
**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
December 15, 2005
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

Advanced Micro Devices, Inc.'s (the "**Company**") formerly majority-owned subsidiary Spansion LLC ("**Spansion LLC**"), formerly 60% owned by the Company and 40% owned by Fujitsu Limited ("**Fujitsu**"), was reorganized into Spansion Inc. (the "**Reorganization**") and on December 15, 2005, Spansion Inc. ("**Spansion**") commenced its underwritten initial public offering (the "**IPO**") of its Class A common stock.

The Reorganization from Spansion LLC into Spansion Inc. occurred through the following steps. First, AMD Investments, Inc., an indirect wholly-owned subsidiary of the Company, contributed its 60 percent ownership interest in Spansion LLC to Spansion Inc. in exchange for 43,529,402 shares of Class A common stock and one share of Class B common stock of Spansion. Fujitsu contributed all of the outstanding capital stock of Fujitsu Microelectronics Holding, Inc. ("**FMH**"), the wholly-owned Fujitsu subsidiary that held Fujitsu's 40 percent ownership interest in Spansion LLC, to Spansion in exchange for one share of Class C common stock and 29,019,601 shares of Class D common stock of Spansion. FMH was then renamed Spansion Technology Inc. ("**STP**") and is a wholly-owned subsidiary of Spansion. As a result, Spansion became the holding company that both directly and indirectly, through STI, owns all of the interests in the operating company subsidiary, Spansion LLC.

In the IPO, Spansion offered 47,264,000 shares of its Class A common stock at a price to the public of \$12.00 per share pursuant to an effective Registration Statement on Form S-1 (File No. 333-124041) filed with the Securities and Exchange Commission. Spansion intends to use the net proceeds, after deducting underwriters' discounts and estimated offering expenses, of approximately \$529 million for working capital, capital expenditures and general corporate purposes.

In connection with the IPO, Fujitsu cancelled \$40 million of the aggregate principal amount outstanding under Spansion LLC's promissory note issued to Fujitsu on June 30, 2003, in exchange for 3,333,333 shares of Spansion's Class D common stock, and the Company cancelled \$60 million of the aggregate principal amount outstanding under Spansion LLC's promissory note issued to the Company on June 30, 2003, in exchange for 5,000,000 shares of Spansion's Class A common stock.

Agreements with Spansion and Fujitsu related to the Reorganization

In connection with the Reorganization, the Company entered into agreements with Spansion and Fujitsu, the terms of which are incorporated herein by reference to the following agreements filed as exhibits hereto:

Stockholders Agreement

The Company entered into a Stockholders Agreement, dated as of December 21, 2005, with the Spansion and Fujitsu, a copy of which is filed as [Exhibit 10.1](#) hereto and the terms of which are incorporated herein by reference. The Stockholders Agreement imposes certain restrictions and obligations on the Company and Fujitsu with respect to their respective shares of Spansion's common stock and provides for certain matters pertaining to Spansion's management and governance.

Pursuant to the Stockholders Agreement, the Company and Fujitsu agree to vote all shares of common stock held by them or their affiliates so as to cause:

- after the conversion of Spansion's Class D common stock into Class A common stock, the election of each Class A director proposed for election by the Nominating Committee of Spansion's Board of Directors;

- for so long as each of the Company and Fujitsu, or their respective affiliates, own at least 15 percent of Spansion's capital stock, the election of Spansion's Chairman of the Board:
 - to be a Class C director, subject to approval of a majority of the Class B directors, until Spansion's 2007 annual stockholders meeting, provided, however, that until that annual stockholder meeting (but not thereafter) the holder of Class C common stock may, at its discretion, select any Class B director, instead of the Class C Director, as the Chairman of the Board;
 - from the Class B directors, subject to approval of the Class C director, from Spansion's 2007 annual stockholders meeting until Spansion's 2010 annual stockholders meeting; and
 - thereafter, from either the Class B directors or the Class C director, with the right to elect rotating every three years.

Spansion agrees to allow the Company or Fujitsu, as the case may be, to have one representative attend Spansion's Board meetings as a non-voting participant for so long as such stockholder owns at least five percent of Spansion's capital stock, on an as converted to common stock basis.

The Stockholders Agreement also provides that neither stockholder can transfer any shares, except to majority-owned subsidiaries, until the earlier of one year from the date of the IPO or the conversion of the Class D common stock into Class A common stock. In addition, neither stockholder can transfer shares in an amount equal to or greater than one percent of the then outstanding common stock to any entity whose principal business competes with Spansion, without first obtaining the consent of the non-transferring stockholder, such consent not to be unreasonably withheld after June 30, 2007.

The Stockholders Agreement also provides that Spansion will agree with the Company and Fujitsu to provide, subject to limitations, various financial and other information relating to Spansion and to assist them in connection with their respective reporting, disclosure and other obligations. Each party has agreed that it will use any information provided under the agreement, unless otherwise made public, only in connection with these obligations and that it will not use the information for any other purpose, including in connection with the sale or purchase of securities issued by Spansion.

Pursuant to the Stockholders Agreement, Spansion has agreed to grant the Company and Fujitsu rights to request Spansion to register all or any part of their shares of Class A common stock under the Securities Act. In addition, subject to limitations, the Company and Fujitsu have rights to request that their shares be included in any registration of Spansion's common stock that Spansion initiates.

With the exception of board observer rights and registration rights, the Stockholders Agreement shall terminate when each of the Company's and Fujitsu's aggregate ownership interest in Spansion falls below ten percent.

Amended and Restated Patent Cross-License Agreements

Spansion was previously party to a patent cross-license agreement with the Company, which was amended and restated as of December 21, 2005. A copy of the Amended and Restated AMD-Spansion Patent Cross-License Agreement is filed as [Exhibit 10.2](#) hereto, the terms of which are incorporated herein by reference.

Under the patent cross-license agreement, Spansion granted to the Company, and the Company granted to Spansion, non-exclusive licenses under certain patents and patent applications to make, have

made, use, sell, offer to sell, lease, import and otherwise dispose of certain semiconductor-related products anywhere in the world. The patents and patent applications that are licensed are those with an effective filing date occurring between June 30, 2003 and the termination of this Amended and Restated AMD-Spansion Patent Cross-License Agreement. This agreement will automatically terminate on the later of June 30, 2013 and the date the Company sells its entire aggregate ownership interest in Spansion. The agreement may be terminated by a party on a change in control of the other party or its semiconductor group. The licenses to patents under license at the time of the termination will survive until the last such patent expires.

In cases where there is a change of control of a party, the other party to the cross-license agreement has the right to terminate the agreement (or to invoke the provisions described in this paragraph if the agreement had been previously terminated) by giving 30 days written notice within 90 days after receiving notice of the change of control. If so terminated, the rights, licenses and immunities granted under the agreement will continue solely with respect to those licensed patents that are entitled to an effective filing date that is on or before, and are licensed as of, the date of such change of control, and will continue until the expiration of the last to expire of such licensed patents. Moreover, with respect to circuit patents, which are patents (other than process patents) covering elements relating to electrical signals to achieve a particular function, the rights, licenses and immunities granted to the party undergoing the change of control are limited solely to:

- (i) each existing and pending product of such party as of the date of change of control;
- (ii) each existing and pending product of the acquiring third party of such party as of the date of change of control that would have been in direct competition with products described in (i) above; and
- (iii) successor products of products described in (i) and (ii) above.

Under the Amended and Restated Patent Cross-License Agreement, Spansion will pay royalties to the Company in the amount of 0.3 percent of net sales of Spansion's products. The royalty rates will be reduced to 0.15 percent at the time Spansion Inc.'s Class D common stock is converted into Class A common stock, and thereafter to zero percent on the second anniversary of the date of such conversion.

In the first nine months of fiscal 2005, Spansion paid royalties of approximately \$11 million to the Company under the previous patent cross-license agreement. In fiscal 2004, Spansion paid royalties in the amounts of \$18 million to the Company under the previous patent cross-license agreement. Spansion will continue to make royalty payments associated with licenses that survive the termination of the agreement.

Amended and Restated AMD-Fujitsu Patent Cross-License Agreement

AMD and Fujitsu executed an Amended and Restated AMD-Fujitsu Patent Cross-License Agreement, dated as of December 21, 2005, a copy of which is filed as Exhibit 10.3 hereto, and the terms of which are incorporated herein by reference. Pursuant to this agreement, each party was granted a non-exclusive license under certain of the other party's respective semiconductor-related patents. This patent cross-license agreement terminates on June 30, 2013, unless earlier terminated upon 30 days notice following a change of control of the other party.

Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement

The Company and Fujitsu have each contributed to Spansion various intellectual property rights pursuant to an Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement, a copy of which is filed as [Exhibit 10.4](#) hereto.

Under this agreement, Spansion became owner, or joint owner with each of Fujitsu and the Company, of certain patents, patent applications, trademarks, and other intellectual property rights and technology. The Company and Fujitsu reserved rights, on a royalty-free basis, to practice the contributed patents and to license these patents to their affiliates and successors-in-interest to their semiconductor groups. The Company and Fujitsu each have the right to use the jointly-owned intellectual property for their own internal purposes and to license such intellectual property to others to the extent consistent with their non-competition obligations to Spansion. Subject to Spansion's confidentiality obligations to third parties, and only for so long as the Company's and Fujitsu's ownership interest remains above a specific minimum level, Spansion has agreed to identify any of its technology to each of the Company and Fujitsu, and to provide copies of and training with respect to that technology to them. In addition, Spansion has granted a non-exclusive, perpetual, irrevocable fully paid and royalty-free license of Spansion's rights in that technology to each of the Company and Fujitsu.

Under this agreement, for as long as the Company continues to hold a majority of Spansion's shares entitled to vote for the election of directors, the Company has agreed to enforce its applicable patents to minimize, to the extent reasonably possible, any of Spansion's losses (whether or not arising out of third-party claims), provided that the details of the manner in which the Company enforces its patents, including which of its patents the Company enforces, is left to the Company's reasonable discretion.

The Company may grant licenses under Spansion's patents, provided that these licenses are of no broader scope than, and are subject to the same terms and conditions that apply to, any license of the Company's patents granted in connection with such license, and the recipient of such license grants to Spansion a license of similar scope under its patents. Until the earlier of the December 21, 2007 or when Spansion's Board of Directors adopts a resolution to convert the Spansion Inc. Class D common stock to Spansion Class A common stock, Fujitsu has agreed to consider conditionally granting Spansion an extension of rights under additional Fujitsu patents in circumstances where Spansion can reasonably assert such patents as a claim or counterclaim to third party infringement claims asserted against Spansion.

Amended and Restated Services Agreements

The Company is party to various amended and restated service agreements with Spansion. A copy of the Amended and Restated AMD Information Technology Services Agreement is filed as [Exhibit 10.5](#) hereto, the terms of which are incorporated herein by reference. A copy of the Amended and Restated AMD General Administrative Services Agreement is filed as [Exhibit 10.6](#) hereto, the terms of which are incorporated herein by reference.

Under its IT Services Agreement and General Administrative Services Agreement, the Company provides, among other things, information technology, facilities, logistics, legal, tax, finance, human resources, and environmental health and safety services to Spansion. For services rendered, the Company is paid fees in an amount equal to cost plus five percent except for services procured by the Company from third parties, which are provided to Spansion at cost.

Unless otherwise earlier terminated, each of these service agreements expires on June 30, 2007, but the applicable parties may extend the term by mutual agreement. Spansion has the ability to terminate individual services under the general services agreement at any time and for any reason upon at least six months' advance notice. With respect to the IT service agreement and general administrative service

agreement, if the Company has failed to comply with applicable service levels for a particular service and has failed to rectify such performance failure, Spansion may terminate such service after 60 days have elapsed since initial notification of the failure to perform the service. Moreover, Spansion may terminate an entire IT service agreement or general services agreement if the Company breaches its material obligations under the respective agreement and does not cure such default within 90 days after receipt of a notice of default from Spansion. Similarly, the Company can terminate the respective agreement for Spansion's failure to make payments when due if Spansion fails to cure such default within 90 days after receipt of notice of default.

For the first nine months of fiscal 2005, the total charges to Spansion for services from the Company were approximately \$77 million. For fiscal 2004, the total charges to Spansion for services from the Company were approximately \$111 million.

