 (*Repayment of the Loans*) in EUR on the nominal amount of seven hundred million (700,000,000) EUR), prepayments (in case of prepayments in USD, calculated in EUR at the Facility Agent's Spot Rate of Exchange on the date of prepayment) and the full amount of all cancellations, less the amount of EUR Outstandings, determined on the basis of the Facility Agent's Spot Rate of Exchange on that Business Day (the "**Current Limit**"), and (ii) the sum of the total USD Outstandings (the "**USD Amount**"), and will notify the Borrower in writing on that same days of the difference amount. If the USD Amount is higher than the Current Limit, the Borrower shall pay into the Cash

Reserve Account, in addition to the amounts which shall be paid into the Cash Reserve Account pursuant to paragraph (b) of Clause 5.7 (*Selection of Currency*) (whether prior to a Utilisation or at a time when the requirements for disapplying this paragraph (a) pursuant to paragraph (b) below are no longer fulfilled) and to be maintained therein, an amount equal to the difference within five (5) Business Day after the date of the notification. From the amounts so paid to the Cash Reserve Account, the Borrower shall be entitled to withdraw amounts by which the USD Amount is lower than the Current Limit, from the Business Day following receipt of notification by the Facility Agent.

- (b) Provided that no Event of Default has occurred and is continuing, paragraph (a) above shall not apply when (i) the amount of Group Consolidated Cash (as shown in the financial statements and other financial information provided by the Guarantors in accordance with Clause 11 (*Information Undertakings*) of the Guarantee Agreement) is equal to or higher than one billion (1,000,000,000) USD and (ii) the Credit Rating is B3 or better by Moody's and B- or better by Standard & Poor's.

20.36 **Reconversion of USD Outstandings**

Upon the occurrence of an Event of Default, all USD Outstandings will be converted into EUR Outstandings with effect as of a date notified to the Borrower by the Facility Agent in writing no later than two Business Days prior thereto, on the basis of the Facility Agent's Spot Rate of Exchange as per the date of such notice. The Borrower shall pay to the Facility Agent, for the account of the Lenders, on the Business Day following the date of the notice an amount equivalent to the sum of (i) the excess of the USD Amount over the Current Limit determined as per the date of the Facility Agent's notice and (ii) the amount specified by the Facility Agent as the Break Costs and the other costs reasonably incurred, and losses suffered, by the Finance Parties as a result of the conversion. Upon receipt by the Facility Agent of such payment, or if the relevant USD Amount is equal to or lower than the relevant Current Limit on the day of the Facility Agent's notice, the Cash Account Pledge shall be released by the Security Agent and the Lenders.

20.37 **Material Adverse Effect**

The Borrower shall not enter into any agreement or obligation:

- (i) which could have a Material Adverse Effect; or
- (ii) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by any Obligor.

21. **EVENTS OF DEFAULT**

21.1 **Acceleration**

On and at any time after the occurrence of an event or circumstance set out in this Clause 21 which is continuing and, if in case of an event or circumstance pursuant to Clause 21.3 (*Financial Covenants*), Clause 21.5 (*Misrepresentation*), Clauses 21.9 (*Ownership of the Borrower*) to 21.14 (*Auditors' Qualification*), Clauses 21.16 (*Change of Control*) to 21.19 (*Project Documents*) and paragraphs (c) and (d) of Clause 21.21 (*Guarantor's Non-Compliance*), such event or circumstance has adverse consequences for the Lenders' risk and security position, such event or circumstance shall constitute an event

of default (an “**Event of Default**”). Upon the occurrence of an Event of Default the Lenders shall be entitled to terminate this Agreement for cause (*wichtiger Grund*), and to avail themselves in such case of the rights enumerated below:

- (a) the Borrower shall not be entitled to make any distributions or other payments to any of the Guarantors or the Limited Partners, or any of their Affiliates; and
- (b) subject to either:
 - (i) the Federal/State Guarantors’ consent; or
 - (ii) the lapse of three (3) Months after the occurrence of such Event of Default (for the avoidance of doubt, such three (3) Month period will be inclusive of any cure period provided for in this Clause 21),

the Facility Agent may, and shall if so directed by the Majority Lenders or by the Federal/State Guarantors, by notice to the Borrower:

- (A) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (B) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (C) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (D) exercise, or direct the Security Agent to exercise, all or any of its or, as the case may be, the Security Agent’s rights, remedies, powers or discretions under any of the Finance Documents.

21.2 **Non-Payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable, unless payment is made within five (5) Business Days of its due date.

21.3 **Financial Covenants**

Any requirement of Clause 19 (*Financial Covenants*) and/or Clause 12 (*Financial Covenants*) of the Guarantee Agreement is not satisfied.

21.4 **Other Obligations**

- (a) The Borrower fails to comply with a material provision under this Agreement (other than those referred to in Clause 21.2 (*Non-Payment*) and Clause 21.3 (*Financial Covenants*)) and/or either Obligor does not comply with any material provision of any other Finance Document.
- (b) The Borrower fails to comply with any provision under Clause 18 (*Information Undertakings*).

- (c) The Borrower fails to comply with any provision under this Agreement (other than those referred to in Clause 21.2 (*Non-Payment*), Clause 21.3 (*Financial Covenants*), paragraphs (a) and (b) of this Clause 21.4 and paragraph (b) of Clause 21.20 (*Equity Contributions and Subordinated Loans*)) and/or either Obligor does not comply with any provision of any other Finance Document (other than those referred to in paragraphs (a) or (b) of Clause 21.21 (*Guarantor's Non-Compliance*)).
- (d) No Event of Default will occur under:
 - (i) paragraph (a) or paragraph (b) of this Clause 21.4 if the failure to comply is capable of remedy and is remedied within five (5) Business Days; or
 - (ii) paragraph (c) of this Clause 21.4 if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days,of the Facility Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

21.5 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of either Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made or repeated.

21.6 Cross Default

- (a) Any liability of the Borrower for a single principal amount of indebtedness of five million (5,000,000) EUR (or its equivalent in any other currency or currencies on the date of default) or more or of a Guarantor for a single principal amount of twenty million (20,000,000) EUR (or its equivalent in any other currency or currencies on the date of default) or more is not paid when due and payable nor within any originally applicable grace period.
- (b) Any liability of the Borrower for a single principal amount of Financial Indebtedness of five million (5,000,000) EUR (or its equivalent in any other currency or currencies of default) or more or of a Guarantor for a single principal amount of twenty million (20,000,000) EUR (or its equivalent in any other currency or currencies on the date of default) or more is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) No Event of Default will occur under this Clause 21.6 if, in any such case, the relevant indebtedness or Financial Indebtedness, as the case may be, is being contested in good faith or Security has been provided to the creditor of the relevant indebtedness or Financial Indebtedness, as the case may be, to the satisfaction of such creditor.

21.7 Insolvency

- (a) The Borrower, LM Beteiligungsgesellschaft mbH, any Limited Partner affiliated to the Borrower or any direct or indirect German Holding Company of the Borrower

(each a “**Relevant German Company**”) is unable to pay its debts as they fall due (*Zahlungsunfähigkeit*), suspends making payments on any of its debts or, for any of the reasons set out in Sections 17-19 of the German *Insolvenzordnung*, a Relevant German Company files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the board of directors (*Geschäftsführung*) of a Relevant German Company is required by law to file for insolvency or the competent court takes any of the actions set out in Section 21 of the German *Insolvenzordnung* or institutes insolvency proceedings against a Relevant German Company (*Eröffnung des Insolvenzverfahrens*) or any event occurs or proceedings commence, appointments are sought or other procedures or steps are taken with respect to a Relevant German Company which, under the laws of any jurisdiction to which it is subject or in which it has assets, has a similar or analogous effect and in the event that such proceedings, appointments or other procedures or steps applied for or commenced by a third party, only to the extent that the same are not dismissed within sixty (60) days of the commencement of such proceedings, procedures or steps or such appointment.

- (b) Proceedings have been applied for or commenced in respect of a Guarantor, the General Partner or a non-German Holding Company of the Borrower (a “**Relevant Holding Company**”) seeking:
- (i) to have an order for relief entered; or
 - (ii) a declaration that a Guarantor, the General Partner or a Relevant Holding Company is insolvent; or
 - (iii) a declaration or finding, or seeking dissolution, winding-up, charter revocation or forfeiture, liquidation, reorganisation, arrangement, adjustment, composition or other similar relief with respect to a Guarantor, the General Partner or a Relevant Holding Company, their respective assets or their respective debts,

under any law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar law now or hereafter in effect and which are not dismissed within sixty (60) days of the commencement of such proceedings or such appointment.

- (c) A Guarantor, the General Partner or a Relevant Holding Company:
- (i) voluntarily suspends transaction of its business, ceases payment of its creditors or makes a general assignment for the benefit of its creditors;
 - (ii) applies for or institutes any of the proceedings described in paragraph (b) above, or (whether or not any such proceeding have been applied for or commenced) consents to or acquiesces in any such order for relief, declaration, finding or other similar relief described in paragraph (b) above, or to the taking of possession by any custodian, receiver, trustee, liquidator, assignee, sequestrator or other officer having similar powers of all or any substantial part of its property;
 - (iii) dissolves, winds-up, revokes or forfeits its charter (or other constituent documents) or liquidates itself or any substantial part of its property; or

(iv) takes any corporate or similar action in furtherance of any of the foregoing.

21.8 Creditors' Process

Any attachment, sequestration, distress or execution affects:

- (a) any asset or assets of a Relevant German Company, a Relevant Holding Company or the General Partner pursuant to a claim having an aggregate amount of one million (1,000,000) EUR (or its equivalent on the date on which it takes effect) or more; or
- (b) all or substantially all of the assets of a Guarantor pursuant to a claim having an aggregate amount of thirty million (30,000,000) Dollars (or its equivalent on the date on which it takes effect) or more;

and is not discharged within thirty (30) days.

21.9 Ownership of the Borrower

AMD Inc. or, upon the Borrower having become a Subsidiary of FoundryCo with the written consent of the Majority Lenders and the Federal/State Guarantors, FoundryCo ceases to own, directly or indirectly, more than 50 *per cent.* of the voting capital of the Borrower without having first obtained the prior written consent of the Majority Lenders and the Federal/State Guarantors, such consent not having been unreasonably withheld or delayed.

21.10 Finance Documents

If:

- (a) it is or becomes unlawful for a Security Provider to perform any of its material obligations under the Finance Documents;
- (b) a Security Provider repudiates a material obligation under Finance Document or repudiates or terminates a Finance Document;
- (c) a Security Provider evidences an intention to repudiate a material obligation under a Finance Document or an intention to repudiate or terminate a Finance Document;
or
- (d) any material term of a Finance Document is not or ceases to be binding on or enforceable against a Security Provider.

21.11 Transaction Security

If:

- (a) any Transaction Security is not in full force and effect in accordance with its terms with the ranking and priority it is expressed to have; or
- (b) an Obligor repudiates any of the Transaction Security or evidences an intention to repudiate any of the Transaction Security.

21.12 Proceedings Pending

- (a) Any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which has had or is likely to have a Material Adverse Effect is or are started or filed against any Obligor.
- (b) Any final (*rechtskräftig*) judgment of any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency adversely determined against an Obligor that exceeds an aggregate amount of thirty million (30,000,000) EUR (or its equivalent on the date of such judgment).
- (c) Any material collective labour dispute occurs which has or is reasonably likely to have a Material Adverse Effect.

21.13 Cessation of Business

Any Obligor ceases to carry on all or any substantial part of its business or proposes to do so.

21.14 Auditors' Qualification

The Auditors qualify their certification of the audited financial statements (*Einschränkung des Bestätigungsvermerks*) of the Borrower or qualify their report in any manner that is, in the opinion of the Majority Lenders, materially adverse in the context of the Finance Documents and the transactions contemplated by the Finance Documents.

21.15 Material Adverse Change or Effect

Any event or circumstance occurs which the Majority Lenders reasonably believe has had or is likely to have a Material Adverse Effect.

21.16 Change of Control

There is a Change of Control.

21.17 Authorisations and Intellectual Property

- (a) Any material Authorisation (including, but not limited to, Authorisations under building laws and under the Federal Immission Protection Act – *BImSchG*) of the Borrower or in respect of the Borrower's business (other than an Authorisation in respect of a Transaction Document or any Intellectual Property) is adversely amended, terminated, suspended, withdrawn or revoked, in whole or in part, or does not remain in full force and effect or otherwise expires and is not renewed prior to its expiry (in each case, without an alternative or replacement Authorisation, on terms reasonably satisfactory to the Facility Agent, being in place within thirty (30) days and having substantially equivalent effect).
- (b) Any Intellectual Property or Authorisation in respect thereof which is material to the Obligors' business conflicts with the rights of any third party or is adversely amended, terminated, suspended, withdrawn or revoked, in whole or in part, with a Material Adverse Effect in either case.

21.18 Misappropriation

The Borrower utilises the Facility in whole or in part for any purposes other than those set out in Clause 3 (*Purpose*).

21.19 Project Documents

If:

- (a) it is or becomes unlawful for any party to perform under a Project Document in respect of any material provision thereof;
 - (b) any party repudiates a Project Document or evidences an intention to repudiate a Project Document; or
 - (c) any material term of a Project Document is not or ceases to be binding on or enforceable against a party thereto,
- the consequences of which would adversely affect the rights of the Finance Parties under the Finance Documents.

21.20 Equity Contributions and Subordinated Loans

- (a) Any of the Limited Partners fails to make a contribution to the partnership capital of the Borrower in accordance with the terms of the Partnership Agreement and/or fails to provide Subordinated Loans in accordance with the terms of the Subordinated Loan Agreement; unless, the defaulting Limited Partner's:
 - (i) share of equity is covered; and/or
 - (ii) Subordinated Loans are provided in the requisite amount,by another Limited Partner or third parties approved by, and on terms satisfactory to, the Majority Lenders and the Federal/State Guarantors within sixty (60) days after the due date of any such equity contribution or Subordinated Loans; however, within one hundred and eighty (180) days thereafter, such equity contribution or Subordinated Loans may be replaced by third party equity or other Subordinated Loans approved by, and on terms satisfactory to, both the Majority Lenders and the Federal/State Guarantors.
- (b) Any payments are made by the Borrower contrary to the terms of the Subordination Agreement.
- (c) No Event of Default will occur under paragraph (b) of this Clause 21.20 if the relevant payments relate to ones which are made by the Borrower contrary to the terms of the Cost Plus Reimbursement Agreement or Management Service Agreement and the correct payments are made within five (5) Business Days from the date on which they were due and payable.

21.21 **Guarantor's Non-Compliance**

A Guarantor does not comply with its obligations, as applicable, in relation to any of the following:

- (a) to make a payment under the Cost Plus Reimbursement Agreement or pursuant to Clause 2(c) of the Guarantee Agreement;
- (b) to make payments to the Borrower, or otherwise to provide funds to the Borrower, in each case without delay in the amount of any Cash Shortfalls, by way of equity contributions, Subordinated Loans or, as the case may be, prepayment for products and/or services (not in excess, however, of the Guarantor's obligations under the Guarantee Agreement, the Subordinated Loan Agreements, the Revolving Credit Agreement and the Partnership Agreement, and not giving rise to any right of any person (with the exception of the Borrower (to the extent that it is still a member of the FoundryCo Group)) to enforce the relevant funding arrangements);
- (c) to provide management and/or technical support to the Borrower pursuant to the Project Documents; or
- (d) to indemnify the Borrower no later than by the due date thereof for any tax payments required to be made by the Borrower pursuant to any tax assessment made by the competent tax authorities in view of transactions not made on an arms' length basis,

unless failure by a Guarantor to comply with any such obligation mentioned in relation to:

- (i) paragraph (a) or paragraph (b) above is capable of remedy and is remedied within seven (7) Business Days of its respective due date; and
- (ii) paragraph (c) or paragraph (d) above is capable of remedy and is remedied within twenty (20) Business Days of the Borrower receiving notice thereof.

SECTION 8
CHANGES TO PARTIES

22. CHANGES TO THE LENDERS

22.1 Assignments and Transfers by the Lenders

- (a) Subject to this Clause 22, a Lender (the “**Existing Lender**”) may assign and transfer any of its rights and obligations under this Agreement to another bank, financial institution, trust, fund, special purpose vehicle or other entity established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”); **provided that**, in case of an assignment or transfer to a New Lender (i) the consent of the Federal/State Guarantors is obtained or has not been unreasonably withheld or delayed; and (ii) the consent of the Borrower is obtained, such consent not to be unreasonably withheld or delayed (the Borrower being deemed to have given such consent ten (10) Business Days after the Borrower have been given notice of a request for such an assignment or transfer, unless such request is expressly refused within that time).
- (b) In addition to any other assignment or participation rights provided in this Clause 22, each Lender may assign or pledge all or any portion of its Loans and the other obligations owed to such Lender, without (unless required by applicable law) notice to or consent of the Borrower, to any federal reserve bank or central bank or multilateral bank; **provided, however, that**:
 - (i) no Lender shall be relieved of any of its obligations hereunder as a result of such assignment or pledge; and
 - (ii) in no event shall such federal reserve bank or central or multilateral bank be considered to be a “**Lender**” or be entitled to require the assigning Lender to take or omit to take any action hereunder.

22.2 Conditions of Assignment and Transfer

- (a) The consent of neither the Borrower nor any other Obligor is required for an assignment or transfer by a Lender to another Lender or one of its Affiliates.
- (b) An assignment or transfer of a Lender’s Commitment must be in a minimum amount of ten million (10,000,000) EUR or any higher amount which is an integral multiple of one million (1,000,000) EUR unless all of such Lender’s Commitment and participation in the EUR Outstandings and the USD Outstandings are assigned or transferred.
- (c) An assignment will only be effective on receipt by the Facility Agent of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 22.5 (*Procedure for Transfer*) is complied with.

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- (e) If:
- (i) a Lender assigns and or transfers any of its rights, obligations and/or claims under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross-up and Indemnities*) or Clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

22.3 Assignment and Transfer Fee

If the New Lender is not an Affiliate of a Lender the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of two thousand (2,000) EUR.

22.4 Limitation of Responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

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- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer from a New Lender of any of the rights, obligations and claims assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

22.5 **Procedure for Transfer**

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of Assignment and Transfer*) a transfer is effected in accordance with paragraph (b) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate and promptly deliver a copy thereof to the Borrower if requested.
- (b) On the Transfer Date:
 - (i) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights or claims against one another which differ from the rights, obligations and claims among the Obligors and the Existing Lender only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (ii) the Facility Agent, the Security Agent, the Mandated Lead Arrangers, the New Lender and the other Lenders shall acquire the same rights and claims and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights, claims and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead Arrangers and the Existing Lender shall each be released from further obligations to each other under this Agreement; and
 - (iii) the New Lender shall become a Party as a “**Lender**”.

22.6 **Disclosure of Information**

- (a) Each Finance Party shall during the continuance of this Agreement keep confidential any information about or provided by or on behalf of any Obligor under the terms of this Agreement (the “**Information**”), and without the prior written consent of the Borrower shall not disclose the Information to any third party other than:
 - (i) any of its Affiliates and any of its or their respective officers, employees, agents, professional advisers or auditors;

- (ii) any other person:
 - (A) to (or through) whom that Lender assigns and transfers (or may potentially assign and transfer) all or any of its rights, obligations and/or claims under this Agreement;
 - (B) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor;
- (iii) any third party:
 - (A) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation;
 - (B) in any proceedings arising out of, or in connection with, any Finance Documents to the extent required for the purpose of such proceedings;
 - (C) if required to do so by any court of competent jurisdiction;
 - (D) if the information is in the public domain other than where the information is in the public domain due to a breach of this Clause 22.6 by the person making the disclosure;
- (iv) any other member of the Group or the FoundryCo Group; and
- (v) in the case of the Reporting Agent, the Federal/State Guarantors,

provided that, in relation to paragraph (i) (other than any a person who is otherwise bound by contractual or professional confidentiality obligations) and paragraph (ii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

- (b) Notwithstanding the foregoing or anything to the contrary in this Agreement or any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, each Party shall be permitted to disclose the tax treatment and tax structure of the transactions set forth in this Agreement and in the other Finance Documents. This permission to disclose includes the ability of each Party to consult, without limitation of any kind, any tax advisor regarding the tax treatment or tax structure of the transactions set forth in this Agreement and in the other Finance Documents. The Parties acknowledge that this written authorisation does not constitute a waiver by any Party of any privilege held by such Party pursuant to the attorney-client privilege or the confidentiality privilege of Section 7525 (a) of the U.S. Internal Revenue Code of 1986, as amended, or pursuant to any similar laws and regulations in any relevant other jurisdiction.

22.7 Ancillary Provisions

Each Obligor shall execute and do all such transfers, assignments, assurances, acts and things as the Facility Agent may reasonably request for perfecting and completing any assignment and transfer by a Lender; **provided however**, such Lender reimburses the Obligors for their respective reasonable costs and expenses and such assignment and transfer is permitted pursuant to this Clause 22.

23. CHANGES TO THE BORROWER

23.1 Assignments and Transfers by the Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

SECTION 9
THE FINANCE PARTIES

24. ROLE OF THE AGENTS AND THE MANDATED LEAD ARRANGERS

24.1 Appointment of the Facility Agent and the Security Agent

- (a) Each of the Finance Parties other than the Facility Agent appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Finance Parties other than the Security Agent appoints the Security Agent to act as its security agent under and in connection with the Finance Documents.
- (c) Each of the Finance Parties other than the Reporting Agent appoints the Reporting Agent to act as its reporting agent under and in connection with the Finance Documents.
- (d) Each of the Finance Parties other than the Facility Agent authorises the Facility Agent, each of the Finance Parties other than the Security Agent authorises the Security Agent, and each of the Finance Parties other than the Reporting Agent authorises the Reporting Agent, to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (e) Each of the Finance Parties other than the Facility Agent, the Security Agent and the Reporting Agent hereby grants power of attorney to the Facility Agent, the Security Agent and the Reporting Agent, respectively, to be exercised for the purposes described in paragraph (d) above. The Facility Agent, the Security Agent and the Reporting Agent shall each be released from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*); they are authorised to delegate their powers of attorney, including the exemption from the restrictions of Section 181 of the German Civil Code. At the request of the Facility Agent, the Security Agent and/or the Reporting Agent, the Mandated Lead Arrangers and the Lenders shall grant special powers of attorney to the Facility Agent, the Security Agent and/or the Reporting Agent to enter into any Finance Documents, or any amendments thereof, on their behalf.
- (f) Each of the Finance Parties other than the Security Agent authorises the Security Agent, to enter as security agent on behalf of the Finance Parties (with the effect that each Finance Party becomes a party thereunder) any pledge agreements governed by German law. The authorisation granted herein comprises any action or declaration the Security Agent may deem necessary in connection with such pledge agreements (including any action or declaration that the Security Agent deems to be necessary in order to create and continue valid pledge agreements governed by German law).

24.2 Duties of the Facility Agent, the Security Agent and the Reporting Agent

- (a) The Facility Agent shall promptly forward to a Party the original or a copy of any document that is delivered to the Facility Agent for that Party by any other Party.

- (b) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Lenders.
- (c) The Facility Agent shall promptly notify the Lenders of any Default arising under Clause 21.2 (*Non-payment*).
- (d) The Facility Agent shall promptly provide the Security Agent with such certificate(s) as the Security Agent may require as to all amounts which are owing, actually or contingently, at any time by any Obligor to all or any of the Finance Parties (other than the Security Agent in its capacity as security agent) under the Finance Documents, whether or not due.
- (e) The Security Agent shall promptly notify the Facility Agent of the contents of any notice or document received by it, in its capacity as security agent, from any of the Obligors under any of the Finance Documents.
- (f) The Reporting Agent shall review the statements received by it under paragraph (d)(A) of Clause 18.1 (*Financial Statements*) to check that they are in compliance with the purpose of the Loans set out in Clause 3 (*Purpose*) and whether an Event of Default is evidenced and shall notify the Federal/State Guarantors, the Facility Agent, the Security Agent and the Lenders accordingly. The Reporting Agent must exercise the standard of care of a prudent banker (*mit banküblicher Sorgfalt*) in performing this obligation.

24.3 **Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, each Mandated Lead Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

24.4 **No Fiduciary Duties**

- (a) Nothing in this Agreement constitutes the Facility Agent, the Security Agent (except as expressly provided in Schedule 10 (*Form of Security Agency Agreement*)), the Reporting Agent or the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, the Security Agent (except as expressly provided in Schedule 10 (*Form of Security Agency Agreement*) or in any Security Document), the Reporting Agent or the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
- (c) No Agent is bound to monitor or verify the application of the proceeds of, or the use of, any Utilisation pursuant to this Agreement.

24.5 **Business with the Group or the FoundryCo Group**

- (a) Each Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group or the FoundryCo Group.

- (b) Each Agent and each Mandated Lead Arranger shall be entitled, notwithstanding that it is also an Agent or, as the case may be, a Mandated Lead Arranger to take, or refrain from taking, any action which it would be entitled to take or refrain from taking as a Finance Party or in connection with any other relationship with any member of the Group or the FoundryCo Group or any other person if it were not an Agent or, as the case may be, a Mandated Lead Arranger.
- (c) Neither the Facility Agent nor the Security Agent nor the Reporting Agent shall be precluded, by virtue of its position as a Finance Party or any such other relationship, from exercising any of its rights, powers, authorities or discretions as agent or, as the case may be, as security agent or, as the case may be, as reporting agent under the Finance Documents.

24.6 Rights and Discretions of the Facility Agent, the Security Agent and the Reporting Agent

- (a) The Facility Agent, the Security Agent and the Reporting Agent may rely on:
 - (i) any communication, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Facility Agent, the Security Agent and the Reporting Agent may assume (unless it has received notice to the contrary in its capacity as agent or, as the case may be, as security agent or, as the case may be, as reporting agent) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.2 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligor.
- (c) Each of the Facility Agent, the Security Agent and the Reporting Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) Each of the Facility Agent, the Security Agent and the Reporting Agent may act in relation to the Finance Documents through its personnel and Agents.

24.7 Majority Lenders' Instructions

- (a) Unless a contrary indication appears in a Finance Document, each of the Facility Agent and the Security Agent shall:
 - (i) act in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from acting or exercising any right, power, authority or discretion vested in it as Facility Agent or Security Agent, as the case may be); and

- (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with such an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Lenders and the Mandated Lead Arrangers.
- (c) Each of the Facility Agent and the Security Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such Security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, all the Lenders) each of the Facility Agent and the Security Agent may act or refrain from taking any action or from exercising any right, power or discretion vested in it as an agent under any Finance Document unless and until instructed by the Majority Lenders as to whether or not such right, power or discretion is to be exercised and, if it is to be exercised, as to the manner in which it should be exercised.
- (e) Neither the Facility Agent nor the Security Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

24.8 Responsibility for Documentation

None of the Facility Agent, the Security Agent, the Reporting Agent and the Mandated Lead Arrangers:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Reporting Agent, the Mandated Lead Arrangers, an Obligor or any other person and given in or in connection with any Finance Document or the Information Memorandum; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

24.9 Exclusion of Liability

- (a) Without limiting paragraph (b) below nor paragraph (f) of Clause 24.2 (*Duties of the Facility Agent, the Security Agent and the Reporting Agent*), neither the Facility Agent nor the Security Agent will be liable for any action taken by it under or in connection with, or for any omission by it in relation to, any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party may take any proceedings against any officer, employee or agent of the Facility Agent or the Security Agent in respect of any claim it might have against

the Facility Agent or the Security Agent or in respect of any act or omission of any kind by that officer, employee or Agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent or the Security Agent may rely on this Clause.

- (c) Neither the Facility Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

24.10 Lenders' Indemnity to the Facility Agent, the Security Agent and the Reporting Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, the Security Agent and the Reporting Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Facility Agent, the Security Agent or the Reporting Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent under the Finance Documents (unless it has been reimbursed by an Obligor pursuant to a Finance Document).

24.11 Resignation of the Facility Agent, the Security Agent or the Reporting Agent

- (a) The Facility Agent, the Security Agent and the Reporting Agent may each resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Facility Agent, the Security Agent and the Reporting Agent may each resign by giving notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent in accordance with paragraph (b) above within thirty (30) days after notice of resignation was given, the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent (after consultation with the Borrower) may appoint a successor agent or security agent (acting through an office in Luxembourg).
- (d) The retiring Facility Agent, the Security Agent or the Reporting Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as agent or security agent under the Finance Documents.
- (e) The Facility Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the receipt by the Facility Agent of written confirmation from the successor (in form and substance satisfactory to the Facility Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Facility Agent is a party in its capacity as agent under the Finance Documents.

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- (f) The Security Agent's resignation notice shall only take effect upon:
- (i) the appointment of a successor;
 - (ii) the receipt by the Security Agent of written confirmation from the successor (in form and substance satisfactory to the Security Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Security Agent is a party in its capacity as security agent under the Finance Documents; and
 - (iii) the receipt by the Facility Agent of written confirmation from the Security Agent (in form and substance satisfactory to the Facility Agent) that it has received, and found satisfactory, the confirmation referred to in sub-paragraph (ii) above and that all Security created pursuant to the Security Documents and all the Security Agent's rights, benefits and obligations as security agent under the Finance Documents have been transferred to its successor.
- (g) The Reporting Agent's resignation notice shall only take effect upon:
- (i) the appointment of a successor;
 - (ii) the receipt by the Reporting Agent of written confirmation from the successor (in form and substance satisfactory to the Reporting Agent) that the successor agrees to be bound by the provisions of the Finance Documents and all other related agreements to which the Reporting Agent is a party in its capacity as reporting agent under the Finance Documents; and
 - (iii) the receipt by the Facility Agent of written confirmation from the Reporting Agent (in form and substance satisfactory to the Facility Agent) that it has received, and found satisfactory, the confirmation referred to in sub-paragraph (ii) above.
- (h) Upon any such resignation notice taking effect, the retiring Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 24 and, in the case of the Security Agent, of Schedule 10 (*Form of Security Agency Agreement*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (i) After consultation with the Borrower, the Majority Lenders may, by notice to the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent or, as the case may be, Security Agent or, as the case may be, Reporting Agent shall resign in accordance with paragraph (b) above.

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- (j) The Parties agree, if requested to do so, to execute whatever documents may be reasonably required to effect such a change of Facility Agent and/or Security Agent and/or Reporting Agent.

24.12 Confidentiality

- (a) The Facility Agent (in acting as agent), the Security Agent (in acting as security agent) and the Reporting Agent (in acting as reporting agent) shall be regarded as acting through its respective agency or security agent division which shall in each case be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Facility Agent or, as the case may be, the Security Agent or, as the case may be, the Reporting Agent, it may be treated as confidential to that division or department and the Facility Agent or, as the case may be, the Security Agent or, as the case may be, the Reporting Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent, the Security Agent, the Reporting Agent and the Mandated Lead Arrangers is obliged to disclose to any other person;
 - (i) any confidential information; or
 - (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

24.13 Relationship with the Lenders

- (a) The Facility Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Each Lender shall supply the Facility Agent with any information required by the Facility Agent in order to calculate the Minimum Reserve Cost, if any.
- (c) Neither the Facility Agent nor the Security Agent nor the Reporting Agent shall have any obligation or liability to any Lender or any other person as a result of any failure by any Obligor or any other person to perform any of its obligations under the Finance Documents.
- (d) If the Facility Agent notifies a Lender that it is required to make a determination in relation to Clause 21.1 (*Acceleration*) and the Facility Agent does not receive a response in writing from such Lender within five (5) Business Days of such notification, then such Lender will be deemed to have determined that the Lenders should terminate this Agreement for cause (*wichtiger Grund*) and that the Facility Agent should avail itself, on behalf of the Lenders, of the rights enumerated in paragraph (b) of Clause 21.1 (*Acceleration*).

24.14 Credit Appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each Agent and

the Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group or the FoundryCo Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the ownership, value or sufficiency of any of the Charged Assets, the adequacy or priority of any of the Security created pursuant to the Security Documents, the right or title of any person in or to any Charged Assets or the existence of any Security affecting the same;
- (e) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Facility Agent, the Security Agent, the Reporting Agent, any Party or any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (f) the adequacy, accuracy and/or completeness of any communication delivered to it under any of the Finance Documents, any legal or other opinions, reports, valuations, certificates, appraisals or other documents delivered or made or required to be delivered or made at any time in connection with any of the Finance Documents or any other report or other document, statement or information circulated, delivered or made, whether orally or otherwise and whether before, on or after the Signing Date.

24.15 **Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

24.16 **Parallel Debt**

- (a) Each of the Parties hereto agree, and the Borrower acknowledges by way of an abstract acknowledgement of debt (*abstraktes Schuldanerkenntnis*) (the “**Acknowledgement**”), that each and every obligation of the Borrower (and any of its successors pursuant to this Agreement) up to the Facility Amount under this Agreement and the other Finance Documents, shall also be owing in full to the Security Agent (and each of the latter’s successors under this Agreement), and that accordingly the Security Agent will have its own independent right to demand

performance by the Borrower of those obligations. The Security Agent undertakes towards the Borrower that in case of any discharge of any such obligation owing to one of the Security Agent or a Finance Party, it will, to the same extent, not make a claim against the Borrower under the Acknowledgement at any time, **provided that** any such claims can be made against the Borrower if such discharge is made by virtue of any set off, counterclaim or similar defence invoked by the Borrower *vis-à-vis* the Security Agent other than as permitted pursuant to Clause 27.6 (*No Set-off by the Borrower*).

- (b) Without limiting or affecting the Security Agent's rights against the Borrower (whether under this paragraph or under any other provision of the Finance Documents), the Security Agent agrees with each other Finance Party (on a several and divided basis) that, subject as set out in the next sentence, it will not exercise its rights under the Acknowledgement with a Finance Party except with the consent of the relevant Finance Party. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent's right to act in the protection or preservation of rights under or to enforce any Security Document as contemplated by this Agreement and/or the relevant Security Document (or to do any act reasonably incidental to the foregoing).

25. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

26. SHARING AMONG THE FINANCE PARTIES

26.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 27 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 27 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the "**Sharing Payment**")

equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 27.5 (*Partial Payments*).

26.2 Redistribution of Payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 27.5 (*Partial Payments*).

26.3 Recovering Finance Party's Rights

- (a) On a distribution by the Facility Agent under Clause 26.2 (*Redistribution of Payments*), the Finance Parties that have shared in the redistribution shall assign to the Recovering Finance Party their rights to the payments that were redistributed.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment that is immediately due and payable.

26.4 Reversal of Redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 26.2 (*Redistribution of Payments*) shall, upon request of the Facility Agent, pay to the Facility Agent for account of that Recovering Finance Party an amount equal to its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights to take the benefit of an assignment in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

26.5 Exceptions

- (a) This Clause 26 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings if:
 - (i) it notified the other Finance Parties of the legal or arbitration proceedings; and
 - (ii) the other Finance Parties had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 10
ADMINISTRATION

27. PAYMENT MECHANICS

27.1 Payments to the Facility Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor (subject to Clause 27.9 (*Payments to the Security Agent*)) or that Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to EUR or USD, in a principal financial centre in a Participating Member State or London) with such bank as the Facility Agent specifies.

27.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to an Obligor*), Clause 27.4 (*Clawback*) and Clause 27.9 (*Payments to the Security Agent*), be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to EUR, in a principal financial centre in a Participating Member State or London).

27.3 Distributions to an Obligor

The Facility Agent and the Security Agent may (with the consent of the Obligor or in accordance with Clause 28 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

27.4 Clawback

- (a) Where a sum is to be paid to the Facility Agent or the Security Agent under the Finance Documents for another Party, the Facility Agent or, as the case may be, the Security Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent or the Security Agent pays an amount to another Party and it proves to be the case that it had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid shall on demand refund the same to the Facility Agent or, as the case may be, the Security Agent, together with interest on that amount from the date of payment to the date of receipt by the Facility Agent or, as the case may be, the Security Agent, calculated by it to reflect its cost of funds.

27.5 **Partial Payments**

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agents or the Mandated Lead Arrangers under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest or commission due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment *pro rata* of any EUR Outstandings and USD Outstandings due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iii) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

27.6 **No Set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim; except in respect of claims of the Borrower which are either undisputed between the relevant Finance Party and such Obligor or which have been the subject of a final court judgement.

27.7 **Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal at the rate payable on the original due date.

27.8 **Currency of Account**

- (a) Subject to paragraphs (b) to (e) below, the EUR is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.

- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than EUR shall be paid in that other currency.

27.9 Payments to the Security Agent

Notwithstanding any other provision of any Finance Document, at any time after any of the Transaction Security becomes enforceable, the Security Agent may require:

- (a) any Obligor to pay all sums due from it under any Finance Document; or
- (b) the Facility Agent to pay all sums received or recovered from any Obligor under any Finance Document,

in each case as the Security Agent may direct for application in accordance with the terms of the Finance Documents.

28. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether matured or not) owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

29. NOTICES

29.1 Communications in Writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or telex.

29.2 Addresses

The address, fax number and telex number (and the department or officer, if any, for whose attention the communication is to be made) of each Party, the Guarantors and the Federal/State Guarantors for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below;
- (b) in the case of AMD Inc.:

Address: One AMD Place M-S 68 Sunnyvale, California 94088
Fax number: +1 408 774 7399
Attention: General Counsel;

(c) in the case of FoundryCo:

Address: 1050 E Arques Ave, Sunnyvale, CA 94085, U.S.A.
Fax number: +1-408-774-7499
Attention: General Counsel

with a copy to
Noerr Stiefenhofer Lutz

Address: Paul-Schwarze-Str. 2, 01097 Dresden, Germany
Fax number: +49-351-8166081
Attention: Mr. Otto Stolberg-Stolberg

- (d) in the case of each Lender, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party;
- (e) in the case of the Mandated Lead Arrangers, the Facility Agent and the Security Agent, that identified with its name below;
- (f) in the case of any successor Agent, that notified in writing to the retiring Agent on or prior to the date on which the resignation notice of the retiring Agent takes effect;
- (g) in the case of any successor Security Agent, that notified in writing to the Facility Agent on or prior to the date on which the resignation notice of the retiring Security Agent takes effect; and
- (h) in the case of the Federal/State Guarantors:

Address: c/oPricewaterhouseCoopers Deutsche Revision AG Wirtschaftsprüfungsgesellschaft
Lise-Meitner-Straße 1
10589 Berlin

Fax Number: +49 30 2636 1221
Telephone Number: +49 30 2636 1346
Attention: Ursula Putz

or any substitute address, fax number, telex number or department or officer as the Party and/or a Guarantor and/or the Federal/State Guarantors may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, a Guarantor and the Federal/State Guarantors, if a change is made by the Facility Agent) by not less than five (5) Business Days' notice.

29.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
- (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being sent by international courier addressed to it at that address; or

- (iii) if by way of telex, when despatched, but only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender's copy of the notice,

and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Facility Agent, the Security Agent or the Reporting Agent will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified with its signature below (or any substitute department or officer as it shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Facility Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

29.4 **Notification of Address, Fax Number and Telex Number**

Promptly upon receipt of notification of an address, fax number and telex number or change of address, fax number or telex number pursuant to Clause 29.2 (*Addresses*) or changing its own address, fax number or telex number, the Facility Agent shall notify the other Parties.

29.5 **Language**

- (a) Any notice and any other document given under or in connection with any Finance Document must be in English, unless otherwise required by applicable laws or regulations or the Federal/State Guarantors.
- (b) Whichever language is chosen or required for a particular notice or any particular document given under or in connection with any Finance Document shall prevail over that of any accompanying translation.

30. **CALCULATIONS AND CERTIFICATES**

30.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

30.2 **Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

30.3 **Day Count Convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days.

31. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

32. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

33. AMENDMENTS AND WAIVERS

33.1 Required Consents

- (a) Subject to Clause 33.2 (*Exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 33.

33.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of “**Majority Lenders**” in Clause 1.1 (*Definitions*);
 - (ii) the length of the Availability Period;
 - (iii) an extension to the date of payment of any amount under the Finance Documents;
 - (iv) the currency in which any payment under any Finance Document is to be made;
 - (v) a reduction in the Margin or the amount of any payment of principal, interest, fees (except in relation to those paid exclusively to an Agent) or commission payable under this Agreement;
 - (vi) an increase in or extension of any Commitment;
 - (vii) a change to the Borrower or a Guarantor;
 - (viii) any provision which expressly requires the consent of all the Lenders;
 - (ix) Clause 2.2 (*Finance Parties’ Rights and Obligations*), Clause 22 (*Changes to the Lenders*) or this Clause 33; or

-
- (x) a release of Security (including, for the avoidance of doubt, any change of the conditions pursuant to which claims can be made under the Guarantee or the Federal/State Guarantee) created pursuant to a Security Document (other than as required by the terms of that Security Document), shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver that relates to the rights or obligations of the Facility Agent, the Security Agent, the Reporting Agent or the Mandated Lead Arrangers may not be effected without the consent of the Facility Agent, the Security Agent, the Reporting Agent or the Mandated Lead Arrangers, as the case may be.

34. COUNTERPARTS

34.1 Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

34.2 Translation

This Agreement is translated into the English language. The English translation (without attachments) is attached hereto in Schedule 19 (*English non-binding translation*). However, the German version will at all times be the binding version with respect to the rights and obligations of the parties under this Agreement.

SECTION 11
THE FEDERAL/STATE GUARANTEE, GOVERNING LAW AND JURISDICTION

35. THE FEDERAL/STATE GUARANTEE

- (a) The Loans are secured, inter alia, by the Federal/State Guarantee.
- (b) The terms of the Federal/State Guarantors Decision are a substantive part of this Agreement (*wesentlicher Bestandteil dieses Vertrages*).
- (c) The Parties agree to the terms of the Federal/State Guarantors Decision whether or not expressly included in this Agreement. In particular, the Borrower will not without the prior consent of the Federal/State Guarantor (i) make any material or financial investments, (ii) take over any material new obligations, (iii) sell or dispose of any material parts of its business and (iv) enter into any mergers or demergers cause by the Borrower.
- (d) The Borrower must comply with all the terms of the Federal/State Guarantors Decision (including, but not limited to, Clause 9 (II) 1) of the Federal/State Guarantors Decision) and of the “Hinweise” attached hereto in Schedule 18 (*Hinweise für die Beantragung von Bundesbürgschaften unter Einbeziehung paralleler Landesbürgschaften*) which directly apply to it. In particular, it will (i) grant the Security set out in the Security Documents under this Agreement und will particularly grant Security with respect to land which is currently not encumbered and/or acquired in the future und which is used for operational purposes, (ii) upon request of the Majority Lenders grant additional Security in case of an impairment (including, but not limited to, by means of depreciation or loss) of the Security so far granted and (iii) in addition to the application fee pay when due any current fees for the Federal/State Guarantee in accordance with Section B of the “Hinweise” attached hereto in Schedule 18 (*Hinweise für die Beantragung von Bundesbürgschaften unter Einbeziehung paralleler Landesbürgschaften*).
- (e) The Federal/State Guarantors are entitled to delegate the administration of the Federal/State Guarantee to an authorised person.

36. GOVERNING LAW

This Agreement is governed by German law without giving effect to the principles of conflict of laws.

37. JURISDICTION

The District Court of Frankfurt am Main has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

38. CONFIRMATION

The Borrower expressly confirms towards each Finance Party that all funds made available to it under this Agreement will be drawn for its own account, and that it is to be the economic beneficiary (*wirtschaftlich Begünstigter*) within the meaning of Section 8 Money Laundering Act (*Geldwäschegesetz*).

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 13
Project Documents

The following documents constitute the "Project Documents" under this Agreement:

- 1) the Cost Plus Reimbursement Agreement;
- 2) the Management Service Agreement;
- 3) the License Agreement;
- 4) the EPC Contract;
- 5) the Partnership Agreement;
- 6) the Purchase Agreements;
- 7) the Participation Agreement;
- 8) the Services Agreement;
- 9) the Exit Agreement;
- 10) the LMB Share Transfer Agreement.

SCHEDULE 16
The Material Contracts

The following documents constitute the “**Material Contracts**” under this Agreement:

A. Existing Contracts

- 1) the EPC Contract;
- 2) the Energy Supply Contract dated 5 March 2004 entered into between the Borrower, DREWAG Stadtwerke Dresden GmbH and Air Liquide GmbH;
- 3) the License Agreement.

B. Future Contracts

All other present or future contracts (save for the Partnership Agreement) that the Borrower has entered into or will enter into with respect to the Project pursuant to which total payments are or will be owing in a total amount of EURO 500,000 or more, or under which amounts in excess of EURO 500,000 will be payable or are expected to become payable within any twelve months period and, notwithstanding the aforementioned thresholds, all other present or future contracts that the Security Agent (after consultation with the Borrower) considers necessary for the undisturbed construction and operation of the Project, including, but not limited to, the following contracts:

- a) supply contracts with respect to Equipment;
- b) maintenance contracts with respect to Equipment;
- c) supply contracts with respect to raw materials (including, but not limited to, chemicals, gases, masks and wafer);
- d) utility/waste management contracts (including, but not limited to, energy supply contracts); and
- e) contracts with the currently planned logistic center.

[SIGNATURES]

[not contained in English translation]

GUARANTEE AGREEMENT

dated 21 April 2004
as amended by Amendment Agreements dated 10 October 2006 and 25 February 2009

between

ADVANCED MICRO DEVICES, INC.

and

THE FOUNDRY COMPANY

as Guarantors

AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG

as Borrower

DRESDNER BANK AG in Berlin

as Security Agent

DRESDNER BANK AG, NIEDERLASSUNG LUXEMBURG

as Facility Agent

and

AMD NETHERLANDS TECHNOLOGIES B.V.

Milbank, Tweed, Hadley & McCloy LLP

Frankfurt

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THIS GUARANTEE AGREEMENT is made between:

- (1) **Advanced Micro Devices, Inc.**, a corporation organised under the laws of the state of Delaware, United States of America, having its principal place of business in Sunnyvale, California, United States of America (“**AMD Inc.**”);
- (2) **The Foundry Company**, an exempted company incorporated under the laws of the Cayman Islands, with its registered and principal office at Maple Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY-1104, Cayman Islands] (“**FoundryCo**”);
- (3) **AMD Fab 36 Limited Liability Company & Co. KG**, a German limited partnership with its business address at Wilschdorfer Landstrasse 101, 01109 Dresden, Germany, registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) in Dresden under HRA 5255 (the “**Borrower**”);
- (4) **Dresdner Bank AG in Berlin** as Security Agent under German law pursuant to and in accordance with Clause 24.1 (*Appointment of the Facility Agent and the Security Agent*) of the Facility Agreement (the “**Security Agent**”);
- (5) **Dresdner Bank AG, Niederlassung Luxemburg** as Facility Agent for the Lenders pursuant to and in accordance with Clause 24.1 (*Appointment of the Facility Agent and the Security Agent*) of the Facility Agreement (the “**Facility Agent**”); and
- (6) **AMD Netherlands Technologies B.V.**, a limited liability company organized under the laws of The Netherlands with its business address at Locatellikade 1, 1076AZ Amsterdam, The Netherlands, registered at the Chamber of Commerce (*Kamer van Koophandel*) of Amsterdam under number file number 34316285 (“**Dutch BV 1**”).

WHEREAS:

AMD Inc. and FoundryCo enter into this Guarantee Agreement in favour of the other parties hereto in order to ensure that the Finance Parties shall receive payment of all amounts expressed to be payable by the Borrower under the Facility Agreement, any other Finance Document to which it is a party or the Subsidy Agreements in the currency and at the place provided therein at its stated or accelerated maturity and irrespective of the factual or legal circumstances and motives by reason of which the Borrower may fail to pay any of the Guarantors’ Liabilities (as each are defined below).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Guarantee Agreement:

“**Agent**” means “*Agent*” (Agent), as this term is defined in the Facility Agreement.

“**AMD Saxony Group**” means AMD Saxony LLC, Delaware, United States of America, AMD Saxony Holding GmbH, Dresden, and all of their Subsidiaries.

“**Amendment Date**” means “*Änderungsdatum*” (Amendment Date) as this term is defined in the Facility Agreement.