The Company and Spansion executed an Amended and Restated Reverse General Administrative Services Agreement, dated as of December 21, 2005, a copy of which is filed as Exhibit 10.7 hereto, and the terms of which are incorporated herein by reference. Pursuant to this agreement, Spansion provides certain research and design services to the Company and Spansion (China) Limited provides manufacturing support services to AMD Technologies (China) Co. Ltd., the Company's microprocessor assembly and test facility in Suzhou, China. For services rendered, Spansion is paid fees generally in an amount equal to cost plus five percent. Unless otherwise earlier terminated, this agreement expires on June 30, 2007, but the parties may extend the term by mutual agreement. The Company has the ability to terminate individual services under this agreements at any time and for any reason upon at least six months' advance notice. In addition, if Spansion has failed to comply with applicable service levels for a particular service and has failed to rectify such performance failure, the Company may terminate such service after 60 days have elapsed since initial notification of the failure to perform the service. Moreover, the Company may terminate the entire agreement if Spansion breaches its material obligations under the agreement and does not cure such default within 90 days after receipt of a notice of default from the Company. Similarly, Spansion can terminate the agreement for the Company's failure to make payments when due if it fails to cure such default within 90 days after receipt of notice of default. For the first nine months of fiscal 2005, the total charge to the Company for these services was approximately \$4 million. For fiscal 2004, the total charge to the Company for these services was approximately \$5 million.

Amended and Restated Non-Competition Agreement

The Company, Fujitsu and Spansion executed an Amended and Restated Non-Competition Agreement, dated as of December 21, 2005, a copy of which is filed as Exhibit 10.8 hereto, and the terms of which are incorporated herein by reference. Pursuant to this agreement, the Company and Fujitsu each agree not to directly or indirectly engage in a business that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing only Flash memory, which is the business in which Spansion primarily competes. This non-competition agreement does not prevent the Company or Fujitsu from manufacturing or selling products that incorporate Flash memory (whether it be Spansion Flash memory or a competitive product). Furthermore, the Company and Fujitsu each agreed that if either of them acquires a business that has a division or other operations that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing only Flash memory, the Company and Fujitsu will provide Spansion with a right of first offer to acquire the competing division or operations. The Company and Fujitsu are required to use their commercially reasonable efforts to divest the competing division or operations if Spansion does not purchase them. The non-competition obligations of the Company will last until the earlier of (i) the dissolution of Spansion, and (ii) two years after the date on which the Company's aggregate ownership interest in Spansion is less than or equal to five percent. The non-competition obligations of Fujitsu will last until the earlier of (i) the dissolution of Spansion, and (ii) two years after the date on which Fujitsu's aggregate ownership interest in Spansion is less than or equal to five percent.

Spansion, the Company and Fujitsu also agreed not to solicit each other's employees. Without Spansion's prior written consent, each of the Company and Fujitsu will not directly or indirectly either for itself or another person, (i) hire any individual employed by Spansion or (ii) solicit or encourage any individual to terminate his or her employment with Spansion. These obligations not to solicit or hire do not apply if (A) Spansion has terminated the employment of such individual or (B) at least two years has elapsed since such individual has voluntarily terminated his or her employment with Spansion. Similarly, without the prior written consent of the Company or Fujitsu, Spansion agreed not to directly or indirectly either for itself or another person, (i) hire any individual employed by the Company or Fujitsu or (ii) solicit or encourage any individual to terminate his or her employment with the Company or Fujitsu. These obligations not to solicit or hire do not apply if (A) the Company or Fujitsu, as applicable, has terminated the employment of such individual or (B) at least two years has elapsed since such individual has voluntarily terminated his or her employment with the Company or Fujitsu, as applicable. These non-solicitation obligations of the Company will last until the earlier of (i) the dissolution of Spansion, and (ii) two years after the date on which the Company's aggregate ownership interest in Spansion is less than or equal to five percent. These non-solicitation obligations of Fujitsu will last until the earlier of (i) the dissolution of Spansion, and (ii) two years after the date on which Fujitsu's aggregate ownership interest in Spansion is less than or equal to five percent. These non-solicitation obligations of Spansion with respect to the Company employees or Fujitsu employees will terminate at the same time as the non-solicitation obligations of the Company or Fujitsu, as applicable, terminate.

Purchase of Spansion LLC 12.75% Senior Subordinated Notes due 2016

On December 21, 2005, Spansion LLC issued to the Company \$175,000,000 aggregate principal amount of its 12.75% Senior Subordinated Notes Due 2016. The Company purchased the senior subordinated notes for approximately \$158.9 million, at 90.828% of face value. The senior subordinated notes are general unsecured obligations of Spansion LLC and will rank junior to any existing and future senior debt of Spansion, STI or Spansion LLC. Interest is payable on April 15 and October 15 of each year beginning April 15, 2006 until the maturity date of April 15, 2016. Spansion LLC's obligations under the senior subordinated notes are guaranteed by Spansion Inc., STI and any restricted subsidiary of Spansion that guarantees any of Spansion's public debt in the future.

Certain events are considered "Events of Default" under the indenture governing the senior subordinated notes which may result in the accelerated maturity of the senior subordinated notes, including (i) a default in any interest, principal or premium amount payment; (ii) a merger, consolidation or sale of all or substantially all of Spansion LLC's property; (iii) a breach of covenants in the senior subordinated notes or the indenture; (iv) a default in certain debts; or (v) if a court enters certain orders or decrees under any bankruptcy law. Upon occurrence of one of these events, the trustee or certain holders may declare the principal of and accrued interest on the senior subordinated notes to be immediately due and payable. If Spansion, STI or Spansion LLC incurs any judgment for the payment of money in an aggregate amount in excess of \$50 million or takes certain voluntary actions in connection to insolvency, all amounts on the senior subordinated notes shall be due and payable immediately without any declaration or other act by the trustee or holders thereof.

Spansion LLC used the net proceeds of approximately \$159 million from the sale of the senior subordinated notes to pay off a portion of the approximately \$276 million outstanding, plus accrued and unpaid interest, under its promissory notes issued to the Company. Spansion LLC used the net proceeds from a concurrent private placement of \$250 million aggregate principal amount of 11.75% Senior Notes due 2016 to pay off the remaining balance.

Acceleration of AMD Stock Options and Restricted Stock Units held by Spansion Employees

On December 15, 2005, the Company accelerated the vesting of all outstanding AMD stock options and restricted stock units held by Spansion employees, that would otherwise have vested by December 31, 2006. The number of shares of AMD common stock underlying AMD stock options and restricted stock units subject to acceleration totaled approximately 864,000, of which approximately 150,000 are held by Spansion's executive officers.

The primary purpose of the acceleration of vesting of these awards was to minimize future compensation expense that the Company would otherwise be required to recognize in its statement of operations with respect to these awards. If the Company had not accelerated these awards, they would have been subject to variable fair value accounting in accordance with the guidance provided in EITF Issue 96-18 and 00-12. This accounting treatment would have applied because subsequent to Spansion's IPO, the Company no longer consolidates Spansion's results of operations in the Company's financial statements. Accordingly, Spansion employees are no longer considered common law employees of the Company. Under variable fair value accounting, the Company would be required to re-measure the fair value of unvested stock-based awards of AMD common stock held by Spansion employees after Spansion's IPO at the end of each accounting period until such awards become fully vested.

The acceleration of the vesting of these awards will result in a compensation charge in the Company's fourth quarter of fiscal 2005, which the Company expects will be immaterial.

ITEM 2.01 COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS.

On December 21, 2005, Spansion closed its IPO. Prior to the IPO, the Company's ownership interest in Spansion was 60 percent. As a result of the IPO, the Company's ownership interest in Spansion was diluted by approximately 22.1 percent such that immediately following the IPO the Company's ownership interest was reduced to approximately 37.9 percent. The Company did not receive any of the proceeds from Spansion's IPO.

In addition, following the IPO, the Company no longer exercises operating control over Spansion. As a result, the Company will use the equity method of accounting for its investment in Spansion, and it will no longer consolidate the financial position, operating results or cash flows of Spansion from the closing date of the IPO.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.**(b) Pro Forma Financial Information**

The tables included in Exhibit 99.1 set forth the Company's (i) unaudited pro forma condensed consolidated statements of operations for the fiscal year ended December 26, 2004 and the nine months ended September 25, 2005 after giving effect to the IPO, as if the IPO occurred, and the equity method of accounting was applied, to the Company's reduced ownership interest in Spansion as of the beginning of each respective period and (ii) an unaudited pro forma consolidated condensed balance sheet as of September 25, 2005 after giving effect to the IPO as if the IPO occurred and the equity method of accounting was applied as of that date.

These unaudited pro forma consolidated condensed financial statements are presented for illustrative purposes only and are not necessarily indicative of the operating results or the financial position that would have been achieved had the Company applied the equity method of accounting as of the dates indicated or of the operating results or financial position of any future period. These unaudited pro forma consolidated condensed financial statements and the accompanying notes should be read together with:

- The Company's consolidated financial statements and accompanying notes as of and for the year ended December 26, 2004, and the Section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in the Company's Annual Report on Form 10-K for the year ended December 26, 2004.
- The Company's consolidated financial statements and accompanying notes as of and for the nine months ended September 25, 2005, and the Section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in the Company's Quarterly Report on Form 10-Q for the quarter ended September 25, 2005.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Stockholders Agreement of Spansion Inc., dated as of December 21, 2005, among Advanced Micro Devices Inc., AMD Investments, Inc., Fujitsu Limited and Spansion Inc.
10.2	Amended and Restated AMD-Spansion Patent Cross-License Agreement, dated as of December 21, 2005, between Spansion Inc. and Advanced Micro Devices, Inc.
10.3	Amended and Restated AMD-Fujitsu Patent Cross-License Agreement, dated as of December 21, 2005, between Advanced Micro Devices, Inc. and Fujitsu Limited
10.4	Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement, dated as of December 21, 2005, between Spansion Inc., Fujitsu Limited, Advanced Micro Devices, Inc., AMD Investments, Inc. and Spansion Technology Inc.
10.5	Amended and Restated Information Technology Services Agreement, dated as of December 21, 2005, between Spansion Inc. and Advanced Micro Devices, Inc.

<u>Exhibit No.</u>	<u>Description</u>
10.6	Amended and Restated General Administrative Services Agreement, dated as of December 21, 2005, between Spansion Inc. and Advanced Micro Devices, Inc.
10.7	Amended and Restated Reverse General Administrative Services Agreement, dated as of December 21, 2005, between Spansion Inc. and Advanced Micro Devices, Inc.
10.8†	Amended and Restated Non-Competition Agreement, dated as of December 21, 2005, among Spansion Inc., Advanced Micro Devices, Inc., AMD Investments, Inc. and Fujitsu Limited
99.1	Unaudited Pro Forma Condensed Consolidated Financial Statements
	(i) Unaudited Pro Forma Condensed Consolidated Statements of Operations for the Nine Months Ended September 25, 2005
	(ii) Unaudited Pro Forma Condensed Consolidated Statements of Operations for the Year Ended December 26, 2004
	(iii) Unaudited Pro Forma Condensed Consolidated Balance Sheet as of September 25, 2005

† The Company has been granted confidential treatment pursuant to Rule 24b-2 for portions of the original Non-Competition Agreement that was filed as an exhibit to the Company's (File No. 001-07882) and has sought confidential treatment pursuant to Rule 24b-2 for the Amended and Restated Non-Competition Agreement filed as an exhibit herewith.

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.

ADVANCED MICRO DEVICES, INC.

Date: December 21, 2005

By: /s/ Faina Medzonsky

Name: Faina Medzonsky

Title: Assistant Secretary

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STOCKHOLDERS AGREEMENT

OF

SPANSION INC.

THIS STOCKHOLDERS AGREEMENT (this "*Agreement*"), dated as of December 21, 2005 (the "*Effective Date*"), is by and among AMD INVESTMENTS, INC., a Delaware corporation ("*AMD Investments*"), SPANSION INC., a Delaware corporation (the "*Corporation*"), ADVANCED MICRO DEVICES, INC., a Delaware corporation ("*AMD*"), and FUJITSU LIMITED, a Japanese corporation ("*Fujitsu*"). AMD Investments and Fujitsu are sometimes hereafter referred to, collectively, as the "*Stockholders*" and, individually, as a "*Stockholder*."

WHEREAS, the Corporation has an authorized capital of 800,000,000 shares of common stock, consisting of 714,999,998 shares of Class A Common Stock, par value \$0.001 per share (the "*Class A Common Stock*"), one (1) share of Class B Common Stock, par value \$0.001 per share (the "*Class B Common Stock*"), one (1) share of Class C Common Stock, par value \$0.001 per share (the "*Class C Common Stock*"), 35,000,000 shares of Class D Common Stock, par value \$0.001 per share (the "*Class D Common Stock*") and together with the Class A Common Stock, the Class B Common Stock and the Class C Common Stock, the "*Common Stock*"), and 50,000,000 shares of Preferred Stock, \$.001 par value per share (the "*Preferred Stock*").

WHEREAS, immediately prior to the execution of this Agreement, AMD Investments contributed its membership interests in Spansion LLC, a Delaware limited liability company, and certain intellectual property to the Corporation and Fujitsu contributed all of the outstanding stock of Fujitsu Microelectronics Holding, Inc., a Delaware corporation, and certain intellectual property to the Corporation, in each case in exchange for shares of Common Stock of the Corporation;

WHEREAS, in connection with the contribution, AMD Investments now owns 48,529,403 shares of Common Stock, consisting of 48,529,402 shares of Class A Common Stock and one (1) share of Class B Common Stock, and Fujitsu owns 32,352,935 shares of Common Stock, consisting of 32,352,934 shares of Class D Common Stock and one (1) share of Class C Common Stock;

WHEREAS, all of the outstanding shares of Class D Common Stock will automatically, without any act or deed on the part of the Corporation or any other person, convert in to shares of Class A Common Stock on a share-per-share basis as provided in the Certificate of Incorporation;

WHEREAS, AMD Investments is an indirect wholly owned subsidiary of AMD; and

WHEREAS, the Stockholders desire to promote their mutual interests by imposing certain restrictions and obligations on each other and on the shares of Common Stock, and, further, to provide for matters pertaining to the management and governance of the Corporation.

NOW, THEREFORE, in consideration of the conditions and provisions contained herein, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 DEFINITIONS. The following terms shall, for the purposes of this Agreement and the Schedules and Exhibits hereto, have the following meanings (terms defined in the singular or the plural include the plural or the singular, as the case may be):

“**Affiliate**” of a Person means any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. A Person shall be deemed an Affiliate of another Person only so long as such control relationship exists. The parties acknowledge and agree that neither Fujitsu nor AMD is presently controlled by any other Person. Notwithstanding the foregoing, a Spansion Entity shall not be deemed to be an Affiliate of either Fujitsu or AMD, except where expressly provided in this Agreement.

“**Aggregate Ownership Interest**” shall mean, with respect to each Stockholder, the quotient, expressed as a percentage, obtained by dividing (a) the aggregate number of shares of Common Stock of the Corporation held by such Stockholder or its Affiliates by (b) the aggregate number of outstanding shares, on an as converted to Common Stock basis, of Common Stock of the Corporation.

“**Board**” shall mean the Board of Directors of the Corporation.

“**Business Day**” means any day other than a day on which commercial banks in California or Tokyo are required or authorized to be closed.

“**Certificate of Incorporation**” shall mean the Certificate of Incorporation of the Corporation as in effect as of the date of this Agreement, as the same may be amended from time to time in accordance with the terms thereof.

“**Class A Directors**” shall mean, collectively, the directors of the Board elected by the holders of Class A Common Stock in accordance with the Certificate of Incorporation.

“**Class B Directors**” shall mean, collectively, the directors of the Board elected by the holders of the Class B Common Stock in accordance with the Certificate of Incorporation.

“**Class C Director**” shall mean, collectively, the director of the Board elected by the holders of the Class C Common Stock in accordance with the Certificate of Incorporation.

“**Commission**” shall mean the Securities and Exchange Commission, or any successor agency performing the functions currently performed by the Securities and Exchange Commission.

“**Competing Business**” means any business engaged in the development, production, manufacture, marketing, distribution, promotion or sale of Stand-Alone NVM Products in any country in the world in which the Corporation conducts its business.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Governmental Authority**” means any foreign, domestic, national, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

“**NVM**” means a non-volatile memory device wherein information stored in a memory cell is maintained without power consumption and the write time (including erase time if there is an erase operation prior to a write operation) exceeds the read time allowing the device to function primarily as a reading device.

“**Person**” means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or Governmental Authority.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Spansion Entity**” means the Corporation, or any of its directly or indirectly majority owned subsidiaries (whether organized as corporations, limited liability companies or other legal entity).

“**Stand-Alone NVM Product**” means a semiconductor product (including a single chip or a multiple chip or system product) containing NVM dedicated to data storage wherein all circuitry (including logic circuitry) contained therein is solely to accept, store, retrieve or access information or instructions and cannot manipulate such information or execute instructions.

“**Transfer**” (including, with correlative meaning, the term “**Transferred**”) means, with respect to any capital stock (or other ownership interest) in any Person or portion thereof, a sale, conveyance, exchange, assignment, gift, bequest or other transfer or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law), or an agreement to do any of the foregoing.

SECTION 1.2 USAGE GENERALLY; INTERPRETATION. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. All references herein to Articles and Sections shall be deemed to be references to Articles and Sections of this Agreement unless the context otherwise requires. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. 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. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.

ARTICLE II VOTING PROVISIONS

SECTION 2.1 VOTING AGREEMENTS.

(a) Upon the conversion of the Class D Common Stock into Class A Common Stock, the Stockholders agree to vote (or cause to be voted) all shares of Class A Common Stock held by them or their respective Affiliates so as to cause the election of each Class A Director proposed for election by the Nominating Committee of the Board in accordance with the Certificate of Incorporation.

(b) The appointment of the Chairman of the Board will be as follows:

(i) Until the Corporation's 2007 annual stockholder meeting, the Chairman of the Board will be the Class C Director, subject to the approval of a majority of the Class B Directors, which approval shall not be unreasonably withheld; *provided, however*, that until the Corporation's 2007 annual stockholder meeting (but not thereafter) the holder of Class C Common Stock may, at its discretion select any Class B director, instead of the Class C Director, as the Chairman of the Board; *provided further, however*, that if the office of the Chairman of the Board so selected by the holder of Class C Common Stock becomes vacant resulting from death, resignation, disqualification, removal or other cause, the Chairman of the Board will be the Class C Director as provided above in this Section 2.1(b)(i);

(ii) From the date of the Corporation's 2007 annual stockholder meeting until the date of the Corporation's 2010 annual stockholder meeting, the Chairman of the Board will be selected by the Class B Directors, subject to the approval of the Class C Director, which approval shall not be unreasonably withheld;

(iii) the right to appoint the Chairman of the Board by the Class B Directors or the Class C Director will continue rotating every three (3) years in the manner set forth in Section 2.1(b)(i) and 2.1(b)(ii) *provided, however*, that if either AMD's or Fujitsu's Aggregate Ownership Interest falls below fifteen percent (15%), then neither Stockholder shall any rights or obligations under this Section 2.1(b).

(c) The Stockholders agree to vote (or cause to be voted) all shares of Common Stock held by them or their respective Affiliates to approve any amendment to the Corporation's Certificate of Incorporation necessary to increase the authorized number of shares of Class A Common Stock for the purpose set forth in Article IV, Section 3(x) of the Certificate of Incorporation.

SECTION 2.2 BOARD OBSERVERS. The parties agree that for so long as a Stockholder's Aggregate Ownership Interest is greater than or equal to five percent (5%), such Stockholder shall have the right to have one (1) representative attend Board meetings as a non-voting participant.

ARTICLE III

TRANSFERS.

SECTION 3.1 NOTICE OF TRANSFER. Prior to any direct or indirect Transfer of Transfer Shares pursuant to Section 3.2, such Stockholder shall give the other Stockholder written notice within ten (10) Business Days of such Transfer.

SECTION 3.2 PERMITTED TRANSFERS

(a) Prior to the conversion of the Class D Common Stock into Class A Common Stock, no Stockholder or any of its Affiliates may Transfer any of its right, title or interest in (i) any Common Stock or (ii) any of their Affiliates ("**Subject Affiliates**") which beneficially own, either directly or indirectly, any Common Stock, to any transferee unless such transferee is an Affiliate of either AMD or Fujitsu with respect to which AMD or Fujitsu, as applicable, owns a majority of the capital stock entitled to vote for the election of directors (or similar management body) of such Affiliate.

(b) After the conversion of the Class D Common Stock into Class A Common Stock, each Stockholder or its Affiliates may Transfer any of its right, title or interest in (i) some or all of its Common Stock ("**Transfer Shares**") or (ii) any of its Affiliates which beneficially own, either directly or indirectly, any Common Stock; *provided, however*, that no Stockholder or its Affiliates shall knowingly Transfer, directly or indirectly, a number of Transfer Shares equal to or greater than one percent (1%) of the Common Stock outstanding, calculated on an as converted to Common Stock basis, at the time of such Transfer, in a single transaction or series of related transactions, to any Person whose principal business is a Competing Business, without the prior written consent of the other Stockholder; such consent to be given or withheld within ten (10) Business Days of receipt of written notice and, after June 30, 2007, such consent not to be unreasonably withheld. In the event of any Transfer of Transfer Shares or interests in Subject Affiliates, a transferee (or subsequent transferee) shall be entitled to the rights and privileges set forth in this Agreement and shall be bound and obligated by the provisions of this Agreement, each to the extent applicable to the transferor.

(c) As a condition to a Transfer of Transfer Shares or interests in Subject Affiliates permitted pursuant to Section 3.2(a) or 3.2(b), each transferee shall, prior to such Transfer, agree in writing to be bound by all of the provisions of this Agreement and no such transferee shall be permitted to make any Transfer which the original transferor was not permitted to make. In connection with any Transfer of Transfer Shares or interests in Subject Affiliates pursuant to Section 3.2(a) or 3.2(b), the transferee shall execute and deliver to the Stockholders and the Corporation such documents as may reasonably be requested by such Stockholders or the Corporation to evidence the same.

ARTICLE IV

STOCKHOLDER FINANCINGS

With respect to each Stockholder's or its respective Affiliates' obligations under any loans, guarantees or other financial support provided by such Stockholder or its Affiliates to or for the benefit of the Corporation outstanding as of the date of this Agreement (any such obligation, a "**Stockholder Financing**"), the Corporation shall not, without the applicable Stockholder's consent, extend the maturity date, or otherwise amend any term that would increase the Corporation's financial or other obligations under, or extend the maturity of, any Stockholder Financing.

ARTICLE V

REGISTRATION RIGHTS IN CLASS A COMMON STOCK

Any shares of Class A Common Stock held by AMD or Fujitsu or their Affiliates will have the registration rights set forth on Annex A attached hereto, which is incorporated herein by reference and made a part hereof as if included in full herein.

ARTICLE VI

ACCESS TO INFORMATION

SECTION 6.1 RESTRICTIONS ON DISCLOSURE OF INFORMATION. Each party will, and each party will cause its respective representatives to, hold in strict confidence, with at least the same degree of care that applies to each party's confidential and proprietary information ("**Information**") pursuant to policies in effect as of the Effective Date, all Information concerning the other parties furnished pursuant to this Agreement. Notwithstanding the foregoing, each party and its representatives may disclose such Information to the extent that such party can demonstrate that such information is or was (i) in the public domain other than by the breach of this Agreement or by breach of any other agreement between or among the parties relating to confidentiality, or (ii) lawfully acquired from a third person on a non-confidential basis or independently developed by, or on behalf of, such party by persons who do not have access to, or descriptions of, any such Information. Each party will maintain, and will cause its respective representatives to maintain, policies and procedures, and develop such further policies and procedures as will from time to time become necessary or appropriate, to ensure compliance with this Section 6.1.

SECTION 6.2 LEGALLY REQUIRED DISCLOSURE OF INFORMATION. If any party or representatives (the "**Disclosing Party**") becomes legally required to disclose any Information that it is otherwise obligated to hold strict confidence pursuant to Section 6.1, such party will promptly notify the Person that owns the Information (the "**Owning Party**") and will use all commercially reasonable efforts to cooperate with the Owning Party so that the Owning Party may seek a protective order or other appropriate remedy and/or waive compliance with this Section 6.2. All expenses reasonably incurred by the Disclosing Party in seeking a protective order or other remedy will be borne by the Owning Party. If such protective order or other remedy is not obtained, or if the Owning Party waives compliance with this Section 6.2, the Disclosing Party will

(a) disclose only that portion of the Information which its legal counsel advises it is legally required to disclose, (b) use all commercially reasonable efforts to obtain reliable assurance requested by the Owning Party that confidential treatment will be accorded such Information and (c) promptly provide the Owning Party with a copy of the Information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such Information was disclosed.

SECTION 6.3 ACCESS TO INFORMATION. For as long as AMD's and Fujitsu's respective Aggregate Ownership Interest is equal or greater than ten percent (10%), Spansion will cooperate with and afford, and will cause its respective representatives to cooperate with and afford, to AMD and Fujitsu or their respective Affiliates, as the case may be, reasonable access upon reasonable advance written request to all Information (other than Information which is (a) protected from disclosure by the attorney-client privilege or work product doctrine, (b) proprietary in nature, (c) the subject of a confidentiality agreement between such party and a third Person which prohibits disclosure to the other party or (d) prohibited from disclosure under applicable law) owned by Spansion or within Spansion's or its representative's possession and which relates to the requesting party's (the "**Requestor**") business, assets or liabilities, and such access is reasonably required by the Requestor (i) to comply with requirements imposed on the Requestor by any Governmental Authority, (ii) for use in any proceeding (except for a litigation matter between the parties), (iii) to satisfy audit, accounting, tax or similar requirements, (iv) to obtain insurance, or (v) to comply with the Requestor's obligations under this Agreement. In connection with providing Information pursuant to this Section 6.3, Spansion hereto will, upon the request of the other party and upon reasonable advance notice, make available during normal business hours its employees (and those employees of its Representatives) to the extent that they are reasonably necessary to discuss and explain all requested Information with and to the Requestor.