- “**Assignment Agreement**” means “*Abtretung von Wesentlichen US-Verträgen*” (Assignment of Material US Contracts), as this term is defined in the Facility Agreement.
- “**Auditor**” means “*Wirtschaftsprüfer*” (Auditor), as this term is defined in the Facility Agreement.
- “**Authorisation**” means “*Genehmigung*” (Authorisation), as this term is defined in the Facility Agreement.
- “**Base Financial Statements**” means “*Basis-Abschlüsse*” (Base Financial Statements), as this term is defined in the Facility Agreement.
- “**Borrower**” means AMD Fab 36 Limited Liability Company & Co. KG.
- “**Business Day**” means “*Bankarbeitstag*” (Business Day), as this term is defined in the Facility Agreement.
- “**Business Plan**” means “*Geschäftsplan*” (Business Plan), as this term is defined in the Facility Agreement.
- “**Cash Shortfalls**” means “*Barmittel-Defizite*” (Cash Shortfalls), as this term is defined in the Facility Agreement.
- “**Charged Assets**” means “*Besichertes Vermögen*” (Charged Assets), as this term is defined in the Facility Agreement.
- “**Collateral Security**” means any Security provided or assumed by a person in favour of the Security Agent securing the Guarantor’s Liabilities, whether generally or to a limited extent only and whether created or entered into before, on or after the date of this Guarantee Agreement.
- “**Commitment**” means “*Kreditusage*” (Commitment), as this term is defined in the Facility Agreement.
- “**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 1 (*Form of Compliance Certificate*).
- “**Credit Rating**” means “*Rating*” (Credit Rating), as this term is defined in the Facility Agreement.
- “**Dangerous Substance**” means “*Gefährliche Substanzen*” (Dangerous Substance), as this term is defined in the Facility Agreement.
- “**Default**” means “*Kündigungstatbestand*” (Default), as this term is defined in the Facility Agreement.
- “**Environment**” means “*Umwelt*” (Environment), as this term is defined in the Facility Agreement.
- “**Environmental Claim**” means “*Umweltansprüche*” (Environmental Claim), as this term is defined in the Facility Agreement.
- “**Environmental Contamination**” means each of the following and their consequences:
- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any site owned, leased, occupied or used by the Guarantor into any part of the Environment; or

(b) any accident, fire, explosion or sudden event at any site owned, leased, occupied or used by the Guarantor which is directly or indirectly caused by or attributable to any Dangerous Substance; or

(c) any other pollution of the Environment arising at or from any site owned or occupied by the Guarantor.

“**Environmental Law**” means “*Umweltrecht*” (Environmental Law), as this term is defined in the Facility Agreement.

“**Environmental License**” means “*Umweltgenehmigung*” (Environmental License), as this term is defined in the Facility Agreement.

“**Equipment**” means “*Anlagen*” (Equipment), as this term is defined in the Facility Agreement.

“**EU Notification Approval**” means “*EU-Genehmigung*” (EU Notification Approval), as this term is defined in the Facility Agreement.

“**Event of Default**” means “*Kündigungsgrund*” (Event of Default), as this term is defined in the Facility Agreement.

“**Exit Agreement**” means “*Ausscheidensvereinbarung*” (Exit Agreement), as this term is defined in the Amendment Agreement.

“**Facility**” means “*Kredit*” (Facility), as this term is defined in the Facility Agreement.

“**Facility Agreement**” means a term loan facility agreement of up to EUR700,000,000 dated 21 April 2004, as amended from time to time, made amongst, *inter alia*, the Borrower, the Lenders, Dresdner Bank AG, Niederlassung Luxemburg as Facility Agent and Dresdner Bank AG in Berlin as Security Agent and Reporting Agent (the “**Facility Agreement**”).

“**Federal/State Guarantee**” means “*Bundes/Landesbürgschaft*” (Federal/State Guarantee), as this term is defined in the Facility Agreement.

“**Federal/State Guarantor Decision**” means “*Bürgschaftsentscheidung*” (Federal/State Guarantor Decision), as this term is defined in the Facility Agreement.

“**Federal/State Guarantors**” means “*Bundes-/Landesbürgen*” (Federal/State Guarantors), as this term is defined in the Facility Agreement.

“**Finance Documents**” means this Guarantee Agreement, the Facility Agreement, any Fee Letter, any other Security Document and any other document designated as such by the Facility Agent and the Borrower and “**Finance Document**” means any of them.

“**Facility Office**” means “*Kreditgeschäftsstelle*” (Facility Office), as this term is defined in the Facility Agreement.

“**Fee Letters**” means “*Gebührenvereinbarungen*” (Fee Letters), as this term is defined in the Facility Agreement.

“**Finance Party**” means “*Finanzierungspartei*” (Finance Party), as this term is defined in the Facility Agreement.

“**Financial Indebtedness**” means “*Finanzverbindlichkeit*” (Financial Indebtedness), as this term is defined in the Facility Agreement.

“**FoundryCo Group**” means “*FoundryCo Gruppe*” (FoundryCo Group), as this term is defined in the Facility Agreement.

“**FoundryCo Group Permitted Business**” means, in relation to FoundryCo and the FoundryCo Group collectively, the business of a silicon foundry, including the design, development, manufacture, marketing and sales of integrated circuits, together with any activity which is ancillary or incidental to any of the above.

“**Funding Agreement**” means “*Finanzausstattungsvertrag*” (Funding Agreement), as this term is defined in the Facility Agreement.

“**General Partner**” means “*Komplementär*” (General Partner), as this term is defined in the Facility Agreement.

“**German Subsidiaries**” means, collectively or, where the context requires, individually, each Subsidiary of FoundryCo (other than a member of the AMD Saxony Group) incorporated, established or formed in Germany.

“**Group**” means “*Gruppe*” (Group), as this term is defined in the Facility Agreement.

“**Group Consolidated Cash**” means for any fiscal month of AMD Inc. the amount of all cash, cash equivalents and short-term investments of AMD Inc. (other than amounts which are “restricted cash” within the meaning of US GAAP, including cash and cash equivalents which are the subject of Security in favour of any party (other than Transaction Security); this exclusion shall however not apply to Security in favour of any relevant account bank constituted by (i) application of standard terms and conditions of financial institutions, (ii) other standard and customary terms and conditions or (iii) operation of law, in each case in respect of accounts which are not subject to any requirement to maintain a minimum balance on such accounts), FoundryCo and all of their respective Subsidiaries for any periods during which the consolidated results of FoundryCo must be consolidated with those of AMD Inc. for the purposes of the financial statements referred to in paragraph (a) of Clause 11.1 (*Financial Statements*) in accordance with US GAAP, calculated employing the same method applied in calculating the annual audited and quarterly unaudited consolidated financial statements of AMD Inc. in accordance with the terms of the Guarantee Agreement, less the aggregate amount of all outstandings under any third-party revolving credit facility agreement (or third party term loan agreement for borrowed money with an original maturity of up to one (1) year) of AMD Inc. and any member of the Group.

“**Group Permitted Business**” means, in relation to AMD Inc. and the Group collectively, the design, development, manufacture, marketing and sales of integrated circuits, together with any activity which is ancillary or incidental to any of the above, and includes the FoundryCo Group Permitted Business.

“**Group Structure Chart**” means “*Schaubild zur Gruppenstruktur*” (Group Structure Chart), as this term is defined in the Facility Agreement.

“**Guarantee**” means the irrevocable and unconditional guarantee issued by the Guarantors pursuant to the terms of this Guarantee Agreement.

“**Guaranteed Liabilities**” means all and any sums that may now be, or might at any time in the future become, due, owing, incurred or payable, whether actually or contingently, by the Borrower to the Finance Parties under or pursuant to the Facility Agreement or any other Finance Document to which the Borrower is a party including, without limitation, on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (a) the capacity (whether as principal, agent, trustee, beneficiary, partner or otherwise) of the Borrower or any Finance Party;
- (b) whether the Borrower is liable as principal debtor or as surety;
- (c) whether the Borrower is liable alone or jointly and/or severally with any other person; and
- (d) whether originally owing to a Finance Party or purchased or otherwise acquired by it in accordance with the terms of the Facility Agreement.

“**Guarantors**” means AMD Inc. and FoundryCo, and “**Guarantor**” means any of them.

“**Guarantors’ Liabilities**” means the Guaranteed Liabilities and the Indemnified Liabilities.

“**Indemnified Liabilities**” means all and any sums that may now be, or might at any time in the future become, due, owing, incurred or payable, whether actually or contingently, by the Borrower under or pursuant to the Subsidy Agreements as a result of any repayment claim brought by the Federal Republic of Germany or the Free State of Saxony (*Freistaat Sachsen*) in connection with any public allowances or grants (*Investitionszuschüsse/ Investitionszulagen*) provided to the Borrower including, without limitation, on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (a) the capacity (whether as principal, agent, trustee, beneficiary, partner or otherwise) of the Borrower or the Security Agent;
- (b) whether the Borrower is liable as principal debtor or as surety; and
- (c) whether the Borrower is liable alone or jointly and/or severally with any other person.

“**Information Memorandum**” means “*Information Memorandum*” (Information Memorandum), as this term is defined in the Facility Agreement.

“**Insolvency**” in relation to any person, refers to that person undergoing or being subject to any winding-up, bankruptcy, receivership, administration, re-organisation, scheme of arrangement or composition, moratorium, assignment for the benefit of creditors or any analogous event or proceeding.

“**Insurance Adviser**” means “*Versicherungsberater*” (Insurance Adviser), as this term is defined in the Facility Agreement.

“**Insurance Report**” means “*Versicherungsbericht*” (Insurance Report), as this term is defined in the Facility Agreement.

“**Intellectual Property**” means “*Geistiges Eigentum*” (Intellectual Property), as this term is defined in the Facility Agreement.

“**Intellectual Property Rights**” means “*Immaterialgüterrechte*” (Intellectual Property Rights), as this term is defined in the Facility Agreement.

“**Interest Period**” means “*Zinsperiode*” (Interest Period), as this term is defined in the Facility Agreement.

“**Lender**” means “*Kapitalgeber*” (Lender), as this term is defined in the Facility Agreement.

“**License Agreement**” means “*Lizenzvertrag*” (License Agreement), as this term is defined in the Facility Agreement.

“**Limited Partners**” means “*Kommanditisten*” (Limited Partners), as this term is defined in the Facility Agreement.

“**Loan**” means “*Kreditbetrag*” (Loan), as this term is defined in the Facility Agreement.

“**Majority Lenders**” means “*Kreditgebermehrheit*” (Majority Lenders), as this term is defined in the Facility Agreement.

“**Management Plan**” means “*Managementplan*” (Management Plan), as this term is defined in the Facility Agreement.

“**Material Adverse Effect**” means “*Wesentliche Nachteilige Veränderung*” (Material Adverse Effect), as this term is defined in the Facility Agreement.

“**Material Subsidiaries**” means, collectively or, where the context requires, individually:

- (a) the Borrower;
- (b) AMD Saxony Limited Liability Company & Co. KG; and
- (c) any other member of the Group and the FoundryCo Group, including each Subsidiary of a Guarantor, which meets any of the following requirements:
 - (i) a Guarantor’s and its Subsidiaries’ investment in and advances to such other member of the Group or the FoundryCo Group exceed five (5) *per cent.* of the total assets of the Group or the FoundryCo Group, respectively, each consolidated as of the end of the most recently completed fiscal year;
 - (ii) a Guarantor’s and its Subsidiaries’ proportionate share of the total assets (after intercompany eliminations) of such other member of the Group or the FoundryCo Group exceeds five (5) *per cent.* of the total assets of the Group or the FoundryCo Group, respectively, each consolidated as of the end of the most recently completed fiscal year; or
 - (iii) a Guarantor’s and its Subsidiaries’ earnings from continuing operations before income taxes, extraordinary items and the cumulative effect of a

change in accounting principles of such other member of the Group or the FoundryCo Group exceeds five (5) *per cent.* of such earnings of the Group or the FoundryCo Group, respectively, each consolidated for the most recently completed fiscal year.

“**Month**” means “*Monat*” (Month), as this term is defined in the Facility Agreement.

“**New German KG**” means “*Neu-KG*” (New German KG) as this term is defined in the Facility Agreement.

“**Obligor**” means “*Verpflichteter*” (Obligor), as this term is defined in the Facility Agreement.

“**Original Lenders**” means “*Ursprüngliche Kreditgeber*” (Original Lenders), as this term is defined in the Facility Agreement.

“**Other Surety**” means any person (other than the Guarantors, the Borrower or the Security Agent) who is a party to any Collateral Security.

“**Participation**” means “*Beteiligung*” (Participation), as this term is defined in the Facility Agreement.

“**Participation Agreement**” means “*Beteiligungsvereinbarung*” (Participation Agreement), as this term is defined in the Facility Agreement.

“**Partnership Agreement**” means “*Gesellschaftsvertrag*” (Partnership Agreement), as this term is defined in the Facility Agreement.

“**Partnership Interest Pledges**” means “*Verpfändung der Gesellschaftsanteile*” (Partnership Interest Pledges), as this term is defined in the Facility Agreement.

“**Permitted Business**” means “*Zulässiger Geschäftsbetrieb*” (Permitted Business), as this term is defined in the Facility Agreement.

“**Permitted Indebtedness**” means “*Zulässige Verbindlichkeiten*” (Permitted Indebtedness), as this term is defined in the Facility Agreement.

“**Permitted Security**” means “*Zulässige Sicherheiten*” (Permitted Security), as this term is defined in the Facility Agreement.

“**Project**” means “*Projekt*” (Project), as this term is defined in the Facility Agreement.

“**Project Documents**” means “*Projektdokumente*” (Project Documents), as this term is defined in the Facility Agreement.

“**Protected Party**” means “*Geschützte Partei*” (Protected Party), as this term is defined in the Facility Agreement.

“**Qualifying Lenders**” means “*Qualifizierte Kreditgeber*” (Qualifying Lenders), as this term is defined in the Facility Agreement.

“**Quarter Date**” means “*Quartalstag*” (Quarter Date), as this term is defined in the Facility Agreement.

“**Relevant GAAP**” means:

- (a) in respect of the Borrower, German GAAP;
- (b) in respect of each of the Guarantors, US GAAP; and

in respect of any other member of the Group or the FoundryCo Group (either alone or including its Subsidiaries on a consolidated basis) the generally accepted accounting principles and practices of its jurisdiction of incorporation, formation or establishment.

“**Relevant Subsidiaries**” means, collectively or, where the context requires, individually, New German KG, the General Partner, AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH and the Borrower.

“**Repeating Representations**” means each of the representations set out in Clause 10.2 (*Status*) to Clause 10.8 (*Governing Law and Enforcement*) (inclusive), Clause 10.11 (*No Default*) to Clause 10.23 (*No Security*) (inclusive) and Clause 10.27 (*Management Plans*) to Clause 10.32 (*Security from the Borrower*) (inclusive).

“**Reporting Agent**” means “*Berichtsentworf*” (Reporting Agent), as this term is defined in the Facility Agreement.

“**Revolving Credit Agreement**” means “*Gesellschafter-Bankkreditvertrag*” (Revolving Credit Agreement), as this term is defined in the Facility Agreement.

“**SEC**” means the United States Securities and Exchange Commission.

“**Security**” means “*Sicherheiten*” (Security), as this term is defined in the Facility Agreement.

“**Security Document**” means “*Sicherheitendokument*” (Security Document), as this term is defined in the Facility Agreement.

“**Share Pledges**” means “*Anteilsverpfändungen*” (Share Pledges), as this term is defined in the Facility Agreement.

“**Signing Date**” means “*Tag der Unterzeichnung*” (Signing Date), as this term is defined in the Facility Agreement.

“**Site**” means “*Betriebsgrundstück*” (Site), as this term is defined in the Facility Agreement.

“**Subordinated Loan**” means “*Nachrangige Darlehen*” (Subordinated Loan), as this term is defined in the Facility Agreement.

“**Subordinated Loan Agreement**” means “*Gesellschafter-Tilgungskreditvertrag*” (Subordinated Loan Agreement), as this term is defined in the Facility Agreement.

“**Subordination Agreement**” means “*Nachrang- und Kapitalbelassungsvereinbarung*” (Subordination Agreement), as this term is defined in the Facility Agreement.

“**Subsidiary**” means “*Tochtergesellschaft*” (Subsidiary), as this term is defined in the Facility Agreement.

“**Subsidy Agreement**” means “*Zuschußvertrag*” (Subsidy Agreement), as this term is defined in the Facility Agreement.

“**Step Plan**” means “*Ablaufplan*” (Step Plan), as this term is defined in the Facility Agreement.

“**Tax**” means “*Steuern*” (Tax), as this term is defined in the Facility Agreement.

“**Tax Credit**” means “*Steuergutschrift*” (Tax Credit), as this term is defined in the Facility Agreement.

“**Tax Deduction**” means “*Steuerabzug*” (Tax Deduction), as this term is defined in the Facility Agreement.

“**Tax Payment**” means “*Steuerzahlung*” (Tax Payment), as this term is defined in the Facility Agreement.

“**Technical Completion**” means “*Technische Fertigstellung*” (Technical Completion), as this term is defined in the Facility Agreement.

“**Transaction Document**” means “*Transaktionsdokument*” (Transaction Document), as this term is defined in the Facility Agreement.

“**Transaction Security**” means “*Transaktionssicherheiten*” (Transaction Security), as this term is defined in the Facility Agreement.

“**Treaties**” means “*Abkommen*” (Treaties), as this term is defined in the Facility Agreement.

“**US GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), as applicable.

“**Utilization Request**” means “*Ziehungsnotiz*” (Utilization Request), as this term is defined in the Facility Agreement.

1.2 Interpretation

(a) Any reference in this Guarantee Agreement to:

- (i) the “**Security Agent**”, “**Facility Agent**”, the “**Borrower**” or the “**Guarantor**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) the “**Facility Agreement**” or any other agreement or instrument is a reference to the Facility Agreement or other agreement or instrument as amended, supplemented, restated, novated or otherwise modified from time to time;
- (iii) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (iv) a provision of law is a reference to that provision as amended or re-enacted;

and

- (v) unless a contrary indication appears, a time of day is a reference to Frankfurt am Main time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A capitalised term used in this Guarantee Agreement or in any notice given under or in connection with this Guarantee Agreement and not otherwise defined herein has the meaning ascribed to such term in the Facility Agreement.

2. GUARANTEE

- (a) The Guarantors hereby irrevocably and unconditionally guarantee, jointly and severally (*als Gesamtschuldner*), the due and punctual payment in full to the Lenders (acting through the Security Agent), without set-off or deduction, of the Guaranteed Liabilities in accordance with, and in the currency or respective currencies in which the same are payable under, the terms of the relevant Finance Documents. Payment shall be made within three (3) Business Days of demand made with a Guarantor to such account in Germany as the Security Agent shall specify in writing.
- (b) The Guarantors hereby irrevocably and unconditionally undertake, jointly and severally (*als Gesamtschuldner*), to indemnify, within three (3) Business Days of demand by the Borrower or the Security Agent, the Borrower and any other party to this Guarantee Agreement against any cost, loss or liability incurred by that party as a result of any repayment claim brought by the Federal Republic of Germany or the Free State of Saxony (*Freistaat Sachsen*) in connection with any public allowances or grants (*Investitionszuschüsse/Investitionszulagen*) provided to the Borrower pursuant to a Subsidy Agreement.
- (c) FoundryCo hereby irrevocably and unconditionally guarantees the due and punctual payment in full to Dutch BV 1 of all amounts owing to Dutch BV 1 under the Wafer Supply Agreement, without set-off or deduction, in accordance with, and in the currency or respective currencies in which the same are payable under, the terms of the Wafer Supply Agreement. FoundryCo undertakes to make payment to Dutch BV 1 within three (3) Business Days of written demand by the Security Agent made with FoundryCo, to such account in Germany as the Security Agent shall specify in writing.

3. PAYMENT ON FIRST DEMAND

Each of the Guarantors undertakes to effect payment hereunder promptly upon receipt of the Security Agent's first written demand and its confirmation in writing that the amount claimed corresponds to the Guarantors' Liabilities.

4. PRIMARY OBLIGATION

The Guarantee constitutes the Guarantors' primary obligation (*Garantie*) (and not a surety guarantee obligation (*Bürgschaft*)) to make payment to the Security Agent in accordance with the terms of this Guarantee Agreement, under any and all circumstances, regardless of the validity, legality or enforceability of the Facility Agreement or any other Finance Document. Demands may be made under this Guarantee Agreement from time to time and may be enforced irrespective of whether any steps or proceedings are or will be taken against the Borrower or any Other Surety to recover amounts claimed under this Guarantee Agreement.

5. CONTINUING SECURITY

This Guarantee Agreement shall be a continuing security until all of the Guarantors' Liabilities have been paid, discharged or performed in full and shall not be satisfied by any intermediate discharge or payment of or on account of the Guarantors' Liabilities or any of them or any settlement of accounts between the Finance Parties and the Borrower or any Other Surety or the Federal Republic of Germany, the Free State of Saxony (*Freistaat Sachsen*), the Agents and the Borrower.

6. UNCONDITIONAL GUARANTEE

6.1 Absolute Payment Obligation

The Guarantors' liability hereunder shall be absolute and unconditional in all circumstances and shall not be discharged, impaired or otherwise affected by any defences, exceptions, rights of withholding or counterclaims which may be available to the Borrower, including without limitation, any one or more of the following (whether occurring with or without the consent of, or notice to, any person):

- (a) the Facility Agreement or any Collateral Security being or becoming wholly or partially illegal, void, voidable, subject to a right of rescission (*Anfechtung*) or unenforceable for any reason whatsoever;
- (b) any absence or insufficiency of corporate resolutions relating to the Facility Agreement;
- (c) any inadequate representation of the Borrower;
- (d) any absence of licenses or other authorisations or any factual or legal restrictions or limitations existing or introduced in the country of incorporation, establishment or formation of the Borrower;
- (e) the Security Agent holding, taking, renewing or extending any Collateral Security at any time;
- (f) any variation, amendment, modification, replacement, termination, waiver, release, discharge, exchange, assignment or transfer of, or other dealing with, the Facility Agreement, this Guarantee Agreement or any Collateral Security (however fundamental and including, without limitation, any increase in any amount due or owing thereunder or in the rate of interest or any other sum payable thereunder or any prejudice to or loss of any rights of subrogation);
- (g) any time, credit or other indulgence being granted to, or any release of or composition or other arrangement with, the Borrower or any Other Surety;
- (h) any inability, omission or neglect (intentional or otherwise) on the part of the Security Agent to take or perfect, or on the part of the Borrower or any other person to give, any Collateral Security agreed or intended to be taken or given or any such inability, omission or neglect on the part of the Security Agent to enforce the Agreement or any Collateral Security;
- (i) any right of set-off (*Aufrechnung*), right of withholding or retention (*Zurückbehaltungsrecht*) or similar rights of the Borrower or any third party on behalf of the Borrower;

- (j) any acquiescence, negligence or mistake on the part of an Agent;
- (k) the Lenders or any Agent being able to raise any right of combination of accounts, set-off or similar rights in view of any Guarantor's Liabilities; and
- (l) any other act, fact, event or omission which but for this provision might operate to discharge, impair or otherwise affect the Guarantors' liability hereunder.

6.2 Unrestricted Right of Enforcement

The Guarantors' obligations hereunder are in addition to and not in substitution for any Collateral Security which the Security Agent may now or hereafter hold. This Guarantee Agreement may be enforced without the Security Agent first having recourse to any such Collateral Security and without having to take any steps or proceedings or exhaust any rights against the Borrower or any Other Surety, or may be enforced for any balance due to the Security Agent after having resorted to any one or more such means of obtaining payment and discharge of all or any part of the Guarantors' Liabilities.

7. TAXES

7.1 Indemnity

- (a) The Guarantors, as joint and several debtors (*als Gesamtschuldner*), shall (within three (3) Business Days of demand by the Security Agent) pay to the Protected Party an amount equal to the loss, liability or cost that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of withholding Tax, stamp duty, registration and other similar Taxes by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Lender:
 - (A) under the law of the jurisdiction in which that Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Lender is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if in either case that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 7.2 (*Gross-up*); or
 - (B) would have been compensated for by an increased payment under Clause 7.2 (*Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 7.2 (*Gross-up*) applied.

- (c) A Protected Party making, or intending to make, a claim pursuant to paragraph (a) above shall promptly notify the Security Agent of the event which will give, or has given, rise to the claim, following which the Security Agent shall notify each of the Guarantors.
- (d) A Protected Party shall, on receiving a payment from a Guarantor under this Clause 7.1, notify the Security Agent.

7.2 **Gross-Up**

- (a) Each of the Guarantors shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) Each of the Guarantors shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Security Agent accordingly. Similarly, a Lender shall notify the Security Agent on becoming so aware in respect of a payment payable to that Lender. If the Security Agent receives such notification from a Lender it shall notify each Guarantor.
- (c) If a Tax Deduction is required by law to be made by a Guarantor in respect of a payment to a Lender, the amount of the payment due from that Guarantor to that Lender shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A Guarantor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of any payment which is capable of attracting a Tax Deduction, if on the date on which the payment falls due:
 - (i) the payment relates to a Tax referred to in paragraph (b) of Clause 7.1 (*Indemnity*);
 - (ii) the payment could have been made to the relevant Lender without the Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under the Facility Agreement in (or in the interpretation, administration or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
 - (iii) the Guarantor is able to demonstrate that the payment could have been made to that Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below, including timely providing the documents allowing the Guarantor to make the payment without a Tax Deduction.
- (e) If a Guarantor is required to make a Tax Deduction, that Guarantor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the relevant Guarantor shall deliver to the Security Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment has been paid to the relevant taxing authority.

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- (g) A Lender and the relevant Guarantor shall co-operate in completing any procedural formalities necessary for the Guarantor to obtain authorisation to make a payment to that Lender without a Tax Deduction, and such Lender shall provide to the applicable party or parties on a timely basis the necessary documents allowing the Guarantor to make the payment without a Tax Deduction.
 - (h) Any difference in the amount which is owed by a Guarantor under paragraph (c) above will not be covered by the Federal/State Guarantee. Any such amount which is paid by that Guarantor and not recovered by it under Clause 7.3 (*Tax Credit*) is deemed to reduce the principal amount owed by the Guarantor in relation to the Federal/State Guarantor.

7.3 Tax Credit

- (a) If a Guarantor makes a Tax Payment and the relevant Lender determines that:
 - (i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
 - (ii) that Lender has obtained, utilised and retained that Tax Credit, or could have obtained, utilised or retained that Tax Credit had it claimed such benefit according to the applicable procedural rules within the provisions of paragraph (c) below,the Lender shall pay an amount to that Guarantor which that Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Guarantor. Upon the request of the Guarantor, the relevant Lender will use its reasonable endeavours (to the extent commercially practicable and legally permitted) to recover such Tax Credit.
- (b) If such a Tax Credit by reference to which a Lender has made a payment to the relevant Guarantor under paragraph (a) above is subsequently disallowed or cancelled, the Guarantor must reimburse any payment made under paragraph (a) above to the relevant Lender.
- (c) If a Guarantor makes a Tax Payment, the relevant Lender shall take reasonable steps to claim a Tax Credit unless in the opinion of that Lender the making of such claim might have an adverse effect on its business, operations, property, condition or prospects (financial or otherwise). The relevant Guarantor shall bear any costs incurred by a Lender in making such a claim.

7.4 Lenders' Confirmation

After the Amendment Date, each Lender shall promptly give notice to the Guarantors (through the Security Agent) if it becomes aware that circumstances have occurred as a result of which it is not a Qualifying Lender.

8. CURRENCY INDEMNITY

If any amount is received by the Security Agent in a currency other than that in which the relevant obligation or liability of that Guarantor was payable (the “**Required Currency**”) (whether pursuant to a judgment, in the Insolvency of that Guarantor or otherwise), such obligation or liability shall be discharged only to the extent that an Agent is able, upon receipt of such amount, to purchase the Required Currency with such other currency in accordance with the usual banking procedures of the Security Agent. If the amount in the Required Currency which may be so purchased is, after deducting any costs of exchange and any other related costs, less than the amount of the relevant obligation or liability, the relevant Guarantor shall, as a separate and independent obligation and notwithstanding any time or other indulgence granted to that Guarantor or any other act, matter or thing, forthwith pay to the Security Agent the amount of the shortfall.

9. CLAIMS BY GUARANTOR

9.1 Limitation on Exercise of Rights

So long as any of the Guarantors’ Liabilities remain outstanding or capable of arising each of the Guarantors waives all rights of subrogation and indemnity against the Borrower and any Other Surety and agrees that it shall not exercise any rights which it may have by reason of performance by it of its obligations hereunder and under the other Finance Documents and it shall not, except as may be directed by the Security Agent:

- (a) make or enforce any claim or right against the Borrower or any Other Surety whether in respect of any payment hereunder or otherwise and whether by way of defence, set-off, counterclaim, subrogation, contribution, indemnity or otherwise, except as specifically permitted under the Subordination Agreement;
- (b) claim the benefit of any set-off, counterclaim, proof, dividend, composition or payment to which an Agent may now or hereafter be entitled from or against the Borrower or any Other Surety, except as specifically permitted under the Subordination Agreement;
- (c) claim the benefit of or participate in any Collateral Security now or hereafter held by the Security Agent or any share therein;
- (d) prove or claim in competition to the Security Agent in the Insolvency of the Borrower or any Other Surety so as to diminish any distribution, dividend or payment which, but for such proof or claim, the Security Agent would be entitled to receive and the Guarantor shall not claim or receive the benefit of any distribution, dividend or payment arising out of or relating thereto;
- (e) call on an Agent to sue or take proceedings against the Borrower or any Other Surety or raise a defence, set-off or counterclaim of the Guarantor, the Borrower or any Other Surety in reduction of the relevant Guarantor’s liability hereunder;
- (f) otherwise have or exercise any rights of subrogation or as surety in competition with an Agent.

9.2 **Payments under the Project Documents**

Subject to the terms of the Subordination Agreement, nothing contained in this Guarantee Agreement shall prevent FoundryCo from receiving any payments due to it pursuant to the Project Documents.

10. **REPRESENTATIONS AND WARRANTIES**

10.1 **Representations and Warranties**

- (a) Each of the Guarantors makes the representations and warranties set out in Clause 10.11 (*No Default*), Clause 10.13 (*Good Title to Assets*), Clause 10.14 (*Intellectual Property Rights*), Clause 10.21 (*Taxation*) to Clause 10.23 (*No Security or Guarantees*) (inclusive), paragraphs (b) to (d) (inclusive) of Clause 10.24 (*Information Memorandum*) to Clause 10.28 (*Change in Business*) (inclusive), Clause 10.30 (*Material Disclosures*) and Clause 10.32 (*Security from the Borrower*) below applicable to it on behalf of itself, and makes all other representations and warranties set out in this Clause 10, except where noted otherwise, on behalf of itself and each of its Subsidiaries.
- (b) The Finance Parties have entered into the Facility Agreement in reliance on these representations and warranties.

10.2 **Status**

- (a) AMD Inc. is a corporation, the FoundryCo is an exempted company and each Relevant Subsidiary is a corporation, limited liability company or a limited partnership (*KG*), duly incorporated, established or formed and validly existing under the law of the jurisdiction of its place of incorporation, establishment or formation.
- (b) Each of the Guarantors and each Relevant Subsidiary has the power to own its assets and carry on its business as it is currently being conducted.
- (c) As of the Signing Date and the Amendment Date, one hundred (100) *per cent.* of the capital partnership interests (*Kapitalanteile*) in the Borrower are held by the Limited Partners and, subject to the terms of the Exit Agreement, Leipziger Messe GmbH.
- (d) Neither Limited Partner holds partner or equity interests in any other person (except that AMD Fab 36 Admin GmbH is a wholly-owned Subsidiary of AMD Fab 36 Holding GmbH).
- (e) AMD Fab 36 Holding GmbH and the General Partner are, indirectly, wholly-owned Subsidiaries of FoundryCo.

10.3 **No Winding-Up**

Save as otherwise disclosed in writing to the Facility Agent, no administrator, receiver, insolvency trustee, bankruptcy examiner, liquidator or similar officer or official has been appointed with respect to a Guarantor, any Material Subsidiary or any Relevant Subsidiary or any of their assets and (to the best of its knowledge and belief) no petition by a third party or proceeding for any such appointment is pending nor has any resolution for any such appointment been passed.

10.4 **Binding Obligations**

The obligations expressed to be assumed by a Guarantor and each Relevant Subsidiary in each Transaction Document to which it is a party are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered in accordance with the terms of the Facility Agreement and the conditions precedent set forth in the Finance Documents, legal, valid, binding and enforceable obligations.

10.5 **Non-Conflict with Other Obligations**

The entry into and performance by the Guarantors and any other member of the Group or the FoundryCo Group that is a party to a Transaction Documents of, and the transactions contemplated by, the Transaction Documents to which any of the Guarantors and/or such other member of the Group or the FoundryCo Group is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any material agreement or instrument binding upon it or any material part of its assets,

nor (except as provided in any Security Documents to which the Guarantor and/or such other member of the Group or the FoundryCo Group is a party) result in the creation of, or oblige the Guarantor or such other member of the Group or the FoundryCo Group or any of its Subsidiaries to create, any Security (other than Permitted Security) over any material part of its or any of its Subsidiaries' assets.

10.6 **Power and Authority**

Each of the Guarantors and any other member of the Group or the FoundryCo Group that is a party to a Transaction Document has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

10.7 **Validity and Admissibility in Evidence**

All Authorisations (not including the EU Notification Approval) required by each of the Guarantors and any other member of the Group or the FoundryCo Group that is a party to a Transaction Document:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation, establishment or formation; and
- (c) to enable it to create any Security expressed to be created by it by or pursuant to, or as the case may be, any Security expressed to have been created by it and to be evidenced in, any Security Document to which it is a party and to ensure that such Security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, save for (i) any filings, registrations or notarisations required in relation to the Security Documents to which it is a party, which filings, registrations or notarisations will be made promptly after execution of the relevant documents and in any event within applicable time limits, or (ii) such filings, registrations or notarisations which have been obtained and effected.

10.8 Governing Law and Enforcement

- (a) the choice of German law as the governing law of the Finance Documents to which each of the Guarantors and any other member of the Group or the FoundryCo Group is a party (or, in respect of any Security Document to which it is a party, the choice of the relevant governing law of that Security Document) will be recognised and enforced in its jurisdiction of incorporation, establishment or formation, subject to the requirements for or exceptions to the recognition and enforcement of provisions governed by foreign laws generally applicable in such jurisdiction.
- (b) Any judgment obtained in Germany in relation to the Finance Document to which each of the Guarantor and any other member of the Group or the FoundryCo Group is a party (or, in respect of any Security Document to which it is a party, any judgment obtained in the courts which are expressed to have jurisdiction to hear disputes under that Security Document) will be recognised and enforced in its jurisdiction of incorporation, establishment or formation, subject to the requirements for or exceptions to the enforcement of foreign judgments generally applicable in such jurisdiction.

10.9 Deduction of Tax

To the extent that a payment by the Guarantor or any other member of the Group or the FoundryCo Group under a Finance Document to which it is a party is made to a Qualifying Lender and such Qualifying Lender has provided all the documentation required under applicable laws and regulations, neither the Guarantor nor such other member of the Group or the FoundryCo Group is required under the law of its jurisdiction of incorporation, establishment or formation to make any deduction for or on account of Tax from any such payment.

10.10 No Filing or Stamp Taxes

Under the law of the jurisdiction of incorporation, establishment or formation of the Guarantor and any other member of the Group or the FoundryCo Group that is a party to a Finance Document, it is not necessary that the Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated therein.

10.11 No Default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes any material default under any other agreement or instrument which is binding on a Guarantor or to which its assets are subject which would amount to an aggregate liability of over twenty million (20,000,000) Euro arising under such agreement or instrument from such default (save to the extent that any liabilities are being contested in good faith).

10.12 Information

- (a) Any written information (excluding that referred to in Clause 10.24 (*Information Memorandum*)) and any financial information (including in relation to the Credit Ratings) provided by any of the Guarantors and/or any German Subsidiary to any Finance Party in connection with the Transaction Documents was true, accurate and complete in all material respects as at the date it was provided and was not misleading in any material respect.
- (b) To the extent that the information referred to in paragraph (a) above contained any opinions, forecasts, projections and/or conclusions, such opinions, forecasts, projections and/or conclusions were fair, based on reasonable assumptions and were made in good faith; **provided however** that no representation or warranty is made in relation to any information provided by a third party and denoted as such.

10.13 Good Title to Assets

The Borrower has, subject to Permitted Security, good and marketable title to or valid leases or licenses of or is otherwise entitled to use all material assets (including the Equipment acquired as at the date of this representation, but not including Intellectual Property which is subject to the provisions of Clause 17.14 (*Intellectual Property Rights*) of the Facility Agreement) necessary to carry on its business as it is being conducted. In particular, the licenses granted to, and the joint ownership interests held by, the Borrower by AMD Inc. and Dutch BV 1 pursuant to the License Agreement will at any time be available to the Borrower and, in the enforcement scenarios contemplated thereby, in accordance with the terms of the Assignment Agreement, the Security Agent.

10.14 Intellectual Property Rights

- (a) To the best of its knowledge and belief, the Guarantor has legal rights to use all the Intellectual Property which is material to its business and, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, to the best of its knowledge and belief, the Guarantor does not, in carrying on its business, infringe any Intellectual Property Rights of any third party in any material respect.
- (b) To the best of its knowledge and belief, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, the Guarantor has registered and has taken all requisite actions (including payment of fees) required to maintain in full force and effect any registered Intellectual Property Rights owned by the Guarantor which are material in the context of its business or which are required to be registered under applicable law.

10.15 Creation of Security

- (a) Each of the Guarantor and any other member of the Group or the FoundryCo Group that is a party to a Security Document is, or at the time of execution (and the fulfilment of any conditions included therein) of the Security Documents to which it is a party will be, subject to any Permitted Security, the absolute owner (*Eigentümer*) of all the material assets over which it purports to create Security by or pursuant to or as evidenced in the Security Documents to which it is a party.
- (b) Each Security Document to which each of the Guarantors and any other member of the Group or the FoundryCo Group that is a party to a Security Document is or is to

be a party creates, or upon such execution (and the fulfilment of any conditions included therein) will create, the Security which that Security Document purports to create or, if that Security Document purports to evidence Security, accurately evidences, or upon such execution (and the fulfilment of any conditions included therein) will so evidence, Security which has been validly created.

- (c) The partner or equity interests (*Gesellschaftsanteile*) of each of the Guarantor and any other member of the Group or the FoundryCo Group that is a party to a Security Document which are or are to be subject to any Security created by or pursuant to, or evidenced in, any of the Security Documents to which it is or is to be a party have been or will be duly authorised and validly issued and are or will be fully paid in, as specified in the “Milestones” set out in the Partnership Agreement, and non-assessable.

10.16 Insurance

- (a) Each of the Guarantor and the Relevant Subsidiaries maintains or is the beneficiary of insurance on and in relation to its business and assets (and in particular, the Borrower maintains the Required Insurance on and in relation to the Site) with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by it in its jurisdiction of incorporation, establishment or formation.
- (b) There has been no omission to disclose a fact which must be disclosed by applicable law or pursuant to contract, which might in either case entitle an insurer to avoid or otherwise reduce its liability under any policy relating to insurance as referred to in paragraph (a) above.

10.17 Pari Passu Ranking

The payment obligations under the Finance Documents to which each of the Guarantor and any other member of the Group or the FoundryCo Group is a party rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

10.18 No Proceedings Pending or Threatened

Except as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, no material litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency in relation to an Obligor, the Project or any Transaction Document to which such Obligor is a party which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of that Obligor’s knowledge and belief) threatened against it.

10.19 Environmental Compliance

- (a) Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, it has obtained all requisite Environmental Licenses as then required in relation to its business, where failure to do so would or might reasonably be expected to have a Material Adverse Effect, and has at all times, unless otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, complied in all material respects with:
 - (i) all applicable Environmental Laws as then required in relation to its business;

- (ii) the terms and conditions of such Environmental Licenses; and
 - (iii) all other covenants, conditions, restrictions and agreements binding on it directly or indirectly concerned with any Environmental Contamination, in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.
- (b) Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, there are to its knowledge no events or circumstances that have occurred which may prevent or interfere with the compliance in any material respect in the future of it with all applicable Environmental Laws required in relation to its business, the terms of all Environmental Licenses referred to in paragraph (a) above and all covenants, conditions, restrictions and agreements referred to in such paragraph and which would or might reasonably be expected to have a Material Adverse Effect.

10.20 Environmental Claims

Save as otherwise disclosed by an Obligor in writing to the Facility Agent or, after the Signing Date, through a Guarantor giving notice of its SEC filings, no Environmental Claim in relation to its business has been started or (to the best of its knowledge and belief) threatened against it which may reasonably be expected to have a Material Adverse Effect.

10.21 Taxation

- (a) The Borrower has duly and punctually paid and discharged all Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
- (i) payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) payment can be lawfully withheld.
- (b) The Guarantor has duly and punctually paid and discharged all German Taxes imposed upon it or its assets and due within the time period allowed without incurring penalties; save to the extent that:
- (i) payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) payment can be lawfully withheld.
- (c) Neither Obligor is materially overdue in the filing of any Tax returns in Germany or the United States.
- (d) No claims are being asserted against either Obligor, nor is either Obligor aware of any claims that are reasonably likely to be asserted against it, with respect to any Taxes which might have a Material Adverse Effect.

10.22 No Indebtedness

Save for any Permitted Indebtedness, the Borrower has:

- (a) no Financial Indebtedness; and
- (b) no other indebtedness, except for any which has been incurred in the ordinary course of its business.

10.23 No Security or Guarantees

Save for any Permitted Security:

- (a) no Security exists over all or any of the Borrower's assets; and
- (b) no arrangement or transaction as described in paragraph (b) of Clause 20.3 (*Negative Pledge*) of the Facility Agreement has been entered into by the Borrower and is outstanding.

10.24 Information Memorandum

- (a) The information provided by AMD Inc. or any German Subsidiary in relation to any member of the Group in the Information Memorandum was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and, as supplemented by a Guarantor's SEC filings, was not misleading or incomplete in any material respect.
- (b) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the Information Memorandum; and
 - (ii) no information has been given or withheld by AMD Inc. or on its behalf, since the date of the Information Memorandum that results in the information contained therein about any member of the Group or the FoundryCo Group being untrue or misleading in any material respect.
- (c) All opinions, forecasts, projections and conclusions contained in the Information Memorandum in relation to any member of the Group were fair, based on reasonable assumptions and were made in good faith.
- (d) Notwithstanding anything to the contrary contained in this Clause 10.24:
 - (i) the Guarantor makes no representation or warranty in relation to:
 - (A) any information provided by a third party and denoted as such; and
 - (B) such information contained in the "Key Lending Considerations" section of the Information Memorandum; and
 - (ii) in relation to the "Risks and Mitigants" section of the Information Memorandum, AMD Inc. only makes representations and warranties in relation to factual information set out therein.

10.25 **Base Financial Statements**

- (a) The Base Financial Statements:
 - (i) were prepared in accordance with the Relevant GAAP consistently applied; and
 - (ii) (in the case of quarterly unaudited financial statements) fairly represent its financial condition and operations as at the date to which they were prepared and during the relevant financial period for which they were prepared, subject to normal year end adjustments, and take account of all material liabilities (contingent or otherwise), and all anticipated losses, as at the date to which they were prepared, unless expressly disclosed to the Facility Agent in writing to the contrary before the date of this Guarantee Agreement.
- (b) There has been no Material Adverse Effect since the date on which its latest Base Financial Statements were prepared.

10.26 **Business Plan**

- (a) The Business Plan has been prepared using accounting policies, practices and procedures consistent, in all material respects, with German GAAP as at the date of the Business Plan.
- (b) The information in the Business Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (c) AMD Inc. does not regard as unreasonable, or to any material extent, unattainable, any of the opinions, forecasts, projections or conclusions set out in the Business Plan as at the date thereof.
- (d) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the Business Plan; and
 - (ii) no information has been given or withheld by AMD Inc. or on its behalf,since the date of the Business Plan that results in the information contained therein being untrue or misleading in any material respect; **provided however**, AMD Inc. makes no representation or warranty in relation to any information provided by a third party and denoted as such.
- (e) All the opinions, forecasts, projections and conclusions contained in the Business Plan were fair, based on reasonable assumptions and were made in good faith.
- (f) To the best of its knowledge and belief, AMD Inc. has made full disclosure of all material facts of which it was aware at the time relating to the Project to all persons responsible for the preparing of the Business Plan.

10.27 **Management Plans**

- (a) The information in the most recent Management Plan was true, accurate and complete in all material respects as at the date on which it was provided to the Facility Agent and was not misleading in any material respect.
- (b) Each of the Guarantors regards (as at the date that the most recent Management Plan is delivered to the Facility Agent) as neither unreasonable, nor to any material extent unattainable, any of the opinions, forecasts, projections or conclusions set out in that Management Plan.
- (c) Save as otherwise disclosed in writing to the Facility Agent:
 - (i) nothing has occurred or been omitted from the most recent Management Plan; and
 - (ii) no information has been given or withheld by a Guarantor or on its behalf,since the date that the most recent Management Plan was delivered to the Facility Agent that results in the information contained therein being untrue or misleading in any material respect; **provided however**, it makes no representation or warranty in relation to any information provided by a third party and denoted as such.
- (d) As at the date that the most recent Management Plan was delivered to the Facility Agent, all the opinions, forecasts, projections and conclusions contained therein were fair, based on reasonable assumptions and were made in good faith.
- (e) To the best of its knowledge and belief, the Guarantors have made full disclosure of all material facts of which any of it was aware at the time relating to the Project to all persons responsible for the preparing of each Management Plan.

10.28 **Change in Business**

- (a) The Borrower has not made, or taken any steps to make, any substantial change to the Permitted Business.
- (b) The Guarantors have not made, or taken any steps to make, any substantial change to the Group Permitted Business (or, in the case of FoundryCo, the FoundryCo Group Permitted Business).

10.29 **Material Adverse Effect**

Neither a Guarantor nor any of its Subsidiaries has entered into any agreement or obligation:

- (a) which could have a Material Adverse Effect; or
- (b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by either Obligor.

10.30 **Material Disclosures**

Each Guarantor has disclosed in writing to the Facility Agent all material information in its possession relating to the Project, including all Project Documents and other material agreements.

10.31 **Compliance with Laws and Regulations**

The Guarantors and each Relevant Subsidiary have at all times complied in all material respects with any law or regulation applicable to it where failure to do so could reasonably be expected to result in a Material Adverse Effect.

10.32 **Security from the Borrower**

No Guarantor has taken from the Borrower or any Other Surety any Security in respect of the Guarantors' liability hereunder or in respect of any other obligation or liability which the Borrower has or may at any time have to a Guarantor as a result of performance by a Guarantor of its obligations under this Guarantee Agreement.

10.33 **Time for Making Representations and Warranties**

- (a) The representations and warranties set out in this Clause 10 are made by AMD Inc. on the Signing Date.
- (b) The Repeating Representations are deemed to be made by the Guarantors by reference to the facts and circumstances then existing (except as otherwise provided therein) on the date of each Utilisation Request, on the first day of each Interest Period and, prior to the date of first Utilisation, on each Quarter Date.

11. INFORMATION UNDERTAKINGS

11.1 **Financial Statements**

- (a) During the term of this Guarantee Agreement, each of the Guarantors shall supply to the Facility Agent in sufficient numbers for all the Lenders and the Federal/State Guarantor;
 - (i) as soon as the same become available, but in any event within ninety (90) days after the end of each of its fiscal years, its audited consolidated financial statements for that financial year, comprising of its balance sheet, profit and loss account and cash flow statement, together with a description of the business, market and financial developments of that Guarantor (as the case may be, as required to be delivered by AMD Inc. in its periodic SEC filings);
 - (ii) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last fiscal quarter of a financial year, within ninety (90) days) after the end of each fiscal quarter in each of its financial years, its unaudited consolidated financial statements for that fiscal quarter, comprising of its balance sheet, profit and loss account and cash flow statement; and
 - (iii) as soon as the same become available, but in any event within thirty (30) days after the end of each Month, reports on the Group Consolidated Cash (calculated in accordance with US GAAP, substantially in the form set out in Schedule 2 (*Form of Monthly Consolidated Cash Reports*)).
- (b) During the term of this Guarantee Agreement, FoundryCo shall supply to the Facility Agent in sufficient numbers for all the Lenders and the Federal/State Guarantor, as soon as the same become available, but in any event within ninety (90) days after the end of each of its fiscal years:

- (i) the audited unconsolidated financial statements of the General Partner for that financial year; and
- (ii) the audited unconsolidated financial statements of each Limited Partner for that financial year, each comprising of its balance sheet, profit and loss account and cash flow statement.

11.2 Compliance Certificate

- (a) AMD Inc. shall supply to the Facility Agent, with each set of financial statements delivered by it pursuant to paragraphs (a) and (b) of Clause 11.1 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail), in each case as at the date to which those financial statements were drawn up, computations as to compliance with Clause 12 (*Financial Covenants*) if compliance with such financial covenants is required pursuant to the terms of this Guarantee Agreement.
- (b) AMD Inc. in respect of paragraph (i) below, and FoundryCo in respect of paragraphs (ii) and (iii) below, shall ensure that the Compliance Certificates to be provided by them, as applicable, shall be signed by:
 - (i) the chief financial officer, director of treasury or treasurer of AMD Inc., in the case of financial statements of AMD Inc.;
 - (ii) a senior duly authorised officer, in the case of financial statements of the General Partner; or
 - (iii) a senior duly authorised officer, in the case of financial statements of a Limited Partner,as the case may be, and, if required to be delivered with the audited financial statements delivered pursuant to paragraph (a) of Clause 11.1 (*Financial Statements*), confirmed by the Auditors.

11.3 Requirements as to Financial Statements

- (a) Each set of financial statements and statements delivered by a Guarantor pursuant to paragraph (a) of Clause 11.1 (*Financial Statements*) shall be audited and accompanied by an audit report without material qualification by the Auditors.
- (b) Each set of financial statements delivered by a Guarantor pursuant to paragraphs (a) and (b) of Clause 11.1 (*Financial Statements*) shall be certified by:
 - (i) the chief financial officer, director of treasury or treasurer of that Guarantor, in the case of financial statements of the Guarantor;
 - (ii) a senior duly authorised officer, in the case of financial statements of the General Partner; or
 - (iii) a senior duly authorised officer, in the case of financial statements of a Limited Partner,as the case may be, as fairly representing its financial condition as at the date as at which those financial statements were drawn up (in the case of unaudited financial statements, subject to normal year end adjustments).

- (c) Each Guarantor must notify the Facility Agent of any material change to the basis on which the audited or unaudited financial statements delivered by it pursuant to paragraph (a) or (b) above are prepared from those applied in the preparation of the relevant Base Financial Statements (including, without limitation, any change in US GAAP but excluding any change resulting only from the exercise by the Guarantor or the General Partner, as the case may be, of a right to choose an alternative treatment under US GAAP).
- (d) If a Guarantor notifies the Facility Agent of a change in accordance with paragraph (c) above, then that Guarantor and the Facility Agent shall enter into negotiations in good faith for a period of not more than thirty (30) days with a view to agreeing:
 - (i) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Guarantee Agreement; and
 - (ii) if so, any amendments to this Guarantee Agreement (including appropriate changes to the financial covenants set out in Clause 12.2 (*Adjusted Tangible Net Worth*) and Clause 12.3 (*EBITDA*)) and applicable definitions which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms, and if any amendments are agreed they shall take effect and be binding on each of the parties hereto in accordance with their terms.

11.4 **Information: Miscellaneous**

Each of the Guarantors shall supply (or shall cause the Borrower to supply, in which case the obligations of the relevant Guarantor under this Clause 11.4 shall be deemed to have been satisfied) to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests) and, in the case of paragraph (e) below, to the Federal/State Guarantors, each case in relation to the Guarantor:

- (a) notice of each equity funding (including funding by way of shareholder loans, if any) received by FoundryCo;
- (b) notice of any material changes regarding, *inter alia*, directly or indirectly, the time and procedures of, and the conditions for, the funding and capitalisation of FoundryCo under the Funding Agreement from the description provided pursuant to paragraph 4(g) of Schedule 2 to the Amendment Agreement;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it and which might, if adversely determined, reasonably be expected to involve potential or alleged liability in excess of fifty million (50,000,000) Euro (or its equivalent in other currencies on the date of their determination);
- (d) promptly upon becoming aware of them, the details of any insurance claims, claims made under the Project Documents or material changes to the Project which might reasonably be expected to involve potential or alleged liability of the Borrower in excess of five million (5,000,000) Euro (or its equivalent in other currencies on the date of their being determined or made);
- (e) promptly upon becoming aware of them, any conflicts or breaches of any law or regulation applicable to it which would or might reasonably be expected to have a Material Adverse Effect;

- (f) promptly upon becoming aware of them, the details of any collective labour dispute which is current, threatened or pending against it which would or might reasonably be expected to have a Material Adverse Effect;
- (g) in the case of AMD Inc. only, promptly upon becoming aware of them, (i) the details of any change in the Credit Rating or in the rating of the Facility (if any) or in the published outlook of either and (ii) any relevant information (if possible, together with any relevant documents in connection therewith) with a likely or expected outcome leading to a downgrade of the Credit Rating;
- (h) promptly upon filing them, notice of any SEC filings;
- (i) promptly, details of any changes to the Borrower's, a Guarantor's and/or the General Partner's accounting periods and all changes of the Borrower's or any Relevant Subsidiary's articles of association or equivalent constitutional documents;
- (j) promptly, such further information regarding the financial condition, business and operations of the Borrower, the Guarantor and/or the General Partner as any Finance Party (through the Facility Agent) may reasonably request;
- (k) promptly, the details of any amendments, variations, novations, supplements or terminations of any Transaction Document to which a Finance Party is not a party; and
- (l) as soon as the same become available, but in any event within sixty (60) days (or, if in respect of the last fiscal quarter of a financial year, within ninety (90) days) after the end of each fiscal quarter in each of its financial years, a report on the number of microprocessors sold by AMD Inc.,

and shall ensure that its senior management is available once a year for the purpose of a meeting with the Lenders and the Facility Agent in relation thereto.

11.5 Notification of Default

- (a) Each of the Guarantors shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon a senior executive officer of the Guarantor becoming aware of its occurrence.
- (b) Promptly upon a request by the Facility Agent, the Guarantor having received that request shall supply to the Facility Agent a certificate signed by two senior officers on its behalf certifying that to the best of its knowledge and belief no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

12. FINANCIAL COVENANTS

The covenants in this Clause 12 will remain in force from the date of this Guarantee Agreement until all of the Guarantors' Liabilities have been paid, discharged or performed in full and as long as any Commitment is in force.

12.1 Financial Definitions

In this Clause 12:

“**Adjusted Net Earnings from Operations**” means, with respect to any fiscal period of AMD Inc., AMD Inc.’s net income after provision for income taxes for such fiscal period, as determined on a consolidated basis in accordance with US GAAP and reported on the financial statements of AMD Inc. (as such financial statements are required to be delivered to the Facility Agent hereunder), but excluding any unaudited year end financial statements, for such period, excluding any and all of the following included in such net income:

- (a) gain arising from the sale of any capital assets;
- (b) gain arising from any write-up in the book value of any asset;
- (c) gain arising from the acquisition of debt or equity securities of AMD Inc. or any Subsidiary of AMD Inc. or from cancellation or forgiveness of any debt of AMD Inc. or any Subsidiary of AMD Inc. (excluding any debt which is limited in recourse to property of AMD Inc. or a Subsidiary of AMD Inc. to the extent the amount of such debt exceeds the book value of such property as would be shown on a consolidated balance sheet of AMD Inc. prepared in accordance with US GAAP);
- (d) earnings of any person to which assets of AMD Inc. or any Subsidiary of AMD Inc. have been sold, transferred or disposed of, or into which AMD Inc. or any Subsidiary of AMD Inc. have been merged, or which has been a party with AMD Inc. or a Subsidiary of AMD Inc. to any consolidation or any other form or reorganisation, prior to the date of such transaction;
- (e) gain arising from extraordinary items, as determined in accordance with US GAAP, or from any other non-recurring transaction;
- (f) interest income;
- (g) non-cash restructuring charges;
- (h) compensation expense related to awards of equity instruments to employees of any member of the Group, as reflected on AMD Inc.’s statement of operations for such fiscal period as is required pursuant to the Financial Accounting Standard Board’s Statement of financial Accounting Standard No. 123R (Revised 2004), Share Based Payment; and
- (i) any amounts reflected in AMD Inc.’s financial statements under “Equity in net income (loss) of Spansion Inc.” or equivalent line item.

“**Adjusted Tangible Assets**” means all of AMD Inc.’s assets, determined on a consolidated basis in accordance with US GAAP, except:

- (a) deferred assets, other than prepaid insurance and prepaid taxes;
- (b) patents, copyrights, trademarks, trade names, franchises, goodwill and other similar intangibles;
- (c) unamortised debt discount and expense;

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- (d) assets of AMD Inc., FoundryCo or any Subsidiary of AMD Inc. or FoundryCo constituting Intercompany Accounts; and
 - (e) fixed assets to the extent of any write-up in the book value thereof resulting from a revaluation effective after the Signing Date.

“**Adjusted Tangible Net Worth**” means, at any relevant time, (a) the book value (after deducting related depreciation, obsolescence, amortisation, valuation and other proper reserves as determined in accordance with US GAAP) at which the Adjusted Tangible Assets would be shown on a balance sheet of AMD Inc. at such time prepared on a consolidated basis in accordance with US GAAP less (b) the amount at which AMD Inc.’s liabilities would be shown on such consolidated balance sheet, including as liabilities all reserves for contingencies and other potential liabilities which would be required to be shown on such balance sheet; provided that any and all contributions under the Participations shall not be treated as indebtedness at any time.

“**EBITDA**” means, on a consolidated basis for any period, Adjusted Net Earnings from Operations for such period plus, to the extent deducted in computing such Adjusted Net Earnings from Operations, the sum of:

- (a) income tax expense;
- (b) interest expense; and
- (c) depreciation and amortisation expense.

“**Intercompany Accounts**” means all assets and liabilities, howsoever arising, which are due to the Borrower from, which are due from the Borrower to, or which otherwise arise from any transaction by the Borrower with, AMD Inc., FoundryCo or any Subsidiary of AMD Inc. or FoundryCo.

12.2 Adjusted Tangible Net Worth

From and after the first date, if any, on which Group Consolidated Cash is less than:

<u>Amount</u>	<u>if Moody's Rating is at least</u>		<u>if Standard & Poor's Rating is at least</u>
USD500,000,000	B1 or lower	And	B+ or lower
USD425,000,000	Ba3	And	BB-
USD400,000,000	Ba2	And	BB
USD350,000,000	Ba1	And	BB+
USD300,000,000	Baa3 or better	And	BBB- or better

AMD Inc. will maintain Adjusted Tangible Net Worth, determined as of the last day of each fiscal quarter, of not less than USD1,750,000,000.

12.3 EBITDA

From and after the first date, if any, on which Group Consolidated Cash is less than:

<u>Amount</u>	<u>if Moody's Rating is at least</u>		<u>if Standard & Poor's Rating is at least</u>
USD500,000,000	B1 or lower	And	B+ or lower
USD425,000,000	Ba3	And	BB-
USD400,000,000	Ba2	And	BB
USD350,000,000	Ba1	And	BB+
USD300,000,000	Baa3 or better	And	BBB- or better

AMD Inc. will maintain EBITDA as of the last day of each four consecutive fiscal quarters in an amount not less than USD850,000,000.

12.4 **Financial Testing**

The financial covenants set out in this Clause 12 shall be tested by reference to each of the financial statements and each Compliance Certificate delivered pursuant to Clause 11.1 (*Financial Statements*) and Clause 11.2 (*Compliance Certificate*).

13. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 13 remain in force from the date of this Guarantee Agreement until all of the Guarantors' Liabilities have been paid, discharged or performed in full and as long as any Commitment is in force.

13.1 **Authorisations**

- (a) Each of the Guarantors shall promptly:
 - (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
 - (ii) supply certified copies to the Facility Agent of,
- (b) any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Transaction Documents to which it is a party and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document to which it is a party.
- (c) Each of the Guarantors shall:
 - (i) ensure that it has the right and is duly qualified to conduct its business as it is conducted from time to time in all applicable jurisdictions in which the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect on the Guarantor;
 - (ii) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation which is necessary for the conduct of its business or the business of the Group and the FoundryCo Group as a whole where failure to do so could reasonably be expected to result in a Material Adverse Effect on the Guarantor; and
 - (iii) upon the Facility Agent's written request supply the Facility Agent with copies of any such Authorisations.

13.2 **Compliance with Laws**

Each of the Guarantors shall comply in all material respects with any law or regulation applicable to it where failure to comply could reasonably be expected to result in a Material Adverse Effect on the Guarantor.

13.3 **Change of Business**

AMD Inc. shall not make, or take any steps to make, any substantial change to the general nature of its business from that of engaging in the Group Permitted Business, and FoundryCo shall not make, or take any steps to make, any substantial change to the general nature of its business from that of engaging in the FoundryCo Group Permitted Business.

13.4 **Record Keeping**

Each of the Guarantors shall:

- (a) keep proper records and books of account in respect of its business in accordance with US GAAP; and
- (b) permit reasonable access to the Facility Agent and/or any professional advisers (who are each bound by professional or other confidentiality obligations) appointed by the Facility Agent to examine its records and books of account.

13.5 **Constitutional Documents**

- (a) The Guarantors shall not request, permit or make any change to the constitutional documents of the Borrower or request, permit or make any change to any Participation Agreement in relation to the partnership interests in the Borrower, without the prior written consent of the Facility Agent, where such change relates to:
 - (i) the substitution, the role, the compensation or other rights to receive payments of the General Partner or a silent partner;
 - (ii) the voting rights of partners;
 - (iii) majority requirements;
 - (iv) the legal form of the Borrower; or
 - (v) restrictions on pledges or transfers of partnership interests or Participations.
- (b) In respect of any other change or proposed change to the constitutional documents of the Borrower and any agreements entered into by the General Partner and/or any Limited Partner in relation to the Borrower, the Guarantors will provide the Facility Agent with information in relation thereto and also provide the Facility Agent with copies of any such changes to the constitutional documents of the Borrower and/or such agreements.

13.6 **Insurance**

- (a) FoundryCo shall maintain or ensure that the Borrower maintains insurance in relation to the Site, on the Borrower's business and the Borrower's assets and all such insurance as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany, and each of the Guarantors shall maintain insurance in relation to its business and its assets and all such insurance as may be required by contract with reputable underwriters or insurance companies against such risks and to such extent as is usual for prudent companies carrying on a business such as that carried on by the Guarantor in the United States.
- (b) Without limiting paragraph (a)(i) above, FoundryCo shall effect and maintain insurance or ensure that insurance is effected and maintained by the Borrower in relation to the Project, on the Borrower's business and the Borrower's assets as deemed sufficient by the Insurance Adviser and as described in the Insurance Report.

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- (c) FoundryCo shall:
- (i) ensure that all premiums are paid and that all other things are done as are necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by the Borrower in Germany) to maintain the insurances that the Borrower has taken out in relation to the Borrower's business, its assets and the Site and will procure that all insurance policies or certificates of insurance that the Borrower maintains in relation to the Site and its assets shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee; and
 - (ii) pay all premiums and do all other things as are necessary (to the extent as is usual for prudent companies carrying on a business such as that carried on by FoundryCo to maintain the insurances that it has taken out in relation to its business, its assets and, on behalf of the Borrower, the Site and the Borrower's assets and will procure that all insurance policies or certificates of insurance that it maintains in relation to the Site and the Borrower's assets shall contain loss payee provisions acceptable to the Facility Agent and the Security Agent noting the Security Agent's interest thereon and naming the Security Agent as loss payee.
- (d) FoundryCo shall supply the Facility Agent on request with copies of each receipt or other evidence satisfactory to the Facility Agent for all premiums and other amounts payable by FoundryCo under the insurances effected and maintained by it pursuant to paragraph (a) and (b) above and shall, in any event, use all reasonable endeavours to procure that the insurer in respect of such insurances relating to the Project undertakes to the Facility Agent to notify it should any renewal fee or other sum payable by FoundryCo not be paid when due.
- (e) Upon request, FoundryCo shall supply the Facility Agent with a copy of all insurance policies or certificates of insurance in its possession relating to the Project evidencing compliance with paragraph (a) and (b) above or (in the absence of the same) such other evidence of the existence of any Project related insurance referred to in paragraph (a) above as may be reasonably acceptable to the Facility Agent and shall, in any event, notify the Facility Agent of any material changes to any such Project related insurance made from time to time.

13.7 Intellectual Property

Each of the Guarantors shall:

- (a) make such registrations and pay such fees and other amounts as are necessary to keep those registered Intellectual Property Rights owned by it or registered in its the name which are material to the relevant Guarantor's or the Borrower's business in force, and to record its interest and/or that of the Borrower in those Intellectual Property Rights;
- (b) observe and comply with all material obligations and laws to which it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the Intellectual Property Rights (or any part thereof) is subject where failure to do so might reasonably be expected to have a Material Adverse Effect;

- (c) do all acts as are reasonably practicable (including, without limitation, the institution of legal proceedings) to maintain, protect and safeguard the Intellectual Property necessary for its business and that of the Borrower as a whole; and
- (d) enter into and maintain such license agreements, and obtain such authorisations, as are necessary for it or the Borrower to use all such Intellectual Property Rights which are material to its business or that of the Borrower where failure to do so, after having taken all reasonable action to enter into and maintain such license agreements and obtain such authorisations, would or might reasonably be expected to have a Material Adverse Effect.

13.8 Environmental Compliance

Each of the Guarantors shall obtain and maintain all requisite Environmental Licenses required in relation to its business and comply in all material respects with:

- (a) all applicable Environmental Laws relating to either the Group Permitted Business or the FoundryCo Group Permitted Business, as applicable;
- (b) the terms and conditions of all Environmental Licenses required in relation to the Group Permitted Business and the FoundryCo Group Permitted Business and applicable to it; and
- (c) all other covenants, conditions, restrictions and agreements entered into by or binding on the Guarantor directly or indirectly concerned with any Environmental Contamination required in relation to the Group Permitted Business and the FoundryCo Group Permitted Business,

in each case where failure to do so would or might reasonably be expected to have a Material Adverse Effect.

13.9 Environmental Claims

Each of the Guarantors shall inform the Facility Agent in writing as soon as reasonably practicable upon its becoming aware of:

- (a) any Environmental Claim which has been commenced or threatened against any Material Subsidiary or Relevant Subsidiary; or
- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against any Material Subsidiary or Relevant Subsidiary,

where the claim might, if determined against that Material Subsidiary or Relevant Subsidiary, reasonably be expected to have a Material Adverse Effect.

13.10 Taxation

- (a) Each of the Guarantors shall duly and punctually pay and discharge all Taxes imposed upon it or its assets and due in Germany and, in respect of material Taxes imposed by non-German Tax authorities, in each case, within the time period allowed without incurring penalties, save to the extent that:

- (i) payment is being contested in good faith;

- (ii) adequate reserves are being maintained for those Taxes; and
 - (iii) payment can be lawfully withheld.
- (b) None of the Guarantors shall be materially overdue in the filing of any Tax returns in Germany or the United States.
- (c) AMD Inc. shall ensure that it continues to be a company resident for Tax purposes in the United States and FoundryCo shall ensure that it continues to be a company resident for Tax purposes in the Cayman Islands.

13.11 Security

- (a) Save as otherwise permitted by the terms of the Finance Documents, each of the Guarantors shall ensure that any Security expressed to be created by it by or pursuant to, or, as the case may be, expressed to have been created by it and to be evidenced in, any Security Document to which it is a party remains in full force and effect with the ranking and priority it is expressed to have.
- (b) Save as otherwise permitted by the terms of the Finance Documents, each of the Guarantors shall not do or omit to do anything or knowingly permit or cause anything to be done or omitted to be done which would or could adversely affect any Security expressed to be created by any Obligor by or pursuant to, or any Security expressed to have been created by any Obligor and to be evidenced in, any Security Document to which it is a party.
- (c) Each of the Guarantors shall take all such action as the Facility Agent or the Security Agent may reasonably request for the purpose of perfecting any such Security.
- (d) Each of the Guarantors shall, if the Security Agent lawfully and in accordance with the terms of the Finance Documents exercises any power (whether of sale or other disposal or otherwise) or right with respect to the Charged Assets, permit the exercise of such power or right.
- (e) Each of the Guarantors has granted or will grant and has caused or will cause to be granted the Security as set out in the Federal/State Guarantor Decision to the Security Agent or the Finance Parties, as the case may be.

13.12 Pari Passu Ranking

Each of the Guarantors shall ensure that its payment obligations under the Finance Documents will rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to creditors or certain types of creditors generally.

13.13 Transaction Documents

Each of the Guarantors shall comply in all material respects with and perform all of its obligations under the Transaction Documents to which it is a party.

13.14 Amendments to Transaction Documents

None of the Guarantors shall amend, vary, novate, supplement or terminate any Transaction Document to which it is a party and to which a Finance Party is not a party, or waive any right thereunder, except for:

- (a) any of the foregoing which is expressly consented to in writing by the Facility Agent acting on the instructions of the Majority Lenders or, pursuant to Clause 33.2 (*Exceptions*) of the Facility Agreement, all Lender consent; or
- (b) any amendment, variation or waiver which is of a minor or technical nature or would not adversely affect the rights of the Finance Parties under the Finance Documents.

13.15 Project Documents

Except as otherwise specifically provided in the Project Documents or required by or permitted under any Finance Document, none of the Guarantors shall, and each of the Guarantors shall ensure that none of its Relevant Subsidiaries shall, assign any of its rights or transfer any of its rights or obligations under the Project Documents.

13.16 Auditors

Each of the Guarantors shall at all times have its accounts and those of the Relevant Subsidiaries audited by the Auditors.

13.17 Partnership and Shareholder Interests

- (a) FoundryCo shall ensure that each of its Subsidiaries, including any members of the AMD Saxony Group, remains at any time (i) directly or indirectly, a wholly-owned Subsidiary of FoundryCo, and (ii) in case of any Subsidiaries of New German KG (other than members of AMD Saxony Group) a wholly-owned direct Subsidiary of its parent company as shown in the Group Structure Chart, except as otherwise agreed by the Majority Lenders and the Federal/State Guarantors.
- (b) FoundryCo shall ensure that the interests of the General Partner as general partner and all interests of AMD Fab 36 Holding GmbH and AMD Fab 36 Admin GmbH as Limited Partners of the Borrower, and all shares in AMD Fab 36 Holding GmbH, AMD Fab 36 Admin GmbH, AMD Fab 36 LLC and LM Beteiligungsgesellschaft mbH are and remain pledged to the Lenders in accordance with the Partnership Interest Pledges, the Share Pledges and the Security Amendment Agreement.

13.18 The Federal/State Guarantee

Each of the Guarantors will comply and will procure that each Relevant Subsidiary will comply with all the terms of the Federal/State Guarantee Decision which directly apply to it.

13.19 Cash Shortfalls

FoundryCo shall at all times make (or shall cause another member of the FoundryCo Group to make) payments to the Borrower, or otherwise provide funds to the Borrower, in each case without delay in the amount of any Cash Shortfalls, by way of equity contributions, Subordinated Loans or, as the case may be, prepayment for products and/or services (not in excess, however, of FoundryCo's obligations under this Guarantee Agreement, the Subordinated Loan Agreements, the Revolving Credit Agreement and the Partnership Agreement, and not giving rise to any right of any person to enforce the relevant funding arrangements).

13.20 Material Adverse Effect

Neither Guarantor shall enter into any agreement or obligation:

- (a) which could have a Material Adverse Effect; or
- (b) the performance of which in accordance with its terms would result in a breach of any provision of any Finance Document by any Obligor.

13.21 Security from the Borrower

Neither Guarantor will take from the Borrower or any Other Surety any Security in respect of the Guarantor's liability hereunder or in respect of any other obligation or liability which the Borrower has or may at any time have to the Guarantor as a result of performance by the Guarantor of its obligations under this Guarantee Agreement. If any such Security is taken from the Borrower or any Other Surety, and any monies or other property or assets are received or recovered by a Guarantor in pursuance of, or in breach of, any of the provisions of Clause 9 (*Claims by Guarantor*), it shall be held on trust (*treuhänderisch halten*) for the Security Agent to secure the Guarantors' liability hereunder, and upon request by the Security Agent the relevant Guarantor will forthwith deposit such Security with the Security Agent or as it may direct or pay or transfer such monies or other property or assets to the Security Agent for application in or towards the discharge of the Guarantors' Liabilities.

13.22 Borrower's Undertakings

FoundryCo will ensure that the Borrower complies with all its obligations under Clause 16 (*Costs and Expenses*), Clause 20 (*General Undertakings*) (in particular, those under Clause 20.35 (*Subsidies*)) and Clause 35 (*The Federal State Guarantee*) of the Facility Agreement.

13.23 Implementation of Reorganisation and Capitalisation

The Guarantors will ensure that all measures described in the Step Plan will be implemented in the form and at the time as set out therein.

14. SET-OFF

The Security Agent may (in addition to any other right to which it may be entitled), if an Event of Default has occurred and is continuing or the Loans have been accelerated, without notice to any of the Guarantors or any other person, setoff and apply any credit balance (or any part thereof in such amounts as it may elect) on any account (whether such account is subject to notice or not and whether matured or not and in whatever currency) of a Guarantor with it and any other monies owing by it to a Guarantor against any liabilities (whether present or future, actual or contingent) of that Guarantor to it, and it may purchase with the monies standing to the credit of any such account such other currencies as may be necessary for this purpose.

15. MISCELLANEOUS

Neither Agent is obliged to furnish to a Guarantor any information in respect of the Facility Agreement and/or the Guarantors' Liabilities.

16. NOTICES

16.1 Communications in Writing

Any communication to be made under or in connection with this Guarantee Agreement shall be made in writing and, unless otherwise stated, may be made by fax, letter or telex.

16.2 Addresses

The address, fax number and telex number (and the department or officer, if any, for whose attention the communication is to be made) of the Guarantor, the Security Agent and the Facility Agent for any communication or document to be made or delivered under or in connection with this Guarantee Agreement is:

(a) in the case of AMD Inc.:

Address: One AMD Place M-S 68
Sunnyvale, California 94088
Fax number: +1 408 774 7002
Attention: General Counsel

(b) in the case of FoundryCo:

Address: 1050 E Arques Ave, Sunnyvale, CA 94085, U.S.A.
Fax number: +1-408-774-7499
Attention: General Counsel

with a copy to

Noerr Stiefenhofer Lutz

Address: Paul-Schwarze-Str. 2, 01097 Dresden, Germany
Fax number: +49-351-8166081
Attention: Mr. Otto Stolberg-Stolberg

(c) in the case of the Security Agent:

Address: c/o Dresdner Bank AG, Frankfurt am Main
Jürgen-Ponto-Platz 1
D-60301 Frankfurt am Main
Fax Number: +49 69 263 11745
Attention: Hans-Jürgen Dittmann

(d) in the case of the Facility Agent:

Address: Dresdner Bank AG, Niederlassung Luxemburg
6a, route de Trèves
L-2633 Senningerberg
Fax Number: +352 346868 3222
Attention: Agency
Erica Palmgren, Marion Sattler

Copies:

Fax Number: +352 346868 565
Attention: Loan Administration
Richard Faber, Bernd Lellig,

or any substitute address, fax number, telex number or department or officer of its as a Guarantor may notify to an Agent (or an Agent may notify to the Guarantors, if a change is made by such Agent) by not less than five (5) Business Days' notice.

16.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Guarantee Agreement will only be effective:
- (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being sent by international courier addressed to it at that address; or
 - (iii) if by way of telex, when despatched, but only if, at the time of transmission, the correct answerback appears at the start and at the end of the sender's copy of the notice,
- and, if a particular department or officer is specified as part of its address details provided under Clause 16.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to an Agent will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified as part of its address details provided under Clause 16.2 (*Addresses*) (or any substitute department or officer as it may specify for this purpose).

16.4 Language

- (a) Any notice and any other document given under or in connection with this Guarantee Agreement must be in English, unless otherwise required by applicable laws or regulations or the Federal/State Guarantor.
- (b) Whichever language is chosen or required for a particular notice or any particular document given under or in connection with this Guarantee Agreement shall prevail over that of any accompanying translation.

17. FURTHER ASSURANCE

Each of the Guarantors confirms that it has taken, and will continue to take, all necessary steps to ensure that any amount claimed by an Agent from it hereunder can be transferred to it immediately, free of any deduction, cost or charges whatsoever.

18. PARTIAL INVALIDITY

If, at any time, any provision of this Guarantee Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

19. AMENDMENTS

No amendment or modification of or to any provision of this Guarantee Agreement, including, without limitation, this Clause 19, shall be effective unless the same shall be in writing and signed by or on behalf of each party hereto.

20. COUNTERPARTS

This Guarantee Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Guarantee Agreement.

21. ASSIGNMENT

21.1 Successor and Assigns

This Guarantee Agreement shall be binding upon and inure to the benefit of the parties to this Guarantee Agreement and their respective successors and permitted assigns.

21.2 The Guarantor

None of the Guarantors shall assign or otherwise transfer the benefit of this Guarantee Agreement or any of its rights, duties or obligations under this Guarantee Agreement without the prior written consent of the Security Agent.

21.3 The Agents

Each Agent may assign or transfer all or any part of the benefits of this Guarantee Agreement and any of its rights, duties and obligations under this Guarantee Agreement without the consent of any Guarantor and for such purposes each Agent may disclose, in accordance with the terms of the Facility Agreement, to a potential assignee or transferee such information about a Guarantor, this Guarantee Agreement and the transactions contemplated by this Guarantee Agreement as it considers appropriate.

21.4 Change in Status

This Guarantee Agreement shall remain binding on the Guarantors notwithstanding any change in the constitution of an Agent, a Guarantor or the Borrower or its absorption in, amalgamation with or merger into, or the acquisition of all or part of its undertaking by any other person, to the intent that the security created by this Guarantee Agreement shall remain valid and effective in all respects in favour of any assignee or successor in title of an Agent in the same manner as if such assignee or successor in title had been named as a party to this Guarantee Agreement instead of, or in addition to, such Agent and (as the case may be) on or in respect of the obligations and liabilities of any successor entity to a Guarantor or the Borrower in the same manner as if such successor entity had been named in this Guarantee Agreement instead of, or in addition to, a Guarantor or the Borrower respectively.

22. CONFIDENTIALITY

- (a) Except as otherwise set out in Clause 21.3 (*The Agents*), this Guarantee Agreement and the contents and existence of the same are strictly confidential and, without the prior written

consent of the other parties hereto, shall not be disclosed to, or relied upon by, any person except as required by law or to comply with the applicable rules or requests of any regulatory body or to its employees or legal or financial advisers who have a need to know this information and who are made aware of and agree to be bound by the obligations under this paragraph.

- (b) Notwithstanding the foregoing or anything to the contrary in this Guarantee Agreement or any other written or oral understanding or agreement to which the parties hereto are parties or by which they are bound, each party to this Guarantee Agreement shall be permitted to disclose the tax treatment and tax structure of the transactions set forth herein and in the other Finance Documents. This permission to disclose includes the ability of each party to consult, without limitation of any kind, any tax advisor regarding the tax treatment or tax structure of the transactions set forth herein and in the other Finance Documents. The parties acknowledge that this written authorisation does not constitute a waiver by any party of any privilege held by such party pursuant to the attorney-client privilege or the confidentiality privilege of Section 7525 (a) of the US Internal Revenue Code of 1986, as amended, or pursuant to any similar laws and regulations in any relevant other jurisdiction.

23. GOVERNING LAW

This Guarantee Agreement is governed by German law.

24. ENFORCEMENT

24.1 Jurisdiction of German courts

The District Court of Frankfurt am Main has exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee Agreement (including a dispute regarding the existence, validity or termination of this Guarantee Agreement).

24.2 Process Agent

Each of the Guarantors irrevocably appoints the Borrower of Wilschdorfer Landstrasse 101, 01109 Dresden, Germany as its agent to receive and acknowledge on its behalf service of any writ, summons, order, judgment or other notice of legal process in Germany. If for any reason the agent named above (or its successor) no longer serves as agent of a Guarantor for this purpose, that Guarantor shall promptly appoint a successor agent approved by the Agents and notify both Agents thereof. Until an Agent receives such notification, it shall be entitled to treat the agent named above (or its said successor) as the agent of each Guarantor for the purposes of this Clause. Each of the Guarantors agrees that any such legal process shall be sufficiently served on it if delivered to such agent for service at its address for the time being in Germany whether or not such agent gives notice thereof to the relevant Guarantor.

This Guarantee Agreement has been entered into on the date stated at the beginning of this Guarantee Agreement.

SCHEDULE 1

Form of Compliance Certificate

To: **Dresdner Bank AG, Niederlassung Luxemburg** as Facility Agent

From: **Advanced Micro Devices, Inc.**

Dated:

Dear Sirs

Guarantee agreement dated 21 April 2004, as last amended on [•] (the "Guarantee Agreement")

1. We refer to the Guarantee Agreement. This is a Compliance Certificate.*
2. Save where the context requires otherwise, terms defined in the Guarantee Agreement have the same meanings when used in this certificate.
3. In particular, we refer to Clause 11.1 (*Financial Statements*) and Clause 12 (*Financial Covenants*) of the Guarantee Agreement. We also refer to the quarterly financial statements for the fiscal quarter ended [*insert date*] delivered to you on [*insert date*] in accordance with paragraph (b) of Clause 11.1 (*Financial Covenants*).
4. We confirm that on the basis of the financial information contained in the above quarterly financial statements, as at [[*the end of the fiscal quarter*]/[*the end of the fiscal year*]] set out below, the following financial ratios or amounts calculated in accordance with and as required by Clause 12 (*Financial Covenants*) were as follows:

<u>Covenant</u>	<u>Amount in USD</u>
Adjusted Tangible Net Worth as at [<i>state fiscal quarter</i>] (Clause 12.2 (<i>Adjusted Tangible Net Worth</i>)).	[]

<u>Covenant</u>	<u>Amount in USD</u>
EBITDA as at [<i>state fiscal quarter</i>] (Clause 12.3 (<i>EBITDA</i>)).	[]

Accordingly, we confirm that the financial covenants set out in Clause 12 (*Financial Covenants*) [*have/have not*] been complied with during the period in question.

* To be issued only if compliance is required pursuant to paragraph (a) of Clause 11.2 (*Compliance Certificate*).

Signed:

[[Chief Financial Officer]/[Director of Treasury]/[Treasurer]]

of

[Advanced Micro Devices, Inc.]

[insert applicable certification language]

for and on behalf of

[Ernst & Young]

SCHEDULE 2

Form of Monthly Consolidated Cash Reports

To: **Dresdner Bank AG, Niederlassung Luxemburg** as Facility Agent

From: **Advanced Micro Devices, Inc.**

Dated:

Dear Sirs

Guarantee agreement dated 21 April 2004 as last amended on [•] (the “Guarantee Agreement”)

1. We refer to the Guarantee Agreement. This is a Compliance Certificate.
2. Save where the context requires otherwise, terms defined in the Guarantee Agreement have the same meanings when used in this certificate.
3. In particular, we refer to paragraph (c) of Clause 11.1 (*Financial Covenants*) of the Guarantee Agreement and to the reports for the Month ended [*insert date*] delivered to you on [*insert date*] pursuant thereto.
4. We confirm the accuracy of the figures and financial information reported below:

<u>Group Consolidated Cash</u>	<u>Amount in [USD]</u>
	[]

Signed:

[*name of duly authorised officer*]

of

Advanced Micro Devices, Inc.

Attachment:

Monthly report containing unaudited Group cash balances.*

* NB. As previously provided by the Guarantor.

The Guarantors

ADVANCED MICRO DEVICES, INC.

by: _____
Name, title:

THE FOUNDRY COMPANY

by: _____
Name, title:

The Borrower

AMD FAB 36 LIMITED LIABILITY COMPANY & CO. KG

by: _____
Name, title:

For guarantee pursuant to paragraph (c) of Clause 2

AMD NETHERLANDS TECHNOLOGIES B.V.

by: _____
Name, title:

The Security Agent

DRESDNER BANK AG in BERLIN

by: _____
Name, title:

The Facility Agent

DRESDNER BANK AG, NIEDERLASSUNG LUXEMBURG

by: _____

Name, title:

SHAREHOLDERS' AGREEMENT

By and Among

ADVANCED MICRO DEVICES, INC.

ADVANCED TECHNOLOGY INVESTMENT COMPANY LLC

and

THE FOUNDRY COMPANY

Dated as of March 2, 2009

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SHAREHOLDERS' AGREEMENT

This SHAREHOLDERS' AGREEMENT (this "*Shareholders' Agreement*" and as referred to herein, this "*Agreement*"), dated as of March 2, 2009 is entered into by and among Advanced Micro Devices, Inc., a Delaware corporation ("*Discovery*"), Advanced Technology Investment Company LLC, a limited liability company established under the laws of the Emirate of Abu Dhabi and wholly-owned by the Government of Abu Dhabi ("*Oyster*") (each of Discovery and Oyster being a "*Shareholder*" and together the "*Shareholders*"), and The Foundry Company, an exempted company incorporated under the laws of the Cayman Islands ("*FoundryCo*"). Discovery, Oyster and FoundryCo are sometimes referred to herein as the "*Parties*", and each individually as a "*Party*".

RECITALS

WHEREAS, Discovery, Oyster and the other parties thereto are parties to the Master Transaction Agreement that provides, among other things, for the formation of FoundryCo under the laws of the Cayman Islands to act as the holding company for a joint venture between Discovery and Oyster;

WHEREAS, pursuant to the Master Transaction Agreement and immediately prior to the execution of this Agreement, Discovery has contributed or caused its Subsidiaries to contribute to FoundryCo, and FoundryCo has acquired from Discovery and its Subsidiaries, the FoundryCo Assets in consideration of the issuance by FoundryCo to Discovery (or a Subsidiary of Discovery) of an amount of Shares as stated in the Master Transaction Agreement and the assumption of the Assumed Liabilities by FoundryCo and its Subsidiaries;

WHEREAS, pursuant to the Master Transaction Agreement and immediately prior to the execution of this Agreement, Oyster (i) has contributed cash to FoundryCo in consideration of the issuance by FoundryCo to Oyster of an amount of Shares as stated in the Master Transaction Agreement and the issuance of the Initial Convertible Notes and (ii) has contributed cash to Discovery in consideration of the transfer by Discovery to Oyster of an amount of Shares as stated in the Master Transaction Agreement; and

WHEREAS, Discovery, Oyster and FoundryCo will have entered into the Funding Agreement pursuant to which Oyster has committed to, and Discovery has the option to, make additional capital contributions, in accordance with the terms thereof, to FoundryCo in exchange for additional Preferred Shares and/or Additional Convertible Notes.

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

ARTICLE I DEFINITIONS

SECTION 1.01 *Certain Defined Terms*

Capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings referred to or ascribed to such terms in Appendix A.

SECTION 1.02 *Interpretation and Rules of Construction*

In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated;

-
- (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
 - (c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;
 - (d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;
 - (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;
 - (f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;
 - (g) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
 - (h) any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor Laws, and any rules and regulations promulgated under such Laws;
 - (i) any reference in this Agreement to a “day” or a number of “days” (without the explicit qualification of “Business”) shall be interpreted as a reference to a calendar day or number of calendar days;
 - (j) references to a Person are also to its successors and permitted assigns; and
 - (k) the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

ARTICLE II
GOVERNANCE

SECTION 2.01 *Share Capital*

The share capital of FoundryCo Outstanding as of the date hereof shall consist of (i) two (2) Class A Ordinary Shares, one each issued to Discovery and Oyster, respectively; (ii) no Class B Ordinary Shares; (iii) one million three hundred nine thousand one hundred forty (1,309,140) Class A Preferred Shares and (iv) eight hundred seventy-two thousand seven hundred sixty (872,760) Class B Preferred Shares. The rights of the holders of the Class A Ordinary Shares, the Class B Ordinary Shares, the Class A Preferred Shares and the Class B Preferred Shares are as set forth in the Memorandum and Articles of Association.

SECTION 2.02 *Voting*

(a) In accordance with the Memorandum and Articles of Association, prior to the Reconciliation Event, the Class A Preferred Shares, the Class B Preferred Shares and the Class B Ordinary Shares shall be non-voting and only the Class A Ordinary Shares shall have voting rights of one vote per Class A Ordinary Share. Discovery and Oyster shall each be a holder of one Class A Ordinary Share and FoundryCo shall not issue any additional Class A Ordinary Shares. Following the Reconciliation Event and in accordance with the Memorandum and Articles of Association, the Class A Ordinary Shares shall be automatically redeemed and the voting rights of the Class A Preferred Shares, the Class B Preferred Shares and the Class B Ordinary Shares shall be given effect.

(b) Subject to the provisions set forth in the Memorandum and Articles of Association and this *Section 2.02*, each Shareholder then entitled to vote at a general meeting of shareholders of FoundryCo shall have the right to vote all Shares of which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any such meeting of shareholders, or execute a written resolution with respect to all Shares of which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof.

SECTION 2.03 *Board of Directors*

(a) Prior to the Reconciliation Event, the Board shall consist of eight Directors, and Discovery and Oyster, each as a holder of one Class A Ordinary Share, shall each be entitled to designate for nomination four (4) Directors. Prior to the Reconciliation Event, no Officers of FoundryCo shall sit on the Board.

(b) Following the Reconciliation Event, the number of Persons a Shareholder may designate for nomination to serve as a Director shall be subject to adjustment according to the percentage of Fully Diluted Shares held by such Shareholder as follows: (i) a Shareholder holding 30% or more but less than 40% of the Fully Diluted Shares shall be entitled to designate three (3) Directors; (ii) a Shareholder holding 20% or more but less than 30% of the Fully Diluted Shares shall be entitled to designate two (2) Directors; (iii) a Shareholder holding 10% or more but less than 20% of the Fully Diluted Shares shall be entitled to designate one (1) Director and (iv) a Shareholder holding less than 10% of the Fully Diluted Shares shall have no right pursuant to this Agreement to designate Persons for nomination to serve as Directors. To the extent the number of Directors a Shareholder shall be entitled to nominate is reduced pursuant to this *Section 2.03(b)*, then, so long as any other Shareholder owns at least a majority of the Fully Diluted Shares, such other Shareholder shall be entitled to designate all of the remaining Directors.

(c) Each Shareholder shall make the nominations to which it is entitled hereunder at least fifteen (15) days prior to each general meeting of shareholders of FoundryCo or, if FoundryCo elects not to hold a general meeting of shareholders, on or prior to the date on which FoundryCo's shareholders shall adopt a written resolution with respect to the foregoing matters. Each Shareholder shall vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any general meeting of shareholders, or adopt a written resolution with respect to all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof, in favor of electing to the Board the nominees of Discovery and Oyster designated pursuant to *Sections 2.03(a)* and *(b)*.

(d) Unless otherwise agreed in writing by Discovery and Oyster, the Chairman of the Board shall be a non-voting position held by a non-Director and the duties of the Chairman of the Board shall include: (i) providing guidance regarding the long-term strategy of FoundryCo; (ii) developing external relationships with governmental organizations, customers and suppliers; (iii) representing FoundryCo at industry forums; (iv) shaping the agenda for the Board with input from Oyster and Discovery; and (v) overseeing and driving the preparation phase of the Abu Dhabi fab build-out.

(e) No member of the Board shall (i) have the ability to act unilaterally; (ii) veto any action of the Board or (iii) have the casting vote with respect to any matter to be voted upon by the Board.

(f) Board meetings may be called by any Board member upon three (3) days' written notice to all other Board members. Such notice shall include a written agenda for the subjects to be considered at such meeting. The Board may not act on any subject not specified in such agenda except (i) after receiving written waivers of such notice from all Board members who were not given such notice and were not present at such meeting or (ii) upon such written consent or vote (including for such purposes, any express recusals) as may be required for such matters under this Agreement, the Memorandum and Articles of Association and applicable Law, including the affirmative vote or express abstentions from voting of those Board members who were not given such notice.

(g) The Board shall conduct meetings no less frequently than quarterly and at such locations as a majority of the members of the Board deem appropriate.

(h) Directors may participate in a meeting of the Board by means of a conference telephone or other communication equipment through which all persons participating in the meeting can hear each other, which shall be provided at all Board meetings if requested by a Director, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 2.04 *Removal of Board Members; Vacancies*

(a) A Shareholder may at any time elect to remove or dismiss any member of the Board appointed or nominated by such Shareholder pursuant to *Section 2.03*, with or without cause. Upon such election, each other Shareholder shall vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any such meeting of shareholders, or execute a written resolution with respect to all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof, in favor of the removal or dismissal of any such Board member. In the event that the number of members of the Board nominated by a Shareholder exceeds the number that such Shareholder has the right to nominate pursuant to *Section 2.03*, such Shareholder shall promptly take all appropriate action to cause any such extra members of the Board nominated by such Shareholder to immediately resign or alternatively shall take such measures as are necessary to remove or dismiss such extra members.

(b) In the event that a vacancy occurs on the Board as a result of the retirement, removal, dismissal, resignation, disability or death of a member thereof nominated pursuant to *Section 2.03*, such vacancy shall be filled by a person nominated by the Shareholder whose nominee's retirement, removal, dismissal, resignation, disability or death created such vacancy. Each Shareholder shall vote all Shares of which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any meeting of shareholders, or execute a written resolution with respect to all Shares of which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof, in favor of the election of any person so nominated to fill a vacancy on the Board.

(c) Each Shareholder hereby agrees that it will not vote (or execute any written resolutions with respect to) any Shares of which it is the registered holder or any other Shares for which such Shareholder shall otherwise have the ability to control or direct the voting thereof in favor of the removal, dismissal or suspension of any member of the Board that any other Shareholder had the right to nominate unless such other Shareholder shall have consented to or requested such removal or dismissal in writing.

SECTION 2.05 *Committees*

(a) FoundryCo and each Shareholder hereby agree that there shall be established a people/compensation committee of the Board (the "*People/Compensation Committee*"), which shall make recommendations to the full Board for matters including, but not limited to, management compensation, and the adoption of or amendment to FoundryCo benefits plans and Incentive Plans. The Board shall establish a People/Compensation Committee Charter setting forth in further detail the powers and duties of the People/Compensation Committee. The People/Compensation Committee shall initially consist of at least two (2) members of the Board, including at least one Director nominated by Discovery and at least one Director nominated by Oyster. The Chairman of the People/Compensation Committee shall be a Director nominated by Oyster initially and thereafter shall rotate annually between a Director nominated by Discovery and a Director nominated by Oyster. The People/Compensation Committee shall meet no less frequently than quarterly at such place and time as shall be determined by the People/Compensation Committee Chairman.

(b) FoundryCo and each Shareholder hereby agree that there shall be established a finance and audit committee of the Board (the "*Finance and Audit Committee*"), which shall assist the Board in its responsibilities

relating to reviewing financial matters generally, including, but not limited to, the accounting and financial reporting processes of FoundryCo, the audits of FoundryCo's consolidated financial statements, the qualifications of FoundryCo's independent auditor and the performance of FoundryCo's internal audit function and independent auditor. The Board shall establish a Finance and Audit Committee Charter setting forth in further detail the powers and duties of the Finance and Audit Committee. The Finance and Audit Committee shall initially consist of at least two (2) members of the Board, including at least one Director nominated by Discovery and at least one Director nominated by Oyster. The Chairman of the Finance and Audit Committee shall be a Director nominated by Discovery initially and thereafter shall rotate annually between a Director nominated by Oyster and a Director nominated by Discovery. The Finance and Audit Committee shall meet no less frequently than quarterly at such place and time as shall be determined by the Finance and Audit Committee Chairman.

(c) FoundryCo and each Shareholder hereby agree that from time to time the Board may establish such other committees to assist the Board in its responsibilities, including a security committee which shall oversee FoundryCo's compliance with any security and compliance-related commitments to the U.S. government as well as the overall security of FoundryCo, including the protection of FoundryCo's technology and compliance with U.S. export control requirements.

SECTION 2.06 *Officers*

(a) The Shareholders shall cause the Board to approve the appointment of the following initial senior executive officers of FoundryCo: (i) Doug Grose as Chief Executive Officer; (ii) Bruce McDougall as Chief Financial Officer; and (iii) such other officers as determined and appointed by the People/Compensation Committee.

SECTION 2.07 *Additional Financings*. FoundryCo shall seek additional financing, and the Shareholders shall make additional capital contributions, in accordance with the terms and conditions set forth in the Funding Agreement.

SECTION 2.08 *Certain Other Corporate Actions*

(a) At all times, subject to *Section 2.08(b)* and *Section 6.01(b)*, FoundryCo shall not, and shall cause its Subsidiaries not to, take (either directly or by amendment, merger, consolidation, reclassification or otherwise) (and each Shareholder agrees to vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any meeting of shareholders against (and to refuse to execute a written resolution that seeks the authority to approve)) any action not in the ordinary course of business, unless the Board shall first have approved such action by Majority Vote; *provided, however*, that the Board may by resolution require prior notification or the Board's prior approval for any actions to be taken in the ordinary course of business; *provided further*, that in the event a matter which would otherwise require approval under this *Section 2.08* has been expressly included in either the Five-Year Capital Plan or the Annual Business Plan, which has been approved by the Board or the Shareholders in accordance with this Agreement and the Funding Agreement, as applicable, no further Board approval shall be required hereunder.