ARTICLE VII

CERTIFICATES

As long as this Agreement shall remain in full force and effect, there shall be inscribed upon each certificate of Common Stock held by a Stockholder the following legend:
THE SHARES REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED OR IN ANY WAY DISPOSED OF EXCEPT PURSUANT TO THE TERMS AND CONDITIONS OF A CERTAIN STOCKHOLDERS AGREEMENT DATED AS OF DECEMBER 21, 2005, AND ANY AMENDMENTS THERETO, AMONG ADVANCED MICRO DEVICES, INC., AMD INVESTMENTS, INC., FUJITSU LIMITED AND SPANSION INC., A COPY OF WHICH IS ON FILE AT THE OFFICE OF THE CORPORATION. THE HOLDER IS SUBJECT TO THE OBLIGATIONS THEREIN SET FORTH AND ANY SUCH DISPOSITION IN VIOLATION OF SAID STOCKHOLDERS AGREEMENT SHALL BE NULL AND VOID.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS

AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, ENCUMBERED, TRANSFERRED, GRANTED AN OPTION WITH RESPECT TO OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR DELIVERY TO THE CORPORATION OF AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE CORPORATION THAT SUCH SALE OR TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE ACT.

ARTICLE VIII

TERMINATION

SECTION 8.1 TERMINATION. Except as set forth in Section 8.2, this Agreement shall terminate upon the occurrence of any of the following events:

- (a) by election of all of the parties hereto;
- (b) the date on which each Stockholder's Aggregate Ownership Interest falls below ten percent (10%); and
- (c) the dissolution of the Corporation.

SECTION 8.2 EXCEPTIONS.

- (a) Section 2.2 shall terminate (as to each Stockholder) on the date on which such Stockholder's Aggregate Ownership Interest falls below five percent (5%);
- (b) Section 3.2 shall terminate (as to each Stockholder) on the date on which either Stockholder's Aggregate Ownership Interest falls below ten percent (10%);
- (c) Article IV shall not terminate; and
- (d) Article V and Annex A shall terminate in accordance with the provisions set forth in Section 9 of Annex A of this Agreement.

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 SEVERABILITY. The terms, conditions and provisions of this Agreement are fully severable, and the decision or judgment of any court of competent jurisdiction rendering void or unenforceable any one or more of such terms, conditions or provisions shall not render void or unenforceable any of the other terms, conditions or provisions hereof, and such void or unenforceable term shall be replaced with a valid and enforceable term which would to the greatest degree possible reflect the original intentions of the parties hereunder.

SECTION 9.2 NOTICES. All notices and other communications hereunder shall be in writing and shall be given and delivered by messenger, transmitted by telecopy or telegram (in either case followed by reputable overnight courier sent the same day), by reputable overnight courier or mailed by certified mail, postage prepaid, return receipt requested, to the parties at the following addresses (or such other address as shall be specified by such party by like notice), and shall be deemed given on the date on which so delivered by messenger or reputable overnight courier, on the next Business Day following the date on which so transmitted by telecopy, telegram or on the tenth Business Day following the date on which mailed by certified mail:

If to AMD or AMD Investments, to:

Advanced Micro Devices, Inc. / AMD Investments, Inc.
One AMD Place
Sunnyvale, California 94088
Attention: Legal Department
Fax: (408) 774-7399

If to Fujitsu, to:

Fujitsu Limited
Electronic Devices Group
Fuchigami 50 Akiruno-shi
Tokyo 197-0833
Attention: Executive Vice President, Business and Promotion Group
Facsimile: +81-42-532-2550

If to the Corporation, to:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, CA 94088
Attention: General Counsel
Fax: (408) 774-7443

SECTION 9.3 CAPTIONS. The captions at the heading of each article or section of this Agreement are for convenience of reference only and are not to be deemed a part of the Agreement itself.

SECTION 9.4 ENTIRE AGREEMENT. This Agreement, including the annexes hereto and the other agreements and documents referenced herein or contemplated hereby, constitutes the entire agreement and understanding of the parties hereto with respect to the matters herein set forth, and all prior negotiations and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement; *provided, however*, that for the avoidance of doubt nothing set forth herein shall supersede any confidentiality obligations by or among any of the parties hereto that exist on the date hereof.

SECTION 9.5 COUNTERPARTS. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same agreement.

SECTION 9.6 AMENDMENTS; WAIVER. Amendments to this Agreement may be made from time to time, provided, however, that no amendment, modification or waiver of this Agreement or any provision hereof shall be valid or effective unless in writing and signed by the Corporation and every Stockholder. No consent to, or waiver, discharge or release (each, a "**Waiver**") of, any provision of or breach under this Agreement shall be valid or effective unless in writing and signed by the party giving such Waiver, and no specific Waiver shall constitute a Waiver with respect to any other provision or breach, whether or not of similar nature. Failure on the part of any party hereto to insist in any instance upon strict, complete and timely performance by another party hereto of any provision of or obligation under this Agreement shall not constitute a Waiver by such party of any of its rights under this Agreement or otherwise.

SECTION 9.7 FURTHER ASSURANCES. Each party shall perform all other acts and execute and deliver all other documents as may be reasonably necessary or appropriate to carry out the purposes and intent of this Agreement.

SECTION 9.8 GOVERNING LAW. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Delaware without giving effect to its rules on conflicts of laws.

SECTION 9.9 THIRD PARTY BENEFICIARY. Nothing set forth in the Agreement shall be construed to confer any benefit to any third party who is not a party to this Agreement.

SECTION 9.10 ASSIGNMENT. This Agreement is personal to the parties hereto, and no party may (except as set forth in Article III) assign or Transfer the rights accruing hereunder nor may performance of any duties by any party hereunder be delegated or assumed by any other Person without the prior written consent of the other parties hereto.

SECTION 9.11 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each party hereto; provided, that no party hereto may Transfer or assign such party's Common Stock or this Agreement or such party's rights, interests or obligations hereunder, except in accordance with the terms of this Agreement.

SECTION 9.12 RELATIONSHIP. This Agreement does not constitute any Stockholder, director, or any employee or agent of the Corporation as the agent or legal manager of any Stockholder for any purpose whatsoever and no Stockholder, director or any employee or agent of the Corporation is granted hereby any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of any Stockholder or to bind any Stockholder in any manner or thing whatsoever.

SECTION 9.13 DISPUTE RESOLUTION. If any party to a dispute or controversy concerning the rights, benefits or obligations set forth in this Agreement determines that a reasonable attempt at settlement has failed, binding arbitration conducted in accordance with the dispute resolution procedure set forth in Annex B attached hereto shall be the exclusive and final

forum for settling any disagreement, dispute, controversy or claim arising out of or in any way related to this Agreement or the subject matter thereof or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof.

SECTION 9.14 EQUITABLE REMEDIES. Each party acknowledges that no adequate remedy of law would be available for a breach of Articles II, III, IV, V and VI of this Agreement or by the Corporation of any of its obligations under the Certificate of Incorporation, including without limitation Article IV, Section 3(x) thereunder, and that a breach of any of such Articles of this Agreement or the Certificate of Incorporation by one party would irreparably injure the other parties and accordingly agrees that in the event of a breach of any of such Articles of this Agreement or the Certificate of Incorporation, the respective rights and obligations of the parties hereunder or thereunder shall be enforceable by specific performance, injunction or other equitable remedy (without bond or security being required), and each party waives the defense in any action and/or proceeding brought to enforce this Agreement or the Certificate of Incorporation that there exists an adequate remedy or that the other party is not irreparably injured. Nothing in this Section 9.14 is intended to exclude the possibility of equitable remedies with respect to breaches of other sections of this Agreement.

SECTION 9.15 FEES AND EXPENSES. Except as specifically set forth herein, each party shall be responsible for any legal and other fees and expenses incurred by such party in connection with the negotiation and preparation of this Agreement and the transactions contemplated hereby.

SECTION 9.16 OBLIGATIONS OF AMD. By their signatures below, AMD agrees to be liable for any failure by AMD Investments to perform any of its obligations under this Agreement that run to the benefit of Fujitsu.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

AMD INVESTMENTS, INC.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien

Title: VP & Secretary

ADVANCED MICRO DEVICES, INC.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien

Title: Corporate Vice President and Secretary

SPANSION INC.

By: /s/ Bertrand F. Cambou

Name: Bertrand F. Cambou

Title: President and Chief Executive Officer

FUJITSU LIMITED

By: /s/ Hiroaki Hurokawa

Name: Hiroaki Hurokawa

Title: President

ANNEX A

REGISTRATION RIGHTS

Section 1. Definitions

Section 1.1 Capitalized terms used herein without definition have the meanings assigned to such terms in the Stockholders Agreement to which this Annex A is attached. As used in this Annex A, the following terms shall have the following meanings:

“**Holder**” means any Person who owns Registrable Securities, including any permitted transferee of a Stockholder.

“**IPO**” means the initial underwritten public offering of the Class A Common Stock pursuant to an effective Registration Statement under the Securities Act.

“**Lock-Up Agreement**” means the agreement between each Stockholder and the managing underwriter(s) for the IPO, pursuant to which such Stockholder agrees that it will not offer to sell, contract to sell, or otherwise sell, dispose of, loan, pledge or grant any rights with respect to any shares of Common Stock, any options or warrants to purchase any shares of Common Stock, or any securities convertible into or exchangeable for any shares of Common Stock now owned or hereafter acquired directly by the Stockholder or with respect to which the Stockholder has or hereafter acquires the power of disposition. Each Lock-Up Agreement shall be binding upon any successors, assigns or other transferees of each Stockholder. No Lock-Up Agreement shall be amended or otherwise modified, nor shall compliance therewith be waived, unless each other Stockholder is given the option, at its sole discretion, to have the same amendment, modification or waiver apply to its Lock-Up Agreement.

“**Lock-Up Period**” means the period agreed to by each Stockholder and the managing underwriter(s) for the IPO (which shall be the same period for each Stockholder) during which time such Stockholder agrees that it will not offer to sell, contract to sell, or otherwise sell, dispose of, loan, pledge or grant any rights with respect to any shares of Common Stock, any options or warrants to purchase any shares of Common Stock, or any securities convertible into or exchangeable for any shares of Common Stock now owned or hereafter acquired directly by the Stockholder or with respect to which the Stockholder has or hereafter acquires the power of disposition.

“**Proceeding**” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“**Prospectus**” means any prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities

covered by any Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

“**Registrable Securities**” means (i) shares of Class A Common Stock issued at any time to AMD Investments and Fujitsu or their respective Affiliates; and (ii) any shares of Class A Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, in exchange for or in replacement of the shares referenced in (i) above, *provided, however*, that the shares of Class A Common Stock that are Registrable Securities shall cease to be Registrable Securities (x) upon the consummation of any sale of such shares pursuant to an effective Registration Statement under the Securities Act or Rule 144 promulgated thereunder or (y) at such time as such shares of Class A Common Stock become eligible for sale under Rule 144(k) under the Securities Act.

“**Registration Statement**” means any Registration Statement and any additional Registration Statement, including (in each case) the Prospectus, amendments and supplements to such Registration Statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such Registration Statement to be filed pursuant to the terms of this Annex A.

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Rule 158**” means Rule 158 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Rule 415**” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Underwritten Registration or Underwritten Offering**” means a registration in connection with which securities of the Corporation are sold to an underwriter for reoffering to the public pursuant to an effective Registration Statement under the Securities Act.

Section 2. “Piggy-Back” Registrations

Section 2.1 If, at any time after the IPO, the Corporation shall determine to register for its own account or the account of others under the Securities Act (including (i) in connection with a public offering by the Corporation other than the IPO or (ii) a demand for registration made by any stockholder of the Corporation including any of the parties hereto) any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to shares of Common Stock to be issued solely in connection with any acquisition of an entity or business or shares of Common Stock issuable in connection with stock option or other employee benefit plans) it shall send to each Holder written notice of such determination and if, within 30 days after receipt of such notice,

such Holder shall so request in writing, the Corporation shall use its commercially reasonable efforts to include in such Registration Statement all or any part of the Registrable Securities such Holder requests to be registered.