(b) In addition to such authorizations or approvals by the Board or shareholders as may be required by applicable Law, the Memorandum and Articles of Association or the constituent documents of each of FoundryCo's Subsidiaries or the other provisions of this Agreement, and subject to *Section 6.01(b)* and *Section 7.01(b)(i)*, FoundryCo shall not, and shall cause its Subsidiaries not to, take (either directly or by amendment, merger, consolidation, reclassification or otherwise) (and each Shareholder agrees to vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability

to control or direct the voting thereof at any meeting of shareholders against (and to refuse to execute a written resolution that seeks the authority to approve)) any of the following actions, unless all of the members of the Board shall have first approved such action:

- (i) implementing material changes in the purpose or scope of FoundryCo's activities or engaging in any material activity unrelated to FoundryCo's business that materially adversely affects FoundryCo's ability to perform its obligations to Discovery under the Wafer Supply Agreement;
- (ii) a change in the number of Directors on the Board;
- (iii) the amendment or restatement of its constituent documents;
- (iv) any transaction resulting in a change of control of FoundryCo or any sale of all or substantially all of the assets of FoundryCo and its Subsidiaries other than to FoundryCo or any of its Subsidiaries or, following termination of the Restricted Period, to a Permitted Transferee; *provided, however*, that any such transaction with a Permitted Transferee is on terms that are fair from a financial point of view to all Shareholders;
- (v) the entering into of any acquisition, joint venture, divestiture, transfer, sale, assignment, lease, license or disposal of any property or asset, real, personal or mixed (including leasehold interests and intangible assets), which have a value in excess of \$25 million singly or \$50 million in the aggregate other than with FoundryCo or any of its Subsidiaries or, following termination of the Restricted Period, to a Permitted Transferee; *provided, however*, that any such transaction with a Permitted Transferee is on terms that are fair from a financial point of view to all Shareholders;
- (vi) approval of any material amendment, modification or revision to the initial Five-Year Capital Plan;
- (vii) approval of any Annual Business Plan or any material amendment, modification or revision thereto;
- (viii) the authorization, issuance, sale, acquisition, conversion, repurchase or redemption of any Shares or other equity interest (or option, warrant, conversion or similar right with respect to any equity interest) in or of FoundryCo or its Subsidiaries to the extent not reflected in the Annual Business Plan, the Memorandum and Articles of Association or any Incentive Plan;
- (ix) the declaration, making or payment of any dividend, distribution or transfer (whether in cash, securities or other property) to shareholders;
- (x) the entering into or the amendment of (A) any of the Transaction Documents, (B) any Incentive Plan or (C) any agreement, contract or arrangement by FoundryCo or any of its Subsidiaries pursuant to which FoundryCo or any of its Subsidiaries is obligated to pay or is entitled to receive payments in excess of \$15 million over the term of such contract;
- (xi)(A) the sale, license, sublicense, assignment, transfer, termination or other disposition of any Intellectual Property right owned by or licensed to FoundryCo or any of its Subsidiaries, (B) any amendment of any license from or to FoundryCo or any of its Subsidiaries of any Intellectual Property, or (C) any covenants or agreements not to assert claims of infringement, misappropriation or other violation of any Intellectual Property, other than any of the foregoing in the ordinary course of the business of FoundryCo or, with respect to any of the foregoing involving a Subsidiary of FoundryCo, the business of such Subsidiary;
- (xii) the prosecution, commencement or settlement of any litigation or administrative action for an amount in excess of \$10 million in any such prosecution, commencement or settlement or series of related prosecutions, commencements or settlements or waiving or relinquishing any material rights or claims;
- (xiii) the making of any loan, investment or expenditure (or series of related expenditures) not reflected in the Annual Business Plan involving more than \$5 million singly or \$10 million in the aggregate;
- (xiv) the incurrence of any indebtedness or subjecting any of its properties or assets to any lien, claim or encumbrance or the giving of any material guarantee or indemnity, in each case to the extent not reflected

in the Annual Business Plan, which would result in an increase of 5% or more of the total indebtedness contemplated in the Annual Business Plan;

(xv) the consummation of any Public Offering of securities;

(xvi) the appointment or termination of FoundryCo's Chief Executive Officer or Chief Financial Officer;

(xvii) the determination of when the Reconciliation Event has occurred;

(xviii) the entering into of any transaction, agreement or arrangement between FoundryCo or any of its Subsidiaries, on the one hand, and any Officer, Director, Affiliate or Shareholder, on the other hand, (other than the transactions provided for in or contemplated by the Transaction Documents) unless the total consideration expected to be paid or received by FoundryCo and its Subsidiaries taken as whole as a result of such transaction or proposed change or waiver shall not exceed \$25 million; and

(xix) the entering into of any contract, arrangement, understanding or other similar agreement with respect to any of the foregoing in subsections (i) - (xviii).

(c) In the event of an inconsistency between FoundryCo's Articles of Association and this Agreement, the Shareholders shall exercise their voting rights to amend the Articles of Association to remove such inconsistency.

SECTION 2.09 *Acknowledgment Regarding Fiduciary Duties*

Except as otherwise expressly set forth in this Agreement and the other Transaction Documents, this Agreement is not intended to, and does not, create or impose any fiduciary duty on any of the Shareholders (in their capacity as a holder of Shares) or their respective Affiliates.

SECTION 2.10 *Delivery of Notice for General Meeting and Board Meeting*

In addition to any other manner of delivery permitted by the Memorandum and Articles of Association, each Shareholder consents to the delivery of notices of any general meeting of shareholders of FoundryCo by electronic mail at the address and upon the terms set forth in *Section 8.02* for such Party. Notwithstanding any provision of this Agreement to the contrary, each Shareholder may withdraw such consent or change the applicable electronic mail address for purposes of such Shareholder notices at any time upon written notice to FoundryCo without the approval of any other Party hereto.

ARTICLE III

RESTRICTIONS ON TRANSFER OF SECURITIES

SECTION 3.01 *General Rules*

(a) For purposes of this *Article III*, Securities held by Discovery shall include any Securities held by any Permitted Transferees or any other transferees (other than a transferee pursuant to a Public Sale) of Discovery and Securities held by Oyster shall include any Securities held by any Permitted Transferees or any other transferees (other than a transferee pursuant to a Public Sale) of Oyster, and any offers or acceptances to purchase or sell Securities made to or by Discovery or Oyster shall have been deemed to have been made to or by the respective Permitted Transferees or any other transferees (other than a transferee pursuant to a Public Sale) of Discovery or Oyster.

(b) No Shareholder shall, directly or indirectly, make or solicit any Sale of Securities, or create, incur, solicit or assume any Encumbrance with respect to any Securities, except in compliance with this Agreement and any applicable securities laws.

(c) Each Shareholder shall vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof at any such meeting of shareholders, or execute a written resolution with respect to all Shares for which such Shareholder is the registered holder or for which Shareholder shall otherwise have the ability to control or direct the voting thereof, in favor of any resolution to procure any transfer in compliance with the provisions of this *Article III* and to prohibit any transfer not in compliance with this *Article III*. The Shareholders shall cause the members of the Board to vote in accordance with the provisions of this *Article III*.

(d) Immediately prior to the IPO, the Convertible Notes shall convert into Class A Preferred Shares or Class B Preferred Shares, as applicable, and all Preferred Shares shall convert into Class B Ordinary Shares, in each case pursuant to the terms thereof.

SECTION 3.02 *General Restrictions on Transfer*

(a) Each Shareholder agrees that the Class A Ordinary Shares are non-transferable.

(b) Each Shareholder agrees that, without the consent of the other Shareholder, it will not participate in any Sale of Securities if (i) prior to the Reconciliation Event, such Sale of Securities would cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement; (ii) such Sale of Securities is made to Intel Corporation (“*Intel*”) or any Affiliates of Intel or (iii) such Sale of Securities is made to any competitor of FoundryCo.

SECTION 3.03 *Certain Restrictions on Transfer*

(a) Each Shareholder agrees that, prior to the earliest of (i) March 2, 2019, (ii) such time as the Abu Dhabi cluster is operational with a steady-state yield and volumes of at least seventy-five thousand (75,000) Wafer Starts on Qualified Processes per month, as set forth in the Wafer Supply Agreement, or (iii) the termination of the Transition Period under the Funding Agreement (the “*Restricted Period*”), it will not, directly or indirectly, make any Sale of Securities, or create, incur or assume any Encumbrance with respect to any Securities held by such Shareholder, or enter into any other transaction pursuant to which it or any of its Permitted Transferees shall receive any consideration in cash or other property in connection with such Securities (other than as a distribution thereon by FoundryCo), other than:

(i) with the prior written consent of the other Shareholder;

(ii) any Sale of Securities to (A) a Permitted Transferee in compliance with the provisions of this *Article III*, or (B) the other Shareholder;

(iii) each of Discovery and Oyster (and any of their Permitted Transferees holding Shares) shall be entitled to sell up to 25% of its Fully Diluted Shares (measured at the time of the IPO) in the IPO; *provided, however*, that any Securities to be included on behalf of FoundryCo shall be given first priority to be included in the IPO and as among the Shareholders wishing to sell Securities, the number of Securities to be included in the IPO shall be allocated pro rata based on the amount of Securities each Shareholder (and its Permitted Transferees) proposes to sell; *provided further*, that any Securities to be included in the IPO on behalf of Discovery and Oyster and their respective Permitted Transferees shall be given priority over any other Shareholder or any employees of FoundryCo or any of its Subsidiaries; *and provided further*, that, with respect only to Discovery or any of its Permitted Transferees, this right shall be suspended until the Reconciliation Event has occurred;

(iv) in each year following the IPO, each of Discovery and Oyster (and any of their Permitted Transferees holding Shares) shall be entitled to sell up to an equal amount of its Fully Diluted Shares as permitted under *Section 3.03(a)(iii)* pursuant to (A) a Public Offering, or (B) an offering exempt from registration pursuant to Rule 144 under the Securities Act, or similar non-U.S. applicable Law, if any, *provided, however*, that any Securities to be included on behalf of FoundryCo shall be given first priority to

be included in any such Public Offering and as among the Shareholders wishing to sell Securities, the number of Securities to be included in any such Public Offering shall be allocated pro rata based on the amount of Securities each Shareholder (and its Permitted Transferees) proposes to sell; *provided further*, that any Securities to be included in any such Public Offering on behalf of Discovery and Oyster and their respective Permitted Transferees shall be given priority over any other Shareholder or any employees of FoundryCo or any of its Subsidiaries; *and provided further*, that, with respect only to Discovery or any of its Permitted Transferees, this right shall be suspended until the Reconciliation Event has occurred;

(v) in each year following the IPO, including the year of the IPO, (A) with respect to Discovery, to pledge up to an equal amount of Fully Diluted Shares as permitted for sale under *Section 3.03(a)(iii)*; *provided however*, that, this right shall be suspended until the Reconciliation Event has occurred, and (B) with respect to Oyster, to pledge up to all of its Fully Diluted Shares; or

(vi) any Sale of Securities by Oyster or its Permitted Transferees pursuant to *Section 5.01*.

(b) Each Shareholder agrees that, following the end of the Restricted Period, it will not, directly or indirectly, make any Sale of Securities, or create, incur or assume any Encumbrance with respect to any Securities held by such Shareholder, or enter into any other transaction pursuant to which it or any of its Permitted Transferees shall receive any consideration in cash or other property in connection with such Securities (other than as a distribution thereon by FoundryCo) other than (i) pursuant to the exceptions set forth in *Section 3.03(a)* above or (ii) any Sale of Securities for cash or readily marketable securities that is made in compliance with the procedures, and subject to the limitations, set forth in *Sections 3.05, 3.06, 3.07 and 3.08*.

SECTION 3.04 *Permitted Transferees*

(a) Notwithstanding anything to the contrary contained herein, any Sale of Securities may be made to a Permitted Transferee. However, no Sale of Securities to a Permitted Transferee shall be effective if a purpose or effect of such transfer shall have been to circumvent the provisions of this *Article III*. Each Shareholder shall remain responsible for the performance of this Agreement by each Permitted Transferee of such Shareholder to which Securities are transferred. If any Permitted Transferee to which Securities are transferred in accordance with this *Article III* ceases to be a Permitted Transferee of the Shareholder from which or whom it acquired such Securities, such Person shall reconvey such Securities to such transferring Shareholder immediately before such Person ceases to be a Permitted Transferee of such transferring Shareholder so long as such Person knows of its upcoming change of status immediately prior thereto. If such change of status is not known until after its occurrence, the former Permitted Transferee shall make such transfer to such transferring Shareholder as soon as practicable after the former Permitted Transferee receives notice thereof.

(b) Each Permitted Transferee shall enter into a joinder agreement pursuant to *Section 3.09(a)*.

SECTION 3.05 *Right of First Offer*

(a) The provisions of this *Section 3.05* shall survive the IPO.

(b) Following the end of the Restricted Period, except as provided for in *Section 3.03(b)*, if at any time during the term of this Agreement, a Shareholder (the "*Prospective Seller*") desires to effect a Sale of Securities to a Third Party or Third Parties, the Prospective Seller shall deliver a written notice (an "*Offer Notice*") thereof to FoundryCo and the other Shareholder (the "*Other Shareholder*"), which notice shall set forth all of the material terms and conditions, including the number of Securities proposed to be sold (the "*Offered Securities*") and the proposed purchase price per Share (the "*Offer Price*") (which shall be payable solely in cash or freely marketable securities in one lump sum payment), on which the Prospective Seller offers to sell the Offered Securities to FoundryCo and the Other Shareholder (the "*Offer*").

(c) The receipt of an Offer Notice by the Other Shareholder shall constitute an offer by the Prospective Seller to sell to the Other Shareholder. Such Offer shall be irrevocable for thirty (30) days (the "*Offer Period*")

after receipt of such Offer Notice by the Other Shareholder. During the Offer Period, the Other Shareholder shall have the right to accept such offer as to any or all of the Offered Securities by giving a written notice of acceptance (the “*Notice of Acceptance*”) to the Prospective Seller prior to the expiration of the Offer Period, which notice shall specify the number of Offered Securities to be purchased by the Other Shareholder. Alternatively, if the threshold set forth in *Section 3.07(b)* is met, the Other Shareholder shall have the right and option to notify the Prospective Seller of the Other Shareholder’s interest in selling along with the Prospective Seller to a Third Party (the “*Tag Along Offer*”) pursuant to *Section 3.07*.

(d) The consummation of any such purchase by and sale to the Other Shareholder shall take place not later than ten (10) days after the expiration of the Offer Period (unless a later date shall be required under the HSR Act or other applicable Law). Upon the consummation of such purchase and sale, the Prospective Seller shall (i) deliver to the Other Shareholder the Securities purchased, free and clear of any Encumbrances (other than this Agreement and applicable Law) and (ii) assign all of its rights and obligations under this Agreement with respect to such Securities against payment of the purchase price contained in the Offer.

(e) In the event that (i) the Other Shareholder shall not have elected during the Offer Period to purchase all the Offered Securities or (ii) the Other Shareholder shall have failed to consummate a purchase of Securities with respect to which a Notice of Acceptance was given, the Prospective Seller shall not be obligated to sell any Offered Securities to the Other Shareholder and, subject to its obligations under *Section 3.06* and *3.07*, shall have the right to sell the Offered Securities (the “*Unaccepted Securities*”) to a Third Party or Third Parties so long as all the Unaccepted Securities are sold or otherwise disposed of by the Prospective Seller (A) within ninety (90) days after the expiration of the Offer Period or such longer period (up to the maximum period permitted by applicable Law) as would be required under the HSR Act or other applicable Law, and (B) at a price not less than the Offer Price included in the Offer Notice.

SECTION 3.06 *Right of Last Look*

(a) The provisions of this *Section 3.06* shall survive the IPO.

(b) Following the end of the Restricted Period, except as provided for in *Section 3.03(b)*, a Prospective Seller shall not consummate any Sale of Securities to a Third Party without offering in writing at least ten (10) Business Days prior to the consummation of the Sale of Securities, the Other Shareholder the right to acquire the Offered Securities for the purchase price set forth in this *Section 3.06* and otherwise on the terms and conditions offered by the Third Party (the “*Last Look Notice*”). The Last Look Notice shall contain (i) the name and address of the Third Party and any Person who controls such Third Party, (ii) the proposed amount and form of consideration to be delivered by the Third Party in the transaction and a calculation of the purchase price applicable to the Other Shareholder, (iii) the material terms of such transaction, and (iv) the proposed closing date. The Other Shareholder shall have five (5) Business Days to notify the Prospective Seller of its intentions to purchase the Securities on the terms and conditions set forth above (the “*Last Look Acceptance Notice*”);

(c) To the extent that the Other Shareholder elects not to exercise its purchase right under this *Section 3.06* or does not timely deliver a Last Look Acceptance Notice, the Prospective Seller shall be permitted to consummate its transaction with the Third Party not later than five (5) Business Days after the expiration of the period of time for the Other Shareholder to deliver the Last Look Acceptance Notice. Alternatively, if the Other Shareholder timely delivers the Last Look Acceptance Notice, the Other Shareholder must consummate the acquisition of Securities on or before the proposed closing date identified in the Last Look Notice.

SECTION 3.07 *Tag-Along Rights*

(a) The provisions of this *Section 3.07* shall terminate upon the IPO.

(b)(i) Following the end of the Restricted Period, except as provided for in *Section 3.03(b)*, no Prospective Seller shall sell any Offered Securities held by it, if such Offered Securities constitute more than 10% of the then

Fully Diluted Shares, unless each Other Shareholder is provided the Offer Notice set forth in *Section 3.05* and is offered the right and option to sell pursuant to such disposition up to the same percentage of Securities held by it as the percentage of Securities held by the Prospective Seller as the Prospective Seller proposes to sell.

(ii) The Other Shareholder desiring to exercise such option shall, prior to the expiration of the Offer Period, provide the Prospective Seller with a written notice specifying the number of Securities as to which such Other Shareholder (the “*Tag-Along Offered Securities*”) has an interest in selling pursuant to the Tag-Along Offer (a “*Tag-Along Notice of Interest*”), and shall cooperate in such manner as the Prospective Seller shall reasonably request to permit the sale of such Securities pursuant to the Tag-Along Offer.

(iii) If the Third Party is unwilling to buy all of the Offered Securities, then the allocation of the Securities to be sold in the Tag-Along Offer shall be made pro rata based on the number of Securities each Shareholder proposes to sell.

(iv) Promptly after the consummation of the Sale of Securities of the Prospective Seller and the Other Shareholder to the Third Party or Parties pursuant to the Tag-Along Offer, the Prospective Seller shall remit to the Other Shareholder the total sales price of the Securities of the Other Shareholder sold pursuant thereto less the *pro rata* portion (based on sales price of Securities being sold by the respective parties) of the out-of-pocket expenses (including reasonable legal expenses) incurred by the Prospective Seller in connection with such sale; *provided, however*, that the Other Shareholder shall not be liable for any such expenses in the event that such sale is not consummated.

(v) If at the end of the Offer Period the Other Shareholder shall not have given a Tag-Along Notice of Interest, the Other Shareholder shall be deemed to have waived its rights under this *Section 3.07* with respect to the sale pursuant to the Tag-Along Offer with respect to which a Tag-Along Notice of Interest shall not have been given.

(vi) If, at the end of the twenty (20)-day period following the giving of the Offer Notice (or such later date as is required under the HSR Act or other applicable Law), the Prospective Seller has not completed the sale of all the Tag-Along Offered Securities made available to the Prospective Seller pursuant to *Section 3.07(b)(ii)*, the Prospective Seller shall return to the Other Shareholder all certificates and documents provided to the Prospective Seller by the Other Shareholder pursuant to *Section 3.07(b)(ii)*; *provided, however*, that the Prospective Seller shall not be relieved of its obligation to sell the Securities of the Other Shareholder in the event that such sale is ultimately completed with such Third Party or Parties.

(vii) Except as expressly provided in this *Section 3.07*, no Prospective Seller shall have any obligation to the Other Shareholder with respect to the sale of any Securities held by the Other Shareholder in connection with this *Section 3.07*. No Other Shareholder shall be entitled to sell and transfer Securities directly to any Third Party pursuant to a Tag-Along Offer (it being understood that all such sales shall be made only on the terms and pursuant to the procedures set forth in this *Section 3.07*).

SECTION 3.08 *Drag-Along Rights*

(a) The provisions of this *Section 3.08* shall terminate upon the IPO.

(b) Following the end of the Restricted Period, except as provided for in *Section 3.03(b)*, in the event that any Shareholder that, together with its Permitted Transferees, holds at least 75% of the Fully Diluted Shares (the “*Dragging-Along Shareholder*”) proposes to sell all of its Securities in a bona fide transaction to a Third Party, then the Dragging-Along Shareholder shall have the unconditional right to effect the sale of all (but not less than all) of such Securities in either a private or public sale, at the option of the Dragging-Along Shareholder (such transaction, the “*Drag-Along Transaction*”). In such event, the Dragging-Along Shareholder may, at its option, require the other Shareholder (the “*Dragged-Along Shareholder*”) to sell all of the Securities then held by or registered in the names of such Dragged-Along Shareholder and its Permitted Transferees (“*Drag-Along Offered Securities*”) to the Third Party or Parties in the Drag-Along Transaction for the same consideration and otherwise on the same terms and conditions upon which the Dragging-Along Shareholder sells its Securities, subject to

Section 3.08(f). Each Shareholder hereby agrees that it will vote in favor of (or execute any written resolutions with respect to) any transaction required by this *Section 3.08(b)* and to take such further actions as may be reasonably required to effect such transaction, in each case, to the extent not consistent with this Agreement. In the event of a Drag-Along Transaction, none of the provisions of *Sections 3.02(b)(i)* and *(b)(iii)*, *3.05*, *3.06*, and *3.07* shall apply.

(c) The Dragging-Along Shareholder shall provide a written notice (the “*Drag-Along Notice*”) of such Drag-Along Transaction (the “*Drag-Along Offer*”) to the Dragged-Along Shareholder not later than thirty (30) days prior to the consummation of the sale contemplated by the Drag-Along Offer. The Drag-Along Notice shall contain written notice of the exercise of the Dragging-Along Shareholder’s rights pursuant to *Section 3.08(b)*, and shall identify the Third Party or Parties making the Drag-Along Offer, the consideration offered per Share and all other material terms and conditions of the Drag-Along Offer. Within twenty (20) days following the date the Drag-Along Notice is given, the Dragged-Along Shareholder shall cooperate in such manner as the Dragging-Along Shareholder shall reasonably request to permit the sale of the Securities requested from each such Dragged-Along Shareholder pursuant to the Drag-Along Offer, and shall enter into a sale agreement with respect to the sale of the Securities of the Dragging-Along Shareholder and the Dragged-Along Shareholder pursuant to the Drag-Along Offer and shall reasonably cooperate in the transfer of these Securities to the relevant Third Party; *provided, however*, that the Dragged-Along Shareholder shall not be required to make any representations and warranties in such sale agreement other than with respect to the Dragged-Along Shareholder’s authority to enter into the sale agreement and ownership of the Securities to be sold by the Dragged-Along Shareholder. The Company shall in connection with the transfer of the relevant Securities to the relevant Third Party request the Board to adopt a resolution to grant the approval for such transfer of Securities pursuant to the Memorandum and Articles of Association.

(d) Promptly after the consummation of the sale of Securities pursuant to the Drag-Along Offer and receipt of consideration therefor, the Dragging-Along Shareholder shall remit to the Dragged-Along Shareholder the sales proceeds received by the Dragging-Along Shareholders of the Securities of such Dragged-Along Shareholder sold pursuant thereto less a pro rata portion of the out-of-pocket expenses (including reasonable legal expenses) incurred by the Dragging-Along Shareholder in connection with such sale; *provided, however*, that the Dragged-Along Shareholder shall not be liable for any such expenses in the event that such sale is not consummated.

(e) If, at the end of the sixty (60)-day period following the giving of the Drag-Along Notice, the Dragging-Along Shareholder has not completed the sale of all its Securities and the Securities of the Dragged-Along Shareholder pursuant to *Section 3.08(b)*, the Dragging-Along Shareholder shall return to the Dragged-Along Shareholder such documents as it shall reasonably request, and the Dragged-Along Shareholder shall no longer be obligated to cooperate in such sale and transfer pursuant to *Section 3.08(b)* with respect to such Drag-Along Offer.

(f) Except as expressly provided in *Section 3.08(d)*, the Dragging-Along Shareholder shall have no obligation to the Dragged-Along Shareholder with respect to the contemplated sale of any Securities held by such Dragged-Along Shareholder in connection with this *Section 3.08*. The Dragging-Along Shareholder shall have no obligation to the Dragged-Along Shareholder to sell and transfer any Drag-Along Offered Securities pursuant to this *Section 3.08* or as a result of any decision by the Dragging-Along Shareholder not to accept or consummate any Drag-Along Offer (it being understood that any and all such decisions shall be made by the Dragging-Along Shareholder in its sole discretion). No Dragged-Along Shareholder shall be entitled to sell and transfer Securities directly to any Third Party pursuant to a Drag-Along Offer (it being understood that all such sales shall be made only on the terms and pursuant to the procedures set forth in this *Section 3.08*).

(g) Upon the consummation of a Drag-Along Transaction, all of the holders of the Securities shall receive the same form and amount of consideration per Security, respectively, taking into account and giving effect to any accrued interest, conversion ratios, liquidation preference and other provisions relating to the nature of

consideration, to which the holders of Securities are entitled in accordance with the terms thereof in effect immediately prior to the Drag-Along Transaction, and if any holders of Preferred Shares or Ordinary Shares are given an option as to the form and amount of consideration to be received, all holders shall be given the same option. In addition, such Shareholder shall not be required to accept consideration in a Drag-Along Transaction other than cash and/or freely-tradable equity securities registered under the Exchange Act and listed on the New York Stock Exchange or NASDAQ Stock Market and/or any other securities exchange or automated quotation system of similar caliber in the United States or elsewhere.

SECTION 3.09 *Certain Persons to Execute Agreement*

(a) Each Shareholder agrees that it will not, directly or indirectly, make any Sale of Securities to any Permitted Transferee or otherwise unless, prior to the consummation of any such Sale of Securities, the Person to whom such Sale of Securities is proposed to be made (a “*Prospective Transferee*”) executes and delivers to FoundryCo and each Shareholder an agreement in the form attached hereto as *Exhibit A* whereby such Prospective Transferee confirms that, with respect to the Securities that are the subject of such Sale of Securities, it shall be deemed to be a “Shareholder” for all purposes of this Agreement and agrees to be bound by all the terms of this Agreement as a “Shareholder”; *provided, however*, that such Prospective Transferee shall not be entitled to the benefits of this Agreement until such time as such Sale of Securities to such Person has been completed.

(b) The provisions of this *Section 3.09* shall not apply to any Sale of Securities pursuant to a Public Offering or, following the IPO, pursuant to an offering exempt from registration pursuant to Rule 144 under the Securities Act, or similar non-U.S. applicable Law (each such Sale of Securities, a “*Public Sale*”).

SECTION 3.10 *Equivalent Rights*

The Shareholders acknowledge that the Board may determine that it is in the best interests of FoundryCo to effect its IPO on a securities exchange located outside of the United States. The Shareholders and FoundryCo agree that prior to any such IPO each of them shall use their commercially reasonable efforts to amend this Agreement as may be necessary to ensure that the rights of the Shareholders with respect to any Public Offerings in and following the IPO and the sale of Securities in any such Public Offerings are at least equivalent to the rights set forth in this Agreement in respect of sales of Securities in the United States.

SECTION 3.11 *Put and Call Options; Fair Market Valuation*

(a) Unless otherwise agreed by the Parties, in the event that a Shareholder’s option pursuant to the terms of this Agreement or the Funding Agreement is triggered (i) to put any or all of the Securities held by such Shareholder and its Permitted Transferees to the other Shareholder, or (ii) to purchase any or all of the Securities held by the other Shareholder and its Permitted Transferees, such Shareholder shall have thirty (30) days from the date that it receives notification of the triggering event by the other Shareholder to deliver a written notice (the “*Election Notice*”) to the other Shareholder electing to exercise such put or call option, as appropriate, and if not so exercised within such thirty (30)-day period, such option shall lapse.

(b) Each Shareholder hereby covenants and agrees that where the provisions of this Agreement and the Funding Agreement indicate that the “Fair Market Value” of the Shares of FoundryCo is to be determined, such Shareholder will take all actions reasonably necessary to determine the Fair Market Value of such Shares in accordance with this *Section 3.11(b)*.

(i) The Shareholder wishing to exercise its put or call option pursuant to *Section 3.11(a)* shall designate an investment banking firm of recognized international standing within fifteen (15) days of the date of the delivery of the Election Notice to determine the Fair Market Value of such Shares. The other Shareholder shall also designate an investment banking firm of recognized international standing within the same time

period. Within thirty (30) days after appointment of both investment banking firms, each investment banking firm shall determine its initial view as to the Fair Market Value of such Shares and shall consult with one another with respect thereto. Within forty-five (45) days after appointment of both investment banking firms, each investment banking firm shall have determined its final view as to the Fair Market Value of such Shares and shall have delivered such final view to the Shareholders.

(ii) If the difference between the higher of the respective final views of the two investment banking firms and the lower of the respective final views of the two investment banking firms is less than 10% of the higher Fair Market Value, then the Fair Market Value determined shall be the average of those two views.

(iii) If the difference between the higher Fair Market Value and the lower Fair Market Value is equal to or greater than 10%, then the Shareholders shall instruct the investment banking firms to jointly designate a third investment banking firm of recognized international standing (the “*Mutually Designated Appraiser*”). The Mutually Designated Appraiser shall be designated within ten (10) days after the delivery of the final views of the investment banking firms pursuant to *Section 3.11(b)(i)* and shall within fifteen (15) days of such designation determine its final view as to the Fair Market Value. The final Fair Market Value determination shall be the Fair Market Value of the Mutually Designated Appraiser.

(iv) Notwithstanding the foregoing, in the event a Shareholder does not appoint an investment banking firm within the time periods specified above, such Shareholder shall have waived its rights to appoint an investment firm and determination of the Fair Market Value shall be made solely by the Shareholder who did appoint an investment banking firm.

(c) FoundryCo shall provide reasonable access to each of the designated investment banking firms to members of management of FoundryCo and its Subsidiaries and to the books and records of FoundryCo and its Subsidiaries in order to allow such investment banking firms to conduct due diligence examinations in scope and duration as are customary in valuations of this kind. Each of the Shareholders and any Permitted Transferees agree to cooperate with each of the investment banking firms to provide such information as may be reasonably requested. Costs of the appraisals shall be borne equally by the Shareholders.

ARTICLE IV

BOOKS AND RECORDS; FINANCIAL STATEMENTS

SECTION 4.01 *Books and Records; Financial Statements*

(a) At all times during the continuance of FoundryCo, FoundryCo shall prepare and maintain separate books of account for FoundryCo that shall show a true and accurate record of all assets, all liabilities, all equity, all investments by owners, all distributions to owners, all comprehensive income, all revenues, all expenses, all gains and all losses, pertaining to FoundryCo or any of its Subsidiaries in accordance with GAAP consistently applied. Such books of account, together with a certified copy of this Agreement and of the constituent documents of FoundryCo, shall at all times be maintained at the principal place of business of FoundryCo. The books of account and the records of FoundryCo shall be examined by and reported upon as of the end of each fiscal year by an internationally recognized independent registered public accounting firm (the “*Auditors*”). For such period as Discovery is required to consolidate the financial results of FoundryCo, the Auditors shall be the same independent registered public accounting firm that audits Discovery’s consolidated financial statements. Thereafter, the Auditors shall be nominated by Oyster. Each Shareholder shall, regarding the appointment of the Auditors, vote its shares in accordance with the proposal of the Board pursuant to the foregoing sentence.

(b) For as long as Discovery is required to consolidate the financial results of FoundryCo, the following financial information, in reasonable detail and prepared in accordance with GAAP, shall be transmitted by FoundryCo to Discovery (with a copy to Oyster) to permit Discovery to timely consolidate FoundryCo’s results

into Discovery's consolidated financial statements and to prepare for its quarterly earnings releases and United States Securities and Exchange Commission ("SEC") regulatory filings at the times hereinafter set forth:

(i) Within four (4) Business Days after the end of each fiscal month (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), the following unaudited financial data:

(A) the consolidated balance sheet and statement of shareholders' equity of FoundryCo and its Subsidiaries as of the end of such fiscal month;

(B) a consolidated statement of operations for FoundryCo and its Subsidiaries for such fiscal month; and

(C) inventory and other sub-ledger information, including inventory unit quantities, standard costs, product attributes, and reserve calculations for such fiscal month as they pertain to Discovery. Inventory and other sub-ledger information with respect to FoundryCo's customers other than Discovery shall be provided on an aggregated basis at the level necessary for Discovery to comply with applicable SEC rules and regulations, GAAP and the reasonable requirements of Discovery's auditors.

(ii) Within seven (7) Business Days after the end of each fiscal month (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), relevant cash flow data for FoundryCo and its Subsidiaries for such fiscal month.

(iii) As soon as available and in any event within six (6) Business Days after the end of each fiscal quarter (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), relevant information as may reasonably be requested by Discovery necessary for Discovery to prepare and discuss its quarterly earnings press release in a manner consistent with Discovery's prior practices and disclosures.

(iv) As soon as available and in any event within twelve (12) Business Days after the end of each fiscal quarter (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), financial and operating data and analysis, including aggregate contractual cash obligations and aggregate unconditional purchase commitments (in each case, without disclosing the individual names, cost or pricing information for any of FoundryCo's customers, vendors or accounts, unless Discovery is required to disclose such information by SEC rules and regulations), necessary for Discovery to prepare its Form 10-Q in compliance with SEC rules and regulations.

(v) As soon as available and in any event within sixteen (16) Business Days after the end of each fiscal year (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), financial and operating data and analysis, including aggregate contractual cash obligations and aggregate unconditional purchase commitments (in each case, without disclosing the individual names, cost or pricing information for any of FoundryCo's customers, vendors or accounts, unless Discovery is required to disclose such information by SEC rules and regulations), necessary for Discovery to prepare its Form 10-K in compliance with SEC rules and regulations.

(vi) Other data and representations as may be necessary to allow Discovery to timely comply with SEC rules and regulations, GAAP and the reasonable requirements of Discovery's auditors; *provided, however*, that FoundryCo shall not be obligated to provide to Discovery the individual names, cost or pricing information for any of FoundryCo's customers, vendors or accounts, unless Discovery is required to disclose such information by SEC rules and regulations.

(c) For as long as Discovery is required to consolidate the financial results of FoundryCo, FoundryCo shall provide financial data and assist in the quarterly review and the annual integrated financial statement audit work

performed by Discovery's auditors under the Sarbanes-Oxley Act of 2002 ("SOX"), including the assistance and information needed for Discovery's management representations to Discovery's auditors, and to the extent applicable, by Discovery's internal audit team, based on Discovery's reasonable timeframes and requests; *provided, however*, that FoundryCo shall not be obligated to provide to Discovery the individual names, cost or pricing information for any of FoundryCo's customers, vendors or accounts, unless such information is necessary for Discovery to complete its assessment of its internal control over financial reporting as required by SOX.

(d) For as long as Discovery is required to consolidate the financial results of FoundryCo, the fiscal quarters and fiscal years of FoundryCo and its Subsidiaries shall end on the same days on which the fiscal quarters and fiscal years of Discovery end.

(e) As soon as available and in any event within sixty (60) days after the end of fiscal year 2009, FoundryCo shall provide Oyster the following financial information, examined by and reported upon by the Auditors and prepared in accordance with IFRS, on the basis of converting from GAAP to IFRS, taking into consideration the material differences between GAAP and IFRS and consistent with Oyster's IFRS accounting policies (it being understood that FoundryCo, and not the Auditors, shall ensure that such financial information is consistent with Oyster's IFRS accounting policies):

(i) the consolidated balance sheet of FoundryCo and its Subsidiaries as of the close of such fiscal year;

(ii) at Oyster's election, either the consolidated statement of shareholders' equity or the consolidated statement of recognized income and expense of FoundryCo and its Subsidiaries as of the close of such fiscal year;

(iii) a consolidated statement of operations for FoundryCo and its Subsidiaries for such fiscal year;

(iv) a consolidated statement of cash flows for FoundryCo and its Subsidiaries for such fiscal year; and

(v) other data and representations as may be necessary to allow Oyster to timely comply with applicable accounting rules and regulations, including any financial information requirements of the Government of Abu Dhabi Audit Authority or similar Governmental Authority, IFRS and the reasonable requirements of Oyster's auditors (it being understood that such other data may not be examined by the Auditors).

(f) Starting with fiscal year 2010 and for as long as Oyster is required to record FoundryCo's financial results into Oyster's books in accordance with IFRS, FoundryCo shall provide Oyster the following financial information examined by and reported upon by the Auditors at the times hereinafter set forth:

(i) As soon as available and in any event within sixty (60) days after the end of each fiscal year, the following financial statements, prepared in accordance with IFRS and consistent with Oyster's IFRS accounting policies (it being understood that FoundryCo, and not the Auditors, shall ensure that such financial information is consistent with Oyster's IFRS accounting policies):

(A) the consolidated balance sheet of FoundryCo and its Subsidiaries as of the close of such fiscal year;

(B) at Oyster's election, either the consolidated statement of shareholders' equity or the consolidated statement of recognized income and expense of FoundryCo and its Subsidiaries as of the close of such fiscal year;

(C) a consolidated statement of operations for FoundryCo and its Subsidiaries for such fiscal year;

(D) a consolidated statement of cash flows for FoundryCo and its Subsidiaries for such fiscal year; and

(E) other data and representations as may be necessary to allow Oyster to timely comply with applicable accounting rules and regulations, including any financial information requirements of the

Government of Abu Dhabi Audit Authority or similar Governmental Authority, IFRS and the reasonable requirements of Oyster's auditors (it being understood that such other data may not be examined by the Auditors).

(g) For as long as Discovery is required to use the equity method of accounting to account for FoundryCo's financial results, the following financial information, in reasonable detail and prepared in accordance with GAAP, shall be transmitted by FoundryCo to Discovery (with a copy to Oyster) to permit Discovery to timely account for its share of FoundryCo's operating results and to prepare for its quarterly earnings releases and regulatory filings:

(i) As soon as available and in any event within six (6) Business Days after the end of each fiscal quarter (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), relevant information as may reasonably be requested by Discovery necessary for Discovery to record its share of FoundryCo's operating results and to prepare and discuss its quarterly earnings press release in a manner consistent with Discovery's prior practices and disclosures.

(ii) As soon as available and in any event within sixteen (16) Business Days after the end of each fiscal quarter (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), FoundryCo's summary balance sheet and income statement for such fiscal quarter, and other financial disclosures necessary for the preparation of Discovery's Form 10-Q in compliance with SEC rules and regulations;

(iii) As soon as available and in any event within twenty (20) Business Days after the end of each fiscal year (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), FoundryCo's summary balance sheet and income statement for such fiscal year, and other financial disclosures necessary for the preparation of Discovery's Form 10-K in compliance with SEC rules and regulations;

(iv) Other data and representations as may be necessary to allow Discovery to timely comply with SEC rules and regulations, GAAP and the reasonable requirements of Discovery's auditors; *provided, however*, that FoundryCo shall not be obligated to provide to Discovery the individual names, cost or pricing information for any of FoundryCo's customers, vendors or accounts, unless Discovery is required to disclose such information by SEC rules and regulations;

(v) As soon as available and in any event within thirty-two (32) Business Days after the end of each fiscal year (or such longer time as the Shareholders and FoundryCo may agree to account for system changes or other events that may affect FoundryCo's ability to close its books within this time period), the following financial statements prepared in accordance with SEC Regulation S-X, examined by and reported upon by the Auditors:

(A) the consolidated balance sheet and statement of shareholders' equity of FoundryCo and its Subsidiaries as of the close of such fiscal year;

(B) a consolidated statement of operations for FoundryCo and its Subsidiaries for such fiscal year;

(C) a consolidated statement of cash flows for FoundryCo and its Subsidiaries for such fiscal year; and

(D) relevant footnotes as required by SEC Regulation S-X.

The Shareholders acknowledge that the audited annual financial statements set forth in (v) above may be attached as an exhibit to Discovery's Form 10-K, as required by the SEC rules and regulations for unconsolidated significant equity investees.

(h) The following financial information, in reasonable detail, shall be transmitted by FoundryCo to each member of the Board and each Shareholder at the times hereinafter set forth:

- (i) As soon as available and in any event within thirty (30) days after the end of each fiscal quarter, the Cumulative Revenue and Cumulative Gross Margin (each as defined in the Funding Agreement);
- (ii) The proposed Annual Business Plan for the next fiscal year in accordance with the schedule set forth in the Funding Agreement;
- (iii) As soon as available and in any event within three (3) weeks of the end of each fiscal month, monthly accounts and progress reports in a form acceptable to Discovery and Oyster, with comparisons against the projected monthly results set forth in the most recent Annual Business Plan;
- (iv) Prompt notification of material developments including events that FoundryCo would be required to disclose under Form 8-K of the Exchange Act had FoundryCo been subject to the reporting requirements of the Exchange Act; and
- (v) Such other information as is reasonably requested by any Shareholder.

(i) Each of Discovery and Oyster and their respective representatives may, for purposes reasonably related to their interests in FoundryCo, (A) examine and copy (at each Party's own cost and expense) the books and records of FoundryCo, including the documents referred to in Sections 4.01(b)-(h), and (B) have reasonable access, during normal business hours, to FoundryCo's management, employees, plans, properties and other assets to conduct due diligence and other reasonable investigations (including environmental assessments) regarding FoundryCo's business and the FoundryCo Assets (at each Party's own cost and expense), and FoundryCo shall reasonably cooperate with each of Discovery and Oyster in such due diligence and investigations. Notwithstanding anything to the contrary provided in this *Section 4.01*, FoundryCo shall have the right to withhold certain customers' sensitive information from Discovery and the Discovery appointees to the Board shall recuse themselves from any discussion of such information at any Board meetings, if such request is made by a third party customer of FoundryCo.

(ii) For such period as the Auditors shall also be the auditors of the consolidated financial statements of Discovery, Oyster and its representatives (including separate independent accountants) shall have the right to perform (at FoundryCo's expense, upon reasonable request by Oyster, and during normal business hours), Oyster's own (A) annual audit of FoundryCo and any of its consolidated Subsidiaries' books and records, accounting policies, internal controls processes, and other information relevant to the FoundryCo financial statements, including the documents referred to in Sections 4.01(b)-(h), and (B) quarterly review of the Auditors' workpapers, which shall be provided subject to applicable auditing and professional standards (it being understood that FoundryCo shall provide its consent for the Auditors to reasonably cooperate with respect to such review). Oyster may request the Auditors to, and the Auditors reasonably shall, provide all such requested information either verbally or in writing, at Oyster's option, and make themselves available during normal business hours to address questions related to the Auditors' workpapers, subject to applicable auditing and professional standards. In addition, Oyster shall have the right to audit or review any transaction involving FoundryCo and any of its consolidated Subsidiaries and to review policies and position papers in connection with such transaction, and to review original documents supporting such transaction (including purchase orders, invoices and signed agreements), in each case as reasonably deemed necessary and appropriate by Oyster or its representatives in order to perform such audit or review. In connection with such audit or review, FoundryCo agrees that it will reasonably cooperate and cause its Subsidiaries to reasonably cooperate with Oyster and its representatives to provide all such requested information either verbally or in writing, at Oyster's option, and to make available during normal business hours FoundryCo's and its Subsidiaries' management and employees, in each case as reasonably deemed necessary and appropriate by Oyster or its representatives in order to perform such audit or review.

(iii) FoundryCo shall make its management and employees and its business records and other documents (including the business records and documents of its management and employees) available to

each of Discovery and Oyster promptly upon request in connection with any litigation or investigation in which either Discovery or Oyster is involved, including making those individuals available for interviews, depositions, written declarations or testimony. Each and every FoundryCo employee that, prior to Closing, was subject to any Discovery or Oyster document preservation notice shall continue to remain subject to such notice. For each and every FoundryCo document that, prior to Closing, was subject to any Discovery or Oyster document preservation notice, FoundryCo shall continue to retain and preserve the affected records until the expiration of such notice. Discovery or Oyster, as the case may be, shall notify FoundryCo promptly of the termination of any such notice.

(j) Discovery's rights under Sections 4.01(h), (i)(i) and (i)(ii) shall terminate upon the later of (i) the termination of the Wafer Supply Agreement and (ii) upon such time that Discovery owns less than 10% of the Fully Diluted Shares. Oyster's rights under Sections 4.01(h), (i)(i) and (i)(ii) shall terminate upon such time that Oyster owns less than 10% of the Fully Diluted Shares.

ARTICLE V OTHER AGREEMENTS

SECTION 5.01 *Discovery Change of Control Transaction*

In the event of a Discovery Change of Control Transaction without Oyster's prior written consent,

(a) Discovery shall promptly notify Oyster in writing thereof, setting forth the date and circumstances of the Discovery Change of Control Transaction and the identity of the Third Party that has acquired control of Discovery;

(b) all transfer restrictions set forth herein shall cease to be applicable with respect to all Securities held by Oyster and its Permitted Transferees; *provided, however*, that the restrictions on transfer set forth in Section 3.02(b)(ii) shall remain applicable;

(c) if the Discovery Change of Control Transaction occurs prior to the IPO, Oyster shall have the right (x) to require FoundryCo to consummate the IPO and (y) to register the number of Securities held by Oyster and its Permitted Transferees in connection with the IPO. Upon such request, each Shareholder shall vote all Shares for which such Shareholder is the registered holder or for which such Shareholder shall otherwise have the ability to control or direct the voting thereof, in favor of such matters as are necessary for approval of the shareholders of FoundryCo to effect the IPO, and FoundryCo shall be obligated to file and have declared effective a Registration Statement under the Securities Act (the "*Registration Statement*") as promptly as practicable following receipt of notice from Oyster of its intention to exercise its IPO demand (the "*IPO Demand Request*") pursuant to this Section 5.01(c). In the event of an IPO pursuant to this Section 5.01(c), at Oyster's election, any Securities to be included on behalf of Oyster and its Permitted Transferees in the IPO shall be given first priority, including for the avoidance of doubt, priority over any Securities to be included on behalf of FoundryCo, Discovery and its Permitted Transferees, other Shareholders and any employees of FoundryCo or any of its Subsidiaries;

(d)(A) Oyster shall have the right to put, in accordance with Section 3.11, any or all of the Securities (valued at their Fair Market Value) held by Oyster and its Permitted Transferees to Discovery in exchange for cash, if the announcement of a Discovery Change of Control Transaction occurs during the 24-month period commencing on the date hereof; or (B) if the Discovery Change of Control Transaction occurs after the Reconciliation Event, Oyster shall have the option to purchase in cash, in accordance with Section 3.11, any or all Securities (valued at their Fair Market Value) held by Discovery and its Permitted Transferees;

(e) Until the end of 2013, as long as Oyster continues to own Securities, Oyster shall have the right to require Discovery or the counterparty to the Discovery Change of Control Transaction, at Oyster's election, to

assume such portion of Oyster's funding commitment under the Funding Agreement based on the percentage of Fully Diluted Shares held by Discovery on each "Funding Date" thereunder; *provided, however*, that any such counterparty shall guarantee such commitment if it does not directly assume it; and

(f) as long as Oyster continues to own Securities, Oyster shall have the right to require the counterparty to the Discovery Change of Control Transaction to guarantee all of Discovery's obligations under the Transaction Documents, including Discovery's MPU exclusivity commitments and Discovery's commitments to purchase minimum GPU volumes under the Wafer Supply Agreement.

SECTION 5.02 *New Investors to Execute Agreement Regarding Restrictions*

FoundryCo shall not, and the Board shall not adopt any resolution to, at any time prior to the IPO, issue any Securities, or resell any Securities held in its treasury, or issue or resell any security convertible or exchangeable into Securities, unless, prior to the consummation of any such issuance or Sale of Securities, each Person to whom such security is proposed to be issued or sold executes and delivers an agreement, in a form reasonably acceptable to Oyster and Discovery, to FoundryCo and each Shareholder, whereby such Person confirms that, with respect to the Securities that are the subject of such Sale of Securities, it shall be deemed to be a "Shareholder" for the purposes of this Agreement and agrees to be bound by all such provisions and any other provisions reasonably required by Oyster and Discovery.

SECTION 5.03 *Further Assurances*

Unless otherwise specified herein, each of the Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated pursuant to this Agreement.

SECTION 5.04 *Confidential Information*

(a) Each Shareholder (a "*Restricted Party*") (i) shall, and shall cause its officers, directors, employees, attorneys, accountants, auditors and agents, to the extent such Persons have received any Confidential Information (as defined herein) (collectively "*Representatives*") and its Affiliates and their Representatives, to the extent such Persons have received any Confidential Information, to maintain in strictest confidence any and all confidential information relating to FoundryCo, the other Shareholders, or any of their respective Subsidiaries that is proprietary to FoundryCo, the other Shareholders, or any of their respective Subsidiaries as applicable, or otherwise not available to the general public, including, but not limited to, information about properties, employees, finances, businesses and operations of FoundryCo, the other Shareholders, or any of their respective Subsidiaries and all notes, analyses, compilations, studies, forecasts, interpretations or other documents prepared by a receiving Shareholder or its Representatives which contain, reflect or are based upon, in whole or in part, the information furnished to or acquired by such Shareholder ("*Confidential Information*") and (ii) shall not disclose, and shall cause its Representatives, any members of the Board appointed by such Shareholder and their Representatives not to disclose, Confidential Information to any Person other than to the other Shareholders, FoundryCo and their respective Subsidiaries (including the agents, employees and attorneys thereof and the members of the Board appointed by such other Shareholders), except only to the extent such disclosure is required by applicable Law, SEC rules and regulations or legal process (including pursuant to any listing agreement with, or the rules or regulations of, any national securities exchange on which any securities of such Shareholder (or any Affiliate thereof) are listed or traded) in which event the Shareholder making such disclosure or whose Affiliates or Representatives are making such disclosure shall so notify the other Shareholders as promptly as practicable (and, if possible, prior to making such disclosure) and shall seek confidential treatment of such information if reasonably requested.

(b) Notwithstanding *Section 5.04(a)*:

(i) Any Restricted Party or any Representative thereof may disclose any Confidential Information for bona fide business purposes on a strict “need to know” basis to its Affiliates, its board of directors (or equivalent governing body), its Representatives and its lenders, *provided, however*, that in each such case each such Person is bound by a legal duty to or otherwise agrees to keep such Confidential Information confidential in the manner set forth in this *Section 5.04*.

(ii) The provisions of *Section 5.04(a)* shall not apply to, and Confidential Information shall not include:

(A) any information that is or has become generally available to the public other than as a result of a disclosure by any Restricted Party or any Affiliate or Representative thereof in breach of any of the provisions of this *Section 5.04*;

(B) any information that has been independently developed by such Restricted Party (or any Affiliate thereof) without violating any of the provisions of this Agreement or any other similar contract to which such Restricted Party, or any Affiliate thereof or their respective Representatives, is bound;

(C) any information made available to such Restricted Party (or any Affiliate thereof), on a non-confidential basis by any third party who is not prohibited from disclosing such information to such Shareholder by a legal, contractual or fiduciary obligation to any other Shareholder or any of its Representatives; or

(D) any information already possessed by such Restricted Party (or any Affiliate thereof) and not obtained pursuant to or subject to a confidentiality agreement.

(c) Except as otherwise provided for in this *Section 5.04*, Confidential Information received hereunder shall be used by each Shareholder and its Affiliates solely for use in connection with such Shareholder’s investment in FoundryCo and with respect to FoundryCo and its Subsidiaries.

(d) The obligations of each Shareholder under this *Section 5.04* shall survive for as long as such Party remains a Shareholder, respectively, and for two years after such Shareholder ceases to be a Shareholder, notwithstanding such Shareholder’s Sale of Securities, and/or any Person ceasing to be an Affiliate of such Shareholder.

SECTION 5.05 Directors’ and Officers’ Liability Insurance and Indemnification Agreements

FoundryCo shall purchase and maintain directors and officers insurance in an amount equal to not less than \$25 million prior to the IPO and \$50 million immediately following the IPO, and the members of the Board and of any similar governing bodies of any Subsidiaries of FoundryCo appointed or designated by the Shareholders shall each be named as covered insureds thereunder. FoundryCo shall maintain the insurance contemplated hereby in effect from the date hereof until six (6) years from the last date upon which any member of the Board nominated by any of the Shareholders held office on the Board. In addition, FoundryCo shall enter into indemnification agreements with each member of the Board, in the form of *Exhibit B* or in such other form as is approved by the Board. In the event FoundryCo or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of the properties and assets of FoundryCo and its Subsidiaries taken as a whole to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of FoundryCo shall assume the obligations set forth in this *Section 5.05*.

SECTION 5.06 Export Controls

(a) FoundryCo shall comply with all applicable export laws, registrations, international treaties or orders in effect on the date of the Agreement and as may be amended from time to time, including, but not limited to, all

such laws, registrations and treaties applicable to the export of goods and services from one country to another. Without limiting the foregoing, FoundryCo shall not export or transfer any product, exchange, supply, disclose or provide access to any technical data, or otherwise provide any service contrary to the applicable laws and regulations of the United States, or to any country, entity or other party which is ineligible to receive such items under U.S. laws and regulations, including regulations of the U.S. Department of Commerce (the Export Administration Regulations at 15 C.F.R. Pts. 730 to 774), U.S. Department of State (the International Traffic in Arms Regulations at 22 C.F.R. Pts. 120-130), or the U.S. Department of the Treasury (the trade sanctions regulations at 31 C.F.R. Pts. 500 to 598).

(b) FoundryCo shall adopt a written policy for compliance with applicable U.S. export control and foreign trade control laws in the form of *Exhibit C*.

SECTION 5.07 *Rights to Purchase New Shares*

(a) The provisions of this Section 5.07 shall terminate upon the IPO.

(b) At any time, in the event that FoundryCo proposes to issue new Shares to a Person, each of Discovery and Oyster shall have the right to purchase, in lieu of any Person to whom FoundryCo proposed to issue such new Shares, in accordance with paragraph (c) below, a number of new Shares equal to the product of (i) the total number of new Shares which FoundryCo proposes to issue at such time and (ii) a fraction, the numerator of which shall be the total number of Fully Diluted Shares which such Shareholder owns at such time and the denominator of which shall be the total number of Fully Diluted Shares then Outstanding at the purchase price set forth in the Notice of Issuance; *provided, however*, that, prior to the Reconciliation Event, to the extent the issuance of any such Shares to Oyster or its designee(s) would cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement, FoundryCo shall instead issue to Oyster or its designee(s) Additional Convertible Notes in an aggregate principal amount equal to the aggregate purchase price for such Shares that would have been issued to Oyster or its designees but for this proviso. The rights given by FoundryCo under this *Section 5.07* shall terminate if unexercised within thirty (30) days after receipt of the Notice of Issuance referred to in paragraph (c) below.

(c) In the event that FoundryCo proposes to undertake an issuance of new Shares to a Person, FoundryCo shall give written notice (a “*Notice of Issuance*”) of its intention to each of Discovery and Oyster, describing all material terms of the new Shares and the purchase price. Each of Discovery and Oyster shall have thirty (30) days from the Notice of Issuance to agree to purchase all or a portion of its pro rata share of such new Shares (as determined pursuant to paragraph (b) above) for the same consideration.

(d) If either or both of Discovery and Oyster elect to purchase any new Shares to be issued by FoundryCo, each such Shareholder electing to purchase the new Shares to be issued by FoundryCo shall select a date not later than twenty (20) days (or longer if required by applicable Law) after the expiration of the thirty (30)-day notice period referenced in paragraph (c) for the issue of the new Shares. Any new Shares not elected to be purchased by Discovery or Oyster may be sold by FoundryCo to the Person to which FoundryCo intended to sell such new Shares on terms and conditions no less favorable to FoundryCo than those offered to Discovery and Oyster.

(e) Notwithstanding anything to the contrary contained herein, the right to purchase new Shares pursuant to this Section 5.07 shall not apply to (i) the issuance of any equity-based awards (and the underlying Shares) under any Incentive Plan, (ii) the issuance of any Shares pursuant to the conversion or exchange of any outstanding Securities of FoundryCo, or (iii) the issuance of any Shares pursuant to the terms of the Funding Agreement.

SECTION 5.08 *Intel Patent Cross License Agreement*

Discovery may not amend, supplement, modify, terminate or extend the Intel Patent Cross License Agreement (as it exists at Closing) in any way adverse to the current rights of FoundryCo, without the prior written consent of FoundryCo.

The Parties agree to use their commercially reasonable efforts with respect to the commitments relating to fab build-outs set forth on *Exhibit D*.

ARTICLE VI

DEADLOCK

SECTION 6.01 *Deadlock Resolution Efforts*

(a) All matters within the scope of the Funding Agreement requiring Board or Shareholder action shall be resolved in accordance with the deadlock provisions set forth therein.

(b) With respect to all other matters requiring Board action hereunder, if a matter properly submitted to the Board fails to be resolved by the Board, then during the twenty-one (21) day period following such deadlock, the Board shall seek in good faith to hold at least three (3) additional meetings in an attempt to resolve such deadlock. The additional meetings shall be held at the time and place (including by telephonic conference) agreed to by the members of the Board. If after such twenty-one (21) day period such deadlock shall not have been resolved, then the Board shall submit the specific items that are the subject of such deadlock to Discovery and Oyster, each acting through their chief executive officers, respectively, for resolution. A deadlock event shall be deemed to have lapsed if not resolved within thirty (30) days of referral to Discovery and Oyster and FoundryCo shall continue to operate in accordance with the terms of this Agreement and in the manner which existed prior to the deadlock event occurring; *provided, however*, that the Shareholders agree that if:

(i) any Shareholder (together with its Permitted Transferees) owns at least 75% of the Fully Diluted Shares, then such Shareholder shall be entitled to resolve the deadlock upon such lapse with respect to any action requiring a Majority Vote prior to the Reconciliation Event and with respect to each of the following:

(A) the amendment or restatement of its constituent documents, so long as, prior to the Reconciliation Event, such amendment or restatement would not cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement;

(B) following the termination of the Restricted Period, any transaction resulting in a change of control of FoundryCo or any sale of all or substantially all of the assets of FoundryCo and its Subsidiaries; *provided, however*, that any such transaction with a Permitted Transferee is on terms that are fair from a financial point of view to all Shareholders;

(C) the entering into of any acquisition, joint venture, divestiture, transfer, sale, assignment, lease, license or disposal of any property or asset, real, personal or mixed (including leasehold interests and intangible assets), which have a value in excess of \$5 million singly or \$10 million in the aggregate; *provided, however*, that any such transaction with a Permitted Transferee is on terms that are fair from a financial point of view to all Shareholders and does not materially adversely affect FoundryCo’s ability to perform its obligations to Discovery under the Wafer Supply Agreement;

(D) approval of any Annual Business Plan or any material amendment, modification or revision thereto; *provided* that such approval, amendment, modification or revision does not materially adversely affect FoundryCo’s ability to perform its obligations to Discovery under the Wafer Supply Agreement;

(E) the authorization, issuance, sale, acquisition, conversion, repurchase or redemption of any Shares or other equity interest (or option, warrant, conversion or similar right with respect to any equity interest) in or of FoundryCo or its Subsidiaries to the extent not reflected in the Annual Business Plan, the Memorandum and Articles of Association or any Incentive Plan, so long as, prior to the Reconciliation Event, such authorization, issuance, sale, acquisition, conversion, repurchase or

redemption would not cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement;

(F) the declaration, making or payment of any dividend, distribution or transfer (whether in cash, securities or other property) to shareholders, so long as, prior to the Reconciliation Event, such declaration, making or payment would not cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement;

(G) the entering into or the amendment of (i) any of the Transaction Documents, (ii) any Incentive Plan or (iii) any agreement, contract or arrangement by FoundryCo or any of its Subsidiaries pursuant to which FoundryCo or any of its Subsidiaries is obligated to pay or is entitled to receive payments in excess of \$5 million over the term of such contract;

(H)(i) the sale, license, sublicense, assignment, transfer, termination or other disposition of any Intellectual Property right owned by or licensed to FoundryCo or any of its Subsidiaries, (ii) any amendment of any license from or to FoundryCo or any of its Subsidiaries of any Intellectual Property, or (iii) any covenants or agreements not to assert claims of infringement, misappropriation or other violation of any Intellectual Property, other than any of the foregoing in the ordinary course of the business of FoundryCo or, with respect to any of the foregoing involving a Subsidiary of FoundryCo, the business of such Subsidiary;

(I) the prosecution, commencement or settlement of any litigation or administrative action for an amount in excess of \$2 million in any such prosecution, commencement or settlement or series of related prosecutions, commencements or settlements or waiving or relinquishing any material rights or claims;

(J) the making of any loan, investment or expenditure (or series of related expenditures) not reflected in the Annual Business Plan involving more than \$2 million singly or \$5 million in the aggregate;

(K) the incurrence of any indebtedness or subjecting any of its properties or assets to any lien, claim or encumbrance or the giving of any material guarantee or indemnity, in each case to the extent not reflected in the Annual Business Plan, which would result in an increase of 5% or more of the total indebtedness contemplated in the Annual Business Plan;

(L) the consummation of any Public Offering of securities;

(M) the appointment or termination of FoundryCo’s Chief Executive Officer or Chief Financial Officer;

(N) the entering into any transaction, agreement or arrangement between FoundryCo or any of its Subsidiaries, on the one hand, and any Officer, Director, Affiliate or Shareholder, on the other hand, (other than the transactions provided for in or contemplated by the Transaction Documents) unless the total consideration expected to be paid or received by FoundryCo and its Subsidiaries taken as whole as a result of such transaction or proposed change or waiver shall not exceed \$2 million; and

(O) the entering into of any contract, arrangement, understanding or other similar agreement with respect to any of the foregoing in subsections (A) - (N);

(ii) any Shareholder (together with its Permitted Transferees) owns at least 90% of the Fully Diluted Shares, then such Shareholder shall be entitled to resolve the deadlock upon such lapse with respect to any action requiring a Majority Vote prior to the Reconciliation Event and with respect to each of the following:

(A) each of the items listed in *Section 6.01(b)(i)* other than 6.01(b)(i)(D);

(B) implementing material changes in the purpose or scope of FoundryCo’s activities or engaging in any material activity unrelated to FoundryCo’s business;

(C) approval of any material amendment, modification or revision to the initial Five-Year Capital Plan;

(D) approval of any Annual Business Plan or any material amendment, modification or revision thereto; and

(E) the entering into of any contract, arrangement, understanding or other similar agreement with respect to any of the foregoing in subsections (A) - (D).

ARTICLE VII
DISSOLUTION

SECTION 7.01 *Dissolution.*

(a) The Shareholders shall pass a special resolution approving the dissolution of FoundryCo upon the occurrence of any of the following:

(i) by virtue of a written agreement to that effect, signed by Discovery and Oyster;

(ii) the occurrence of any material event that makes it unlawful or illegal to carry on FoundryCo's business, which event is not able to be cured after written notice has been given to the Shareholders specifying the details of such event; or

(iii) at the election by the other Shareholder (the "*Non-Affected Shareholder*"), (A) if either Discovery or Oyster (the "*Affected Shareholder*"):

(1) commences a voluntary case under any Bankruptcy Law,

(2) consents to the entry of an order for relief against it in an involuntary case under any Bankruptcy Law,

(3) consents to the appointment of a Custodian of it or for all or substantially all of its property,

(4) makes a general assignment for the benefit of its creditors,

(5) generally is unable to pay its debts as the same become due, or

(B) if a court of competent jurisdiction enters an order or decree, and such order or decree remains unstayed and in effect for sixty (60) days, under any Bankruptcy Law that:

(1) is for relief against the Affected Shareholder in an involuntary case,

(2) appoints a Custodian of the Affected Shareholder or for all or substantially all of its property, or

(3) orders the liquidation of the Affected Shareholder.

For the purposes of this *Section 7.01*, the term "*Bankruptcy Law*" means title 11, U.S. Code or any similar foreign, federal or state law for the relief of debtors. The term "*Custodian*" means any receiver, trustee, assignee, liquidation or similar official under any Bankruptcy Law.

(b) Upon the occurrence of any of the events set forth in *Section 7.01(a)(iii) (A)* and *(B)*, the Non-Affected Shareholder may elect in lieu of triggering the dissolution of FoundryCo pursuant to *Section 7.01(a)(iii)* any or all of the following actions:

(i) upon notice to FoundryCo by the Non-Affected Shareholder, the rights of the Directors designated by the Affected Shareholder (each an "*Affected Director*") under *Section 2.08(b)* shall terminate and all actions set forth under *Section 2.08(b)* shall require the approval of each Director designated by the Non-Affected Shareholder (each a "*Non-Affected Director*") with each Affected Director recusing themselves from such vote and upon such approval, the matter shall be deemed approved by the Board; *provided, however*, that the rights of each Affected Director under *Section 2.08(b)(i)* shall survive if, prior to

the Reconciliation Event, the action to be approved by the Board would cause FoundryCo to fail to constitute a “subsidiary” of Discovery, as such term is defined in the Intel Patent Cross License Agreement; and/or

(ii) the Non-Affected Shareholder shall have the option to purchase in cash, in accordance with *Section 3.11*, any or all of the Securities (valued at their Fair Market Value) held by the Affected Shareholder and its Permitted Transferees.

(c) Upon the dissolution of FoundryCo, the Person or Persons approved by the Shareholders holding a majority of the Fully Diluted Shares to carry out the winding-up of FoundryCo shall immediately commence to wind up FoundryCo’s affairs in accordance with applicable Law and the Memorandum and Articles of Association; *provided, however*, that a reasonable time shall be allowed for the orderly liquidation of the assets of FoundryCo and the satisfaction of liabilities to creditors so as to enable the Shareholders to minimize the normal losses attendant upon a liquidation.

ARTICLE VIII
MISCELLANEOUS

SECTION 8.01 *Termination*

This Agreement shall terminate only:

(a) upon dissolution of FoundryCo in accordance with *Article VII*;

(b) by virtue of a written agreement to that effect, signed by all Parties hereto then possessing any rights hereunder; or

(c) with respect to any Shareholder (subject to *Section 5.04(d)*), at such time as such Shareholder (together with its Permitted Transferees) no longer owns or holds any Securities.

If this Agreement is terminated pursuant to *Section 8.01*, all rights and obligations of the Parties hereunder (except for this paragraph, *Section 5.04* (Confidential Information), *Section 8.02* (Notices), *Section 8.10* (Governing Law; Arbitration), *Section 8.13* (Expenses) and *Appendix A* (Definitions) shall terminate. Nothing contained in this *Section 8.01* shall relieve any Party for any breach of any agreement or covenant contained in this Agreement that occurred prior to the date of termination of this Agreement.

SECTION 8.02 *Notices*

All notices, requests, claims, demands and other communications hereunder shall be given or made in accordance with Section 14.01 of the Master Transaction Agreement.

SECTION 8.03 *Public Announcements*

No Party hereto shall make, or cause to be made, any press release or public announcement or otherwise communicate with any news media in respect of this Agreement or the transactions contemplated hereby without the prior consent of the other Parties unless otherwise required by Law or applicable stock exchange regulation, and the Parties hereto shall cooperate as to the timing and contents of any such press release, public announcement or communication.

SECTION 8.04 *Severability*

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

SECTION 8.05 *Entire Agreement*

This Agreement and the other Transaction Documents constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, between Discovery, Oyster and FoundryCo with respect to the subject matter hereof and thereof.

SECTION 8.06 *Assignment*

This Agreement may not be assigned by operation of law or otherwise without the express written consent of each Party hereto (which consent may be granted or withheld in the sole discretion of such Party) and any such assignment or attempted assignment without such consent shall be void.

SECTION 8.07 *Amendment*

This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, each Party hereto or (b) by a waiver in accordance with *Section 8.08*.

SECTION 8.08 *Waiver*

Either Discovery or Oyster may (a) extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties of the other Party contained herein or in any document delivered by the other Party pursuant hereto, or (c) waive compliance with any of the agreements of the other Party or conditions to such Party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either Party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 8.09 *Third Party Beneficiaries*

This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of Discovery, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 8.10 *Governing Law; Arbitration*

(a) This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York applicable to contracts executed in and to be performed in that State, without regard to principles of the conflict of laws.

(b) Any dispute arising out of, or in connection with this Agreement or any transactions contemplated hereby, including any question regarding the existence, validity, interpretation, breach or termination of this Agreement (a “*Dispute*”), shall be referred, upon written notice (a “*Dispute Notice*”) given by one Party to the other(s), to a senior executive from each Party. The senior executives shall seek to resolve the Dispute on an amicable basis within thirty (30) days of the Dispute Notice being received.

(c) Any Dispute not resolved within thirty (30) days of the Dispute Notice being received shall be referred to, and shall be finally and exclusively resolved by, arbitration under the Rules of the London Court of International Arbitration (the “*LCIA Rules*”) then in effect, as amended by this Section 8.10, which LCIA Rules are deemed to be incorporated by reference into this Section 8.10. The seat, or legal place, of the arbitration shall be London, England. The language of the arbitration shall be English. The number of arbitrators shall be three (3). Each Party shall nominate one arbitrator and the two (2) arbitrators nominated by the Parties shall, within thirty (30) days of the appointment of the second arbitrator, agree upon and nominate a third arbitrator who shall act as Chairman of the Tribunal (as such terms are defined in the LCIA Rules). If no agreement is reached within thirty (30) days, the LCIA Court (as such term is defined in the LCIA Rules) shall appoint a third arbitrator to act as Chairman of the Tribunal. The Chairman of the arbitration panel should not be a citizen or a resident of the country of an arbitrator nominated by, or appointed on behalf of, a Party nor should the Chairman be a citizen or a resident of the United States of America or the United Arab Emirates. It is hereby expressly agreed that if there is more than one claimant party or more than one respondent party, the claimant parties shall together nominate one arbitrator and the respondent parties shall together nominate one arbitrator. In the event that a sole claimant or the claimant parties, on the one side, or a sole respondent or the respondent parties, on the other side, fails to nominate its/their arbitrator, such arbitrator shall be appointed by the LCIA Court. Any award issued by the arbitrators shall be final and binding upon the Parties, and, subject to this Section 8.10(c) and to Section 8.10(d), may be entered and enforced in any court of competent jurisdiction by any of the Parties. In the event any Party subject to such final and binding award desires to have it confirmed by a final order of a court, the only court which may do so shall be a court of competent jurisdiction located in London, England; provided however, that nothing in this sentence shall prejudice or prevent a Party from enforcing the arbitrators’ final and binding award in any court of competent jurisdiction. The Parties hereto acknowledge and agree that any breach of the terms of this Agreement could give rise to irreparable harm for which money damages would not be an adequate remedy. Accordingly, the Parties agree that, prior to the formation of the Tribunal, the Parties have the right to apply exclusively to any court of competent jurisdiction or other judicial authority located in London, England for interim or conservatory measures, including, without limitation, to compel arbitration (an “*Interim Relief Proceeding*”). Furthermore, the Parties agree that, after the formation of the Tribunal, the arbitrators shall have the sole and exclusive power to grant temporary, preliminary and permanent relief, including injunctive relief and specific performance, and any then pending Interim Relief Proceeding shall be discontinued without prejudice to the rights of any of the Parties thereto. Unless otherwise ordered by the arbitrators pursuant to the terms hereof, the arbitrators’ expenses shall be shared equally by the Parties. In furtherance of the foregoing, each of the Parties hereto irrevocably submits to: (i) the exclusive jurisdiction of the courts of England located in London, England in relation to any Interim Relief Proceeding and; (ii) the non-exclusive jurisdiction of the courts of England located in London, England with respect to the enforcement of any arbitral award rendered in accordance with this Section 8.10; and, with respect to any such suit, action or proceeding, waives any objection that it may have to the courts of England located in London, England on the grounds of inconvenient forum. For the avoidance of doubt, where an arbitral tribunal is appointed under this Agreement, the whole of its award shall be deemed for the purposes of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to be contemplated by this Agreement (and judgment on any such award may be entered in accordance with the provisions set forth in this Section 8.10).

(d) Oyster hereby irrevocably waives to the fullest extent permitted by applicable Law whatever defense it may have of sovereign immunity against suit or enforcement, for itself and its property (presently owned or subsequently acquired, and whether related to this Agreement or not), in: (i) any arbitration proceedings commenced and held in London, England in accordance with Section 8.10(c); (ii) any Interim Relief Proceeding commenced and held in a court of competent jurisdiction in London, England, in accordance with Section 8.10(c); (iii) any proceedings in a court of competent jurisdiction located in London, England to confirm an award rendered by the arbitrators in accordance with this Section 8.10; and (iv) any proceedings in a court of competent jurisdiction to enforce an award, and Oyster agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

(e) The Parties hereto agree that the process by which any arbitral or other proceedings in London, England are begun may be served on them by being delivered to Law Debenture Corporate Services Limited or their registered offices for the time being and by giving notice in accordance with Section 8.02. If Law Debenture Corporate Services Limited is not or ceases to be effectively appointed to accept service of process in England on any Party's behalf, such Party shall immediately appoint a further person in England to accept service of process on its behalf. If within fifteen (15) days of notice from a Party requiring another Party to appoint a person in England to accept service of process on its behalf the other Party fails to do so, the Party shall be entitled to appoint such a person by written notice to the other Party. Nothing in this paragraph shall affect the right of the Parties to serve process in any other manner permitted by Law.

SECTION 8.11 *Currency*

Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.

SECTION 8.12 *Counterparts*

This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

SECTION 8.13 *Expenses*

Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and in closing and carrying out the transactions contemplated hereby shall be paid by the Party incurring such cost or expense.

SECTION 8.14 *No Presumption Against Drafting Party*

Each Party hereto acknowledges and agrees it has had the opportunity to draft, review and edit the language of this Agreement and that each of the Parties hereto has been represented by counsel in connection with the negotiation and execution of this Agreement and the other Transaction Documents. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized signatories thereunto duly authorized as of the date first above written.

THE FOUNDRY COMPANY
Executed in Abu Dhabi, United Arab Emirates

By: /s/ Bruce McDougall
Name: Bruce McDougall
Title: Chief Financial Officer

ADVANCED MICRO DEVICES, INC.

By: /s/ Harry A. Wolin
Name: Harry A. Wolin
Title: SVP, General Counsel & Secretary

ADVANCED TECHNOLOGY INVESTMENT COMPANY LLC

By: /s/ Samer Saleh Halawa
Name: Samer Saleh Halawa
Title: Attorney-in-Fact, pursuant to an appointment by resolutions dated as of February 26, 2009

By: /s/ Hani Barhoush
Name: Hani Barhoush
Title: Attorney-in-Fact, pursuant to an appointment by resolutions dated as of February 26, 2009

[SIGNATURE PAGE TO SHAREHOLDERS' AGREEMENT AMONG
FOUNDRYCO, DISCOVERY AND OYSTER]

SHAREHOLDERS' AGREEMENT

DEFINITIONS

“*Accreted Value*” means the sum of (i) the purchase price per Class B Preferred Share, plus (ii) the amount of value accreted on the purchase price per Class B Preferred Share at a rate of 12% per year, compounded semiannually.

“*Additional Convertible Notes*” means any additional convertible promissory notes of FoundryCo to be issued after the Closing Date pursuant to the Funding Agreement and the Master Transaction Agreement, including paid-in-kind interest on such notes.

“*Additional Shares*” means the additional Class B Ordinary Shares issuable upon the conversion of the Class B Preferred Shares, if the Fair Market Value of the Class B Ordinary Shares to be received upon such conversion would be less than the Accreted Value of such Class B Preferred Shares.

“*Affiliate*” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person; *provided, however*, that with respect to Oyster and Pearl, Affiliate shall mean any direct or indirect Subsidiary of Oyster or Pearl, respectively, and not any direct or indirect parent or sister entity of either Oyster or Pearl, as the case may be, unless such parent or sister entity is acting as a “group” (as defined in Section 13(d)(3) of the Exchange Act) with Oyster or Pearl, respectively, for the purposes of acquiring, holding or disposing of securities of FoundryCo.

“*Annual Business Plan*” has the meaning set forth in the Funding Agreement.

“*Assumed Liabilities*” means only the Liabilities set forth on Exhibit E to the Master Transaction Agreement.

“*Board*” means the Board of Directors of FoundryCo, as specified in the Memorandum and Articles of Association.

“*Business Day*” means any day that is not a Friday, a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York or in Abu Dhabi.

“*Class A Ordinary Shares*” means the Class A ordinary shares of FoundryCo, with rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Class B Ordinary Shares*” means the Class B ordinary shares of FoundryCo, with rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Class A Preferred Shares*” means shares of Class A preferred shares of FoundryCo with the rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Class B Preferred Shares*” means shares of Class B preferred shares of FoundryCo with the rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Closing*” shall have the meaning set forth in the Master Transaction Agreement.

“*Closing Date*” means the date of the Closing, as further described in *Section 2.03* of the Master Transaction Agreement.

“control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“Convertible Notes” means the Initial Convertible Notes and the Additional Convertible Notes.

“Director” means a Person who is a member of the Board.

“Discovery Change of Control Transaction” has the meaning set forth in the Master Transaction Agreement.

“Discovery-specific Have Made Rights” means the right of Discovery to have unlimited volumes of products, including microprocessors, made for Discovery and its Subsidiaries by FoundryCo, regardless of whether FoundryCo is a “Subsidiary” or “Affiliate” of Discovery for purposes of the Intel Patent Cross License Agreement. For the avoidance of doubt, such rights shall not require (i) the payment of any royalties, license fees or other consideration by FoundryCo or the pass through of such royalties, license fees or other consideration by Discovery to FoundryCo, (ii) the license to (or covenants for the benefit of) Intel or its Affiliates in respect of any patents or patent applications of FoundryCo (other than patents already licensed or required to be licensed to Intel pursuant to agreements between Intel and Discovery as of the Closing), or (iii) other restrictions that would prevent FoundryCo from (or limit FoundryCo in) manufacturing or supplying Discovery’s products for Discovery.

“Encumbrance” means any security interest, pledge, hypothecation, mortgage, lien (including environmental and tax liens), violation, charge, lease, license, encumbrance, servient easement, adverse claim, reversion, reverter, preferential arrangement, restrictive covenant, condition or restriction of any kind, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fair Market Value” means, as of any date of determination (i) with respect to the Convertible Notes, the aggregate outstanding principal amount of such Convertible Notes plus any accrued interest; (ii) with respect to securities traded on any internationally recognized securities exchange, the value shall be deemed to be the average of the closing price of the securities on such exchange over the twenty (20)-day period ending two (2) days prior to such date of determination; (iii) with respect to securities actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale price (whichever is applicable) over the twenty (20)-day period ending two (2) days prior to such date of determination; and (iv) with respect to securities for which there is no active public market, and with respect to property or other assets, the fair market value thereof, as determined in accordance with Section 3.11. In making such determination, the impact of all terms of the securities shall be taken into account, including conversion premiums, dividends, attached warrants, exercise price and the like, if there is no active public market, and whether or not the Reconciliation Event shall have occurred. For purposes of Section 5.01, the date of determination hereunder shall be the date of the public announcement of the Discovery Change of Control Transaction.

“Five-Year Capital Plan” has the meaning set forth in the Funding Agreement.

“FoundryCo Group” has the meaning set forth in the Master Transaction Agreement.

“FoundryCo Assets” has the meaning set forth in the Master Transaction Agreement.

“Fully Diluted Shares” means the aggregate of (i) the number of Class B Ordinary Shares issued and Outstanding and (ii) the number of Class B Ordinary Shares issuable upon (x) the exercise of any then exercisable outstanding options, warrants or similar instruments (other than such instruments held by FoundryCo) and (y) the exercise of any conversion or exchange rights with respect to any outstanding securities, including (A) any Class A Preferred Shares and Class B Preferred Shares, assuming each Class A Preferred Share and each Class B Preferred Share converts into 100 Class B Ordinary Shares (but excluding any Additional Shares issuable with respect to the Class B Preferred Shares), as adjusted for any share splits, share dividends, share combinations and the like, and (B) any Convertible Notes, assuming the Convertible Notes convert into Preferred Shares and then into Class B Ordinary Shares in accordance with the terms thereof (excluding any accrued and unpaid interest).

“Funding Agreement” means the Funding Agreement dated as of the date hereof among Oyster, Discovery and FoundryCo relating to future capital contributions to FoundryCo, as may be amended from time to time.

“Funding Date” has the meaning set forth in the Funding Agreement.

“GAAP” means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

“Governmental Authority” means any federal, national, supranational, state, provincial, local, or similar government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations promulgated thereunder.

“IFRS” means International Financial Reporting Standards as in effect from time to time.

“Incentive Plan” means an incentive compensation plan for FoundryCo.

“Initial Convertible Notes” means (i) the two hundred one million eight hundred ten thousand dollars (\$201,810,000) principal amount class A convertible promissory note issued by FoundryCo to Oyster at the Closing, including any paid-in-kind interest on such note, and (ii) the eight hundred seven million two hundred forty thousand dollars (\$807,240,000) principal amount class B convertible promissory note issued by FoundryCo to Oyster at the Closing, including any paid-in-kind interest on such note.

“Intellectual Property” has the meaning set forth in the Master Transaction Agreement.

“Intel Patent Cross License Agreement” means that certain Patent Cross License Agreement between Discovery and Intel, dated January 1, 2001, as may be amended from time to time.

“IPO” means the initial Public Offering of FoundryCo.

“Law” means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, decree, regulation, rule, code, order, requirement or rule of law (including common law).

“Luther Forest Site” has the meaning set forth in the Master Transaction Agreement.

“Majority Vote” means the affirmative vote of at least a majority of the members of the Board.

“Malta Rocket Fuel Area” has the meaning set forth in the Master Transaction Agreement.

“Master Transaction Agreement” means the Master Transaction Agreement by and among Discovery, Oyster and the other parties thereto dated as of October 6, 2008, as amended.

“*Memorandum and Articles of Association*” means the Memorandum and Articles of Association of FoundryCo, filed with the Registrar of Companies in the Cayman Islands.

“*Officers*” means the employees designated as officers by the Board including but not limited to a Chief Executive Officer and a Chief Financial Officer.

“*Ordinary Shares*” means the Class A Ordinary Shares and the Class B Ordinary Shares.

“*Outstanding*” means, as of any date of determination, all Shares that have been issued on or prior to such date, other than Shares held, repurchased or otherwise reacquired by FoundryCo on or prior to such date.

“*Pearl*” has the meaning set forth in the Master Transaction Agreement.

“*Permitted Transferee*” means with respect to a Shareholder or FoundryCo, any Affiliate of such Shareholder or FoundryCo, as the case may be; *provided, however*, that with respect to Oyster or FoundryCo, Permitted Transferee shall also mean any transferee Person directly or indirectly controlled by the Abu Dhabi government that is directed to be a transferee by any Governmental Authority.

“*Person*” means an individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“*Preferred Shares*” means the Class A Preferred Shares and Class B Preferred Shares.

“*Proceeding*” means any action, suit, claim, charge, hearing, arbitration, audit, or proceeding (public or private).

“*Public Offering*” means an underwritten public offering of equity securities pursuant to an effective Registration Statement under the Securities Act or similar non-U.S. applicable Laws.

“*Qualified Processes*” has the meaning set forth in the Wafer Supply Agreement.

“*Reconciliation Event*” means the earlier of (i) such time when Discovery has secured for FoundryCo Discovery-specific Have Made Rights under the Intel Patent Cross License Agreement, or (ii) such time when the Board determines that FoundryCo no longer needs to be a “subsidiary” of Discovery as defined in Section 1.22 of the Intel Patent Cross License Agreement. For the avoidance of doubt, notwithstanding any provision of this Agreement or any other Transaction Document, prior to the Reconciliation Event, FoundryCo shall in no event be under any obligation (contractually or otherwise) to directly or indirectly distribute more than seventy percent (70%) of its profits to any Person.

“*Sale of Securities*” means any issuance, sale, assignment, transfer, distribution (whether by an entity to its owners or otherwise) or other disposition of Securities or of a participation therein, whether voluntarily or by operation of applicable Law.

“*Securities*” means the Shares and the Convertible Notes.

“*Securities Act*” means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“*Shareholders’ Agreement*” means this Agreement, as may be amended from time to time.

“*Shareholder*” means each Person (other than FoundryCo) that shall be a party to the Shareholders’ Agreement as a holder of Securities, whether in connection with the execution and delivery thereof as of the Closing Date or otherwise, so long as such Person shall beneficially own, hold of record or be a registered holder of any Securities.

“*Shares*” means the Ordinary Shares, the Preferred Shares and any other shares of the share capital of FoundryCo issued on or after the date of the Shareholders’ Agreement.

“*Subsidiary*” or “*Subsidiaries*”, with respect to any Person, means any and all corporations, partnerships, limited liability companies, joint ventures, associations and other entities controlled by such Person, directly or indirectly or in which such Person directly or indirectly has at least 50% of the voting power to elect the board of directors or other governing body of such entity; *provided, however*, that solely for purposes of this Agreement neither FoundryCo nor any member of the FoundryCo Group shall be deemed to be a Subsidiary of Discovery following the Closing. The foregoing proviso shall be applicable only to this Agreement and shall not be applicable to, and shall have no relevance with respect to, any other agreement, arrangement, understanding, contract, license or mortgage to which any of Oyster, Discovery or FoundryCo, or any of their respective Affiliates, is or may become a party or the interpretation thereof, unless such proviso is included therein.

“*Third Party*” means, with respect to any Shareholder, any Person other than (i) any Permitted Transferee of such Shareholder or (ii) the Other Shareholder, and, with respect to FoundryCo, any Person other than its Subsidiaries or a Shareholder or the Permitted Transferees of a Shareholder.

“*Transaction Documents*” has the meaning set forth in the Master Transaction Agreement.

“*Transition Period*” has the meaning set forth in the Funding Agreement.

“*Wafer Starts*” has the meaning set forth in the Wafer Supply Agreement.

“*Wafer Supply Agreement*” means the Wafer Supply Agreement, dated as of the date hereof, between Discovery and FoundryCo relating to the manufacture and sale of wafers to Discovery by FoundryCo following the Closing, as may be amended from time to time.

Table of Additional Definitions. The following terms have the meanings set forth in the Sections set forth below:

<u>Definition</u>	<u>Location</u>
Affected Director	7.01(b)(i)
Affected Shareholder	7.01(a)(iii)(A)
Agreement	Preamble
Auditors	4.01(a)
Bankruptcy Law	7.01
Confidential Information	5.04(a)
Custodian	7.01
day(s)	1.02
Discovery	Preamble
Dispute	8.10(b)
Dispute Notice	8,10(b)
Drag-Along Notice	3.08(c)
Drag-Along Offer	3.08(c)
Drag-Along Offered Securities	3.08(b)
Drag-Along Transaction	3.08(b)
Dragged-Along Shareholder	3.08(b)
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Election Notice	3.11(a)
Finance and Audit Committee	2.05(b)
FoundryCo	Preamble
Intel	3.02(b)
Interim Relief Proceeding	8.10(c)
IPO Demand Request	5.01(c)
Last Look Acceptance Notice	3.06(b)
Last Look Notice	3.06(b)
LCIA Rules	8.10(c)
Mutually Designated Appraiser	3.11(b)(iii)
Non-Affected Director	7.01(b)(i)
Non-Affected Shareholder	7.01(a)(iii)
Notice of Acceptance	3.05(c)
Notice of Issuance	5.07(c)
Offer	3.05(b)
Offer Notice	3.05(b)
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Offer Price	3.05(b)
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Other Shareholder	3.05(b)
Oyster	Preamble
Parties/Party	Preamble
People/Compensation Committee	2.05(a)
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Prospective Transferee	3.09(a)
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Definition

SEC
Shareholders' Agreement
SOX
Tag-Along Notice of Interest
Tag-Along Offer
Tag-Along Offered Securities
Unaccepted Securities

Location

4.01(b)
Preamble
4.01(c)
3.07(b)(ii)
3.05(c)
3.07(b)(ii)
3.05(e)

APPENDIX A-7

FUNDING AGREEMENT

By and Among

ADVANCED MICRO DEVICES, INC.

ADVANCED TECHNOLOGY INVESTMENT COMPANY LLC

and

THE FOUNDRY COMPANY

Dated as of March 2, 2009

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This FUNDING AGREEMENT (this "*Funding Agreement*" and as referred to herein, this "*Agreement*"), dated as of March 2, 2009, is entered into by and among Advanced Micro Devices, Inc., a Delaware corporation ("*Discovery*"), Advanced Technology Investment Company LLC, a limited liability company established under the laws of the Emirate of Abu Dhabi and wholly-owned by the Government of Abu Dhabi ("*Oyster*") (each of Discovery and Oyster being a "*Shareholder*" and together the "*Shareholders*") and The Foundry Company, an exempted company incorporated under the laws of the Cayman Islands ("*FoundryCo*"). Discovery, Oyster and FoundryCo are sometimes referred to herein as the "*Parties*," and each individually as a "*Party*."

RECITALS

WHEREAS, Discovery, Oyster and the other parties thereto are parties to the Master Transaction Agreement that provides, among other things, for the formation of FoundryCo under the laws of the Cayman Islands to act as the holding company for a joint venture between Discovery and Oyster; and

WHEREAS, pursuant to the terms and subject to the conditions set forth in this Agreement, the Parties wish to provide for the funding of FoundryCo from the period commencing on the date hereof and ending on the date this Agreement is terminated.

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

ARTICLE I

DEFINITIONS

SECTION 1.01. *Certain Defined Terms.* Capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings referred to or ascribed to such terms in *Appendix A*.

SECTION 1.02. *Interpretation and Rules of Construction.* In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

- (a) when a reference is made in this Agreement to an Article, Section or Appendix, such reference is to an Article or Section of, or an Appendix to, this Agreement unless otherwise indicated;
- (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
- (c) whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";
- (d) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (e) any certificate delivered pursuant to this Agreement shall be deemed a representation and warranty contained in this Agreement as to the matters covered thereby;
- (f) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;
- (g) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

-
- (h) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
 - (i) any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor Laws and any rules or regulations promulgated thereunder;
 - (j) any reference in this Agreement to a “day” or a number of “days” (without the explicit qualification of “Business”) shall be interpreted as a reference to a calendar day or number of calendar days;
 - (k) references to a Person are also to its successors and permitted assigns; and
 - (l) the use of “or” is not intended to be exclusive unless expressly indicated otherwise.

ARTICLE II
PROCEDURES PRIOR TO EACH FUNDING NOTICE

SECTION 2.01. *Approval of Annual Business Plan.*

(a) On or prior to mid-November of each year (which date shall be prior to the end of the seventh fiscal week of the fourth fiscal quarter of such year of FoundryCo), or the next succeeding Business Day if such date is not a Business Day, the Management Team shall prepare and present to the Board for its approval a proposed Annual Business Plan for the subsequent Fiscal Year. The Annual Business Plan for the Fiscal Year ending on December 26, 2009 (the “*First Annual Business Plan*”) is attached hereto as *Appendix B*. Each proposed Annual Business Plan shall address, among other things, each of the line items set forth in the First Annual Business Plan.

(b) In connection with the preparation of each proposed Annual Business Plan, the Management Team shall retain such advisors and take such actions as will enable it to estimate whether and to what extent third-party debt financing (“*Debt Financing*”) would then be available to FoundryCo, with the aim that such Debt Financing would be at least sufficient to meet the projected Debt Funding Level for such Fiscal Year as set forth in the Five-Year Capital Plan. Each proposed Annual Business Plan shall include either a proposed commitment letter for such Debt Financing or a summary of indicative terms from at least two financial institutions (or, if in the good faith determination of the Management Team, no reputable and established financial institutions would provide such Debt Financing on commercially reasonable terms, a statement to such effect). Each of Discovery and Oyster shall use its commercially reasonable efforts to assist FoundryCo in obtaining any Debt Financing, and either Shareholder shall have the option, but not the obligation, to provide guarantees or other similar means of financial support in connection with any Debt Financing.

(c) Such proposed Annual Business Plan shall specifically include an estimate, by fiscal quarter, of sources and uses of funds for FoundryCo for such subsequent Fiscal Year, at all times after giving effect to the cash reserve requirement in *Section 2.02*. After due consideration of such proposed Annual Business Plan, the Board shall vote on whether to approve (with such changes as the Board shall determine) such proposed Annual Business Plan in accordance with the approvals required by the Shareholders’ Agreement. If the Board approves such proposed Annual Business Plan in accordance with the approvals required by the Shareholders’ Agreement, such proposed Annual Business Plan shall immediately become effective as the Annual Business Plan for the subsequent Fiscal Year.

(d) If the Board has not approved such proposed Annual Business Plan on or prior to the earlier of (i) the first Business Day after November 29 and (ii) the last day of the ninth (9th) fiscal week of the fourth fiscal quarter

of Foundry Co, then within three (3) Business Days thereafter FoundryCo shall deliver a notice that shall detail the specific items that are the subject of such non-approval to the chief executive officer of each Shareholder. During the period following receipt of such notice through December 23 of that Fiscal Year, the chief executive officers, acting on behalf of their respective Shareholder, shall seek in good faith and shall use their commercially reasonable efforts to hold at least three (3) additional meetings with the goal of approving the proposed Annual Business Plan (with such changes as the chief executive officers shall determine). If (i) the Board approves such proposed Annual Business Plan (with such changes as the chief executive officers, acting on behalf of their respective Shareholder, shall determine) in accordance with the approvals required by the Shareholders' Agreement, or (ii) a Shareholder unilaterally approves such proposed Annual Business Plan (with such changes as such Shareholder shall determine) pursuant to the rights granted under *Section 6.01(b)* of the Shareholders' Agreement, such proposed Annual Business Plan shall immediately become effective as the Annual Business Plan for such subsequent Fiscal Year.

(e) If the Shareholders, acting through their respective chief executive officers, have not approved such proposed Annual Business Plan on or prior to December 23rd of the Fiscal Year in which the proposed Annual Business Plan was submitted to the Board and the chief executive officers, a "*Business Plan Deadlock*" shall be deemed to have occurred and the Parties shall follow the deadlock resolution procedures set forth in *Article VIII*.

SECTION 2.02. *Cash Reserve*. The Parties agree that at all times during the term of this Agreement, the FoundryCo Group shall maintain Cash and Cash Equivalents in an amount equal to at least \$1.0 billion, *provided, however*, that this requirement shall no longer apply upon the earlier of (i) FoundryCo entering into a Transition Period in accordance with *Article VIII* hereunder and (ii) the end of Phase II.

ARTICLE III FUNDING PROCEDURES

SECTION 3.01. *Funding Notices*.

(a) From time to time during the term of this Agreement, FoundryCo may provide a notice requesting equity funding (the "*First Funding Notice*") to both Shareholders in substantially the form attached hereto as *Appendix D*. The First Funding Notice shall be provided at least thirty (30) Business Days prior to the date of any contemplated equity funding hereunder (unless otherwise agreed in writing by the Shareholders) (each, a "*Funding Date*").

(b) On any Funding Date, the aggregate number of Securities to be issued shall consist of twenty percent (20%) in the form of Class A Preferred Shares and eighty percent (80%) in the form of Class B Preferred Shares, *provided, however*, that, prior to the Reconciliation Event, to the extent the issuance of any such Securities to Oyster would cause FoundryCo to fail to constitute a "subsidiary" of Discovery, as such term is defined in the Intel Patent Cross License Agreement, FoundryCo shall instead issue to Oyster (i) a Class A Convertible Note in an aggregate principal amount equal to the aggregate purchase price for the Class A Preferred Shares that would have been issued to Oyster but for this proviso, and (ii) a Class B Convertible Note in an aggregate principal amount equal to the aggregate purchase price for the Class B Preferred Shares that would have been issued to Oyster but for this proviso.