Section 2.2 If, in connection with any offering described in Section 2.1 of this Annex A involving an underwriting of Common Stock to be issued by the Corporation, the managing underwriter shall impose a limitation on the number of shares of such Common Stock which may be included in the Registration Statement because in its judgment, such limitation is necessary to effect an orderly public distribution, then, in the discretion of such managing underwriter, the Corporation shall include in such Registration Statement only such portion of the Registrable Securities with respect to which such Holders have requested inclusion pursuant hereto as such limitation permits after the inclusion of all shares of Common Stock to be registered by the Corporation for its own account. Any exclusion of Registrable Securities shall be made pro rata among such Holders seeking to include such shares, in proportion to the number of such shares owned by such Holders.

Section 3. “Demand” Registrations

Section 3.1 At any time commencing after the expiration of the Lock-Up Period, each Holder (a “**Demand Holder**”) may make a written request (each a “**Demand Request**”) for registration under the Securities Act (a “**Demand Registration**”) of all or part of the Registrable Securities held by such Holder; *provided, however*, that if the Registrable Securities requested to be registered shall be less than all of such Demand Holder’s Registrable Securities, the Registrable Securities requested to be registered shall, on the date that the Demand Request is delivered, (i) constitute at least three percent (3%) of the shares of Common Stock outstanding or (ii) have an aggregate minimum market value of at least \$25,000,000 before calculation of underwriting discounts and commissions. Each Demand Request shall specify the number of shares of Registrable Securities proposed to be sold by such Demand Holder.

Section 3.2 Within 15 days after receipt of each Demand Request, the Corporation shall give written notice of such Demand Request to all non-requesting Holders. Within 30 days after receipt of such notice, the non-requesting Holders shall provide written notice to the Corporation of their intention to have any or all of their Registrable Securities be included in the Demand Registration. The Corporation shall use its commercially reasonable efforts to file a Registration Statement registering such of the Registrable Securities as may be requested by any Holders thereof (including the Holder or Holders making the initial Demand Request) with the Commission not later than 120 days after receipt of such Demand Request (the “**Demand Filing Date**”) and shall use commercially reasonable efforts to cause the same to be declared effective by the Commission as promptly as practicable after such filing. Both the Demand Request and any request to join in such Demand Request shall be considered a single Demand Request. Any inclusion of Registrable Securities owned by a Demand Holder pursuant to a Demand Request (including a notice of a non-requesting holder to join a Demand Request) shall be deemed to have been effected pursuant to a single Demand Request.

Section 3.3 Notwithstanding any other provision set forth in this Section 3, each Stockholder (together with all of its assignees) shall be entitled to deliver no more than two (2)

Demand Requests; *provided, however*, that if the Corporation meets the eligibility requirements for using Form S-3, then this limitation shall not apply. In addition, no Holder shall be entitled to deliver a Demand Request within 90 days after the effectiveness of any Registration Statement filed (i) by the Corporation pursuant to an Underwritten Offering by the Corporation or (ii) on behalf of any Demand Holder or any other holder of demand registration rights.

Section 3.4 A registration will not count as a Demand Registration until the Registration Statement registering the shares of such Demand Request has been declared effective by the Commission (unless the Demand Holder withdraws all of its Registrable Securities and the Corporation has performed its obligations hereunder in all material respects, in which case such demand will count as a Demand Registration).

Section 3.5 The Corporation may defer the filing (but not the preparation) of a Registration Statement required by this Section 3 until a date not later than 90 days after the Demand Filing Date if:

(a) there is (i) material non-public information regarding the Corporation which the Board reasonably determines not to be in the Corporation's best interest to disclose and which the Corporation is not otherwise required to disclose or (ii) there is a significant business opportunity (including but not limited to the acquisition or disposition of assets (other than in the ordinary course of business) or any merger, consolidation, tender offer or other similar transaction) available to the Corporation which the Board reasonably determines not to be in the Corporation's best interest to disclose; or

(b) prior to receiving the Demand Request, the Board had determined to effect an Underwritten Offering and the Corporation had taken substantial steps and is proceeding with reasonable diligence to effect such offering.

A deferral of the filing of a Registration Statement pursuant to this Section 3.5 shall be lifted, and the requested Registration Statement shall be filed forthwith, if, (x) in the case of a deferral pursuant to clause (a)(i), the material non-public information is made public by the Corporation, (y) in the case of a deferral pursuant to clause (a)(ii), the significant business opportunity is disclosed by the Corporation or is terminated, or (z) in the case of a deferral pursuant to clause (b), the proposed registration for the Corporation's account is abandoned. In order to defer the filing of a Registration Statement pursuant to this Section 3.5, the Corporation shall promptly (but in any event within 10 days), upon determining to seek such deferral, deliver to each Demand Holder a certificate signed by an executive officer of the Corporation stating that the Corporation is deferring such filing pursuant to this Section 3.5 and an approximation of the anticipated delay. Within twenty (20) days after receiving such certificate, the Demand Request may be withdrawn by those Persons representing a majority of the Registrable Securities being registered on the Registration Statement filed pursuant to such Demand Request upon providing written notice to the Corporation; if withdrawn, the Demand Request shall be deemed not to have been made for purposes of this Annex A.

Section 3.6 If, in connection with any offering described in Section 3.1 of this Annex A, the managing underwriter shall impose a limitation on the number of shares of Common Stock

which may be included in the Registration Statement because in its judgment, such limitation is necessary to effect an orderly public distribution, then, in the discretion of such managing underwriter, the Corporation shall include in such Registration Statement only such portion of the Registrable Securities with respect to which such Holders have requested inclusion pursuant hereto as such limitation permits. No shares of Registrable Securities shall be excluded from the Registration Statement unless all other securities of the Corporation (including any securities proposed to be registered by the Corporation for its own account) have been so excluded. Any exclusion of Registrable Securities shall be made pro rata among such Holders seeking to include such shares, in proportion to the number of such shares owned by such Holders.

Section 4. Registration Procedures

Section 4.1. Whenever any Holder has requested that any Registrable Securities be registered pursuant to this Annex A, the Corporation will use its commercially reasonable efforts to effect the registration of such Registrable Securities, and in furtherance thereof the Corporation shall:

(a) prepare and file with the Commission a Registration Statement on any appropriate form under the Securities Act with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective;

(b) prepare and file with the Commission such amendments, including post-effective amendments and supplements to the Registration Statement as may be necessary to keep the Registration Statement continuously effective as to the applicable Registrable Securities for a period of not less than 180 days (or such lesser period as is necessary for the underwriters in an underwritten offering to sell unsold allotments); (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement, and as so supplemented or amended to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; (iii) respond as promptly as possible to any comments received from the Commission with respect to the Registration Statement or any amendment thereto and as promptly as possible provide the Holders true and complete copies of all correspondence from and to the Commission relating to the Registration Statement; and (iv) comply in all material respects with the provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by the Registration Statement during the applicable period in accordance with the intended methods of disposition by the Holders thereof set forth in the Registration Statement as so amended or in such Prospectus as so supplemented;

(c) (i) furnish to the Holders of Registrable Securities to be sold, their counsel and any managing underwriters, copies of all such documents proposed to be filed, which documents (other than those incorporated by reference) will be subject to the reasonable review of such Holders, their counsel and such managing underwriters, and (ii) cause its officers and directors, counsel and independent certified public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to such Holders and such underwriters, to conduct a reasonable investigation within the meaning of the Securities Act.

(d) notify the Holders of Registrable Securities to be sold, their counsel and any managing underwriters as promptly as possible (and in the case of (i) below, not less than five (5) days prior to such filing):

(i) when a Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement is proposed to be filed;

(ii) when the Commission notifies the Corporation whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement;

(iii) with respect to the Registration Statement or any post-effective amendment, when the same has become effective;

(iv) of any request by the Commission or any other federal or state Governmental Authority for amendments or supplements to the Registration Statement or Prospectus or for additional information;

(v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose;

(vi) if at any time any of the representations and warranties of the Corporation contained in any agreement (including any underwriting agreement) contemplated hereby ceases to be true and correct in all material respects;

(vii) of the receipt by the Corporation of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose; and

(viii) of the occurrence of any event that makes any statement made in the Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to the Registration Statement, Prospectus or other documents so that, in the case of the Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(e) use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order suspending the effectiveness of the Registration Statement or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment;

(f) if requested by any managing underwriter (which in the case of a Demand Registration shall be selected by mutual agreement of the Corporation and the demand Holder) in connection with an Underwritten Offering, (i) promptly incorporate in a Prospectus supplement or

post-effective amendment to the Registration Statement such information as the Corporation reasonably agrees should be included therein and (ii) make all required filings of such Prospectus supplement or such post-effective amendment as soon as practicable after the Corporation has received notification of the matters to be incorporated in such Prospectus supplement or post-effective amendment; *provided, however*, that the Corporation shall not be required to take any action pursuant to this clause (f) that would, in the opinion of counsel for the Corporation, violate applicable law or be materially detrimental to the business prospects of the Corporation;

(g) furnish to each Holder of Registrable Securities to be sold, their counsel and any managing underwriters, without charge, at least one conformed copy of each Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission;

(h) promptly deliver to each Holder of Registrable Securities to be sold, their counsel, and any underwriters, without charge, as many copies of the Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Persons may reasonably request; and the Corporation hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders and any underwriters in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto;

(i) prior to any public offering of Registrable Securities, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders, their counsel and any underwriters in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any selling Holder or underwriter requests in writing, to keep each such registration or qualification (or exemption therefrom) effective for at least 180 days and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by a Registration Statement; *provided, however*, that the Corporation shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or subject the Corporation to any material tax in any such jurisdiction where it is not then so subject;

(j) cooperate with the selling Holders and any managing underwriters to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by applicable law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such managing underwriters or Holders may request at least two Business Days prior to any sale of Registrable Securities;

(k) upon the occurrence of any event contemplated by Section 4(d)(viii) of this Annex A, as promptly as possible, prepare a supplement or amendment, including a post-effective amendment, to the Registration Statement or a supplement to the related Prospectus or any

document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither the Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(l) use its commercially reasonable efforts to cause all Registrable Securities relating to such Registration Statement to be listed on the securities exchange, quotation system, market or over-the-counter bulletin board on which similar securities issued by the Corporation are then listed and to provide a transfer agent and registrar for all Registrable Securities registered pursuant to such Registration Statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(m) enter into such agreements (including an underwriting agreement in form, scope and substance as is customary in Underwritten Offerings) and take all such other actions in connection therewith (including those reasonably requested by any managing underwriters in order to expedite or facilitate the disposition of such Registrable Securities, and whether or not an underwriting agreement is entered into), including the following:

(i) make such representations and warranties to such selling Holders and such underwriters as are customarily made by issuers to underwriters in underwritten public offerings, and confirm the same if and when requested;

(ii) in the case of an Underwritten Offering, obtain and deliver copies thereof to the selling Holders and the managing underwriters, if any, of opinions of counsel to the Corporation and updates thereof addressed to each such selling Holder and underwriter, in form, scope and substance reasonably satisfactory to any such managing underwriters and counsel to the selling Holders covering the matters customarily covered in opinions requested in Underwritten Offerings and such other matters as may be reasonably requested by such counsel and underwriters;

(iii) immediately prior to the effectiveness of the Registration Statement, and, in the case of an Underwritten Offering, at the time of delivery of any Registrable Securities sold pursuant thereto, obtain and deliver copies to the selling Holders and the managing underwriters, if any, of “cold comfort” letters and updates thereof from the independent certified public accountants of the Corporation (and, if necessary, any other independent certified public accountants of any subsidiary of the Corporation or of any business acquired by the Corporation for which financial statements and financial data is, or is required to be, included in the Registration Statement), addressed to each selling Holder and each of the underwriters, if any, in form and substance as are customary and reasonable in connection with Underwritten Offerings;

(iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures no less favorable to the selling Holders and the underwriters, if any, than those set forth in Section 8 of this Annex A (or such other provisions and procedures acceptable to the managing underwriters, if any), and

(v) deliver such documents and certificates as may be reasonably requested by the selling Holders, their counsel and any managing underwriters to evidence the continued validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Corporation;

(n) make available for inspection by the selling Holders, any representative of such Holders, any underwriter participating in any disposition of Registrable Securities, and any attorney or accountant retained by such selling Holder or underwriters, at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and properties of the Corporation and its subsidiaries, and cause the officers, directors, agents and employees of the Corporation and its subsidiaries to supply all information in each case reasonably requested by any such Holder, representative, underwriter, attorney or accountant in connection with the Registration Statement; *provided, however*, that any information that is determined in good faith by the Corporation in writing to be of a confidential nature at the time of delivery of such information shall be kept confidential by such Persons, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities; (ii) disclosure of such information, in the opinion of counsel to such Person, is required by law; (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by such Person; or (iv) such information becomes available to such Person from a source other than the Corporation and such source is not known by such Person to be bound by a confidentiality agreement with the Corporation; and

(o) comply in all material respects with all applicable rules and regulations of the Commission and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 not later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) (i) commencing at the end of any fiscal quarter in which Registrable Securities are sold to underwriters in a firm commitment or best efforts Underwritten Offering and (ii) if not sold to underwriters in such an offering, commencing on the first day of the first fiscal quarter of the Corporation after the effective date of the Registration Statement, which statement shall conform to the requirements of Rule 158.