(c) Subject to the satisfaction or waiver of the applicable conditions precedent set forth in *Article VI*, unless otherwise agreed by the Shareholders, the aggregate amount of equity funding to be provided by the Shareholders in any Fiscal Year pursuant to this Agreement shall be as follows:

(i) during Phase I, such amount shall be equal to the Original Funding Level for such Fiscal Year as set forth in the Five-Year Capital Plan, *provided, however*, that such Original Funding Level shall be reduced to the extent any Debt Financing obtained by FoundryCo during such Fiscal Year exceeds the projected Debt

Funding Level for such Fiscal Year, and *provided further*, that, subject to *Section 3.01(c)(iv)*, to the extent such Debt Financing is less than any such projected Debt Funding Level, the Original Funding Level shall not be increased to make up any such difference;

(ii) during Phase II, such amount shall be equal to the Original Funding Level for such Fiscal Year as set forth in the Five-Year Capital Plan, *provided, however*, that such amount may be reduced (A) to the Minimum Funding Level pursuant to *Section 6.02(b)*, (B) to a level between the Original Funding Level and the Minimum Funding Level pursuant to *Section 8.02(a)* and (C) to the Minimum Funding Level pursuant to *Section 8.04(c)*. Such amount shall also be reduced to the extent any Debt Financing obtained by FoundryCo during such Fiscal Year exceeds the projected Debt Funding Level for such Fiscal Year, *provided, however*, that, subject to *Section 3.01(c)(iv)*, to the extent such Debt Financing is less than any such projected Debt Funding Level, such amount shall not be increased to make up any such difference. For the avoidance of doubt, if the Minimum Funding Level applies, then (x) the projected Debt Funding Level shall be reduced to the Minimum Debt Funding Level, and (y) if the level of Debt Financing is less than any such projected Minimum Debt Funding Level, the minimum level of equity funding shall be equal to the Minimum Funding Level;

(iii) during Phase III, such amount shall be equal to the equity funding level set forth in the approved Annual Business Plan for such Fiscal Year, *provided, however*, that such amount may be reduced (A) to a level between the Phase III Alternate Funding Level and the Transition Funding Level pursuant to *Section 8.03(a)* and (B) to the Transition Funding Level pursuant to *Section 8.04(c)*. Such amount shall also be reduced to the extent any Debt Financing obtained by FoundryCo during such Fiscal Year exceeds the projected Debt Funding Level for such Fiscal Year, *provided, however*, that to the extent such Debt Financing is less than any such projected Debt Funding Level, such amount shall not be increased to make up any such difference. For the avoidance of doubt, if the Transition Funding Level applies and such Debt Financing is less than any such projected Debt Funding Level, the minimum level of equity funding shall be equal to the Transition Funding Level; and

(iv) notwithstanding anything to the contrary in *Section 3.01(c)(i)* or *(ii)*, if (A) any equity funding has been reduced during Phase I or Phase II as a result of Debt Financing obtained during any Fiscal Year exceeding the projected Debt Funding Level for such Fiscal Year (the cumulative amount of such equity funding reduction being referred to as the “*Rollover Amount*”) and (B) during any subsequent Fiscal Year during Phase I or Phase II the amount of any Debt Financing is less than the projected Debt Funding Level for such Fiscal Year, then the amount of equity funding for such Fiscal Year or for any subsequent Fiscal Year during Phase I or Phase II may be increased up to the Rollover Amount, *provided, however*, that in no event shall the aggregate amount of equity funding to be provided by Oyster during Phase I and Phase II exceed the aggregate amount of equity funding for Phase I and Phase II as set forth in the Five-Year Capital Plan.

(d) Subject to the satisfaction or waiver of the applicable conditions precedent set forth in *Article VI*, Oyster shall be obligated to purchase its Pro Rata Portion of the Securities offered pursuant to any First Funding Notice. Discovery shall have the right, but not the obligation, to purchase its Pro Rata Portion of the Securities offered pursuant to any First Funding Notice. Within ten (10) Business Days of receipt of a First Funding Notice, Discovery shall advise FoundryCo and Oyster, in writing, whether it elects to purchase any of the Securities offered. To the extent that Discovery elects not to purchase all of its Pro Rata Portion of any Securities offered pursuant to any First Funding Notice, Oyster shall be obligated, subject to the satisfaction or waiver of the applicable conditions precedent set forth in *Article VI*, to purchase all of such unpurchased Securities. Oyster may also elect at any time to purchase additional Securities in excess of those offered pursuant to any First Funding Notice.

(e) On or prior to the tenth (10th) Business Day prior to a Funding Date, FoundryCo shall provide a notice (the “*Second Funding Notice*”) to each Shareholder in substantially the form attached hereto as *Appendix E* which shall detail each Shareholder’s allocable portion of the Securities offered.

SECTION 3.02. *Purchase and Sale of Securities.*

(a) Pursuant to the terms and subject to the conditions of this Agreement, on each Funding Date, FoundryCo shall issue to each purchasing Shareholder and such Shareholder shall purchase, accept and acquire from FoundryCo the allocated Securities as set forth in the Second Funding Notice for such Funding Date.

(b) On each Funding Date, the purchase price per Class A Preferred Share shall be the same as the purchase price per Class B Preferred Share and shall be determined by dividing (i) the Net Tangible Assets of the FoundryCo Group (derived from the most recent Fiscal Year-end audited consolidated balance sheet of FoundryCo that has been approved by the Board and calculated in accordance with the Statement of Principles set forth in *Appendix F* attached hereto) by (ii) the Number of Outstanding Preferred Shares (as of the date of the balance sheet referred to in clause (i) above), and multiplying such quotient by 0.90.

(c) On each Funding Date, the aggregate principal amount of Convertible Notes to be issued shall be determined in accordance with *Section 3.01(b)*.

SECTION 3.03. *Closing Deliveries by FoundryCo.* On each Funding Date, FoundryCo shall deliver or cause to be delivered to Oyster and Discovery, if applicable, or their respective designated custodians:

(a) if requested, physical certificates evidencing the number of Class A Preferred Shares to be purchased by such Shareholder on such Funding Date, rounded to the nearest whole share;

(b) if requested, physical certificates evidencing the number of Class B Preferred Shares, to be purchased by such Shareholder on such Funding Date, rounded to the nearest whole share;

(c) if applicable, a Class A Convertible Note to Oyster for an aggregate principal amount in accordance with *Section 3.01(b)*;

(d) if applicable, a Class B Convertible Note to Oyster for an aggregate principal amount in accordance with *Section 3.01(b)*;

(e) an updated Register of Members reflecting the issuance of the Securities on such Funding Date;

(f) a certificate, dated as of such Funding Date, executed by an authorized officer of FoundryCo certifying as to the matters set forth in *Article IV, Section 6.01* and *Section 6.02(a), 6.02(b)* or *6.02(c)*, as applicable; and

(g) receipt(s) for the aggregate consideration paid by such Shareholder for the Securities issued to it on such Funding Date.

SECTION 3.04. *Closing Deliveries by the Shareholders.* On each Funding Date, to the extent a Shareholder is purchasing Securities, such Shareholder shall deliver to FoundryCo:

(a)(i) a wire transfer of the aggregate consideration for the Securities to be issued to such Shareholder on such Funding Date, payable in United States dollars and in immediately available funds to the bank account designated by FoundryCo in the First Funding Notice, or (ii) if the Board so agrees in advance, the aggregate consideration for such Securities payable in Cash and Cash Equivalents acceptable to the Board; and

(b) a certificate, dated as of such Funding Date, executed by an authorized officer of such Shareholder certifying as to the matters set forth in *Article V*.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF FOUNDRYCO AT EACH FUNDING

FoundryCo hereby represents and warrants as of each Funding Date to each Shareholder who is issued Securities on such Funding Date as follows:

SECTION 4.01. *Organization, Authority and Qualification of FoundryCo.* FoundryCo is an exempted company limited by shares, duly formed, validly existing and in good standing under the Laws of the Cayman Islands. FoundryCo has all corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

SECTION 4.02. *Authorization of the Class A Preferred Shares and Class B Preferred Shares.* The Class A Preferred Shares and the Class B Preferred Shares to be issued and purchased pursuant to this Agreement on any Funding Date have been duly authorized and, when issued and delivered in accordance with this Agreement on such Funding Date, shall be validly issued, fully paid and non-assessable and will be free of all preemptive or similar rights, except as set forth in the Memorandum and Articles of Association and Shareholders' Agreement, and shall be entitled to the rights and be subject to the restrictions described in the Memorandum and Articles of Association. The Class B Ordinary Shares issuable upon conversion of the Class A Preferred Shares and Class B Preferred Shares shall be entitled to the rights and be subject to the restrictions described in the Memorandum and Articles of Association and will be duly authorized, validly issued, fully paid and non-assessable, free of all preemptive or similar rights, except as set forth in the Memorandum and Articles of Association and Shareholders' Agreement.

SECTION 4.03. *Authorization of Convertible Notes.* In the event that any Convertible Notes are issued on any Funding Date, the Convertible Notes to be issued pursuant to this Agreement on such Funding Date have been duly authorized and, when issued and delivered in accordance with this Agreement on such Funding Date, shall be duly executed and delivered by FoundryCo and shall constitute valid and binding obligations of FoundryCo, enforceable against FoundryCo in accordance with their terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity, and by applicable bankruptcy, insolvency and similar Laws affecting creditors' rights and remedies generally. The Class A Preferred Shares issuable upon conversion of the Class A Convertible Notes shall be entitled to the rights and be subject to the restrictions described in the Memorandum and Articles of Association and will be duly authorized, validly issued, fully paid and non-assessable, free of all preemptive or similar rights, except as set forth in the Memorandum and Articles of Association and the Shareholders' Agreement. The Class B Preferred Shares issuable upon conversion of the Class B Convertible Notes shall be entitled to the rights and be subject to the restrictions described in the Memorandum and Articles of Association and will be duly authorized, validly issued, fully paid and non-assessable, free of all preemptive or similar rights, except as set forth in the Memorandum and Articles of Association and the Shareholders' Agreement.

SECTION 4.04. *Authorization; Enforceability.* The execution and delivery of this Agreement by FoundryCo, the performance by FoundryCo of its obligations hereunder and the consummation by FoundryCo of the transactions contemplated hereby have been duly authorized by all requisite action on the part of FoundryCo. This Agreement has been duly executed and delivered by FoundryCo, and this Agreement constitutes a valid and binding obligation of FoundryCo, enforceable against FoundryCo in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity, and by applicable bankruptcy, insolvency and similar Laws affecting creditors' rights and remedies generally.

SECTION 4.05. *Absence of Further Requirements.* The execution and delivery of this Agreement by FoundryCo, the performance by FoundryCo of its obligations hereunder and the consummation by FoundryCo of the transactions contemplated hereby do not and will not require any Authorizations and do not and will not require any Consents, except such as have been previously obtained and will be in full force and effect as of such Funding Date.

SECTION 4.06. *No Conflicts.* The execution and delivery by FoundryCo of this Agreement, the compliance by FoundryCo with all the provisions hereof, the performance by FoundryCo of all of its obligations hereunder and the consummation of the transactions contemplated hereby will not: (i) conflict with or constitute a breach of any of the terms or provisions of, or a default under, the constituent documents of FoundryCo or any of its Subsidiaries, any Material FoundryCo Contract or any other indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to FoundryCo and its Subsidiaries, taken as a whole, to which FoundryCo or any of its Subsidiaries is a party or by which FoundryCo or any of its Subsidiaries or their respective property is bound; (ii) materially violate or conflict with any Law applicable to FoundryCo, any of its Subsidiaries or their respective property; (iii) result in the imposition or creation of (or the obligation to create or impose) any material Encumbrance on the assets, properties or business of FoundryCo under any agreement or instrument to which FoundryCo or any of its Subsidiaries is a party or by which FoundryCo or any of its Subsidiaries or their respective property is bound; or (iv) result in the suspension, termination or revocation of any material Consent or Authorization of FoundryCo or any of its Subsidiaries or any other impairment of the rights of the holder of any such material Consent or Authorization.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF FUNDING SHAREHOLDERS

Each of Oyster and Discovery, if applicable, severally and not jointly, hereby represents and warrants as of each Funding Date to FoundryCo as follows:

SECTION 5.01. *Organization.* Such Shareholder has been duly organized, validly existing and is in good standing under the laws of the jurisdiction of its organization and has all power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

SECTION 5.02. *Authorization; Enforceability.* The execution and delivery of this Agreement by such Shareholder, the performance by such Shareholder of its obligations hereunder and the consummation by such Shareholder of the transactions contemplated hereby have been duly authorized by all requisite action. This Agreement has been duly executed and delivered by such Shareholder and this Agreement constitutes a valid and binding obligations of such Shareholder, enforceable against such Shareholder in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity, and by applicable bankruptcy, insolvency and similar Laws affecting creditors' rights and remedies generally.

SECTION 5.03. *Absence of Further Requirements.* To the knowledge of such Shareholder, the execution and delivery of this Agreement by such Shareholder, the performance by such Shareholder of its obligations hereunder and the consummation by such Shareholder of the transactions contemplated hereby do not and will not require any Authorization and do not and will not require any Consents, except such as have been previously obtained and will be in full force and effect as of such Funding Date.

SECTION 5.04. *No Conflicts.* The execution and delivery by such Shareholder of this Agreement, the compliance by such Shareholder with all the provisions hereof, the performance by such Shareholder of all of its obligations hereunder, and the consummation of the transactions contemplated hereby will not: (i) conflict with or constitute a breach of any of the terms or provisions of the organizational documents of such Shareholder; or (ii) materially violate or conflict with any Law applicable to such Shareholder.

SECTION 5.05. *Investment Representations.*

(a) Such Shareholder acknowledges and understands that (i) the Securities have not been and will not be registered under the Securities Act or under any state securities Laws and are being offered and sold in reliance

upon federal and state exemptions for transactions not involving any public offering, (ii) such exemption depends in part upon, and such Securities are being sold in reliance on, the representations and warranties set forth in this Agreement, (iii) such Shareholder may have to bear the economic risk of its investment in the Securities for an indefinite period of time because the Securities must be held indefinitely unless subsequently registered under the Securities Act and applicable state securities Laws or unless an exemption from such registration is available, and (iv) a restrictive legend evidencing these restrictions shall be placed on all certificates evidencing the Securities.

(b) Such Shareholder is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act, a sophisticated investor and, by virtue of its business or financial experience, is capable of evaluating the merits and risks of the investment in the Securities. Such Shareholder has been provided an opportunity to ask questions of and receive answers from representatives of FoundryCo concerning the terms and conditions of this Agreement and the purchase of the Securities contemplated hereby.

(c) Such Shareholder is acquiring the Securities for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof that would be prohibited by Law.

ARTICLE VI

CONDITIONS PRECEDENT TO OYSTER FUNDING

SECTION 6.01. *Conditions Precedent To Oyster Funding on Each Funding Date.* The obligation of Oyster to purchase any Securities on any Funding Date as contemplated by this Agreement shall be subject to the satisfaction or waiver, on or prior to the applicable Funding Date, of each of the following conditions precedent:

(a) *Deliverables.* FoundryCo shall have delivered to Oyster the closing deliverables set forth in *Section 3.03*.

(b) *Representations and Warranties; Covenants.*

(i) the representations and warranties of FoundryCo set forth in this Agreement shall be true and correct in all material respects on and as of such Funding Date; and

(ii) the covenants and agreements set forth in this Agreement to be complied with by FoundryCo on or before the applicable Funding Date shall have been complied with in all material respects.

(c) *No Material Adverse Effect.* No event or events shall have occurred, or be reasonably likely to occur, which, individually or in the aggregate, have, or are reasonably likely to have, (i) a FoundryCo Material Adverse Effect or (ii) a Discovery Material Adverse Effect that could reasonably be expected to materially and adversely affect Discovery’s performance of its obligations under the Wafer Supply Agreement, including a sustained material decrease in Discovery’s MPU forecasts, or Discovery’s MPU purchase orders under the Wafer Supply Agreement being materially below its MPU forecasts thereunder on a sustained basis.

(d) *No Material Default Under Transaction Documents.* As of such Funding Date, there shall be no material breach or default by FoundryCo or Discovery under the terms or provisions of any Transaction Document.

(e) *Legal Opinion.* The Shareholders shall have received from counsel to FoundryCo a written legal opinion, addressed to Oyster and dated as of such Funding Date, in the form attached hereto as *Appendix G*.

SECTION 6.02. *Supplemental Conditions to Oyster Funding.*

(a) In addition to the conditions precedent set forth in *Section 6.01*, the obligation of Oyster to purchase any Securities offered on any Funding Date during Phase I shall be subject to the satisfaction or waiver of the

supplemental conditions set forth in paragraphs 1, 2 and 3(a) under Legal Conditions on *Appendix H* on or prior to such Funding Date.

(b) In addition to the conditions precedent set forth in *Section 6.01*, the obligation of Oyster to purchase any Securities offered on any Funding Date during Phase II shall be subject to the satisfaction or waiver of each of the supplemental conditions set forth under Legal Conditions, Financial Conditions and Strategic Conditions on *Appendix H* on or prior to such Funding Date, except for any other date otherwise specified therein, *provided, however*, that if paragraph 3(b) under Legal Conditions on *Appendix H* has not been satisfied or waived on or prior to such Funding Date, then Oyster's funding obligation may, at Oyster's option, be reduced to the Minimum Funding Level until such date, if any, when Oyster receives evidence to its reasonable satisfaction that the event referred to in paragraph 3(b) under Legal Conditions has occurred and *provided, further*, that if any of the Financial Conditions or Strategic Conditions on *Appendix H* has not been satisfied or waived on or prior to such Funding Date, then Oyster's funding obligation may, at Oyster's option, be reduced to the Minimum Funding Level until such date, if any, when Oyster receives evidence to its reasonable satisfaction that such condition has been satisfied. For the avoidance of doubt, with respect to any Abu Dhabi-related Strategic Condition set forth on *Appendix H*, such condition shall be deemed satisfied if FoundryCo shall have performed in all material respects all obligations in its reasonable control, regardless of whether or not such Strategic Condition or milestone shall have in fact been achieved.

(c) In addition to the conditions precedent set forth in *Section 6.01*, the obligation of Oyster to purchase any Securities offered on any Funding Date during Phase III shall be subject to approval of the Annual Business Plan for the applicable Fiscal Year in accordance with this Agreement and the Shareholders' Agreement and the satisfaction or waiver of the supplemental conditions set forth in paragraphs 1, 2 and 3(a) under Legal Conditions on *Appendix H* on or prior to such Funding Date.

ARTICLE VII

OTHER AGREEMENTS

SECTION 7.01. *Agreement Regarding Conditions Precedent.* Oyster and Discovery agree to use their commercially reasonable efforts to cause each of its designees to the Board to refrain from taking any action that would prevent, restrict or limit FoundryCo's ability to satisfy each of the applicable conditions precedent set forth in *Article VI*.

SECTION 7.02. *Force Majeure Event.* The Parties agree that in the event of a Force Majeure Event that has directly caused the failure to satisfy any Abu Dhabi-related Strategic Condition set forth in *Appendix H*, then the target date for such Strategic Condition shall be automatically extended until such condition has been satisfied, at which time each Shareholder's respective obligations under *Article III* shall automatically resume.

SECTION 7.03. *Confidentiality.* The Parties agree that any information relating to FoundryCo, the other Shareholder, or any of their respective Subsidiaries that is proprietary to FoundryCo, the other Shareholder or any of their respective Subsidiaries, as applicable, or otherwise not available to the general public, received in connection with this Agreement shall be treated as "Confidential Information" in accordance with *Section 5.04* of the Shareholders' Agreement.

ARTICLE VIII

BUSINESS PLAN DEADLOCK RESOLUTION

SECTION 8.01. *Business Plan Deadlock Resolution During Phase I.* In the event of a Business Plan Deadlock as a result of not being able to approve the Annual Business Plan for the Fiscal Year ending in 2010, Oyster shall be obligated to, and Discovery may if it elects to, continue to fund at the Original Funding Level through the end of Phase I, subject to the satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(a)*. If at the end of such Fiscal Year, the Annual Business Plan for the Fiscal Year ending in 2011 is approved in accordance with this Agreement and the Shareholders' Agreement, then funding shall be at the Original Funding Level, subject to the satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(b)*. If at the end of such Fiscal Year, the Annual Business Plan for the Fiscal Year ending in 2011 is not so approved, then the provisions of *Section 8.02* below shall apply.

SECTION 8.02. *Business Plan Deadlock Resolution During Phase II.*

(a) In the event of a Business Plan Deadlock with respect to any Fiscal Year of Phase II, Oyster shall continue to provide funding in an amount at least equal to the Minimum Funding Level and up to the Original Funding Level, subject to satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(b)*, until either (i) approval of the Annual Business Plan, in which case Oyster's funding commitment shall revert to the Original Funding Level, subject to satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(b)*, or (ii) Oyster notifies FoundryCo that it has elected to have FoundryCo enter into the Transition Period, in which case *Section 8.04* will become effective immediately upon such notice.

(b) In the event Oyster does not elect to have FoundryCo enter into the Transition Period pursuant to *Section 8.02(a)(ii)*, Oyster shall, within five (5) Business Days of the end of each fiscal quarter, provide FoundryCo with notice of the amount of funding Oyster is committing to fund for the following fiscal quarter, FoundryCo shall include such amount in any First Funding Notice delivered with respect to such following fiscal quarter, and the funding procedures set forth in *Article III* shall otherwise continue to apply.

SECTION 8.03. *Business Plan Deadlock Resolution During Phase III.*

(a) In the event of a Business Plan Deadlock with respect to any Fiscal Year of Phase III, Oyster shall continue to provide funding in an amount at least equal to the Transition Funding Level and up to the Phase III Alternate Funding Level, subject to satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(c)* (other than the approval of the Annual Business Plan), until either (i) approval of the Annual Business Plan, in which case Oyster's funding commitment shall revert to the level set forth in such approved Annual Business Plan, subject to satisfaction or waiver of the conditions set forth in *Section 6.01* and *Section 6.02(c)*, or (ii) Oyster notifies FoundryCo that it has elected to have FoundryCo enter into the Transition Period, in which case *Section 8.04* will become effective immediately upon such notice.

(b) In the event Oyster does not elect to have FoundryCo enter into the Transition Period pursuant to *Section 8.03(a)(ii)*, Oyster shall, within five (5) Business Days of the end of each fiscal quarter, provide FoundryCo with notice of the amount of funding Oyster is committing to fund for the following fiscal quarter, FoundryCo shall include such amount in any First Funding Notice delivered with respect to such following fiscal quarter, and the funding procedures set forth in *Article III* shall otherwise continue to apply.

SECTION 8.04. *Transition Period.* If Oyster elects to have FoundryCo enter into the Transition Period pursuant to *Section 8.02* or *Section 8.03*, then the Parties agree that such Transition Period shall be governed by the following:

(a) Prior to any request for equity funding from the Shareholders, the Management Team shall have first complied with the obligation regarding Debt Financing set forth in *Section 2.01(b)*.

(b) The funding procedures set forth in *Article III* shall continue to apply.

(c) Oyster shall only be obligated to provide funding through the Transition Period at the Minimum Funding Level in the case of a Transition Period during Phase II and at the Transition Funding Level in the case of a Transition Period during Phase III, in each case subject to the satisfaction or waiver of the conditions set forth in *Section 6.01* and the supplemental conditions set forth in paragraphs 1, 2 and 3(a) under Legal Conditions on *Appendix H* on or prior to any Funding Date.

(d) The Shareholders shall jointly pursue, in good faith, transition options during the Transition Period, including without limitation, winding-down, selling or liquidating FoundryCo.

(e) Upon termination of the Transition Period, Oyster shall have the option to purchase in cash, in accordance with *Section 3.11* of the Shareholders' Agreement, any or all Securities (valued at their Fair Market Value) held by Discovery and its Permitted Transferees at a price equal to their Fair Market Value.

ARTICLE IX
MISCELLANEOUS

SECTION 9.01. *Termination.* This Agreement shall terminate upon the earlier of (i) a written agreement to that effect, signed by all Parties hereto then possessing any rights hereunder, and (ii) the termination of the Transition Period. If this Agreement is terminated pursuant to this *Section 9.01* (Termination), all rights and obligations of the Parties hereunder (except for *Section 7.03* (Confidentiality), this *Section 9.01*, *Section 9.02* (Notices), *Section 9.10* (Governing Law; Arbitration), *Section 9.13* (Expenses) and *Appendix A* (Defined Terms)) shall terminate.

SECTION 9.02. *Notices.* All notices, requests, claims, demands and other communications hereunder shall be given or made in accordance with *Section 14.01* of the Master Transaction Agreement.

SECTION 9.03. *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

SECTION 9.04. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, among the Parties with respect to the subject matter hereof.

SECTION 9.05. *Assignment.* This Agreement may not be assigned by operation of law or otherwise without the express written consent of each Party hereto (which consent may be granted or withheld in the sole discretion of such Party) and any such assignment or attempted assignment without such consent shall be void, *provided, however*, that Oyster may assign all of its rights and obligations under this Agreement without any consent to any Permitted Transferee.

SECTION 9.06. *Amendment.* This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, each Party hereto or (b) by a waiver in accordance with *Section 9.07*.

SECTION 9.07. *Waiver*. Any Party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of any other Party, (b) waive any inaccuracies in the representations and warranties of other Parties contained herein or in any document delivered by other Parties pursuant hereto or (c) waive compliance with any of the agreements of other Parties or conditions to such Party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any Party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 9.08. *Third Party Beneficiaries*. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of any Party, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 9.09. *Further Assurances*. Each of the Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated pursuant to this Agreement.

SECTION 9.10. *Governing Law; Arbitration*.

(a) This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York applicable to contracts executed in and to be performed in that State, without regard to principles of the conflict of laws.

(b) Any dispute arising out of, or in connection with this Agreement or any transactions contemplated hereby, including any question regarding the existence, validity, interpretation, breach or termination of this Agreement (a "*Dispute*"), shall be referred, upon written notice (a "*Dispute Notice*") given by one Party to the other(s), to a senior executive from each Party. The senior executives shall seek to resolve the Dispute on an amicable basis within thirty (30) days of the Dispute Notice being received.

(c) Any Dispute not resolved within thirty (30) days of the Dispute Notice being received shall be referred to, and shall be finally and exclusively resolved by, arbitration under the Rules of the London Court of International Arbitration (the "*LCIA Rules*") then in effect, as amended by this Section 9.10, which LCIA Rules are deemed to be incorporated by reference into this Section 9.10. The seat, or legal place, of the arbitration shall be London, England. The language of the arbitration shall be English. The number of arbitrators shall be three. Each Party shall nominate one arbitrator and the two arbitrators nominated by the Parties shall, within thirty (30) days of the appointment of the second arbitrator, agree upon and nominate a third arbitrator who shall act as Chairman of the Tribunal (as such terms are defined in the LCIA Rules). If no agreement is reached within thirty (30) days, the LCIA Court (as such term is defined in the LCIA Rules) shall appoint a third arbitrator to act as Chairman of the Tribunal. The Chairman of the arbitration panel should not be a citizen or a resident of the country of an arbitrator nominated by, or appointed on behalf of, a Party nor should the Chairman be a citizen or a resident of the United States of America or the United Arab Emirates. It is hereby expressly agreed that if there is more than one claimant party or more than one respondent party, the claimant parties shall together nominate one arbitrator and the respondent parties shall together nominate one arbitrator. In the event that a sole claimant or the claimant parties, on the one side, or a sole respondent or the respondent parties, on the other side, fails to nominate its/their arbitrator, such arbitrator shall be appointed by the LCIA Court. Any award issued by the arbitrators shall be final and binding upon the Parties, and, subject to this Section 9.10(c) and to Section 9.10(d), may be entered and enforced in any court of competent jurisdiction by any of the Parties. In the event any Party

subject to such final and binding award desires to have it confirmed by a final order of a court, the only court which may do so shall be a court of competent jurisdiction located in London, England; provided however, that nothing in this sentence shall prejudice or prevent a Party from enforcing the arbitrators' final and binding award in any court of competent jurisdiction. The Parties hereto acknowledge and agree that any breach of the terms of this Agreement could give rise to irreparable harm for which money damages would not be an adequate remedy. Accordingly, the Parties agree that, prior to the formation of the Tribunal, the Parties have the right to apply exclusively to any court of competent jurisdiction or other judicial authority located in London, England for interim or conservatory measures, including, without limitation, to compel arbitration (an "*Interim Relief Proceeding*"). Furthermore, the Parties agree that, after the formation of the Tribunal, the arbitrators shall have the sole and exclusive power to grant temporary, preliminary and permanent relief, including injunctive relief and specific performance, and any then pending Interim Relief Proceeding shall be discontinued without prejudice to the rights of any of the parties thereto. Unless otherwise ordered by the arbitrators pursuant to the terms hereof, the arbitrators' expenses shall be shared equally by the Parties. In furtherance of the foregoing, each of the Parties hereto irrevocably submits to: (i) the exclusive jurisdiction of the courts of England located in London, England in relation to any Interim Relief Proceeding and; (ii) the non-exclusive jurisdiction of the courts of England located in London, England with respect to the enforcement of any arbitral award rendered in accordance with this Section 9.10; and, with respect to any such suit, action or proceeding, waives any objection that it may have to the courts of England located in London, England on the grounds of inconvenient forum. For the avoidance of doubt, where an arbitral tribunal is appointed under this Agreement, the whole of its award shall be deemed for the purposes of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to be contemplated by this Agreement (and judgment on any such award may be entered in accordance with the provisions set forth in this Section 9.10).

(d) Oyster hereby irrevocably waives to the fullest extent permitted by applicable Law whatever defense it may have of sovereign immunity against suit or enforcement, for itself and its property (presently owned or subsequently acquired, and whether related to this Agreement or not), in: (i) any arbitration proceedings commenced and held in London, England in accordance with Section 9.10(c); (ii) any Interim Relief Proceeding commenced and held in a court of competent jurisdiction in London, England, in accordance with Section 9.10(c); (iii) any proceedings in a court of competent jurisdiction located in London, England to confirm an award rendered by the arbitrators in accordance with this Section 9.10; and (iv) any proceedings in a court of competent jurisdiction to enforce an award, and Oyster agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

(e) The Parties hereto agree that the process by which any arbitral or other proceedings in London, England are begun may be served on them by being delivered to Law Debenture Corporate Services Limited or their registered offices for the time being and by giving notice in accordance with Section 9.02. If Law Debenture Corporate Services Limited is not or ceases to be effectively appointed to accept service of process in England on any Party's behalf, such Party shall immediately appoint a further person in England to accept service of process on its behalf. If within fifteen (15) days of notice from a Party requiring another Party to appoint a person in England to accept service of process on its behalf the other Party fails to do so, the Party shall be entitled to appoint such a person by written notice to the other Party. Nothing in this paragraph shall affect the right of the Parties to serve process in any other manner permitted by Law.

SECTION 9.11. *Currency.* Unless otherwise specified in this Agreement, all references to currency, monetary values and dollars set forth herein shall mean United States (U.S.) dollars and all payments hereunder shall be made in United States dollars.

SECTION 9.12. *No Presumption Against Drafting Party.* Each Party hereto acknowledges and agrees it has had the opportunity to draft, review and edit the language of this Agreement and that each of the Parties hereto has been represented by counsel in connection with the negotiation and execution of this Agreement and the other Transaction Documents. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

SECTION 9.13. *Expenses.* Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and in closing and carrying out the transactions contemplated hereby shall be paid by the Party incurring such costs or expenses.

SECTION 9.14. *Counterparts.* This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

THE FOUNDRY COMPANY
Executed in Abu Dhabi, United Arab Emirates

By: /s/ Bruce McDougall
Name: Bruce McDougall
Title: Chief Financial Officer

ADVANCED MICRO DEVICES, INC.

By: /s/ Harry A. Wolin
Name: Harry A. Wolin
Title: SVP, General Counsel & Secretary

ADVANCED TECHNOLOGY INVESTMENT COMPANY LLC

By: /s/ Samer Saleh Halawa
Name: Samer Saleh Halawa
Title: Attorney-in-Fact, pursuant to an appointment by resolutions dated as of February 26, 2009

By: /s/ Hani Barhoush
Name: Hani Barhoush
Title: Attorney-in-Fact, pursuant to an appointment by resolutions dated as of February 26, 2009

Funding Agreement Signature Page

APPENDIX A

Certain Defined Terms. For purposes of this Agreement:

“*Additional Shares*” has the meaning set forth in the Shareholders’ Agreement.

“*Affiliate*” has the meaning set forth in the Shareholders’ Agreement.

“*Agreement*” or “*this Agreement*” means this Funding Agreement between the Parties hereto (including the Appendixes hereto) and all amendments hereto made in accordance with the provisions hereof.

“*Annual Business Plan*” means the then current annual business plan and budget of FoundryCo that has been approved by the Board in accordance with this Agreement and the Shareholders’ Agreement.

“*Authorization*” has the meaning set forth in the Master Transaction Agreement.

“*Board*” means the Board of Directors of FoundryCo, as specified in the Memorandum and Articles of Association.

“*Business Day*” means any day that is not a Friday, a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York or in Abu Dhabi.

“*Cash and Cash Equivalents*” means (i) cash on hand and any credit balance in United States dollars, Euros or any other currency on any current savings or deposit account with any bank that is repayable on demand or upon and not more than ninety (90) days’ notice; (ii) securities denominated in United States dollars, Euros or any other currency that are not convertible into any other form of security and are rated or issued by any Person rated Aa2 or better by Moody’s or AA or better by Standard & Poor’s; (iii) securities denominated in United States dollars, Euros or any other currency that are not convertible into any other form of security and are rated at least P-1 by Moody’s or A-1 by Standard & Poor’s; (iv) certificates of deposit denominated in United States dollars, Euros or any other currency issued by, and acceptances so denominated by, banking institutions authorized under applicable legislation which at the time of making such issue or acceptances, have outstanding debt securities rated as provided in clause (iii) above, and (v) such other securities (if any) as are approved as such in writing by each of Discovery and Oyster which, in each case, have no more than twelve (12) months to final maturity.

“*Class A Convertible Note*” means a promissory note of FoundryCo, convertible into Class A Preferred Shares, substantially in the form attached as *Appendix I* hereto.

“*Class A Preferred Shares*” means the Class A preferred shares of FoundryCo, with the rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Class B Convertible Note*” means a promissory note of FoundryCo, convertible into Class B Preferred Shares, substantially in the form attached as *Appendix J* hereto.

“*Class B Ordinary Shares*” means the Class B ordinary shares of FoundryCo, with rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Class B Preferred Shares*” means the Class B preferred shares of FoundryCo, with the rights, preferences and privileges set forth in the Memorandum and Articles of Association.

“*Closing*” has the meaning set forth in the Master Transaction Agreement.

“*Closing Date*” means the date of the Closing, as further described in *Section 2.03* of the Master Transaction Agreement.

“*Consent*” has the meaning set forth in the Master Transaction Agreement.

“*control*” (including the terms “*controlled by*” and “*under common control with*”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“*Convertible Notes*” means the Class A Convertible Notes and the Class B Convertible Notes.

“*Cumulative Gross Margin*” has the meaning set forth in *Appendix H* attached hereto.

“*Cumulative Revenue*” has the meaning set forth in *Appendix H* attached hereto.

“*Debt Funding Level*” is the estimated level of gross third-party debt funding for any Fiscal Year, based on the Original Funding Level scenario, as set forth in the Five-Year Capital Plan.

“*Discovery Material Adverse Effect*” has the meaning set forth in the Master Transaction Agreement.

“*Dresden Subsidies*” means subsidies in the amount and form approved as of the Closing Date, and as set forth in the Five-Year Capital Plan, in the form of a loan guarantee and cash subsidies provided, or to be provided, by the Federal Republic of Germany and/or the State of Saxony relating to Fab 30, Fab 36 and Fab 38 and not any other fabs in Dresden.

“*Encumbrance*” has the meaning set forth in the Master Transaction Agreement.

“*Exchange Act*” means the United States Securities Exchange Act of 1934, as amended.

“*Fair Market Value*” has the meaning set forth in the Shareholders’ Agreement.

“*Fiscal Year*” means the fiscal year of FoundryCo.

“*Five-Year Capital Plan*” means the initial five-year capital plan of FoundryCo attached hereto as *Appendix C* that includes (i) initial five-year projections of FoundryCo’s estimated capital expenditures and revenues, (ii) the amounts of the Dresden Subsidies and New York Subsidies available over such five-year period, (iii) the Original Funding Level and Minimum Funding Level over such five-year period, and (iv) the projected Debt Funding Level and Minimum Debt Funding Level over such five-year period, as amended, modified or revised by the Board in accordance with the Shareholders’ Agreement.

“*Force Majeure Event*” means any event or circumstance beyond the reasonable control of any Party (other than general industry, business or economic conditions or competitive factors adversely affecting Discovery or FoundryCo) that could not have been avoided by due diligence and use of reasonable efforts by the affected Party, including war (declared or not), hostilities, blockade, revolution, insurrection, riot, fire, flood, earthquake, storm or similar acts of God, change of Law and acts of Governmental Authorities.

“*FoundryCo Group*” has the meaning set forth in the Master Transaction Agreement.

“*FoundryCo Material Adverse Effect*” has the meaning set forth in the Master Transaction Agreement.

“*GAAP*” has the meaning set forth in the Shareholders’ Agreement.

“*Governmental Authority*” has the meaning set forth in the Master Transaction Agreement.

“*IBM Development and License Agreement*” has the meaning set forth in the Master Transaction Agreement.

“*Intel Patent Cross License Agreement*” has the meaning set forth in the Master Transaction Agreement.

“*Law*” means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, decree, regulation, rule, code, order, requirement or rule of law (including common law).

“*Management Team*” shall mean the chief executive officer and chief financial officer and such other officers of FoundryCo as may be designated as such by the Board.

“*Master Transaction Agreement*” means the Master Transaction Agreement by and among Discovery, Oyster and the other parties thereto, dated as of October 6, 2008, as amended.

“*Material FoundryCo Contract*” means those contracts set forth in *Section 4.13(a)* of the Disclosure Schedule of the Master Transaction Agreement, as updated by FoundryCo on each Funding Date.

“*Memorandum and Articles of Association*” means the Memorandum and Articles of Association of FoundryCo filed with the Registrar of Companies in the Cayman Islands.

“*Minimum Debt Funding Level*” is the estimated level of gross third-party debt funding for any Fiscal Year, based on the Minimum Funding Level scenario, as set forth in the Five-Year Capital Plan.

“*Minimum Funding Level*” is the level of equity funding as set forth in the Five-Year Capital Plan for any Fiscal Year during Phase II, which is intended to be sufficient to both (i) continue to meet Discovery’s volume requirements as set forth in the Wafer Supply Agreement, and (ii) continue to build out both Fab 38 in Dresden and Fab 4x in New York to the capacities required to ensure continued availability of one hundred percent (100%) of the Dresden Subsidies and one hundred percent (100%) of the New York Subsidies, *provided, however*, that the cumulative amount of such equity funding shall not exceed \$3.582 billion.

“*New York Subsidies*” means subsidies in the amount and form approved as of the Closing Date and, as set forth in the Five-Year Capital Plan, in the form of grants, incentives and other benefits provided, or to be provided, by the Empire State Development Corporation, the State of New York and the County of Saratoga relating only to building Fab 4x and not any other fabs in New York.

“*Number of Outstanding Preferred Shares*” means, as of any determination date, the aggregate number of outstanding Class A Preferred Shares and Class B Preferred Shares, assuming conversion of all outstanding Class A Convertible Notes into Class A Preferred Shares and the conversion of all outstanding Class B Convertible Notes into Class B Preferred Shares, each in accordance with the terms set forth therein.

“*Original Funding Level*” is the level of original equity funding (excluding any Debt Funding Level) as set forth in the Five-Year Capital Plan for any Fiscal Year through Phase II without giving effect to any Minimum Funding Level or Transition Funding Level, *provided, however*, that the cumulative amount of such equity funding shall not exceed \$5.847 billion.

“*Oyster/FoundryCo Cash Consideration*” has the meaning set forth in the Master Transaction Agreement.

“*Permitted Transferee*” has the meaning set forth in the Shareholders’ Agreement.

“*Person*” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

“*Phase I*” means the period commencing on the date hereof and ending on the last day of the Fiscal Year ending in 2010.

“*Phase II*” means the period commencing on the first day of the Fiscal Year ending in 2011 and ending on the last day of the Fiscal Year ending in 2013.

“*Phase III*” means the period commencing the first day of the Fiscal Year ending in 2014 and ending on the date this Agreement is terminated pursuant to the provisions hereof.

“*Phase III Alternate Funding Level*” is the level of equity funding for any Fiscal Year during Phase III, which shall be sufficient to meet Discovery’s MPU volume requirements for such Fiscal Year as set forth in the Wafer Supply Agreement, and shall include additional funding up to, at Oyster’s election: (i) the level of funding as set forth in the most recently approved Annual Business Plan, or (ii) a level of funding sufficient to continue to build out the next fabs after Fab 4x, as determined by Oyster in its sole discretion.

“*Pro Rata Portion*” means, as of any determination date, the aggregate number of Securities owned as of such date by a Shareholder and its Permitted Transferees divided by the aggregate number of Securities owned as of such date by both Shareholders and their Permitted Transferees, calculated on an as-converted into Class B Ordinary Shares basis, but excluding (i) any Class B Ordinary Shares or Securities, or securities convertible or exchangeable into or exercisable for any Class B Ordinary Shares or Securities, held by any Person other than a Shareholder and its Permitted Transferees; (ii) the Additional Shares with respect to the Class B Preferred Shares and (iii) any accrued and unpaid interest on the Convertible Notes.

“*Reconciliation Event*” has the meaning set forth in the Shareholders’ Agreement.

“*Remaining Discovery Subsidiaries*” has the meaning set forth in the Master Transaction Agreement.

“*Securities*” means any or all of the Class A Preferred Shares, Class B Preferred Shares, Class A Convertible Notes, if any, and Class B Convertible Notes, if any, issued by FoundryCo pursuant to the terms of this Agreement and any securities into which such Securities may be converted, exchanged or exercised.

“*Securities Act*” means the United States Securities Act of 1933, as amended.

“*Shareholders’ Agreement*” means the Shareholders’ Agreement among Oyster, Discovery and FoundryCo, dated as of the date hereof, as may be amended from time to time.

“*Subsidiary*” or “*Subsidiaries*”, with respect to any Person, means any and all corporations, partnerships, limited liability companies, joint ventures, associations and other entities controlled by such Person, directly or indirectly or in which such Person directly or indirectly has at least 50% of the voting power to elect the board of directors or other governing body of such entity, *provided, however*, that solely for purposes of this Agreement neither FoundryCo nor any member of the FoundryCo Group shall be deemed to be a Subsidiary of Discovery following the Closing. The foregoing proviso shall be applicable only to this Agreement and shall not be applicable to, and shall have no relevance with respect to, any other agreement, arrangement, understanding, contract, license or mortgage to which any of Oyster, Discovery or FoundryCo, or any of their respective Affiliates, is or may become a party or the interpretation thereof, unless such proviso is included therein.

“*Transaction Documents*” has the meaning set forth in the Master Transaction Agreement.

“*Transition Funding Level*” is the level of equity funding during the Transition Period, which shall be sufficient to meet Discovery’s MPU volume requirements for such period, such requirements to be based on binding MPU forecasts for such period delivered and agreed to in accordance with the Wafer Supply Agreement.

“*Transition Period*” means a period beginning on the date of notice of Oyster’s election to have FoundryCo enter into the Transition Period pursuant to *Section 8.02(a)(ii)* or *Section 8.03(a)(ii)*, as applicable, and ending on the later of (i) twelve (12) months after such date and (ii) the last day of the Fiscal Year ending in 2013.

“*Wafer Supply Agreement*” has the meaning set forth in the Master Transaction Agreement.

Table of Additional Definitions. The following terms have the meanings set forth in the Sections set forth below:

<u>Definition</u>	<u>Location</u>
“Agreement”	Preamble
“Business Plan Deadlock”	2.01(e)
“Debt Financing”	2.01(b)
“Discovery”	Preamble
“Dispute”	9.10(b)
“Dispute Notice”	9.10(b)
“First Annual Business Plan”	2.01(a)
“First Funding Notice”	3.01(a)
“FoundryCo”	Preamble
“Funding Date”	3.01(a)
“Interim Relief Proceeding”	9.10(c)
“LCIA Rules”	9.10(c)
“Oyster”	Preamble
“Party”	Preamble
“Rollover Amount”	3.01(c)
	(iv)
“Rules”	9.10(c)
“Second Funding Notice”	3.01(e)
“Shareholder”	Preamble

WAFER SUPPLY AGREEMENT

This **WAFER SUPPLY AGREEMENT** (this “**Agreement**”) is made this 2nd day of March, 2009, (the “**Effective Date**”), by and among (i) Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”); (ii) with respect to all of the provisions in this Agreement other than those in Sections 5.5(a), 6.2, 7.1 and 7.3(a) and the related provisions in connection with U.S. sales activities only (though without limiting FoundryCo’s guarantee obligations pursuant to Section 15.7), The Foundry Company, an exempted company incorporated under the laws of the Cayman Islands (“**FoundryCo**”) on behalf of itself and its direct and indirect wholly-owned subsidiaries, including all FoundryCo Sales Entities and FoundryCo Manufacturing Entities, as further set forth herein; and (iii) subject to FoundryCo’s guarantee obligations pursuant to Section 15.7, with respect to Sections 5.5(a), 6.2, 7.1 and 7.3(a) and the related provisions in connection with U.S. sales activities only, AMD Fab Technologies US, Inc., a Delaware corporation and a wholly-owned subsidiary of FoundryCo (“**USOpCo**”).

WHEREAS, AMD has been in the business of designing and manufacturing semiconductor products;

WHEREAS, AMD desires to transfer its business of manufacturing and sorting semiconductor products to FoundryCo pursuant to the Master Transaction Agreement by and among AMD, Advanced Technology Investment Company LLC and West Coast Hitech L.P., dated as of October 6, 2008 (as may be amended from time to time, the “**Master Agreement**”);

WHEREAS, it is the intent of the parties that this Agreement establish a productive, mutually-beneficial relationship among the parties that will mitigate key risks for each party by establishing volume, capacity and pricing commitments by each party pursuant to the terms and conditions set forth herein;

WHEREAS, the parties also desire that this Agreement help establish business processes for the parties to work closely together on planning capacity and supply;

WHEREAS, FoundryCo is a company whose primary purpose is the provision of wafer fabrication foundry services and FoundryCo is willing to provide such services to AMD on the terms and conditions set forth herein, and AMD is willing to engage FoundryCo to provide foundry services to AMD on the terms and conditions set forth herein; and

WHEREAS, all purchases of Products by AMD will be made from FoundryCo Sales Entities, including USOpCo, and all manufacturing of Products for AMD will be performed by FoundryCo Manufacturing Entities;

NOW, THEREFORE, in consideration of the mutual promises of the parties, and of good and valuable consideration, it is agreed by and among the parties as follows:

1. DEFINITIONS

For the purpose of this Agreement the following capitalized terms are defined in this Section 1 and shall have the meaning specified herein. Other terms that are capitalized but not specifically defined below or in this Agreement shall have the meaning set forth in the Master Agreement.

1.1 “*Actual Quarterly GPU Wafers Shipped*” shall mean the actual number of Wafer Outs for GPU Products delivered in a fiscal quarter from the applicable FoundryCo Sales Entities to AMD.

[****] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended. Confidential treatment has been granted with respect to the omitted portions.

1.2 “**Actual Quarterly Total GPU Wafer Demand**” shall mean the actual number of Wafer Outs for GPU Products delivered in a fiscal quarter from all foundry partners to AMD.

1.3 “**Actual Quarterly GPU Wafer Demand Percentage**” is calculated as Actual Quarterly GPU Wafers Shipped divided by Actual Quarterly Total GPU Wafer Demand.

1.4 “**AMD Furnished Property**” shall mean materials or tooling that AMD consigns to the applicable FoundryCo Manufacturing Entities for use by the applicable FoundryCo Manufacturing Entities to process AMD’s Product orders or to perform services on AMD’s behalf, as further set forth in this Agreement, including such materials or tooling (other than Sort Equipment owned by the applicable FoundryCo Manufacturing Entities on the Effective Date pursuant to the Master Agreement) required by the FoundryCo Manufacturing Entities to provide Sort Services pursuant to the terms of this Agreement.

1.5 “**AMD Indemnified Parties**” shall have the meaning set forth in Section 10.2.

1.6 “**AMD MPU Specific Development Wafer Cost**” shall mean the sum of:

(a) During a Period, the number of Development Wafer Starts for MPU Products multiplied by the AMD MPU Specific Direct Material Cost, divided by the sum of the number of Production Wafer Starts for MPU Products and the number of Development Wafer Starts of MPU Products, which, in an equation format, shall be:

$$\frac{\left(\begin{array}{c} \text{Development Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{AMD MPU Specific} \\ \text{Direct Material Cost} \end{array} \right)}{\left(\begin{array}{c} \text{Production Wafer Starts for MPU} \\ \text{Products} \end{array} \right) + \left(\begin{array}{c} \text{Development Wafer Starts for MPU} \\ \text{Products} \end{array} \right)} \quad ; \text{ and}$$

(b) During such Period, (i)(1) the number of Development Wafer Starts for MPU Products multiplied by the Development Factor and then multiplied by (2) the AMD MPU Specific Manufacturing Costs less the AMD MPU Specific Direct Material Cost, divided by (ii) the sum of (1) the number of Production Wafer Starts for MPU Products and (2) the number of Development Wafer Starts for MPU Products multiplied by the Development Factor, which, in an equation format, shall be:

$$\frac{\left(\begin{array}{c} \text{Development Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{Development} \\ \text{Factor} \end{array} \right) \left(\begin{array}{c} \text{AMD MPU Specific Manufacturing Cost} \\ \text{– AMD MPU Specific Direct Material Cost} \end{array} \right)}{\left(\begin{array}{c} \text{Production Wafer Starts} \\ \text{for MPU Products} \end{array} \right) + \left(\begin{array}{c} \text{Development Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{Development} \\ \text{Factor} \end{array} \right)}$$

1.7 “**AMD MPU Specific Direct Material Cost**” shall mean the actual cost of Raw Wafers for MPU Products.