Section 4.2. The Corporation may require each selling Holder to furnish to the Corporation information regarding such Holder and the distribution of such Registrable Securities as is required by law to be disclosed in the Registration Statement, and the Corporation may exclude from such registration the Registrable Securities of any such Holder who unreasonably fails to furnish such information within a reasonable time after receiving such request. If the Registration Statement refers to any Holder by name or otherwise as the holder of any securities of the Corporation, then such Holder shall have the right to require (if such reference to such Holder by name or otherwise is not required by the Securities Act or any similar federal statute then in force) the deletion of the reference to such Holder in any amendment or supplement to the Registration Statement filed or prepared subsequent to the time that such reference ceases to be required.

Section 5. Lock-Up Agreement

Each Holder agrees, if such Holder is so requested by the managing underwriter in the IPO, to enter into a Lock-Up Agreement, *provided* that, subject to applicable NASD rules, the Lock-Up Period shall not exceed 180 days following the effectiveness of the IPO.

Section 6. Holder Covenants

Each Holder hereby covenants and agrees that:

(a) it will not sell any Registrable Securities under the Registration Statement until it has received notice from the Corporation that such Registration Statement and any post-effective amendments thereto have become effective;

(b) it and its officers, directors or Affiliates, if any, will comply with the prospectus delivery requirements of the Securities Act as applicable to them in connection with sales of Registrable Securities pursuant to a Registration Statement; and

(c) by its inclusion of such Registrable Securities in the Registration Statement that, upon receipt of a notice from the Corporation of the occurrence of any event of the kind described in Section 4.1(d)(iv), (v), (vi), (vii) and (viii) of this Annex A, such Holder will forthwith discontinue disposition of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing by the Corporation that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement.

Section 7. Registration Expenses

Except to the extent limited by the applicable state law, all fees and expenses incident to the performance of or compliance with this Annex A by the Corporation shall be borne by the Corporation whether or not pursuant to an Underwritten Offering and whether or not any Registration Statement is filed or becomes effective and whether or not any Registrable Securities are sold pursuant to any Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any securities exchange or market on which Registrable Securities are required hereunder to be listed and (B) in compliance with state securities or Blue Sky laws (including, without limitation, fees and disbursements of counsel for the Holders in connection with Blue Sky qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as the managing underwriters, if any)); (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by the managing underwriters, if any; (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of counsel for the Corporation; (v) fees and disbursements of a single counsel for all selling

Holders; (vi) Securities Act liability insurance, if the Corporation so desires such insurance; (vii) fees and expenses of all other Persons retained by the Corporation in connection with the consummation of the transactions contemplated by this Annex A; and (viii) all of the internal expenses of the Corporation incurred in connection with the consummation of the transactions contemplated by this Annex A (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder) (all such expenses being referred to herein as “*Registration Expenses*”); *provided, however*, that except as expressly set forth herein, in no event shall Registration Expenses include any underwriting discounts, commissions or fees attributable to the sale of the Registrable Securities or any counsel, accountants or other persons (other than a single counsel for all selling Holders) retained by the Holders incurred in connection with the consummation of the transactions contemplated by this Annex A.

Section 8. Indemnification and Contribution

Section 8.1 Indemnification by the Corporation. The Corporation shall, notwithstanding any termination of this Annex A, indemnify and hold harmless each Holder and their agents, counsel, brokers, investment advisors and employees of each of them and each underwriter of the Registrable Securities and their officers, directors, Affiliates, partners and any broker or dealer through whom such shares may be sold and each Person, if any, who controls (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) such Holder or any such underwriter to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys’ fees) and expenses (collectively, “*Losses*”), as incurred, arising out of or relating to any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Corporation by such Holder expressly for use therein, which information was reasonably relied on by the Corporation for use therein or to the extent that such information relates to such Holder or such Holder’s proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in any Registration Statement, such Prospectus or such form of Prospectus or in any amendment or supplement thereto. The Corporation shall notify the Holders promptly of the institution, threat or assertion of any Proceeding of which the Corporation is aware in connection with the transactions contemplated by this Annex A.

Section 8.2 Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Corporation, the directors, officers, agents, counsel and employees, each Person who controls the Corporation (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents, counsel or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and

against all Losses, as incurred, arising solely out of or based solely upon any untrue statement of a material fact contained in the Registration Statement, any Prospectus, or any form of prospectus, or arising solely out of or based solely upon any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Corporation specifically for inclusion in the Registration Statement or such Prospectus and that such information was reasonably relied upon by the Corporation for use in the Registration Statement, such Prospectus or such form of prospectus or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in the Registration Statement, such Prospectus or such form of Prospectus. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

Section 8.3 Conduct of Indemnification Proceedings.

(a) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; *provided*, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Annex A, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

(b) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

(c) All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten (10) Business Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; *provided*, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

Section 8.4 Contribution.

(a) If a claim for indemnification under Section 8.1 or 8.2 is unavailable to an Indemnified Party because of a failure or refusal of a Governmental Authority to enforce such indemnification in accordance with its terms (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth herein, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to an indemnification or contribution obligation hereunder.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 8, no Holder shall be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(c) The indemnity and contribution agreements contained in this Section 8 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

Section 8.5 Rule 144. Following the IPO, the Corporation covenants that:

(a) it will file the reports required to be filed by the Corporation under the Securities Act and the Exchange Act, so to enable the Holders to sell Registrable Securities pursuant to Rule 144 under the Securities Act;

(b) it shall cooperate with any Holder in connection with any sale, transfer or other disposition by such Holder of any Registrable Securities pursuant to Rule 144 under the Securities Act;

(c) it will take such action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell its Common Stock without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 promulgated under the Securities Act, including providing any legal opinions; and

(d) upon the request of any Holder, it shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

Section 9. Term of Registration Rights.

The rights of Holders with respect to the registration rights granted pursuant to this Annex A shall remain in effect, subject to the terms hereof, so long as there are Registrable Securities or securities which are convertible or exchangeable for Registrable Securities issued and outstanding.

**AMENDED AND RESTATED
AMD-SPANSION PATENT CROSS-LICENSE AGREEMENT**

THIS AMENDED AND RESTATED AMD-SPANSION PATENT CROSS-LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of December 21, 2005 (the “**Amendment Date**”), by and between Advanced Micro Devices, Inc., a Delaware corporation (“**Parent**” or “**AMD**”) and Spansion Inc., a Delaware corporation (“**Spansion**”). Parent and Spansion are hereinafter also referred to, collectively, as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, as of June 30, 2003 (the “**Effective Date**”), Parent and Spansion LLC, a Delaware limited liability company (“**LLC**”), entered into that certain AMD-Spansion Patent Cross-License Agreement (the “**AMD-Spansion PXL**”);

WHEREAS, the Parties hereto hereby desire to amend and restate the AMD-Spansion PXL, including substituting Spansion for LLC as a Party hereto, and LLC consents to such substitution as set forth below;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and other terms and conditions contained herein, Parent and Spansion agree as follows:

AGREEMENT

1. DEFINITIONS; INTERPRETATION

1.1 **Terms Defined in this Agreement.** The following terms when used in this Agreement shall have the following definitions:

1.1.1 “**Acquired Party**” means a Party or the Semiconductor Group of a Party that has undergone a Change of Control.

1.1.2 “**Acquired Party Covered Product**” has the meaning set forth in Section 9.3.3(a).

1.1.3 “**Acquirer**” means a Third Party that, through a Change of Control of an Acquired Party, either (a) acquires, through any transaction or series of related transactions, ownership of securities representing more than fifty percent (50%) of the power to elect Acquired Party’s board of directors or other managing authority, or in the case Acquired Party is a non-corporate Person, equivalent interests, (b) consolidates with or merges with or into Acquired Party, or has Acquired Party merged into it, or (c) purchases or otherwise receives transfer of all or a substantially all of the assets or business of Acquired Party.

1.1.4 “**Acquirer Competitive Product**” has the meaning set forth in Section 9.3.3(b).

1.1.5 “**Acquirer Licensed Patents**,” with respect to an Acquirer to which this Agreement is assigned pursuant to Section 10.6, means all Patents that, as of the effective date of such assignment or thereafter during the Term, are wholly owned by Acquirer, or as to which, and only to the extent and subject to the conditions under which, Acquirer has the right, as of the effective date of such assignment or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless the non-assigning Party undertakes to pay directly or to reimburse Acquirer for any such royalties or other consideration, in which case such Patents shall be included within the Acquirer Licensed Patents), except for payments to a Subsidiary of Acquirer sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Acquirer or any Subsidiary of Acquirer sublicensed hereunder.

1.1.6 “**Aggregate Ownership Interest**” has the meaning set forth in the Certificate of Incorporation.

1.1.7 “**AMD**” has the meaning set forth in the first paragraph of this Agreement.

1.1.8 “**AMD Investments**” means AMD Investments, Inc., a Delaware corporation and an indirect wholly-owned subsidiary of AMD.

1.1.9 “**AMD-Spansion PXL**” has the meaning set forth in the recitals of this Agreement.

1.1.10 “**Assigned Patent Rights**” has the meaning set forth in the Intellectual Property Contribution and Ancillary Matters Agreement.

1.1.11 “**Auxiliary Part**” means input/output means, supporting means, terminal members, conductors or equivalent interconnecting members, housing means, any environmental controlling means included within such housing means or unitary with such housing means and active and/or passive elements unitarily or separately combined with a Semiconductor Product and any other parts, primarily useable in or for manufacturing, assembling or packaging Semiconductor Products.

1.1.12 “**Certificate of Incorporation**” means the Certificate of Incorporation of Spansion Inc., as of the Amendment Date.

1.1.13 “**Change of Control**” shall be deemed to have occurred, with respect to a Person (which, for purposes of this Section 1.1.13 also includes the Semiconductor Group of either Party), when: (a) any “person” or “group” (as such terms are used in Sections 13(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than fifty percent (50%) of the combined voting power of the then-outstanding securities entitled to vote generally in elections of directors of such Person, or in the case such Person is a non-corporate Person, equivalent interests; (b) such Person consolidates with or merges with or into any other Person, or any other Person merges into such Person, unless immediately after such consolidation or merger, the Persons that, prior to such consolidation or merger, owned the then-outstanding securities of such Person entitled to vote generally in elections of directors, or in the case such Person is a non-corporate Person, equivalent interests, own in the aggregate at least fifty percent (50%) of such securities or equivalent interests of the surviving entity; or (c) such Person sells or otherwise transfers all or substantially all of the assets or business of such Person.

1.1.14 “**Change of Control Date**” means, with respect to the Change of Control of a Person, the effective date of such Change of Control.

1.1.15 “**Circuit Patents**” means those Licensed Patents that claim a plurality of active and/or passive elements for generating, receiving, transmitting, storing, transforming or acting in response to electrical signal(s) to achieve a particular function, *provided* that Circuit Patents shall not include Process Patents.

1.1.16 “**Conversion Date**” means the date that the Class D Common Stock of Spansion is converted into Class A Common Stock in accordance with the Certificate of Incorporation.

1.1.17 “**Contribution Agreement**” means that certain Contribution Agreement, dated as of June 30, 2003, by and among, AMD, AMD Investments, Fujitsu, FMH and FASL LLC (now Spansion LLC), as amended.

1.1.18 “**Control**” (including “**Controlled**,” “**Controlling**” and other forms thereof), with respect to a Person, means beneficial ownership, directly or indirectly, of securities representing more than fifty percent (50%) of the power to elect such Person’s board of directors or other managing authority, or in the case of a non-corporate Person, equivalent interests.

1.1.19 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

1.1.20 “**Exchange Rate**” means, with respect to any payment by Spansion to Parent, the exchange rate for bank cable transfers from the applicable currency to United States dollars as quoted by Bloomberg, L.P.

1.1.21 “**Effective Date**” has the meaning set forth in the recitals of this Agreement.

1.1.22 “**Existing Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person and being made (or have made) and offered for sale by such Person on or prior to such date.

1.1.23 “**FMH**” means Fujitsu Microelectronics Holding, Inc., a Delaware corporation and wholly owned subsidiary of Fujitsu.

1.1.24 “**Fujitsu**” means Fujitsu Limited, a Japanese corporation.

1.1.25 “**Intellectual Property Contribution and Ancillary Matters Agreement**” means that certain Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement entered into as of December 21, 2005 by and among Fujitsu, Spansion, STI, AMD Investments and AMD.

1.1.26 “**Licensed Patents**” means, collectively, the Spansion Licensed Patents, the Parent Licensed Patents, and the Subsidiary Licensed Patents of each Subsidiary of Parent that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4.

1.1.27 “**Licensed Product**” means any of the items described in the following clauses (a) through (d) and/or parts thereof:

- (a) Semiconductive Material;
- (b) Auxiliary Part;
- (c) Semiconductor Product; or
- (d) Manufacturing Apparatus.

1.1.28 “**LLC**” has the meaning set forth in the first paragraph of this Agreement.

1.1.29 “**Manufacturing Apparatus**” means any instrumentality or aggregate of instrumentalities primarily designated for use in the making of any of the items set forth in clauses (a) through (c) of Section 1.1.27 and/or parts thereof.

1.1.30 “**Net Sales**” with respect to a product, means the gross amounts invoiced by Spansion and its Subsidiaries for the sale or other distribution of the product within any country, *less* (a) separately stated charges for sales and use taxes, excise taxes, customs duties and other similar taxes, and (b) any amounts that Spansion and its Subsidiaries actually paid for the non-Spansion Content, if any, of such product.

1.1.31 “**Non-Semiconductor Group**,” with respect to a Party, means any of such Party’s internal groups or other organizations that is not the Semiconductor Group of such Party.

1.1.32 “**Offering Documents**” has the meaning set forth in the Intellectual Property Contribution and Ancillary Matters Agreement.

1.1.33 “**Parent**” has the meaning set forth in the first paragraph of this Agreement.

1.1.34 “**Parent Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by Parent, or as to which, and only to the extent and subject to the conditions under which, Parent has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless Spansion undertakes to pay directly or to reimburse Parent for any such royalties or other consideration, in which case such Patents shall be included within the Parent Licensed Patents), except for payments to a Subsidiary of Parent sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Parent or any Subsidiary of Parent sublicensed hereunder.

1.1.35 “**Party**” and “**Parties**” have the respective meanings set forth in the first paragraph of this Agreement.

1.1.36 “**Patents**” means all classes or types of patents (including design patents) and utility models of all countries of the world issued or issuing on patent or utility model applications entitled to an effective filing date that is on or before the end of the Term, and respective applications therefor, together with any divisions, continuations and continuations-in-part and reissues and results of re-examinations thereof.

1.1.37 “**Pending Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person that such Person reasonably expects to tapeout within eighteen (18) months of such date (as specified in a then-current written product roadmap as of such date) and that such Person reasonably expects to make (or have made) and sell commencing reasonably promptly thereafter.

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

1.1.39 “**Process Patents**” means those Licensed Patents that claim (a) a process for designing and/or making Licensed Products, including equipment used therefor, (b) materials comprising or used in the manufacturing of Licensed Products, or (c) a structure for the arrangement or interrelationship of regions, layers, electrodes or contacts of Licensed Products.

1.1.40 “**Royalty Payment**” has the meaning set forth in Section 6.1.

1.1.41 “**Semi-Annual Period**” means each half of Spansion’s fiscal year; *provided, however*, that the last Semi-Annual Period shall end on the effective date of any termination of this Agreement.

1.1.42 “**Semiconductive Element**” means an element consisting primarily of a body of Semiconductive Material having a plurality of electrodes associated therewith, whether or not said body consists of a single Semiconductive Material or of a multiplicity of such materials, whether or not said body has, therein and/or thereon, one or more junctions and whether or not said body includes one or more layers or other regions (constituting substantially less than the whole of said body) of a material or materials which are of a type other than Semiconductive Material, and if provided as a part thereof, said element includes passivating means thereof.

1.1.43 “**Semiconductive Material**” means any material whose conductivity is intermediate to that of metals and insulators at room temperature and whose conductivity increases with increasing temperature over some temperature range.

1.1.44 “**Semiconductor Group**,” with respect to a Party, means the internal group or other organization of such Party having as its primary activities the research and development and making of Semiconductor Products for, and selling of Semiconductor Products to, the semiconductor merchant market. The Spansion Semiconductor Group currently consists of Spansion in its entirety. The Parent Semiconductor Group currently consists of Parent in its entirety.

1.1.45 “**Semiconductor Product**” means:

-
- (a) a Semiconductive Element; or
 - (b) a Semiconductive Element and one or more films of conductive, semiconductive or insulating materials formed on a surface or surfaces of such Semiconductive Element, said film or films comprising one or more conductors, active or passive electrical circuit elements or any combination thereof; or
 - (c) a unitary assembly consisting of one or more of the elements described in clauses (a) and/or (b) of this Section 1.1.45 having a fixed permanent physical relationship established therebetween; or
 - (d) a unitary assembly consisting primarily of (i) one or more of the elements described in clauses (a), (b) and/or (c) of this Section 1.1.45, and (ii) one or more film devices having a fixed permanent physical relationship established therebetween.

Semiconductor Product includes, if provided therewith as a part thereof, (A) Auxiliary Parts and (B) additional electrical circuits constituted thereby and integrally included therein, *provided* that such Auxiliary Parts and additional electrical circuits are incidental to the functionality of such Semiconductor Products.

1.1.46 “**Spansion**” has the meaning set forth in the first paragraph of this Agreement.

1.1.47 “**Spansion Content**” means components or products manufactured by Spansion or a Spansion Subsidiary, or components or products specifically manufactured by any other Entity, including AMD or Fujitsu or any third party subcontractor or foundry, on behalf of Spansion or a Spansion Subsidiary at Spansion’s or the Spansion Subsidiary’s direction and based on (a) technology or intellectual property owned by Spansion, or which Spansion otherwise has the right to use, or (b) designs provided by Spansion, which designs are proprietary to Spansion or a third party licensor of Spansion.

1.1.48 “**Spansion Japan**” means Spansion Japan Limited, a Japanese corporation.

1.1.49 “**Spansion Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by Spansion or any of its Subsidiaries that are subject to control by the Spansion Semiconductor Group, or as to which, and only to the extent and subject to the conditions under which, Spansion or any of its Subsidiaries that are subject to control by the Spansion Semiconductor Group has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless Parent undertakes to pay directly or to reimburse Spansion and/or its Subsidiaries, as applicable, for any such royalties or other consideration, in which case such Patents shall be included within the Spansion Licensed Patents), except for payments to Spansion or any of its Subsidiaries that are subject to control by the Spansion Semiconductor Group or payments to Persons for inventions made by such Persons while employees or contractors of Spansion or any of its Subsidiaries that are subject to control by the Spansion Semiconductor Group. Notwithstanding any of the foregoing, Spansion Licensed Patents do not include any Assigned Patent Rights.

1.1.50 “**STI**” means Spansion Technology Inc., a Delaware corporation, a wholly owned subsidiary of Spansion.

1.1.51 “**Subsidiary**” of a Party means any other Person that is Controlled by such Party, but such other Person shall be deemed to be a Subsidiary only so long as such Control exists. Notwithstanding the foregoing, neither Spansion nor any Subsidiaries of Spansion shall be deemed a Subsidiary of Parent.

1.1.52 “**Subsidiary Licensed Patents,**” with respect to a Subsidiary of Parent that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4, means all Patents that, as of the date of sublicense or thereafter during the Term, are wholly owned by such Subsidiary, or as to which, and only to the extent and subject to the conditions under which, such Subsidiary has the right, as of the date of sublicense or thereafter during the Term, to grant licenses or sublicenses, without such grant resulting in the payment of royalties or other consideration to third parties (unless Spansion undertakes to pay directly or to reimburse such Subsidiary for any such royalties or other consideration, in which case such Patents shall be included within the Subsidiary Licensed Patents), except for payments to Parent or any other Subsidiary of Parent sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of such Subsidiary or any other Subsidiary of Parent sublicensed hereunder.

1.1.53 “**Successor Product**” means a subsequent or follow-on version of an Acquired Party Covered Product or Acquirer Competitive Product that is based on substantially the same technology (including “process shrinks” of such products and other incremental improvements thereto) as such Acquired Party Covered Product or Acquirer Competitive Product without the benefit of fundamental advances in design, and that is intended to replace such Acquired Party Covered Product or Acquirer Competitive Product and to be used in the same type of application (e.g., personal computer, mobile phone, etc.).

1.1.54 “**Term**” means the period commencing on the Effective Date and ending on the effective date of the termination of this Agreement pursuant to Section 9.

1.1.55 “**Termination Agreement**” means that certain Termination Agreement entered into as of June 30, 2003 by and among Parent, Fujitsu, and Fujitsu AMD Semiconductor Limited (now Spansion Japan).

1.1.56 “**Third Party**” means any Person other than the Parties and other than any Person Controlling, Controlled by or under common Control with either Party.

1.1.57 “**Transaction Document**” has the meaning set forth in the Contribution Agreement.

1.2 Interpretation.

1.2.1 Certain Terms. The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.” The words “make” and “have made” include the acts of developing, assembling, packaging and/or testing.

1.2.2 Section References, Titles and Subtitles. Unless otherwise noted, all references to Sections herein are to Sections of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.2.3 Reference to Persons, Agreements, Statutes. Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. MUTUAL RELEASE

2.1 **Release by Spansion**. Spansion hereby releases, acquits and forever discharges Parent hereunder from any and all claims or liability for infringement or alleged infringement of any Spansion Licensed Patent by performance of acts prior to the date on which such Patent becomes a Spansion Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

2.2 **Release by Parent**. Parent hereby releases, acquits and forever discharges Spansion hereunder from any and all claims or liability for infringement or alleged infringement of any Parent Licensed Patent by performance of acts prior to the date on which such Patent becomes a Parent Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

3. GRANTS OF LICENSE

3.1 **Grant by Spansion**. Subject to the terms and conditions of this Agreement, Spansion hereby grants to Parent a non-exclusive and non-transferable (except pursuant to Section 10.6) license under Spansion Licensed Patents:

3.1.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.1.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.2 **Grant by Parent**. Subject to the terms and conditions of this Agreement, Parent hereby grants to Spansion a non-exclusive and non-transferable (except pursuant to Section 10.6) license under Parent Licensed Patents:

3.2.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.2.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.3 Non-Semiconductor Groups.

3.3.1 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by Parent hereunder to Spansion (and the definition of Parent Licensed Patents included in such grant) shall exclude Licensed Patents of any Parent Non-Semiconductor Group. No Parent Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to Parent for Licensed Products, except with respect to Licensed Products that are made by or for the Parent Semiconductor Group or a Subsidiary sublicensed hereunder.

3.3.2 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by Spansion hereunder to Parent (and the definition of Spansion Licensed Patents included in such grant) shall exclude Licensed Patents of any Spansion Non-Semiconductor Group. No Spansion Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to Spansion for Licensed Products, except with respect to Licensed Products that are made by or for the Spansion Semiconductor Group or a Subsidiary sublicensed hereunder.

4. IMMUNITY FOR CUSTOMERS AND USERS

4.1 **Grant of Immunity by Spansion.** The licenses granted to Parent pursuant to Section 3 shall include immunity for (and Spansion hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of Parent for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of Parent as set forth herein (whether such products are used, imported, sold, offered for sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Licensed Products). With respect to products made by Parent on a foundry basis where a customer engages Parent as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any Parent materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to Parent and its resellers, distributors, users and other customers (to the extent such other customers are not engaging Parent as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by Parent does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

4.2 **Grant of Immunity by Parent.** The licenses granted to Spansion pursuant to Section 3 shall include immunity for (and Parent hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of Spansion for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of Spansion as set forth herein (whether such products are used, imported, sold, offered for

sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Licensed Products). With respect to products made by Spansion on a foundry basis where a customer engages Spansion as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any Spansion materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to Spansion and its resellers, distributors, users and other customers (to the extent such other customers are not engaging Spansion as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by Spansion does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

5. EXTENSION OF LICENSE

5.1 **Right of Parent.** Parent shall have the right to grant sublicenses of the rights, licenses and immunities granted to Parent under Sections 2, 3 and 4, to a Subsidiary of Parent that is subject to control by the Semiconductor Group, but subject to the condition that such Subsidiary grants a license to Spansion under its Subsidiary Licensed Patents, if any. Any such grant-back license shall otherwise be of a scope equivalent to that of Section 3.2. For purposes of clarification, (a) except as set forth in Section 5.2, it is an option, and not an obligation, for a Subsidiary to grant back such a license, unless and until such Subsidiary elects to be granted a sublicense of such rights, licenses and immunities, and (b) even without obtaining such a sublicense, a Subsidiary of Parent (whether subject to control by the Semiconductor Group or a Non-Semiconductor Group) may exercise the rights, licenses and immunities granted hereunder to Parent solely for Licensed Products that are made by or for the Semiconductor Group or a Subsidiary of Parent sublicensed hereunder.