1.8 “**AMD MPU Specific Fixed Cost**” shall mean all AMD MPU Specific [****] actually incurred during a Period, other than the AMD MPU Specific [****]. For the avoidance of doubt and notwithstanding anything to the contrary, AMD MPU Specific Fixed Cost shall include, and AMD shall pay, [****] for the [****] existing on the Effective Date (which shall be [****] in [****] and [****] in [****]) and [****] for the [****] to be put in [****] to [****] AMD MPU Product [****], and agreed to by the parties, pursuant to Sections 2.2 and 5.1 that have not been recouped by the applicable FoundryCo Manufacturing Entities.

[****] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended. Confidential treatment has been granted with respect to the omitted portions.

1.9 “**AMD MPU Specific Inventory Change**” shall mean the amount calculated by subtracting (a) the gross inventory dollars attributable to MPU Products manufactured for AMD at the end of a relevant Period from (b) the gross inventory dollars attributable to MPU Products manufactured for AMD at the beginning of such Period (excluding, in each case, Raw Wafers).

1.10 “**AMD MPU Specific Manufacturing Costs**” shall mean all [****] and [****] costs incurred in the MPU Product wafer manufacturing process (including [****] Services Cost and [****] cost (which shall include [****] on [****] owned by the FoundryCo Manufacturing Entities on the Effective Date), and whether or not such wafers are [****] and whether or not such wafers are [****] or are in [****]) and which would properly be included according to industry and accounting standards in the cost of a [****], [****] or a [****]. AMD MPU Specific Manufacturing Costs shall not include [****], nor shall it include [****] or [****] and [****]. AMD MPU Specific Manufacturing Costs shall be equal to the sum of AMD MPU Specific [****] and AMD MPU Specific [****]. In addition, AMD MPU Specific Manufacturing Costs shall be equal to the sum of AMD MPU Specific [****] and AMD MPU Specific [****].

1.11 “**AMD MPU Specific Other COGS**” shall mean FoundryCo’s allocation of other costs of goods sold related to MPU Products not otherwise specified as AMD MPU Specific [****], as determined in accordance with industry and accounting standards as generally applied by FoundryCo, and which includes as of the Effective Date a portion of the [****] of [****] related [****], a portion of the [****] of the [****] organization (mostly within the sub-organization [****],” which is almost entirely [****]), a portion of the [****] related to [****], as well as a portion of other costs (including certain [****] allocated to COGS) that are incurred in direct support of the [****] in the FoundryCo Manufacturing Entities’ facilities.

1.12 “**AMD MPU Specific Production Wafer Cost**” shall mean the sum of:

(a) During a Period, the number of Production Wafer Starts for MPU Products multiplied by the actual AMD MPU Specific Direct Material Cost, divided by the sum of the number of [Production Wafer Starts for MPU Products and the number of Development Wafer Starts for MPU Products, which, in an equation format, shall be:

$$\frac{\left(\begin{array}{c} \text{Production Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{AMD MPU Specific} \\ \text{Direct Material Cost} \end{array} \right)}{\left(\begin{array}{c} \text{Production Wafer Starts} \\ \text{for MPU Products} \end{array} \right) + \left(\begin{array}{c} \text{Development Wafer Starts} \\ \text{for MPU Products} \end{array} \right)}$$

; and

(b) During such Period, (i)(1) the number of Production Wafer Starts for MPU Products multiplied by (2) the AMD MPU Specific Manufacturing Costs less the AMD MPU Specific Direct Material Cost, divided by (ii) the sum of (1) the number of Production Wafer Starts for MPU Products and (2) the number of Development Wafer Starts for AMD MPU Products multiplied by the Development Factor, which, in an equation format, shall be:

$$\frac{\left(\begin{array}{c} \text{Production Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{AMD MPU Specific Manufacturing Cost} \\ - \text{AMD MPU Specific Direct Material Cost} \end{array} \right)}{\left(\begin{array}{c} \text{Production Wafer Starts} \\ \text{for MPU Products} \end{array} \right) + \left(\begin{array}{c} \text{Development Wafer Starts} \\ \text{for MPU Products} \end{array} \right) \left(\begin{array}{c} \text{Development} \\ \text{Factor} \end{array} \right)}$$

1.13 “**AMD MPU Specific Total COGS**” shall mean the sum of AMD MPU Specific Production Wafer Cost, AMD MPU Specific Other COGS and AMD MPU Specific Inventory Change.

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1.14 **“AMD MPU Specific Variable Cost”** shall mean those AMD MPU Specific Manufacturing Costs actually incurred during a Period, consisting of AMD MPU Specific Direct Materials Cost, and [****] percent ([****]%) of [****].

1.15 **“AMD-Specific Engineering Expense Allocation”** shall mean the actual costs incurred by FoundryCo Manufacturing Entities in developing AMD-Specific Manufacturing Process Technologies.

1.16 **“AMD-Specific License Fee Allocation”** shall mean [****] percent ([****]%) of the aggregate [****] fees incurred by FoundryCo according to the [****] and [****] between [****] and AMD dated as of [****], as may be amended from time to time, for both [****] and [****] process technologies, and [****] percent ([****]%) of any additional licenses required specifically for MPU Products.

1.17 **“AMD-Specific Manufacturing Process Technology”** shall refer to any manufacturing or sorting process technology used at the time of development by any FoundryCo Manufacturing Entity specifically for AMD. For purposes of example only, as of the Effective Date, the [****] is currently considered an AMD-Specific Manufacturing Process Technology. For the avoidance of doubt, [****] process technology, unless specifically designed to manufacture only Products, is not an AMD-Specific Manufacturing Process Technology.

1.18 **“AMD-Specific Process Engineering Wafer Starts”** shall mean the Wafer Starts of AMD-Specific Process Engineering Wafers.

1.19 **“AMD-Specific Process Development Wafers” or “AMD-Specific Process Engineering Wafers”** shall mean Process Engineering Wafers processed by a FoundryCo Manufacturing Entity utilizing an AMD-Specific Manufacturing Process Technology.

1.20 **“AMD-Specific Process Engineering Wafer Cost”** shall mean the portion of AMD MPU Specific Development Wafer Costs incurred to produce AMD-Specific Process Engineering Wafers. It shall be determined based on the ratio of AMD-Specific Process Engineering Wafer Starts] to Development Wafer Starts (for MPU Products).

1.21 **“AMD-Specific Product Qualification Plan”** shall mean the qualification tests and schedules to be agreed upon by the parties under which a Product is Qualified.

1.22 **“AMD-Specific Qualification Plan”** shall mean the qualification tests and schedules to be agreed upon by the parties under which an AMD-Specific Qualified Process is established and tested at the applicable FoundryCo Manufacturing Entity and the MPU Products are manufactured using an AMD-Specific Qualified Process to meet the Specifications.

1.23 **“AMD-Specific Qualified Process”** shall mean the wafer manufacturing processes used at the applicable FoundryCo Manufacturing Entity specifically for production of Wafers for AMD with respect to MPU Products, and any other FoundryCo-proprietary wafer manufacturing process approved by the parties specifically to produce MPU Products on AMD’s behalf.

1.24 **“AMD-Specific R&D Costs”** shall mean the sum of AMD-Specific [****], AMD-Specific [****] and AMD-Specific [****].

1.25 **“[****]”** shall mean the [****] of the applicable FoundryCo Manufacturing Entities’ [****] to [****] the [****] of (a) any [****] within the FoundryCo Manufacturing Entities and (b) any [****] to AMD.

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1.26 **“Binding Forecast”** shall mean AMD’s MPU Product forecast for the first [****] months of any rolling [****] month MPU Product forecast as set forth in Section 5.1 and in accordance with Section 2.2. For the avoidance of doubt, a “Binding Forecast” shall not include any forecast that requires more capacity to manufacture the relevant Products than the capacity that had been agreed upon pursuant to Section 2.2.

1.27 **“Binding Forecast Period”** shall mean the first [****] months of any rolling [****] month MPU Product forecast.

1.28 **“[****]”** shall have the meaning set forth in Section 2.1(b)(i).

1.29 **“[****] Change of Control Transaction”** shall mean a transaction with or among [****] or any of its subsidiaries and any other person (other than FoundryCo) with respect to (a) a merger, consolidation, business combination or similar transaction of [****], (b) any purchase of an equity interest (including by means of a tender or exchange offer) representing an amount equal to or greater than a [****] percent ([****]%) voting or economic interest in [****], or (c) any purchase of assets, securities or ownership interests representing an amount equal to or greater than [****] percent ([****]%) of the consolidated assets of [****] and its subsidiaries taken as a whole (including stock of [****]’s subsidiaries); provided that a sale or transfer of assets that are not used to manufacture on behalf of [****] shall not be included in the calculation of assets to determine a [****] Change of Control Transaction.

1.30 **“COGS”** shall mean cost of goods sold in accordance with AMD’s standard practices in effect as of the Effective Date.

1.31 **“Confidential Information”** shall mean all proprietary or nonpublic information disclosed by one party to another party in connection with this Agreement, whether in graphic, oral, written or electronic form, directly or indirectly, which information (a) is marked as “proprietary” or “confidential” or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information.

1.32 **“Development Factor”** shall mean a factor calculated once per fiscal year (within the first fiscal quarter of a year for application to that fiscal year) by FoundryCo to reflect [****] for processing [****] versus a [****] Wafer. The Development Factor is used for the [****] of AMD MPU Specific [****] for a Period into AMD MPU Specific [****] and AMD MPU Specific [****]. The Development Factor consists of a factor for [****] and a factor for [****] that are consolidated into one factor (weighted with the [****] of the respective [****] categories). The development factor for [****] reflects the higher effort due to engineering times before, during and after processing [****], e.g. creation of ERFs, writing reports, R&D-analysis, and split lots. The calculation is based on [****] via [****] for representative ERFs and on processing data of the ERFs in the manufacturing execution system (currently [****]). The development factor for [****] reflects the [****] for [****] versus a [****]. The data is collected and calculated through a software tool. Output of this software tool is per [****] per [****] versus [****] per [****] over [****]. This [****] will be weighted with the running [****] per [****]. As of the Effective Date, the Development Factor is [****].

1.33 **“Development Wafer Starts”** shall mean the combined Wafer Starts of AMD-Specific Process Engineering Wafers and Product Development Wafers.

1.34 **“Die”** shall mean one of the semiconductor devices on a Wafer produced by FoundryCo for AMD using a Qualified Process.

1.35 **“Dispute”** shall have the meaning set forth in Section 15.11(b).

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1.36 **“Dispute Notice”** shall have the meaning set forth in Section 15.11(b).

1.37 **“Embedded Products”** shall mean x86-based semiconductor devices or any other device based on new architecture or architecture adopted in the future, in each case, other than MPU Products that are used in systems that have targeted applications, and which are not designed for use as central processing units for general purpose desktop, notebook, workstation, server computers or game consoles. Embedded Products shall include AMD’s Geode™ product lines.

1.38 **“Engineering Change”** shall mean any change to the process, materials, equipment, technology, location or any other items listed in FoundryCo’s standard specifications for which a change would affect the performance, function or reliability of the Wafers.

1.39 **“Engineering Request Form”** or **“ERF”** shall mean an engineering request form submitted by AMD to FoundryCo to carry out an experiment in a process line.

1.40 **“Engineering Wafers”** shall mean those Wafers required for the Qualification Plan or delivered to AMD for testing pursuant to AMD’s request. Engineering Wafers consist of Process Development Wafers and Product Development Wafers.

1.41 **“Epidemic Failure”** shall mean the occurrence of an average in-field failure rate of [****] percent ([****]%) or more per month of the total units for a particular Product delivered in any rolling [****] month period.

1.42 **“Fab Start up Costs”** shall mean the costs required by FoundryCo to establish new facilities or to convert existing facilities to new wafer sizes (e.g., from 200mm to 300mm) and any other costs which FoundryCo would otherwise include in this category.

1.43 **“Forecasted GPU Wafer Demand”** shall mean a non-binding, rolling [****] month forecast describing the monthly Wafer Outs expected to be placed by AMD on FoundryCo Sales Entities for GPU Products.

1.44 **“Forecasted Total GPU Wafer Demand”** shall mean a non-binding, rolling [****] month forecast describing the total Wafer Outs expected to be placed by AMD on all foundry partners for GPU Products.

1.45 **“Forecasted GPU Wafer Demand Percentage”** is calculated as Forecasted GPU Wafer Demand divided by Forecasted Total GPU Wafer Demand.

1.46 **“FoundryCo Indemnified Parties”** shall have the meaning set forth in Section 10.1.

1.47 **“FoundryCo Manufacturing Entities”** shall mean FoundryCo and any direct or indirect wholly-owned subsidiaries of FoundryCo to which FoundryCo has delegated the responsibility to manufacture Products for AMD in accordance with this Agreement.

1.48 **“FoundryCo Sales Entities”** shall mean USOpCo and any other direct or indirect wholly-owned subsidiaries of FoundryCo to which FoundryCo has delegated the responsibility to process purchase orders from AMD and to offer to sell and sell Products to AMD in accordance with this Agreement.

1.49 **“Fusion Products”** shall mean both (a) MPU Products that incorporate GPU Products and (b) GPU Products that incorporate MPU Products; for purposes hereof, subsection (iv) of the “MPU Products” definition referring to “Fusion Products” shall not apply.

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- 1.50 “**GAC**” shall mean gases, acids and chemicals.
- 1.51 “**G&A Expenses**” shall mean standard general and administrative expenses, as calculated by FoundryCo in accordance with accounting standards as generally applied by FoundryCo.
- 1.52 “**GPU Minimum Percentage**” shall have the meaning set forth in Section 2.1(c)(ii).
- 1.53 “**GPU Product**” shall mean an integrated or discrete graphics processing unit. As an example, as of the Effective Date, GPU Products consist of integrated or discrete graphics processing unit for use in any of the following or similar products: desktop computers, notebook computers, servers, workstations or game consoles.
- 1.54 “**Interim Relief Proceeding**” shall have the meaning set forth in Section 15.11(c).
- 1.55 “**Lead Time**” shall mean the time between the date an order is accepted by a FoundryCo Sales Entity and the date the Wafers are made available for shipment by the FoundryCo Sales Entity.
- 1.56 “**Major Change**” shall mean a change to a manufacturing process that would affect the form, fit, or function of a Product of AMD or that otherwise materially affects a manufacturing process for AMD.
- 1.57 “**Minimum Batch Size**” shall mean the minimum total number of Wafers in a Process Batch for a particular Product.
- 1.58 “**MPU Products**” shall mean any of the following: (i) the x86, x86-64, and IA (Intel Architecture)-64 families of microprocessors, (ii) any existing or new microprocessors based on the x86, x86-64, and IA-64 family architecture, or any new instruction set for a processor described in clause (i) first introduced by AMD, (iii) any microprocessors based on new architecture or an architecture adopted in the future, or (iv) Fusion Products. As used in this definition, a microprocessor shall include a component that can execute computer programs and is the central processing unit controlling an electronic device.
- 1.59 “**Other Future Products**” shall mean any future integrated circuit devices designed by AMD other than GPU Products and MPU Products.
- 1.60 “**Partnership Committee**” shall have the meaning set forth in Section 3.2(a).
- 1.61 “**Period**” shall mean a fiscal month or fiscal quarter, as applicable to the specific measurement period in question.
- 1.62 “**Process Batch**” shall mean a group of wafers that are processed together as a group.
- 1.63 “**Process Development Wafers**” or “**Process Engineering Wafers**” shall mean Engineering Wafers produced by a FoundryCo Manufacturing Entity to enable it to design, develop, establish, test, improve and validate FoundryCo Manufacturing Entity manufacturing processes. For avoidance of doubt, Process Development Wafers or Process Engineering Wafers shall not include Engineering Wafers expressly requested by AMD, which shall be counted as Product Development Wafers.
- 1.64 “**Process Node**” shall mean a specific geometry loosely based on minimum line width at which semiconductor integrated circuit devices, and the photomasks or reticles used in the manufacture of those devices, are manufactured (e.g., a 45 nm process node). For avoidance of doubt, Process Nodes shall include half nodes (e.g., 40nm and 28nm process nodes).

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1.65 **“Product”** shall mean an integrated circuit device incorporating AMD’s proprietary designs to be manufactured by the FoundryCo Manufacturing Entities and sold to AMD by the FoundryCo Sales Entities, including Embedded Products, GPU Products, MPU Products and Other Future Products. The Products will be provided to AMD as unprobed Wafers, probed Wafers or bumped Wafers, as specified in the applicable purchase order.

1.66 **“Product Development Wafers”** shall mean Engineering Wafers requested by AMD and produced by the FoundryCo Manufacturing Entities to test, evaluate and validate Product designs, including, but not limited to, design verification and engineering verification.

1.67 **“Product Development Wafer Cost”** shall mean the portion of AMD MPU Specific Development Wafer Cost related to Product Development Wafer Starts, determined as the ratio of Product Development Wafer Starts to Development Wafer Starts (for MPU Products).

1.68 **“Product Development Wafer Starts”** shall mean the Wafer Starts of Product Development Wafers.

1.69 **“Production Wafers”** shall mean the finished silicon wafers for the Products to be manufactured by the FoundryCo Manufacturing Entities in accordance with the applicable Specifications and using the Qualified Processes, and shall include Risk Starts.

1.70 **“Production Wafer Starts”** shall mean Wafer Starts for Production Wafers.

1.71 **“Qualification Plan”** shall mean the qualification tests and schedules to be agreed upon by the parties under which a Qualified Process is established and tested at FoundryCo Manufacturing Entities and relevant Wafers are manufactured using the Qualified Process to meet the Specifications.

1.72 **“Qualification”** or **“Qualified”** shall mean the mutual determination that the relevant Wafers meet the Specifications in accordance with the applicable Qualification Plan for a particular Product.

1.73 **“Qualified Process”** shall mean the wafer manufacturing processes used at FoundryCo for production of relevant Wafers, and any other FoundryCo Manufacturing Entity proprietary wafer manufacturing process approved by the parties to produce relevant Wafers.

1.74 **“Quarterly Business Reviews”** or **“QBRs”** shall mean business reviews held every fiscal quarter by the Partnership Committee or their designees as mutually agreed to by the parties.

1.75 **“Quarterly Technical Reviews”** or **“QTRs”** shall mean technical reviews held every fiscal quarter by the Partnership Committee or their designees as mutually agreed to by the parties.

1.76 **“R & D”** shall mean research and development.

1.77 **“Raw Wafers”** shall mean unprocessed or bare silicon wafers purchased by FoundryCo Manufacturing Entities and used by FoundryCo Manufacturing Entities as a substrate to enable the FoundryCo Manufacturing Entities to fabricate Wafers on behalf of AMD as set forth in this Agreement.

1.78 **“Raw Wafer Cost”** shall mean the actual cost to the FoundryCo Manufacturing Entities of a Raw Wafer.

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1.79 **“Recall”** shall mean a recall, field correction, market withdrawal, stock recovery, or other similar action with respect to any Products delivered under this Agreement and related to manufacturing of such Products (and not related to AMD’s Product designs or Specifications) other than Engineering Wafers.

1.80 **“Relevant Executive Officer”** shall have the meaning set forth in Section 3.2(b).

1.81 **“Representatives”** shall have the meaning set forth in Section 13.1.

1.82 **“Residual Information”** shall mean with respect to Confidential Information, information in non-tangible form which may be incidentally retained in the unaided memory of the receiving party’s personnel having had access to the Confidential Information of the disclosing party, and which such personnel cannot identify as Confidential Information of the disclosing party. Such personnel’s memory is “unaided” if the personnel have not intentionally memorized any Confidential Information of the disclosing party.

1.83 **“Risk Starts”** shall mean Production Wafer Starts for Products that have yet to be accepted by a customer. Process Development Wafers and Product Development Wafers are not Risk Starts.

1.84 **“RFQ”** shall mean request for quotation with respect to the [****] of [****] as specified in Exhibit B.

1.85 **“RMA”** shall mean return material authorization. An RMA process is a process by which Products are identified as defective, returned to a FoundryCo Sales Entity or scrapped, and the applicable FoundryCo Sales Entity or FoundryCo Manufacturing Entity undertakes specified remediation activities and provides refunds or credits, as further specified in Exhibit E.

1.86 **“RMA Threshold”** shall mean a percentage of the Target Yield for each Product, as determined by the Partnership Committee on a Product by Product basis.

1.87 **“Sales and Marketing Expenses”** shall mean standard sales and marketing expenses, as calculated by FoundryCo in accordance with accounting standards as generally applied by FoundryCo.

1.88 **“SOI”** shall mean use of a layered silicon-insulator-silicon substrate in the process of manufacturing Wafers.

1.89 **“Sort Equipment”** shall mean equipment owned as of the Effective Date by FoundryCo to perform Sort Services for MPU Products.

1.90 **“Sort Services”** shall mean the wafer testing and sorting services to be provided by the applicable FoundryCo Manufacturing Entities upon agreement of the parties to determine conformance of the Wafers with the Specifications.

1.91 **“Sort Services Cost”** shall mean all cost incurred in providing Sort Services, including the depreciation on Sort Equipment.

1.92 **“Specifications”** shall mean the AMD Product specifications agreed upon by the parties on a Product by Product basis, initially consistent with AMD’s current specifications for existing Products currently being manufactured by AMD as of the Effective Date.

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1.93 **“Target Yield”** shall mean the anticipated Yield for each Product determined on a fiscal quarter basis by the parties as set forth in Section 3.7.

1.94 **“[****]”** shall mean [****].

1.95 **“Transition Period”** shall have the meaning set forth in Section 12.3.

1.96 **“Transition Services Agreement”** shall mean the Transition Services Agreement between AMD and FoundryCo dated of even date herewith.

1.97 **“[****]”** shall mean [****].

1.98 **“Wafers”** shall mean Engineering Wafers, Production Wafers, or both, as applicable.

1.99 **“Wafer Outs”** shall mean completed Wafers processed for delivery to AMD.

1.100 **“Wafer Price”** shall mean the price of Wafers quoted by FoundryCo Sales Entities to AMD on a Product by Product basis and thereafter set forth on a purchase order from AMD to the FoundryCo Sales Entities.

1.101 **“Wafer Starts”** shall mean Wafers that have started the manufacturing process.

1.102 **“Warranty Period”** shall mean the time following delivery of a Product when the performance warranty set forth in Section 9.1 is available for such Product. This Warranty Period shall be reviewed and approved by the Partnership Committee on a Product by Product basis, but in the absence of a specific Warranty Period approved by the Partnership Committee, the default Warranty Period for a Product will be [****] months.

1.103 **“Yield”** shall mean the actual percentage of Die on a Wafer that conform to the Specifications as measured at Wafer sort.

1.104 **“Yield Loss”** shall mean the percentage of Die on a Wafer that do not conform with the Specifications as measured at Wafer sort.

2. PURCHASE AND CAPACITY COMMITMENTS

2.1 Purchase Commitments.

(a) MPU Products. During the term of this Agreement and subject to Section 2.1(b), AMD agrees to purchase all of AMD's and the Remaining Discovery Subsidiaries' MPU Product requirements from FoundryCo Sales Entities in accordance with the terms and conditions of this Agreement, provided that if FoundryCo is not in compliance with its obligations to provide the agreed to capacity or to provide all of the MPU Products pursuant to the Binding Forecasts and applicable purchase orders in a timely manner, within the Yield requirements, on Qualified Processes and in accordance with the Specifications, then the parties agree to meet, discuss and implement a mutually acceptable corrective action plan to address such non-compliance as well as a mutually acceptable plan to allow FoundryCo to provide the agreed to capacity and to provide all of the MPU Products pursuant to the Binding Forecasts and applicable purchase orders in a timely manner, within the Yield requirements, on Qualified Processes and in accordance with the Specifications going forward. Notwithstanding the foregoing, in the event that AMD acquires a business from a third party that either manufactures or has manufactured MPU Products, then AMD shall have a commercially reasonable period of time to transition

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manufacture of such MPU Products to FoundryCo; provided that such period of time to transition shall not exceed two (2) years from the date of such acquisition, unless consented to by FoundryCo (which consent shall not be unreasonably withheld).

(b) Second Sourcing.

i. Notwithstanding Section 2.1(a), AMD may source up to [****] percent ([****]%) of AMD's and the Remaining Discovery Subsidiaries' quarterly MPU Product Wafer requirements with [****] at Process Nodes of [****] nm or greater, until [****] establishes a fabrication facility at an [****] outside [****] with Qualified Processes to manufacture the applicable MPU Products for AMD.

ii. If at any time while AMD may purchase the applicable MPU Products from [****], FoundryCo cannot deliver in a timely manner Qualified Products produced on Qualified Processes that meet the Specifications in accordance with Binding Forecasts, the Partnership Committee shall promptly address the situation, including conducting a prompt review process and implementing a corrective action plan. If, however, such failure to so deliver such Products is causing AMD to fail to meet its material commitments to its customers, and AMD as a result needs to purchase greater MPU Product volumes from [****] than otherwise set forth above, AMD may increase its purchases at [****] for the affected MPU Products above the [****] percent ([****]%) maximum to meet such customer requirements. AMD may thereafter continue to purchase MPU Products over the [****] percent ([****]%) maximum until such time as FoundryCo demonstrates, as mutually agreed upon, that FoundryCo can meet the relevant Specifications and Yields for such MPU Product in a manner reasonably comparable or better than those of [****], as well as meet the applicable supply commitments set forth in this Agreement or as actually required by AMD.

iii. Upon request from AMD and [****], FoundryCo agrees to use commercially reasonable efforts to provide technical assistance to [****] with respect to an agreed upon plan to enable [****]'s efforts to manufacture the applicable MPU Products, including, subject to any applicable third-party sublicensing and disclosure restrictions, granting access and rights to necessary process technology, provided that [****] agrees to use such assistance solely to manufacture applicable MPU Products for AMD and to enter into a confidentiality agreement reasonably satisfactory to FoundryCo. AMD agrees to bear the reasonable expenses approved in advance by AMD and actually incurred by FoundryCo to provide such assistance.

iv. Notwithstanding any of the foregoing, upon the occurrence of [****] Change of Control Transaction, AMD shall not be permitted thereafter to engage [****] as a second source manufacturer of any MPU Products, subject to a reasonable wind-down period to move the production of the applicable MPU Products to Qualified Processes at the FoundryCo Manufacturing Entities without materially affecting AMD's supply obligations to its customers. FoundryCo agrees, in good faith, to work with AMD to resolve any issues related to AMD's ongoing customer relationship as a result of AMD's inability to engage [****] as a second source manufacturer. Notwithstanding the foregoing and except for the reasonable transition period contemplated in the final sentence of Section 2.1(a), to the extent the relevant MPU Products were being made by [****] or [****] at the time AMD acquired the applicable business pursuant to the final sentence of Section 2.1(a), AMD agrees not to second source any MPU Products from [****] or [****] or any company controlled by [****] or [****].

(c) GPU Products.

i. AMD commits to, and the parties agree to work together, to establish FoundryCo's ability to manufacture GPU Products via a high volume bulk 32 nm process with Specifications to be agreed upon in advance by the parties in writing.

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ii. At such time as FoundryCo has established a 32 nm Qualified Process, AMD agrees, subject to this Section 2.1(c), that it will purchase from FoundryCo Sales Entities at least [****] percent ([****]%) of AMD's and the Remaining Discovery Subsidiaries' monthly Wafer requirements for the GPU Products at all Process Nodes, as further detailed in Exhibit C, ramping up linearly over a five (5) year period beginning with the fiscal month in which the initial [****] percent ([****]%) GPU Product volume sourcing commitment has been met, to at least [****] percent ([****]%) of AMD's Wafer requirements of its GPU Products (such minimum percentage, the "**GPU Minimum Percentage**"). If for an applicable quarter it is determined that AMD has not placed the GPU Minimum Percentage of AMD's and the Remaining Discovery Subsidiaries' GPU Products for manufacture by FoundryCo as set forth herein, the parties agree to meet, discuss and implement a mutually acceptable corrective action plan to address such non-compliance and to enable FoundryCo to manufacture higher volumes of the GPU Products in future.

iii. For each GPU Product (including the first-tape out of such GPU Product), FoundryCo shall have a [****] in accordance with the process set forth in Exhibit B to manufacture such GPU Product. For the avoidance of doubt, the parties agree that FoundryCo shall have such [****] in accordance with the process set forth in Exhibit B with respect to each GPU Product (whether or not such GPU Product is first GPU Product) at each [****] of [****].

iv. AMD agrees not to sell, transfer or otherwise dispose of all or substantially all of its or the Remaining Discovery Subsidiaries' assets related to GPU Products and related technology (including the equity interests of ATI Technologies ULC or its other subsidiaries that own such assets) to any person (other than to AMD or another Remaining Discovery Subsidiaries) without the consent of FoundryCo, unless the transferee (A) agrees to be bound by the provisions of this Agreement with respect to GPU Products, including FoundryCo's [****] with respect to each GPU Product and the GPU volume commitment set forth in this section 2.1(c), and (B) agrees to purchase, on an annual basis, GPU Products in an amount equal to the GPU Minimum Percentage (determined at the time of such transfer) of AMD's volume of total GPU Products purchased from any foundry during the one (1) year period before such transfer, or if such transfer takes place less than one (1) year from the Effective Date, then the annualized volume for the period from the Effective Date to such transfer date.

(d) Embedded Products. FoundryCo shall continue to manufacture the Embedded Products (other than such Products on [****]nm technology), in accordance with the terms of this Agreement, that AMD is manufacturing as of the Effective Date so long as AMD gives FoundryCo commercially viable volumes, as determined by the Partnership Committee.

(e) Other Future Products. AMD shall have no purchase commitment with respect to any Other Future Products; provided, however, that in the event AMD introduces a tape-out of any Other Future Products, FoundryCo shall have a right of first refusal in accordance with the process set forth in Exhibit B to manufacture such Other Future Product (including the first tape-out of such Other Future Product), subject to Qualification of such Other Future Product at such Process Node.

2.2 Capacity Commitment. The parties agree to work in good faith to review the forecast with respect to MPUs provided by AMD pursuant to Section 5.1, including a review of all incremental capital costs and expenditures expected to be incurred by FoundryCo resulting from any increase in the MPU Product volumes pursuant to the MPU Product forecasts. Upon completion of such review, and to the extent agreed to by the parties regarding the implementation of any additional capacity at FoundryCo Manufacturing Entities, FoundryCo shall allocate such additional capacity sufficient to produce the MPU Product volumes indicated in the relevant Binding Forecasts. The parties agree to act in good faith and in reasonable manner in connection

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with such review and any agreement to allocate such capacity. The parties agree to establish capacity requirements in writing in advance for the manufacture and supply of GPU Products. Notwithstanding the foregoing, FoundryCo will use commercially reasonable efforts to fill any unutilized capacity at FoundryCo Manufacturing Entity facilities that has been allocated to AMD as set forth in this Agreement with production on behalf of third parties, and FoundryCo will offset AMD's obligations to reimburse FoundryCo's fixed costs for such unutilized capacity by the percentage of such unutilized capacity FoundryCo uses to manufacture products for third parties; provided that FoundryCo shall not be required to fill such unutilized capacity that has been allocated to AMD if there exists unutilized capacity at FoundryCo Manufacturing Entity facilities that has not been allocated to AMD.

3. PROCESS IMPLEMENTATION

3.1 **Operational Coordination.** The parties will maintain communication via applicable technical personnel to ensure production and delivery of Products in accordance with the requirements as set forth in this Agreement.

3.2 Partnership Committee.

(a) **Partnership Committee Composition.** The parties hereto shall create a partnership committee (the "**Partnership Committee**") which shall have responsibility for the implementation of this Agreement and for the relationship between FoundryCo and AMD. The Partnership Committee shall be comprised of at least four (4) members, with each of AMD and FoundryCo appointing an equal number of representatives. The Partnership Committee will create or approve general guidelines, policies, and procedures governing the process for determining any specific parameters to be mutually established by the parties (e.g., production volume forecast, customer feedback, Specifications, Target Yields). The Partnership Committee will meet (a) on a quarterly basis, (b) at the request of any party in connection with the resolution of a dispute, and (c) at the reasonable request of any party to address significant issues with respect to this Agreement. The Partnership Committee or its designees will also conduct QBRs and QTRs.

(b) **Dispute Escalation.** If at any point the Partnership Committee members are deadlocked and cannot reach agreement on an issue, the Partnership Committee will notify the relevant executive officer (each, a "**Relevant Executive Officer**") of AMD and FoundryCo of the issue. If the Relevant Executive Officers reasonably determine that the issue warrants further escalation, the Relevant Executive Officers will then discuss the issue in person or by telephone and the parties shall attempt in good faith to resolve the issue for a period of ten (10) Business Days. If the issue is not resolved, as agreed by AMD and FoundryCo, within such ten (10) Business Day period, the issue will be escalated to the chief executive officers of AMD and FoundryCo.

3.3 **New Processes.** The parties will discuss in good faith the details of the introduction of new process technologies, technology roadmaps and new Process Nodes at FoundryCo (subject to, in each case, any applicable constraints to which FoundryCo may be subject pursuant to any confidentiality obligations (whether oral or in writing) to or confidentiality agreements with third parties) for use to manufacture Products, including production capacity, ramp time, dependencies and Wafer Prices. As between FoundryCo and AMD, FoundryCo will bear all expenses for introducing new process technology and new Process Nodes, as further described in Exhibit A, other than AMD-Specific Manufacturing Process Technologies.

3.4 **New Products.** If the parties agree, pursuant to Section 2.1 or otherwise, to add new non-MPU Products for FoundryCo to manufacture on AMD's behalf, AMD and FoundryCo shall agree in writing in advance on the Specifications, the AMD-Specific Product Qualification Plan and the price for such new non-MPU Products.

3.5 **Product Development Wafer Production Run.** Upon the agreement of the parties pursuant to a purchase order, FoundryCo will produce Product Development Wafers, using the applicable FoundryCo

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manufacturing process, and deliver the Product Development Wafers to AMD in accordance with the AMD-Specific Qualification Plan or the Qualification Plan agreed upon by the parties.

3.6 Process Evaluation. AMD shall evaluate the Wafers provided by FoundryCo in accordance with the AMD-Specific Qualification Plan or the Qualification Plan, as applicable. The parties will then assess in accordance with the procedures set forth in Exhibit G whether the applicable manufacturing process fulfills the necessary requirements to manufacture the applicable Products in commercial production quantities in accordance with all applicable Specifications and requirements.

3.7 Yield Calculation Process and Yield Improvements.

(a) Existing Products on Existing Processes. On a fiscal quarter basis within thirty (30) days following the end of the previous fiscal quarter, the parties will meet and review the actual Yields achieved by FoundryCo on a Product by Product basis. The parties will agree in writing on a Product by Product basis for the Target Yields for each Product that will apply to orders placed in the subsequent fiscal quarter. For the first [****] fiscal quarters following the Effective Date, the lot average actual Yields measured over the last completed fiscal quarter prior to the Effective Date for the Products calculated by AMD and provided to FoundryCo shall be used for the Target Yields.

(b) New Products on New Processes. For instances where AMD and FoundryCo have agreed that FoundryCo will manufacture a new Product for AMD and will do so on a new process that has not previously been Qualified to manufacture Products for AMD, the Partnership Committee may set a Target Yield, but Yield and Yield Loss percentages will not be calculated until the parties mutually agree that a sufficient number of Wafers have been produced to generate Target Yield data. The parties will establish in advance mutually-acceptable test criteria for determining conformance of the applicable Die to the applicable Specifications so that the Target Yield data will be determined objectively.

(c) New Products on Existing Processes. For instances where AMD and FoundryCo have agreed that FoundryCo will manufacture a new Product for AMD and will do so on an existing FoundryCo process that has previously been Qualified to manufacture Products for AMD, the Partnership Committee may set a Target Yield, but the Target Yield will not be calculated until the parties mutually agree that a sufficient number of Wafers have been produced to generate Target Yield data, with a presumption that fewer Wafers will need to be produced to calculate such Target Yield data than would be required for new Products on new processes. The parties will establish in advance mutually-acceptable test criteria for determining conformance of the applicable Die to the applicable Specifications so that the Target Yield data will be determined objectively.

(d) Yield Improvements. FoundryCo shall use commercially reasonable efforts to continuously improve Yields and to decrease Yield Losses for all Products. AMD understands and accepts that design and test program changes instigated by AMD (for instance, by moving test from system level test to wafer sort test) may decrease the Wafer sort Yield and reasonably decrease the Target Yield, and agrees to reset the relevant Target Yield and Wafer sort Yield accordingly. FoundryCo shall notify AMD with respect to such decrease in the Wafer sort Yield and decrease in the Target Yield.

3.8 Notice of Engineering Change.

(a) Engineering Change Approval. FoundryCo shall not remove, destroy, cease production on, or make any Major Changes to, any Qualified Process, or the controlled process parameters or sources, types or grade classifications of materials used on any Qualified Process, with respect to any Product, except (i) in accordance with FoundryCo's then-standard, reasonable engineering change notification process as generally applied to its

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customers; (ii) as reviewed and approved by the Partnership Committee on a case-by-case basis; or (iii) in accordance with a mutually agreed-upon process for implementing end-of-life procedures at the request of AMD.

(b) **Engineering Change Requests from AMD.** AMD may request Engineering Changes to a Qualified Process with respect to any Product from time to time. AMD agrees to provide FoundryCo reasonable specifications and rationales for making the process change, as well as propose an effective date for such Engineering Changes. FoundryCo shall respond within a reasonable period of time with a change order advising AMD as to whether it can support such change, and if it can support such change, the impact of such change on Product price, Yield, schedule, materials and work in progress. FoundryCo shall implement the requested Engineering Changes upon written agreement by AMD and FoundryCo of the terms of the change order.

3.9 Information. To the extent that it is able to do so based on disclosure obligations to third parties, and upon a specific request from AMD and the receipt by FoundryCo of each relevant consent from its third party customers, FoundryCo agrees to share with AMD the necessary technical and manufacturing information to ensure successful performance and production ramp of Products. Without limiting the foregoing, FoundryCo agrees to provide AMD the information listed in Exhibit D in accordance with the delivery schedules specified in Exhibit D for the applicable information.

3.10 Technical Assistance to Enable FoundryCo to Implement New Processes and New Process Nodes. The parties acknowledge and agree that it is in the best interest of each party that FoundryCo design and implement new processes and new Process Nodes to enable FoundryCo to manufacture Products on behalf of AMD and to obtain additional customers for its services. Therefore, AMD agrees to use reasonable efforts to provide FoundryCo information and assistance to enable FoundryCo to implement manufacturing processes at Process Nodes that are equivalent to or better than similar manufacturing processes at the same or higher Process Nodes in the marketplace. This information sharing between AMD and FoundryCo will be conducted through the Quarterly Technical Reviews and Quarterly Business Reviews or as otherwise agreed by the parties.

4. PRODUCTION

4.1 General. Upon the successful completion of Qualification, the FoundryCo Manufacturing Entities will manufacture the Products, utilizing the applicable Qualified Processes, for AMD in accordance with the terms and conditions of this Agreement.

4.2 Sort Services and Sort Equipment.

(a) **Sort Services.** As part of the Wafer supply services performed by FoundryCo for AMD under this Agreement, FoundryCo agrees to provide the Sort Services on a Product by Product basis as requested by AMD. Unless otherwise agreed to by the parties, AMD shall consign to the FoundryCo Manufacturing Entities all equipment and tooling (other than the Sort Equipment described below in Section 4.2(b), but including any upgrade to then existing equipment and tooling) necessary for the FoundryCo Manufacturing Entities to provide Sort Services, and such equipment and tooling shall be considered AMD Furnished Property subject to Section 4.3 below.

(b) **Sort Equipment.** The Sort Equipment will be owned by FoundryCo pursuant to the Master Agreement. The parties will meet and discuss in good faith with respect to any proposal from FoundryCo or AMD to modify or dispose of any of the Sort Equipment. In the event any or all of the Sort Equipment is no longer useable for providing Sort Services for MPU Products or for products of FoundryCo's other customers due to AMD changes in its test platforms or otherwise, FoundryCo may dispose of such Sort Equipment in any reasonable manner and AMD agrees to reimburse FoundryCo for the difference between (i) the sum of

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(A) [****] percent ([****]%) of the [****] of the disposed Sort Equipment, (B) FoundryCo's reasonable costs to dispose of the Sort Equipment, (C) all [****] and [****] (and any interest related to such [****] and [****]) required to be [****] as a result of such disposition, and (D) incremental taxes incurred by FoundryCo on such disposition, and (ii) the proceeds from the sale of Sort Equipment actually received by FoundryCo. Notwithstanding the foregoing, if the proceeds resulting from the sale of such Sort Equipment, less the costs to be reimbursed by AMD as set forth above, including the costs of [****] or [****], results in a net profit from such disposal of the Sort Equipment, then FoundryCo agrees to reimburse AMD the net profit resulting from such disposal of the Sort Equipment.

4.3 AMD Furnished Property. AMD may provide FoundryCo AMD Furnished Property from time to time to enable FoundryCo to provide the services specified under this Agreement. All such AMD Furnished Property shall be itemized and agreed upon in writing by the parties from time to time. All equipment and tooling included in the AMD Furnished Property shall be installed at the locations agreed upon in writing in advance and shall not be serviced without the prior written consent of AMD on a case-by-case basis, except that AMD's prior written consent shall not be required if the AMD Furnished Property is serviced by appropriate FoundryCo Manufacturing Entity personnel, by the manufacturer of the AMD Furnished Property, or by an AMD pre-approved vendor. AMD shall bear all reasonable maintenance and other operational costs for all equipment consigned by AMD as part of the AMD Furnished Property. The parties will agree from time to time regarding the nature, quantity and location for all AMD Furnished Property and FoundryCo shall be responsible for the proper storage of the AMD Furnished Property, at AMD's reasonable expense, and for FoundryCo's use of the AMD Furnished Property, ordinary wear and tear excepted. Upon completion of use, or upon termination of this Agreement, FoundryCo shall return such AMD Furnished Property to AMD at AMD's reasonable expense in accordance with AMD's reasonable packing and shipment instructions.

4.4 AMD Activities at FoundryCo Facilities. It is anticipated by the parties that AMD may undertake activities as needed at FoundryCo Manufacturing Entity facilities (i) to work with FoundryCo Manufacturing Entities to enhance and to improve engineering and quality initiatives with respect to the manufacture of Products for AMD and (ii) to verify maintenance of the AMD-Specific Qualified Processes and the manufacturing of the Products for AMD in accordance with the Specifications. AMD agrees to comply with all applicable safety, security and environmental policies and procedures implemented by FoundryCo at such facilities. In addition, AMD will comply with all confidentiality procedures that separate AMD activities at FoundryCo facilities from other activities related to other FoundryCo customers. FoundryCo agrees to implement reasonable safety, security and environmental procedures at all of its facilities, including reasonable security procedures to protect the confidentiality of AMD's technical information and AMD's personnel for AMD-Specific Manufacturing Process Technology and AMD's Confidential Information.

4.5 Provision of Reticles. The parties will obtain and manage the reticles for the Products as further specified in Section 5.9 and Exhibit H.

4.6 Quick Turn Module Assembly Line Services. As part of the Wafer supply services performed by FoundryCo for AMD under this Agreement, FoundryCo agrees to provide quick turn module assembly line services on a Product by Product basis as reasonably requested by AMD.

4.7 Treatment of Gain on Sale of Specific FoundryCo Equipment. When FoundryCo delivers certain specific [****] equipment that was sold to [****] prior to the Effective Date and recognizes the gain on the sale of such equipment, to the extent such gain reduces manufacturing costs, the gain shall be reversed in calculating AMD MPU Specific Total COGS or AMD MPU Specific Manufacturing Costs for the Period in which such gain was recognized by FoundryCo. For the avoidance of doubt, AMD MPU Specific Total COGS or AMD Specific Manufacturing Costs shall not be reduced in that Period as a result of such gain.

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5. ORDER AND SHIPMENT

5.1 **MPU Product Forecasts.** Beginning on the Effective Date, AMD shall provide FoundryCo, in writing on a monthly basis a non-binding, rolling [****] month forecast of its monthly volume requirements for MPU Products on a Product by Product basis, identified by specific technology and Process Node for the MPU Products listed. Notwithstanding the foregoing, upon the agreement of the parties with respect to any additional capacity requirements as specified in Section 2.2, the forecasts for capacity requirements for MPU Products shall be binding on each party regarding the Binding Forecast Period. AMD shall be required to reimburse FoundryCo for all AMD MPU Specific [****], as part of the MPU Product pricing calculation in Exhibit A, [****] of the [****] of [****] actually [****] during any relevant Period. Notwithstanding anything to the contrary, the parties agree that the binding capacity for the first [****] years after the Effective Date shall be [****] percent ([****]%) of the capacity at [****] in [****] plus [****] in [****] and any [****] at the request of AMD to manufacture MPU Products during such [****] years per mutual written agreement by the parties.

(a) In the event that during the Binding Forecast Period AMD requests additional capacity and FoundryCo provides such capacity, AMD shall also [****] FoundryCo for the AMD MPU Specific [****], as part of the MPU pricing calculation in Exhibit A, for such additional capacity.

(b) FoundryCo shall, upon receipt of the relevant [****] month rolling forecast, provide AMD, on a quarterly basis, with a non-binding forecast of the AMD MPU Specific [****], AMD MPU Specific [****], AMD-Specific [****] and [****] Wafer [****] (for MPU Products) at a reasonable level of detail required to produce and maintain the capacity requirements contained in such forecast.

(c) FoundryCo agrees to make a good faith effort to provide additional capacity to meet AMD requirements in excess of the capacity allocated to AMD pursuant to this Section 5.1 and Section 2.2; provided, however, that FoundryCo shall not be required to reallocate any capacity that has been committed to its other customers.

5.2 **GPU Products.** AMD shall provide FoundryCo, in writing and updated on a monthly basis, a rolling [****] month forecast of its Forecasted GPU Wafer Demand on a Product by Product basis, identified by specific technology and Process Node for the GPU Products listed.

5.3 **Embedded Products.** AMD shall provide FoundryCo, in writing and updated on a monthly basis, a non-binding, rolling [****] month forecast of its monthly volume requirements for Wafers for Embedded Products on a Product by Product basis, identified by specific technology and Process Node for the Embedded Products listed.

5.4 Cost Allocation Principles.

(a) The cost allocations set forth in Exhibit A are based on the assumption that in the early years of this Agreement following the Effective Date, AMD will likely be the primary customer of FoundryCo, and that it will take time for FoundryCo to establish additional customers to fill capacity at its facilities not used to manufacture Products on behalf of AMD. However, subject to Section 2.2, FoundryCo agrees (i) to make a good faith effort to fill any capacity at its facilities allocated to AMD that is not required to meet FoundryCo's supply commitments under this Agreement by providing foundry services to additional customers and (ii) to offset AMD's obligations to [****] FoundryCo's [****] for such capacity by the [****] of such capacity FoundryCo uses to manufacture products for third party customers.

(b) In addition, subject to Section 2.2, if AMD notifies FoundryCo in writing that despite the binding MPU Product forecast AMD issued pursuant to Section 5.1 above, AMD's actual requirements for MPU Product

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production will be less than initially forecasted for the applicable Binding Forecast Period, FoundryCo agrees to use commercially reasonable efforts to find customers to fill the unneeded capacity and to the extent that FoundryCo does engage alternative customers to fill such capacity no longer needed by AMD, then FoundryCo agrees not to charge AMD for the forecasted, but no longer necessary, capacity for which FoundryCo has found alternative purchasers, provided that the price paid by such alternative purchasers is equal to or greater than the purchase price for the MPU Products to have been manufactured for AMD pursuant to the applicable forecast.

(c) The parties agree to use commercially reasonable efforts to work together to reduce fixed costs and Product production costs, including by improving Yields.

5.5 Purchase Orders.

(a) AMD will purchase Products from FoundryCo Sales Entities pursuant to valid purchase orders referencing this Agreement that specify the purchase order number, type and quantity of Products ordered, the applicable price for such Products, the place(s) of delivery, and required delivery date(s). Purchase orders may take the form of electronic submissions in a mutually-acceptable format (including submissions currently referred to by AMD as “B+B+B files”) so long as they contain the same information specified above for purchase orders, even if such submissions may not be referred to specifically as “purchase orders” when transmitted. The applicable FoundryCo Sales Entity shall provide written order acknowledgements by confirmed facsimile, electronic transmission, or other mutually-agreed means as soon as reasonably practicable; provided that such purchase orders shall not be binding until accepted in writing by the applicable FoundryCo Sales Entity. Notwithstanding the foregoing, no FoundryCo Sales Entity may reject an MPU Product purchase order submitted in accordance with Binding Forecasts and Lead Times, and will not unreasonably delay purchase order acknowledgments or unreasonably reject purchase orders submitted in accordance with applicable forecasts and Lead Times for all other Products. In the event of any discrepancy between any pre-printed terms on a purchase order or sales acknowledgment form or notice and the terms of this Agreement, this Agreement shall prevail and any different or additional terms shall be deemed rejected.

(b) Minimum Batch Sizes for Production Wafers shall be determined by FoundryCo on a commercially reasonable basis. Lead Times will be determined by the parties on a Product-by-Product basis. Lead Times shall take into account manufacturing process cycle times, capacity commitment times, materials ordering times, and the like.

5.6 Acceleration. It is anticipated that from time to time there may be instances where an accelerated lead and cycle time is required to serve the needs of AMD. AMD shall have the right to request change orders to existing purchase orders to accelerate production and delivery of specified Products by providing written notice to FoundryCo prior to the delivery of the Products impacted by such change order and FoundryCo shall use commercially reasonable efforts to meet such request; provided that, unless otherwise agreed to by the parties, such lot acceleration shall be limited to [****] percent ([****]%) of AMD’s [****] at [****].

5.7 Cancellations. Subject to AMD’s purchase volume commitments set forth in this Agreement, including the MPU Product purchase requirements set forth in Section 5.1, AMD may cancel any purchase order or portion thereof for Products, without charge, upon [****] days advance written notice to FoundryCo prior to the applicable Wafer Start date. If AMD provides notice of cancellation on or after the applicable Wafer Start date for a Product order, then AMD agrees to pay FoundryCo all verified, reasonable out-of-pocket costs, per a mutually-agreed scrap calculation as further described in Exhibit F, for raw materials and work in process incurred by FoundryCo for the ordered Products under the cancelled purchase order, provided that such raw materials and work in process may not be reasonably used by FoundryCo in fulfilling subsequent purchase orders.

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5.8 **Lot Splits and Lot Holds.** The parties agree to work in good faith with respect to any lot splits and lot holds requested by AMD; provided that, unless otherwise agreed to by the parties, no lot hold may extend for a period exceeding [****] days and the total number of Wafers on hold cannot exceed [****] percent ([****]%) of total work in process for AMD.

5.9 **Reticle Holds.** FoundryCo agrees to retain reticles for Products for at least [****] months following the last applicable Product delivery for the applicable reticle. At the end of such [****] month period, upon agreement by the parties, FoundryCo may return such reticles to AMD at AMD's expense if no applicable Product has been forecasted by AMD.

5.10 **Product End of Life Procedures.** If AMD decides that it will no longer offer for sale and sell a particular Product, AMD will give FoundryCo reasonable prior written notice, and the parties will mutually agree upon and implement an end of life process for the applicable Products, including any Wafers specific to that Product that may still be on hold in accordance with Section 5.8 above. As part of such discussions, the parties will determine the disposition of any reticles specific to that Product.

6. DELIVERY

6.1 **Packaging.** The FoundryCo Manufacturing Entities will package the Products for shipment to AMD in accordance with the applicable industry standard specifications, unless otherwise agreed to by the parties.

6.2 **Delivery and Risk of Loss.** Unless otherwise agreed to by the applicable FoundryCo Sales Entity and AMD, the Products will be delivered EXW the applicable FoundryCo Manufacturing Entity (Incoterms 2000). Title to Products will pass from the applicable FoundryCo Sales Entity to AMD upon receipt of the Products by AMD or its carrier at the FoundryCo Manufacturing Entity shipping dock, unless the applicable FoundryCo Sales Entity and AMD agree to another location. At AMD's request, the applicable FoundryCo Sales Entity will arrange for transportation in accordance with standard industry practice, and AMD shall pay for the transportation of the Products.

7. PRICING, R&D CHARGES AND PAYMENT

7.1 **Pricing.** The following pricing terms shall apply to all FoundryCo Sales Entities, including USOpCo, and USOpCo and any other FoundryCo Sales Entity shall be bound by the cost determinations set forth in this Agreement.

(a) **MPU Product Pricing.** The methodology for calculating the pricing for MPU Products is set forth in Exhibit A attached hereto. The same pricing and pricing methodology shall apply to Fusion Products, if and when such Fusion Products are developed by AMD.

i. MPU Product pricing for the first [****] after the Effective Date shall be the amount as determined under Section 1 of Exhibit A. Such amounts shall be determined based on FoundryCo's capacity in place to manufacture MPU Products for such [****], which shall be [****] percent ([****]%) of the capacity at [****] in [****] plus [****] in [****] and any [****] added at the request of AMD to [****] during such [****] period per mutual written agreement of the parties.

ii. MPU Product pricing for FoundryCo's fiscal years subsequent to such [****] period shall be the amount determined under Section 1 of Exhibit A and based on the FoundryCo manufacturing capacity allocated to AMD pursuant to Sections 2.2 and 5.1. If FoundryCo decides, in accordance with Exhibit D to the Shareholders' Agreement, to [****] a [****] or [****] after the Effective Date in a [****], and the choice of location for such [****] will result in materially increased [****] for the MPU Products, then AMD and FoundryCo shall discuss in good faith [****] measures to make the AMD MPU Specific [****] manufactured at

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such new facilities reasonably consistent with the AMD MPU Specific [****] for the same type of MPU Products manufactured at [****] of FoundryCo Manufacturing Entities; provided that the parties agree that the [****] in Section 1 of Exhibit A on AMD MPU Specific [****] shall not be amended. Notwithstanding the foregoing, AMD acknowledges and agrees that normal, [****] by foundries to implement new processes or new facilities shall not be taken into account in determining whether a material [****] in [****] has occurred.

(b) GPU Product Pricing. At such time as FoundryCo is able to begin manufacturing GPU Products for AMD, the parties will agree on the applicable pricing for such GPU Products; provided, however, that the parties agree that such prices shall be based on competitive market pricing. The price for Engineering Wafers for GPU Products shall be determined by mutual written agreement of the parties on a case-by-case basis.

(c) Embedded Product Pricing. The pricing for Embedded Products shall be based on competitive market pricing. The price for Engineering Wafers for Embedded Products shall be determined by mutual written agreement of the parties on a case-by-case basis.

(d) Other Future Product Pricing. The parties will agree on applicable pricing for any Other Future Products; provided, however, that the parties agree that such prices shall be based on competitive market pricing. The price for Engineering Wafers for Other Future Products shall be determined by mutual written agreement of the parties on a case-by-case basis.

(e) Shipping Costs. AMD shall bear, in addition to the Product pricing agreed upon by the parties, the amount of any freight, insurance, handling and other duties levied on the shipment of Product.

(f) Price Calculation Process for Products other than MPU Products. The parties may from time to time agree on a Product by Product basis to alter the method of calculating the pricing for a Product, including to die-buy purchasing models, and regarding situations where Yields may be materially less than Target Yields (but greater than RMA Thresholds) or materially greater than Target Yields.

7.2 Research and Development Charges.

(a) Charge for AMD-Specific R&D Costs. The charge for AMD-Specific R&D Costs shall be determined pursuant to Section 2 of Exhibit A. Pursuant to Section 5 of Exhibit A, should FoundryCo produce products for other customers using the AMD-Specific Manufacturing Process Technology, FoundryCo shall pay a rebate amount, if any, to AMD as described therein. Such rebate shall in the form of a credit by FoundryCo against the accounts receivable from AMD.

(b) Charge for Process Development Wafers. Charges for Process Development Wafers shall be determined pursuant to Section 3 of Exhibit A.

(c) Charge for Product Development Wafers. The charge for Product Development Wafers shall be determined pursuant to Section 4 of Exhibit A.

(d) [****],[****]and[****]and[****]. Notwithstanding anything to the contrary in this Agreement, FoundryCo shall not charge AMD for its [****], for any [****] and [****], or for any [****], other than as may be provided in the Transition Services Agreement.

7.3 Payment.

(a) The FoundryCo Sales Entities will invoice AMD for all Products (including Product Development Wafers) shipped to AMD in a manner to be mutually agreed by the applicable FoundryCo Sales Entities and

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AMD. Payment shall be made in U.S. Dollars in cash within forty-five (45) days after the invoice date unless otherwise agreed to by the parties.

(b) The prices for MPU Products shall be based on forecasts of the AMD MPU Specific [****] provided by FoundryCo to AMD pursuant to Section 5.1(b). The parties shall true-up at the end of each [****] any difference in such prices based on such forecasts and the actual AMD MPU Specific [****] calculated by FoundryCo at the end of such [****]. If at the end of each fiscal [****] Period, AMD has [****] the [****] to it pursuant to Sections 2.2 and 5.1, FoundryCo shall, as part of a mandatory, [****] true-up process, invoice AMD for the [****] related to such [****]. If, as part of such [****] true-up process, AMD has previously overpaid required amounts, then the amount of overpayment will be deducted from the next payment due from AMD. FoundryCo shall invoice AMD with respect to AMD-Specific [****] at the end of each fiscal [****].

7.4 **Taxes.** 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 FoundryCo as a result of the sale or shipment of the products to AMD or its customers. AMD agrees to pay and otherwise be fully responsible for any such taxes and duties, unless in lieu thereof AMD provides FoundryCo with an exemption certificate acceptable to the relevant governmental authorities.

8. AUDIT

8.1 Audit.

(a) FoundryCo. FoundryCo shall keep records in sufficient detail to enable AMD to determine the correctness of the pricing for MPU Products, and to determine the correctness of the AMD-Specific R&D Costs allocated to AMD, in accordance with Section 7. FoundryCo shall permit said records to be inspected, at AMD's expense, upon reasonable advance notice, during regular business hours by an independent auditor selected by AMD and approved by FoundryCo, which approval shall not be unreasonably withheld. The audit shall only be for the purpose of verifying that the MPU Product prices and the AMD-Specific R&D Cost allocations established in Section 7 have been properly calculated. Inspections conducted under this Section 8.1(a) shall be at AMD's expense, unless a variation or error in FoundryCo's calculations have produced an overcharge of [****] percent ([****]%) or more for the applicable audited period, in which case FoundryCo shall bear the reasonable expenses of such audit. Notwithstanding anything to the contrary in Section 4.4 or this Section 8.1, FoundryCo shall not be obligated to permit AMD to inspect any agreement or terms with other third party customers, including with respect to pricing.

(b) AMD. AMD shall keep records in sufficient detail to enable FoundryCo to determine that AMD has complied with its second sourcing limitations in Section 2.1(b) and its GPU Product volume sourcing commitments in Section 2.1(c). AMD shall permit said records to be inspected, at FoundryCo's expense, upon reasonable advance notice, during regular business hours by an independent auditor selected by FoundryCo and approved by AMD, which approval shall not be unreasonably withheld. The audit shall be for the purpose of verifying that AMD has complied with its second source restrictions in Section 2.1(b) and its GPU Product sourcing commitments in Section 2.1(c). Inspections conducted under this Section 8.1(b) shall be at FoundryCo's expense, unless AMD has a non-compliance variance adverse to FoundryCo of [****] percent ([****]%) or more of (i) the relevant [****] percent ([****]%) second source restriction or (ii) the GPU Minimum Percentage for the applicable audited period, in which case AMD shall bear the reasonable expenses of such audit.

9. LIMITED WARRANTY; WARRANTY DISCLAIMER

9.1 **Limited Warranty.** FoundryCo represents and warrants that the Products delivered hereunder (other than Engineering Wafers) shall meet the applicable Specifications, and shall be free from defects in material and

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workmanship, under normal use and service during the Warranty Period. If, during the Warranty Period, (i) AMD notifies FoundryCo promptly in writing upon discovery of any defect in the applicable Products, including a reasonable description of the alleged defect, or if Yield Losses exceed pre-established limits, (ii) AMD returns samples of such Products to FoundryCo pursuant to the RMA procedures described in Exhibit E, and (iii) FoundryCo determines in good faith that such Product is defective or corroborates the low Yields and that such defect or low Yield was not caused by any accident, abuse, misuse, neglect, improper installation, repair, alteration or some other action by someone other than FoundryCo, improper testing or use contrary to any instructions issued by FoundryCo, or by any other reason not attributable to FoundryCo, then FoundryCo shall undertake the actions specified in Exhibit F. The warranty in this Section 9.1 does not apply to any failure in conformance or defect to the extent arising as a result of AMD's design nor for any other cause not attributable to defective materials or workmanship or failure to meet Specifications on the part of FoundryCo. This paragraph states the exclusive remedy of AMD and FoundryCo's sole and exclusive obligation for a breach of the foregoing warranty. All Engineering Wafers delivered to AMD are delivered "AS IS," without any warranty of any kind.

9.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOUNDRYCO EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS REGARDING THE WAFERS PROVIDED HEREUNDER, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

10. INDEMNIFICATION

10.1 AMD Indemnity. Except as provided for in Section 10.2 below, AMD shall, at its own expense, indemnify, defend and hold FoundryCo and its Affiliates, officers, directors, employees, agents, successors and assigns ("**FoundryCo Indemnified Parties**") harmless from and against any liabilities, losses, damages, costs or expenses, including reasonable attorneys' fees, arising from any third party action, claim, suit or proceeding alleging infringement or misappropriation of such third party's patent, trademark, copyright, mask work or other intellectual property rights to the extent arising from (i) FoundryCo Manufacturing Entities making Wafers for AMD in compliance with any AMD's Product designs or Specifications, (ii) the use by FoundryCo Manufacturing Entities to make Products for AMD of the same equipment, material, manufacturing methods and process technologies as those used by AMD or its Subsidiaries at the relevant facilities immediately prior to the Effective Date (provided that such indemnity shall not be applicable for this clause (ii) if such use were not in the same manner as that used by AMD or its Subsidiaries immediately prior to the Effective Date and the applicable claim directly relates to a FoundryCo Manufacturing Entity's not using such equipment, materials, manufacturing methods and process technologies in the same manner for the same Products as those used by AMD or its Subsidiaries immediately prior to the Effective Date); or (iii) the use by FoundryCo Manufacturing Entities of AMD Furnished Property (provided that such indemnity shall not apply with respect to this clause (iii) if the FoundryCo Manufacturing Entities have not used such AMD Furnished Property in accordance with all applicable safety standards and instructions and the applicable claim directly relates to the FoundryCo Manufacturing Entities' not complying with the applicable safety standards and instructions); provided that such indemnities shall not apply to such liabilities, losses, damages, costs or expenses arising from fraud, willful misconduct or gross negligence of FoundryCo Indemnified Parties.

10.2 FoundryCo Indemnity. Except as provided for in Section 10.1, FoundryCo shall, at its own expense, indemnify, defend and hold AMD and its Affiliates, officers, directors, employees, agents, successors and assigns ("**AMD Indemnified Parties**") harmless from and against any liabilities, losses, damages, costs or expenses, including reasonable attorneys' fees, arising from any third party action, claim, suit or proceeding alleging infringement or misappropriation of such third party's patent, trademark, copyright, mask work or other

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intellectual property rights to the extent arising from FoundryCo's method of manufacturing the applicable Products, providing the Sort Services, or from IP blocks (e.g., standard cell libraries), (except as a result of the use by FoundryCo of the same equipment, materials, manufacturing methods and process technologies as those used by AMD or its subsidiaries at the relevant facilities immediately prior to the Effective Date); provided that such indemnity shall not apply to such liabilities, losses, damages, costs or expenses arising from fraud, willful misconduct or gross negligence of AMD Indemnified Parties.

10.3 Notice of Loss; Third Party Claims. The provisions of Section 12.07 of the Master Agreement shall apply in connection with any claim for a loss under this Section 10 as it relates to the indemnified party and the indemnifying party under this Section 10.

11. INTELLECTUAL PROPERTY

11.1 License Grant. Subject to the terms and conditions of this Agreement, AMD grants FoundryCo and the applicable FoundryCo subsidiaries (and any permitted assignees) a non-exclusive, non-transferable, royalty-free right and license to make Products on behalf of AMD and to import and sell such Products to AMD. Subject to the terms and conditions of this Agreement, AMD also grants FoundryCo and the applicable FoundryCo subsidiaries (and any permitted assignees) a non-exclusive, non-transferable, royalty-free right and license to reproduce any documentation provided by AMD hereunder to enable FoundryCo and the applicable FoundryCo subsidiaries (or such permitted assignees) to manufacture the Products on behalf of AMD. All other rights are reserved. AMD confirms that on the Effective Date, AMD has not granted such rights or licenses to AMD's Technology or non-patent intellectual property rights to FoundryCo or any applicable FoundryCo subsidiaries, other than the rights or licenses granted pursuant to this Section 11.1 related to designs or Specifications for the Products and to the AMD Excluded Technology (as defined and listed in the Non-Patent Intellectual Property and Technology Transfer Agreement between FoundryCo and AMD of even date herewith).

11.2 AMD Ownership. Subject to the Non-Patent Intellectual Property and Technology Transfer Agreement between FoundryCo and AMD of even date herewith, as among the parties, AMD will own all right, title and interest in and to the designs and Specifications for the Products, and any other documentation that AMD provides FoundryCo pursuant to this Agreement.

11.3 FoundryCo Ownership. Subject to the Non-Patent Intellectual Property and Technology Transfer Agreement between FoundryCo and AMD of even date herewith, as among the parties, FoundryCo will own all right, title and interest in and to any manufacturing process technology that the FoundryCo Manufacturing Entities use to manufacture the Products hereunder.

11.4 Joint Development of New Technology or Intellectual Property Rights. This Agreement does not address the development and ownership of new technology or intellectual property rights. If the parties choose to work together to develop new process technology, new product technology, the parties will enter into a separate written development agreement to address the terms and conditions of such development work, and the resulting ownership and licenses applicable to any intellectual property rights created as a result.

11.5 Trademarks. None of the parties shall acquire any proprietary right or interest in any trademark of another party by reason of this Agreement.

12. TERM AND TERMINATION

12.1 Term. This Agreement shall commence on the Effective Date and shall continue until the later of ten (10) years or until the [****] is [****] with a [****] and [****] of at least [****] on Qualified Processes per

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month, unless terminated earlier by FoundryCo or AMD pursuant to Section 12.2, but in no event longer than fifteen (15) years after the Effective Date. The parties agree to discuss any renewal of this Agreement at least [****] years prior to the anticipated date of its termination under the first sentence of this Section 12.1.

12.2 Termination of Agreement. This Agreement may be terminated as follows:

(a) The parties may terminate this Agreement upon mutual written consent at any time.

(b) This Agreement may be terminated by FoundryCo or AMD if and when a Business Plan Deadlock (as defined in the FoundryCo Funding Agreement) exists and Advanced Technology Investment Company PJSC elects to enter into the Transition Period (as defined in the FoundryCo Funding Agreement).

12.3 Termination Assistance. Upon expiration or termination of this Agreement, FoundryCo shall use commercially reasonable efforts (i) to cooperate with AMD to assist AMD in the preparation and execution of a plan to transition the supply of Products to another provider; provided that the period of such transition (the “**Transition Period**”) shall not last more than twenty four (24) months from such expiration or termination of this Agreement; and (ii) to fulfill purchase orders submitted by AMD during the Transition Period. The pricing for MPU Products during the Transition Period shall be based on pricing specified in Section 7, and the exclusivity provision in Section 2.1(a) shall be waived from the beginning of the Transition Period in order to enable AMD to find and qualify a new manufacturing partner or to otherwise obtain manufacturing capabilities for MPU Products. For the avoidance of doubt, during the Transition Period (i) AMD shall continue to provide MPU Product forecasts pursuant to Section 5.1 and (ii) AMD shall be required to reimburse FoundryCo for all AMD MPU Specific [****], as part of the MPU Product pricing calculation in Exhibit A, regardless of the amount of MPU Products [****] manufactured during the Transition Period.

12.4 Effect of Termination. Upon expiration of the term, the licenses granted herein shall terminate (other than with respect to any Products manufactured or delivered during the Transition Period), and FoundryCo shall have no further delivery obligations other than continuing to manufacture and deliver all confirmed purchase orders accepted prior to the expiration of the term or during the Transition Period. Termination of this Agreement shall not affect any payment rights accrued as of the date of such termination or during the Transition Period. The termination of this Agreement shall not release any party from any liability which at said date of termination has already accrued to another party.

12.5 Survival. Notwithstanding any termination or expiration of this Agreement, Section 2.2 (with respect to the Transition Period), 5.1 (with respect to the Transition Period), Sections 7 (with respect to the Transition Period), 8 (with respect to the Transition Period), 9, 10, 11.2, 11.3, 11.5, 12.3, 12.4, 12.5, 13 (for the period specified in Section 13.3), 14, and 15 and the applicable Exhibits and definitions shall survive any expiration or termination of this Agreement.

13. CONFIDENTIALITY

13.1 Confidential Information. Each party agrees, and agrees to cause its officers, directors, employees, attorneys, accountants, auditors and agents (collectively, “**Representatives**”), to maintain in confidence the Confidential Information it has received from another party, using the same degree of care to preserve the confidentiality of such Confidential Information that the party to whom such Confidential Information is disclosed would use to preserve the confidentiality of its own information of a similar nature and in no event less than a reasonable degree of care. Except as authorized in writing by the affected party, none of the other parties shall at any time use or disclose or permit to be disclosed any Confidential Information of such party to any

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person, firm, corporation or entity, (a) except as may reasonably be required in connection with the performance of this Agreement by AMD, FoundryCo, USOpCo, or FoundryCo's other permitted designees, as the case may be, and (b) except to the parties' Representatives or Affiliates who are informed by the parties of the confidential nature of the information and are bound to maintain its confidentiality.

13.2 Exceptions. The obligation not to disclose information under Section 13.1 hereof shall not apply to information that, (a) becomes generally available to the public other than as a result of disclosure made by the party desiring to treat such information as non-confidential, (b) was or becomes readily available to the party desiring to treat such information as non-confidential on a non-confidential basis, (c) is or becomes available to the party desiring to treat such information as non-confidential on a non-confidential basis from a source other than its own files or personnel or the other parties, provided that such source is not known by the party desiring to treat such information as non-confidential to be bound by confidentiality agreements with the other parties or by legal, fiduciary or ethical constraints on disclosure of such information, or (d) is required to be disclosed pursuant to a governmental order or decree or other legal requirement (including the requirements of the U.S. Securities and Exchange Commission and the listing rules of any applicable securities exchange), provided that the party required to disclose such information shall give the other parties prompt notice thereof prior to such disclosure and, at the request of the other parties, shall cooperate in all reasonable respects in maintaining the confidentiality of such information, including obtaining a protective order or other similar order. Nothing in this Section 13.2 shall limit in any respect any party's ability to disclose information in connection with the enforcement by such party of its rights under this Agreement; provided that the proviso of clause (d) in the immediately preceding sentence shall apply to the party desiring to disclose such information.

13.3 Duration. The obligations of the parties set forth in this Section 13 with respect to the protection of Confidential Information shall remain in effect until the later of (a) five (5) years after the date of disclosure and (b) two (2) years after the termination of this Agreement.

13.4 Residual Information. Notwithstanding Section 13.1 above, a party receiving Confidential Information shall not be in breach of its confidentiality obligations under Section 13.1 for the inadvertent use of the disclosing party's Residual Information for the receiving party's own business purposes by personnel who no longer has access to any tangible (including machine-readable) embodiments of the applicable Confidential Information of the disclosing party; provided, however, that the foregoing shall not apply to any disclosure of the disclosing party's Confidential Information to any third parties, or any use of such Confidential Information by such third parties. This Section 13.4 shall not be deemed to (a) grant to the receiving party a license under any intellectual property rights (excluding trade secrets) of the disclosing party or (b) authorize any use of the tangible (including machine-readable) embodiments of any Confidential Information of the disclosing party.

14. LIMITATION OF LIABILITY

14.1 Damages Waiver. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. MISCELLANEOUS PROVISIONS

15.1 Compliance with Law. Each party agrees to comply with all applicable state, local and federal laws related to the performance of their obligations under this Agreement. Without limiting the foregoing, each party agrees to comply with any applicable export control laws and regulations of the United States.

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15.2 **No Agency.** It is agreed and understood that neither FoundryCo nor AMD is the agent, representative or partner of the other and neither FoundryCo nor AMD has any authority or power to bind or contract in the name of or to create any liability against the other in any way or for any purpose pursuant to this Agreement.

15.3 **Force Majeure.** Each party shall not be liable for any failure to perform its obligations under this Agreement due to a force majeure event during the term of this Agreement or during the Transition Period, including but not limited to an act of God, flood, earthquake, fire, explosion, interruption or defect in the supply of electricity or water, act of government, war, acts of terror, civil commotion, insurrection, embargo, riots, lockouts, inability to obtain raw materials, or labor disputes. Upon the occurrence of a force majeure event, (a) the affected party shall notify the other parties in writing; and (b) the originally scheduled date shall be deemed extended for a period equal to the time lost by reason of the event except that if such force majeure continues for more than twelve (12) consecutive months without the prospect of cure, AMD (if such affected party is FoundryCo, USOpCo or any FoundryCo permitted designee) or FoundryCo (if such affected party is AMD) shall have the option to terminate this Agreement immediately upon written notice. Upon the cessation of a force majeure event, the affected party shall inform the other parties of the date on which that party's obligations under this Agreement shall be reinstated.

15.4 **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile, by registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 15.4):

(a) if to FoundryCo:

The Foundry Company
c/o Maples Corporate Services Limited
PO Box 309, Ugland House
Grand Cayman KY1-1104, Cayman Islands
Attention: General Counsel

(b) if to USOpCo:

AMD Fab Technologies US, Inc.
One AMD Place
Sunnyvale, CA 94085 USA
Attention: General Counsel

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(c) if to AMD:

Advanced Micro Devices, Inc.
7171 Southwest Parkway
MS B100.T
Austin, Texas 78735
Facsimile: (512) 602-0148
Attention: General Counsel

with a copy to (which shall not constitute notice):

Latham & Watkins LLP
140 Scott Drive
Menlo Park, CA 94025
Facsimile: (650) 463-2600
Attention: Tad J. Freese
Christopher Kaufman

15.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

15.6 Entire Agreement. This Agreement, the Master Agreement and the other Ancillary Agreements constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

15.7 Assignment. This Agreement may not be assigned by operation of law or otherwise without the express written consent of the other parties hereto (which consent may be granted or withheld in the sole discretion of such parties (provided that USOpCo shall have no such consent right)) and any such assignment or attempted assignment without such consent shall be void; provided, however, that FoundryCo may assign or delegate all or some of its rights and obligations under this Agreement to one or more of its subsidiaries, including USOpCo, any other applicable FoundryCo Sales Entity, or any FoundryCo Manufacturing Entity, without any such consent if FoundryCo guarantees the performance of the obligations that have been so assigned or delegated. Subject to the foregoing obligation by FoundryCo to guarantee USOpCo's performance and any other FoundryCo designee's or assignee's performance, the parties acknowledge that FoundryCo will assign or delegate all or some of such rights hereunder, directly or indirectly, to USOpCo with respect to U.S. sales activities pursuant to one or more intercompany agreements to be entered into on the date hereof by FoundryCo (with copies provided to AMD). Without limiting FoundryCo's guarantee of performance pursuant to this Section 15.7, the parties intend that FoundryCo shall assign or delegate all such rights and obligations, directly or indirectly, to USOpCo to the extent the retention of such rights or obligations could give rise to income to FoundryCo that is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of Section 864 of the U.S. Internal Revenue Code of 1986, as amended.

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15.8 **Amendment.** This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, each party hereto or (b) by a waiver in accordance with Section 15.9.

15.9 **Waiver.** Any party may (a) extend the time for the performance of any of the obligations or other acts of any other party or (b) waive compliance with any of the agreements of the other parties or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

15.10 **Third Party Beneficiaries.** Except for the provisions of Section 10 relating to indemnified parties, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and delegates and nothing herein, express or implied, is intended to or shall confer upon any other person, including any union or any employee or former employee of any party, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

15.11 **Governing Law; Dispute Resolution.**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State, without regard to conflict of law principles.

(b) Any dispute arising out of, or in connection with this Agreement or any transactions contemplated hereby or thereby, including any question regarding the existence, validity, interpretation, breach or termination of this Agreement (a "**Dispute**"), shall be referred, upon written notice (a "**Dispute Notice**") given by one party to the other parties, to a senior executive from each party. The senior executives shall seek to resolve the Dispute on an amicable basis within thirty (30) days of the Dispute Notice being received.

(c) Any Dispute not resolved within thirty (30) days of the Dispute Notice being received shall be referred to, and shall be finally and exclusively resolved by, arbitration under the LCIA Rules then in effect, as amended by this Section 15.11, which LCIA Rules are deemed to be incorporated by reference into this Section 15.11. The seat, or legal place, of the arbitration shall be London, England. The language of the arbitration shall be English. The number of arbitrators shall be three. Each party shall nominate one arbitrator and the two arbitrators nominated by the parties shall, within thirty (30) days of the appointment of the second arbitrator, agree upon and nominate a third arbitrator who shall act as Chairman of the Tribunal. If no agreement is reached within thirty (30) days, the LCIA Court shall appoint a third arbitrator to act as Chairman of the Tribunal. The Chairman of the arbitration panel should not be a citizen or a resident of the country of an arbitrator nominated by, or appointed on behalf of, a party nor should the Chairman be a citizen or a resident of the United States of America or the United Arab Emirates. It is hereby expressly agreed that if there is more than one claimant party or more than one respondent party, the claimant parties shall together nominate one arbitrator and the respondent parties shall together nominate one arbitrator. In the event that a sole claimant or the claimant parties, on the one side, or a sole respondent or the respondent parties, on the other side, fails to nominate its/their arbitrator, such arbitrator shall be appointed by the LCIA Court. Any award issued by the arbitrators shall be final and binding upon the parties, and, subject to this Section 15.11, may be entered and enforced in any court of competent jurisdiction by any of the parties. In the event any party subject to such final and binding award desires to have it confirmed by a final order of a court, the only court which may do so shall be a court of

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competent jurisdiction located in London, England; provided however, that nothing in this sentence shall prejudice or prevent a party from enforcing the arbitrators' final and binding award in any court of competent jurisdiction. The parties hereto acknowledge and agree that any breach of the terms of this Agreement could give rise to irreparable harm for which money damages would not be an adequate remedy. Accordingly, the parties agree that, prior to the formation of the Tribunal, the parties have the right to apply exclusively to any court of competent jurisdiction or other judicial authority located in London, England for interim or conservatory measures, including, without limitation, to compel arbitration (an "**Interim Relief Proceeding**"). Furthermore, the parties agree that, after the formation of the Tribunal, the arbitrators shall have the sole and exclusive power to grant temporary, preliminary and permanent relief, including injunctive relief and specific performance, and any then pending Interim Relief Proceeding shall be discontinued without prejudice to the rights of any of the parties thereto. Unless otherwise ordered by the arbitrators pursuant to the terms hereof, the arbitrators' expenses shall be shared equally by the parties. In furtherance of the foregoing, each of the parties hereto irrevocably submits to: (i) the exclusive jurisdiction of the courts of England located in London, England in relation to any Interim Relief Proceeding and; (ii) the non-exclusive jurisdiction of the courts of England located in London, England with respect to the enforcement of any arbitral award rendered in accordance with this Section 15.11; and, with respect to any such suit, action or proceeding, waives any objection that it may have to the courts of England located in London, England on the grounds of inconvenient forum. For the avoidance of doubt, where an arbitral tribunal is appointed under this Agreement, the whole of its award shall be deemed for the purposes of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 to be contemplated by this Agreement, as the case may be (and judgment on any such award may be entered in accordance with the provisions set forth in this Section 15.11).

(d) The parties hereto agree that the process by which any arbitral or other proceedings in London, England are begun may be served on them by being delivered to Law Debenture Corporate Services Limited or their registered offices for the time being and by giving notice in accordance with Section 15.4. If Law Debenture Corporate Services Limited is not or ceases to be effectively appointed to accept service of process in England on any party's behalf, such party shall immediately appoint a further person in England to accept service of process on its behalf. If within fifteen (15) days of notice from a party requiring another party to appoint a person in England to accept service of process on its behalf the other party fails to do so, the party shall be entitled to appoint such a person by written notice to the other party. Nothing in this paragraph shall affect the right of the parties to serve process in any other manner permitted by law.

15.12 No Presumption Against Drafting Party. Each party hereto acknowledges and agrees it has had the opportunity to draft, review and edit the language of this Agreement and that each party hereto has been represented by counsel in connection with the negotiation and execution of this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

15.13 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

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WHEREFORE, the parties have signed this Wafer Supply Agreement effective as of the date first set forth above.

FOUNDRYCO

By: /s/ Bruce McDougall
Name: Bruce McDougall
Title: Chief Financial Officer

AMD

By: /s/ Harry A. Wolin
Name: Harry A. Wolin
Title: SVP, General Counsel & Secretary

USOPCo

By: /s/ Kelly Smales
Name: Kelly Smales
Title: Vice President

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Exhibit List:

Exhibit A – Product Pricing and Cost Allocation

Exhibit B – [****] Process

Exhibit C – Capacity Commitments

Exhibit D – Technical Information

Exhibit E – RMA Process

Exhibit F – Product Scrapping Process

Exhibit G – Manufacturing Process Qualification Procedures

Exhibit H – Reticles/Mask

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EXHIBIT A: PRODUCT PRICING AND COST ALLOCATION

1. Price for Production Wafers. The price for Production Wafers containing MPU Products, regardless of [****] or [****], shall be [****] by AMD MPU Specific [****], as graphically represented in the attachment to this Exhibit A.

2. Charges for AMD-Specific R&D Costs. The charge for AMD-Specific R&D Costs shall be determined as follows:

AMD-Specific R&D Costs [**] by the following [****] (such [****], the “AMD-Specific [****]”):**

- (i) [****] during the first [****] full fiscal months after the Effective Date
- (ii) [****] during the remainder of fiscal year [****]
- (iii) [****] during fiscal year [****]
- (iv) [****] during fiscal year [****]
- (v) [****] during fiscal year [****]
- (vi) [****] during fiscal year [****]

Notwithstanding the foregoing, FoundryCo shall pay all [****], [****], [****] and other R&D costs, unless otherwise agreed by the parties.

3. Charges for Process Development Wafers. The charge for Process Development Wafers shall be determined as follows:

- a. AMD-Specific Process Engineering Wafers containing MPU Products – Pursuant to Section 2 above.
- b. Process Engineering Wafers containing MPU Products (other than AMD-Specific Process Engineering Wafers) – [****].
- c. Process Engineering Wafers (not containing MPU Products) – [****].

4. Price for Product Development Wafers Containing MPU Products. The price for Product Development Wafers containing MPU Products shall be determined as follows:

- a. For the first [****] after the Effective Date: [****] by the [****].
- b. Thereafter: [****] by the [****].

5. Rebate Amounts. Should FoundryCo produce products for other customers using AMD-Specific Manufacturing Process Technologies, FoundryCo shall rebate within a reasonable period of time after the end of the relevant fiscal [****] (starting with the end of [****]) [****] or [****], as the [****] be, of the AMD-Specific R&D Costs from the immediately prior [****], as follows:

[****]
(with respect to any [****])

[****]

(AMD-Specific R&D Costs
with respect to the [****])

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provided that such rebate amount shall not be less than zero with respect to any relevant [****].

The parties expect that any products produced for other customers using AMD-Specific Manufacturing Process Technologies are likely to be based on such technology put in place in prior years. Therefore, the parties agree that any rebate amount paid to AMD as specified above at the [****] of any relevant [****] should be based on the AMD-Specific R&D Costs for the immediately prior [****].

As an example, if (a) AMD-Specific [****] with respect to [****] is [****], (b) the [****] of wafer starts using AMD-Specific Manufacturing Process Technology for AMD (in [****] total wafer starts using AMD-Specific Manufacturing Process Technology for any customer) in [****] is [****] (thus, such [****] of wafer starts for third party customers is [****]) and (c) AMD-Specific R&D Costs for [****] is \$[****], then the rebate amount AMD will receive at the [****] of [****] is ([****]) (\$[****]) or \$[****].

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[**] Product Pricing Chart**

[****]

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EXHIBIT B: [**] PROCESS**

Subject to Section 2.1(c) of this Agreement, AMD will continually provide FoundryCo with the opportunity to respond to GPU Product business opportunities and Other Future Product business opportunities. AMD agrees to invite FoundryCo to participate in the RFQ process for any and all GPU Products and Other Future Products that are being developed within AMD (including the first tape-out of such GPU Product or Other Future Product) that could potentially be manufactured at FoundryCo.

AMD agrees to share present and future product requirements with FoundryCo so that FoundryCo can adequately respond to any RFQ requests coming from AMD. This will be accomplished through Quarterly Technical Reviews and Quarterly Business Reviews.

In the process of awarding business to FoundryCo, AMD will execute a benchmarking process on a product-by-product basis across a number of potential foundry partners (including FoundryCo), covering AMD's technical requirements and design system requirements, along with commercial terms. This benchmarking process can occur at any point in time and may or may not be coincident with the QTR or QBR meetings already occurring. Notwithstanding the foregoing, this benchmarking process shall not be undertaken by AMD with regards to MPU Products.

Subject to Section 2.1(c), in the event that FoundryCo has a [****], as determined by AMD, FoundryCo will be selected as the foundry partner for the development and production of that particular product. In the event that FoundryCo's offer is equivalent to the [****] of another foundry partner, as determined by AMD, FoundryCo will be selected as the foundry partner for the development and production of that particular product.

In the event that after an initial review of the available bids, AMD determines that FoundryCo's [****] is [****], AMD agrees to [****] a [****] with FoundryCo not to exceed [****] and to work collaboratively with FoundryCo during such [****] to attempt to [****] any [****] in the [****] to make the [****]. AMD also agrees that, at the point that AMD engages with FoundryCo on this [****] process, AMD will [****] with [****] to assist [****] in the [****] of their [****]. This [****] may be [****] at AMD's discretion.

After this [****], and subject to Section 2.1(c), if FoundryCo's offer becomes [****], as determined by AMD, AMD will select FoundryCo as the foundry partner for the development and production of that particular product.

In the event that, after this [****], AMD determines that FoundryCo's offer is [****], AMD is free to select another foundry partner as the foundry partner for the development of that particular product and will continue to [****] in [****] to assist FoundryCo in [****] its [****] such that FoundryCo will be more likely to [****] for future AMD [****].

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EXHIBIT C: CAPACITY COMMITMENTS

As described in Section 5 of this Agreement, AMD will provide to FoundryCo, on a monthly basis, a rolling [****] month wafer forecast for MPU Products, a rolling [****] month wafer forecast for GPU Products, and a rolling [****] month forecast for Embedded Products.

For those Products other than MPU Products for which FoundryCo has received, and agreed to, purchase orders from AMD in accordance with Section 5.5, FoundryCo agrees to provide adequate capacity to produce such Products. In addition, FoundryCo agrees to allocate capacity to AMD as described in Section 2.2 of this Agreement.

For Embedded Products, so long as AMD gives FoundryCo commercially viable volume, FoundryCo agrees to maintain the process and equipment set required to manufacture these products for a period of [****] years, or if earlier, until the termination or expiration of this Agreement. The [****] year duration is measured from the qualification date of each specific Embedded Product and any extensions to the [****] year duration will be negotiated in good faith between AMD and FoundryCo.

For GPU Products, the Forecasted GPU Wafer Demand will be calculated on a monthly basis along with the Forecasted Total GPU Wafer Demand. The Forecasted GPU Wafer Demand Percentage will then be reviewed monthly as part of the Partnership Committee meeting as well as reviewed quarterly as part of the Quarterly Business Review. The Forecasted GPU Wafer Demand Percentage will be calculated based on the [****] fiscal months following and including the month that the Forecasted GPU Wafer Demand Percentage is shared with FoundryCo.

Also for GPU Products, the Actual Quarterly GPU Wafers Shipped will be calculated on a quarterly basis, along with the Actual Quarterly Total GPU Wafer Demand. The Actual Quarterly GPU Wafer Demand Percentage will then be reviewed with FoundryCo as part of the Quarterly Business Review. The Actual Quarterly GPU Wafer Demand Percentage will be calculated based on the most recent fiscal quarter prior to the date that the Actual Quarterly GPU Wafer Demand Percentage is shared with FoundryCo.

FoundryCo and AMD jointly agree that if, at any time, either the Forecasted GPU Wafer Demand Percentage or the Actual Quarterly GPU Wafer Demand Percentage falls below the designated levels as described in Section 2.1(c) of this Agreement that both companies will use commercially reasonable efforts to restore the percentage levels to their agreed upon values.

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EXHIBIT D: TECHNICAL INFORMATION

The technical information that AMD may request from FoundryCo may include:

- SPICE models of varying degrees of accuracy, in concert with the state of process development at FoundryCo
- Various EDA tools support files (for example, SDK's and PDK's)
- lot status update reports
- Defect density trends on a per-fab basis for any technologies that are being used by AMD
- WIP status updates on all Products
- Yield status update on all Products
- Wafer sort data
- Inline trend charts for key process modules
- Inline data for specific process modules
- Process failure analysis timetables and reports, as necessary
- Detailed explanation and sharing of all relevant data for significant fab excursions
- Any qualification reports for technology and technology options (process qual, eFuse qual etc...)

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EXHIBIT E: RMA PROCESS

IN GENERAL

Wafers that sort to less than the RMA Threshold may not be scrapped without providing AMD with prior written notice and shall be subject to the procedures set forth in Exhibit F. FoundryCo must, at AMD's option, either credit the amounts paid for the rejected Wafers or replace the defective Wafers as set forth in this Exhibit E or Exhibit F, as applicable.

FoundryCo shall bear all packing, transportation, insurance and other costs incurred in connection with the return and replacement of defective Products. For MPU Products, in no event may FoundryCo charge AMD for replacement Wafers pursuant to this Exhibit E.

For all Wafers whose Yields fall below the RMA Threshold, FoundryCo will provide a credit or will deliver additional Wafers for the affected Products to make up for the shortfall of good Die in a manner to be determined by the Partnership Committee.

EPIDEMIC FAILURE

If an Epidemic Failure occurs, or if FoundryCo or AMD believes it may be necessary to conduct a Recall, the parties will work together to promptly diagnose the problem resulting in an Epidemic Failure or requiring the Recall and establish a corrective action plan to fix the problem with the affected Products and to implement such plan immediately upon the parties' agreement regarding the corrective action plan. If the parties cannot promptly agree upon a corrective action plan, the corrective action plan will be submitted to the Partnership Committee for resolution, or if the Partnership Committee cannot resolve the issue promptly, the parties will escalate the issue for resolution as set forth in Section 3.2 of this Agreement.

In the event of any Recall required due to (i) a manufacturing error, (ii) a breach of this Agreement by FoundryCo, or (iii) negligence or willful misconduct by FoundryCo, FoundryCo shall, subject to the terms of this Agreement: (a) replace the affected Products; or credit amounts previously paid by AMD for the affected Products against future payment obligations of AMD; and (b) reimburse (or at the election of AMD, credit) AMD for the actual costs and expenses incurred by AMD in respect of such recalled Products. Any Recall required because of a negligent act or omission in the additional manufacturing or testing, handling, storage, marketing, promotion, sale or distribution of Products, or as a result of AMD's designs or Specifications, or other breach of this Agreement by AMD shall be at AMD's sole expense.

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EXHIBIT F: PRODUCT SCRAPPING PROCESS

Product scrapping occurs when the manufacturing of a Product is discontinued before the Product has completed all of its processing steps in the facility.

Product scrapping can be requested by FoundryCo only if the manufacturing process has fallen out of Specification and the delivered Products are expected to not meet the desired performance range or Yield. In this occurrence, the Partnership Committee will review the factory performance excursion and AMD will decide if the Product should be scrapped. If the decision is for such Product to be scrapped, at AMD's request, FoundryCo shall replace the affected Products or credit amounts previously paid by AMD for the affected Products against future payment obligations of AMD. In the event that AMD elects to run Products that are known to be out of Specification through the complete fabrication process, these Products will be taken from FoundryCo "AS IS", without any warranty of any kind, and there will be no RMA or profit-sharing variances performed on the purchase order value of those scrapped Products with FoundryCo.

In addition, AMD can request Product scrapping on a case-by-case basis at AMD's discretion. There is no limit to the number of Products that AMD can request to be scrapped. In the event that AMD requests Products to be scrapped, the Products will immediately be put on-hold at FoundryCo and an assessment will be made of where in the process the Products to be scrapped are located. The location in the process is defined by the last numerical masking step that the Products to be scrapped have been subjected to. For instance, if FoundryCo is running a process with 50 masking steps, and AMD requests a lot of Products to be scrapped, and those Products have been determined to have passed masking step 36 but have not yet passed masking step 37, the location in the process is defined as masking step 36.

In the event that AMD requests FoundryCo to scrap Products, AMD will render partial payment for the scrapped Products to FoundryCo relative to where in the process those scrapped Products are located. Using the example above, if a Product is requested by AMD to be scrapped, and the Product is determined to be at masking step 35 out of total of 50 masking steps in the technology, the Raw Wafer Cost was \$200, and the Wafer Price of the Product was \$1000, the scrap cost is calculated as

$[\text{Wafer Price} - \text{Raw Wafer Cost}] \times [\text{percentage of total mask levels fabricated}] + \text{Raw Wafer Cost}$, which would be calculated as $(\$1000 - \$200) \times (35/50) + \$200$ which equals \$760.

It is AMD's decision whether the scrap cost is rendered to FoundryCo as an adjustment of the original purchase order pricing or through a credit note to FoundryCo, or through some other means.

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EXHIBIT G: MANUFACTURING PROCESS QUALIFICATION PROCEDURES

Process Qualification Requirements will be reviewed on a Product-by-Product basis. In the situation where FoundryCo is making a technology offering that is not yet Qualified (for instance, in the early stages of the development of a new technology node), the parties will discuss and agree upon Specifications, the process technology to be employed, and the allowable variations in each of the following evaluation areas during the development and production phases of that technology or a specific Product.

The areas of evaluation will include at least the following:

1. **Die pricing.** The die pricing is calculated from the Wafer Pricing, gross die per (GDPW), and Yield.
2. **Yields.** AMD and FoundryCo will agree on a consistent manner in which Target Yield predictions will be made and may also monitor other parameters (such as defect densities) that are used in the calculation of Yield.
3. **Alignment with 3rd party assembly houses.** The manufacturing process performed by FoundryCo will adhere to the applicable sections of the Specifications that address AMD's need to take the Wafers manufactured by FoundryCo through the die assembly process within industry acceptable quality levels.
4. **Wafer-in-process Monitoring.** For each process, FoundryCo must provide the ability for AMD to continuously monitor the position of Wafer orders as they progress through the FoundryCo manufacturing processes. It is expected that, starting in [****], this ability will be rendered from FoundryCo to AMD through a secure internet portal. Until the internet portal is available, FoundryCo will provide Wafer monitoring reports consistent with Exhibit D at a frequency to be agreed upon by the parties.
5. **Product Life Test Procedures.** AMD will perform product life tests on Products delivered from FoundryCo and will run tests including but not limited to short-term life, long-term life, and HAST (Highly Accelerated Stress Tests). The successful completion of these product life tests will be a gating item for the release of the Product to volume production at FoundryCo.

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EXHIBIT H: RETICLES/MASK

Upon request from AMD, FoundryCo shall provide mask manufacturing services to AMD, including mask data prep, at [****]. As of the Effective Date, FoundryCo shall provide mask data prep services to AMD utilizing hardware and software owned or leased by AMD. The parties agree to secure alternative hardware and software going forward. AMD acknowledges that for each new technology, mask manufacturing research and development and mask data prep may require AMD-specific [****] that will be deemed to be AMD-Specific [****] pursuant to the terms of this Agreement.

Any additional mask sets required specifically (a) for FoundryCo in connection with its technology learning, (b) for process changes introduced by FoundryCo, (c) for replacements by FoundryCo to account for normal wear and tear or (d) to enable FoundryCo to manufacture a particular Product at more than one FoundryCo location, will be at FoundryCo's expense. AMD acknowledges that for the purpose of MPU Product pricing, mask costs may become part of the AMD MPU Specific [****].

Any new masks required by (a) design or Specification changes, (b) design learning desired by AMD, (c) process changes requested by AMD or (d) second sourcing requested by AMD or its customers will be paid by AMD at [****].

AMD and FoundryCo shall mutually agree on mask suppliers for the purpose of meeting all the required technical criteria at reasonable cost and fulfilling the [****] obligations in the Advanced Mask Technology Center. The parties acknowledge that for initial designs at each new technology node or at each process within a technology node, AMD may request, and FoundryCo may reasonably consider, early adopter incentives that may include discounted engineering, prototyping or production mask sets to AMD.

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