5.2 Semiconductor Group Subsidiaries. If requested by Spansion, Parent shall cause a Subsidiary actually controlled by the Semiconductor Group of Parent to grant a license to Spansion under Section 5.1, in which case such Subsidiary shall be deemed sublicensed pursuant to Section 5.1.

5.3 Right of Spansion. Spansion shall have the right to grant sublicenses of the rights, licenses and immunities granted to Spansion under Sections 2, 3 and 4, to Subsidiaries of Spansion that are subject to control by the Spansion Semiconductor Group.

5.4 No Other Right. A Party shall not have the right to grant sublicenses of the Patents licensed hereunder except as provided in this Section 5 or in Section 7.1 of the Intellectual Property Contribution and Ancillary Matters Agreement.

6. ROYALTIES

6.1 **Royalty Payments.** In consideration of the licenses set forth in Section 3.2 with respect to Parent Licensed Patents, Spansion shall pay to Parent the following royalty payments (each a "**Royalty Payment**").

6.1.1 From the Amendment Date until the Conversion Date, three-tenths of one percent (0.3%) of Net Sales of Licensed Products; and

6.1.2 During the two-year period following the Conversion Date, fifteen one-hundredths of one percent (0.15%) of Net Sales of Licensed Products.

Spansion shall not owe any royalties on Net Sales of Licensed Products occurring on or after the second anniversary of the Conversion Date in consideration of the license hereunder to Parent Licensed Patents.

6.2 Reports. Spansion shall: (a) keep accurate and detailed accounts and records of all Royalty Payments due under this Agreement; and (b) within sixty (60) days after the last day of each Semi-Annual Period, deliver to Parent a statement of all Royalty Payments due to Parent, if any, during such Semi-Annual Period.

6.3 Payment Terms. Royalty Payments for Net Sales occurring during each Semi-Annual Period shall be made within sixty (60) days from the end of such Semi-Annual Period. All amounts payable by Spansion to Parent shall be paid by wire transfer of U.S. Dollars in immediately available funds to such financial institution and account number as Parent may designate in writing to Spansion.

6.4 Exchange Rates. In the event of any Net Sales from the sale or other distribution of a Licensed Product by Spansion in any currency other than U.S. Dollars, for purposes of determining the Royalty Payment, Spansion shall use the monthly average of the closing quote of the Exchange Rate for the month in which such sale or other distribution was effected.

6.5 Late Payments. If Spansion fails to make any payment on or before the required payment date, Spansion shall be liable for interest on such payment, for the period commencing on such required payment date and ending on the date such payment is made, at the rate of ten percent (10%) per annum or the maximum amount allowed by Applicable Law, whichever is less.

6.6 Taxes. In the event that Spansion is required by Applicable Law to withhold any Tax from any amount payable by Spansion to Parent hereunder, (a) Spansion shall withhold such Tax and remit such withheld amount to the appropriate Governmental Authorities in accordance with Applicable Law and shall promptly report to Parent the amounts and dates of all such withholdings, and (b) the amount otherwise payable to Parent by Spansion hereunder upon which such withholding is based shall be decreased accordingly; provided, that Spansion shall in all events provide Parent with five Business Days advance written notice of the amount of any withholding to be made hereunder. Spansion shall promptly furnish Parent with official copies (or certified copies if official copies are not available) of each Tax receipt received from any Governmental Authority and a copy of any document pertaining to Parent filed with any Governmental Authority (including United States Internal Revenue Service Form 1042-S), and shall furnish Parent with such other documentation relating to any such deductions or withholdings as may be reasonably requested by Parent. If at any time Parent believes that Spansion may in the future adopt withholding practices in respect of Parent that are not in accordance with the requirements of Applicable Law, Parent shall notify Spansion of the basis for its objection to such withholding practices and, if the matter cannot be resolved by agreement, Spansion shall refer the issue to an independent law firm of national stature (which shall not be a law firm that is

regularly used by Spansion or AMD), which shall advise Spansion concerning the legal obligations of Spansion in respect of withholding, and thereafter Spansion shall act consistently with such advice in matters pertaining to withholding. If Spansion acts in accordance with the advice of such law firm and a Governmental Authority later asserts in writing to any Party that Spansion failed to withhold Tax from amounts payable to Parent hereunder at the time and/or in the amounts required by Chapter 3 of the Code or comparable provisions of other Tax laws in respect of Parent, then Parent shall promptly upon receipt of a copy of such writing accompanied by a written notice from Spansion specifying that a payment is required pursuant to this Section 6.6 pay to such Governmental Authority an amount in full satisfaction of the amount of Taxes so asserted by such Governmental Authority. If Parent does not promptly pay such amount to such Governmental Authority, then, unless Parent provides satisfactory written evidence of settlement in full of the matter asserted by the Governmental Authority, Spansion shall withhold such amount from the next payment(s) to Parent, shall promptly pay such withheld amounts over to such Governmental Authority in payment of such asserted liability for Taxes.

6.7 Audit. Parent may audit the books and records of Spansion and its Subsidiaries as may reasonably be required to verify the accuracy and sufficiency of Spansion's payment of Royalty Payments hereunder. Any such audit shall be at Parent's expense; *provided* that, if such audit reveals an underpayment of five percent (5%) or more, Spansion shall promptly pay to Parent all costs and expenses of such audit. Spansion shall promptly pay Parent the amount of any underpayment revealed by any such audit. Parent's rights under this provision, with respect to Royalty Payments paid and payable on Net Sales occurring during each Semi-Annual Period, shall continue for a period of six (6) years after the last day of such Semi-Annual Period.

7. WARRANTIES AND DISCLAIMERS

7.1 Warranties. Subject to Section 10.1, each Party represents and warrants to the other Party that it has the right, and will continue during the term of this Agreement to have the right, to grant to or for the benefit of the other Party the rights and licenses granted hereunder in accordance with the terms of this Agreement and such grant of rights and licenses does not, and will not during the term of this Agreement, conflict with the rights and obligations of such Party under any other license, agreement, contract or other undertaking.

7.2 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY TRANSACTION DOCUMENT OR OFFERING DOCUMENT, NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

8. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERM AND TERMINATION

9.1 **Term.** This Agreement will be effective as of the Effective Date, and will continue in full force and effect until the later to occur of (a) the tenth (10th) anniversary of the Effective Date, or (b) Parent transferring 100% of its Aggregate Ownership Interest in Spansion, at which time this Agreement shall terminate, unless earlier terminated as set forth in this Section 9.

9.2 **Termination for Change of Control of Party.** Either Party shall have the right to terminate this Agreement, or to invoke the provisions of Section 9.3.3 if this Agreement was previously terminated, in the event the other Party or its Semiconductor Group undergoes a Change of Control (including a Change of Control in connection with bankruptcy proceedings of such other Party) by giving thirty (30) days' written notice of termination or invocation to the other Party, *provided* that the terminating or invoking Party must exercise such right no later than ninety (90) days after receiving notice of such Change of Control.

9.3 Effect on Licenses

9.3.1 Upon termination of this Agreement pursuant to Section 9.1, the rights, licenses and immunities granted by each Party and its Subsidiaries hereunder shall survive such termination and shall continue until the expiration of the last to expire of the Licensed Patents, subject to Sections 9.2 and 9.3.3.

9.3.2 Upon termination of this Agreement pursuant to Section 9.2, the rights, licenses and immunities granted by each Party and its Subsidiaries hereunder shall survive such termination solely under those Licensed Patents that are entitled to an effective filing date that is on or before, and are licensed as of, the Change of Control Date, and shall continue until the expiration of the last to expire of such Licensed Patents, subject to Sections 9.2 and 9.3.3.

9.3.3 Upon termination of this Agreement pursuant to Section 9.2 or invocation of the provisions of this Section 9.3.3 pursuant to Section 9.2, the rights, licenses and immunities granted under Circuit Patents to Acquired Party and its Subsidiaries hereunder shall be limited solely to:

- (a) each Existing Product and Pending Product of Acquired Party and its Subsidiaries sublicensed hereunder as of the Change of Control Date ("**Acquired Party Covered Product**");
- (b) each Existing Product and Pending Product of Acquirer as of the Change of Control Date that would have been in direct competition with an Acquired Party Covered Product if both such products were offered for sale contemporaneously by different Persons ("**Acquirer Competitive Product**"); and
- (c) Successor Products.

9.3.4 Notwithstanding anything to the contrary, once the rights, licenses and immunities granted under Circuit Patents to an Acquired Party and its Subsidiaries hereunder have been limited pursuant to this Section 9.3.3, in no event shall such rights, licenses and immunities be subsequently broadened or expanded to cover additional products or Patents.

9.4 **Effect on Royalties.** To the extent that Spansion retains any of the licenses granted under Sections 3 and 5 following any termination of this Agreement, the obligations of Spansion under Section 6.1 shall survive. To the extent that Section 6.1 survives, Sections 6.1 through 6.7 shall survive.

9.5 **Continuing Liability.** The termination of this Agreement for any reason shall not release either Party from any liability, obligation or agreement which has already accrued at the time of termination. Termination of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a Party may have hereunder, at law or otherwise, or which may arise out of or in connection with such termination.

9.6 **Survival.** The provisions of Sections 1, 2, 4 (with respect to Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of prior to termination of the Agreement), 6, 8, 9.2, 9.3, 9.4, 9.5, 9.6 and 10, and any other sections of this Agreement to the extent expressly provided herein, shall survive any termination of this Agreement.

10. MISCELLANEOUS

10.1 **Limitation.** Nothing contained in this Agreement shall be construed as:

10.1.1 a warranty or representation by either Party or its Subsidiaries sublicensed hereunder as to the validity, enforceability or scope of any Licensed Patents; or

10.1.2 conferring upon either Party or its Subsidiaries sublicensed hereunder any license, right or privilege under any patents, utility models or design patents except the licenses, rights and privileges expressly granted hereunder; or

10.1.3 a warranty or representation that any acts licensed or sublicensed hereunder will be free from infringement of patents, utility models, design patents, copyrights, mask work rights or trade secrets other than those Patents under which licenses, rights and privileges have been expressly granted hereunder; or

10.1.4 an obligation of either Party or its Subsidiaries to file or maintain any patent application, secure any patent or maintain any patent in force; or

10.1.5 an arrangement to bring or prosecute actions or suits against third parties for infringement or conferring any right to bring or prosecute actions or suits against third parties for infringement;

10.1.6 conferring any right to use in advertising, publicly or otherwise, any trademark, service mark, trade name or their equivalent, or any contraction, abbreviation or simulation thereof, of either Party or its Subsidiaries sublicensed hereunder; or

10.1.7 derogating from or otherwise affecting Parent's non-competition obligations in Sections 2 and 3 of the Non-Competition Agreement for so long as such obligations remain in effect.

10.2 Relationship of the Parties. In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

10.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

10.4 Dispute Resolution. Any disagreement, dispute, controversy or claim arising out of or in any way related to this Agreement or the subject matter thereof or the interpretation hereof or any arrangements relating hereto or contemplated herein or the breach, termination or invalidity hereof (a "dispute"), shall be finally settled by binding arbitration in accordance with the provisions of this Section 10.4. The Parties will first attempt in good faith to resolve the dispute by negotiation. To invoke this dispute, the disputing Party shall give the other party written notice of the dispute. Within 30 days, the Parties shall meet at a mutually acceptable place to attempt to resolve the dispute. If for any reason the dispute has not been resolved within 90 days after the date of the disputing Party's notice, either Party may serve on the other a written demand for arbitration. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitral tribunal shall consist of one arbitrator. The arbitration shall be conducted in San Jose or in any other city in the State of California in the United States of America as the Parties to the dispute may designate by mutual written consent. Any decision or award of the arbitral tribunal shall be final and binding upon the Parties to the arbitration proceeding. The arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the state of California or any other applicable law. The language to be used in the arbitration proceedings shall be English and all documents written in a language other than English shall be translated to the English language for the arbitration proceedings, unless otherwise decided by the Parties to the arbitration proceedings. The Party requesting the arbitration shall pay for the costs of the translation. The Parties hereto agree that the arbitral award, which shall be in writing, may be enforced against the Parties to the arbitration proceeding or their assets wherever the award may be entered in any court having jurisdiction thereof, and each Party hereby consents to personal jurisdiction in such court and consents to service of process by means of certified or registered mail, return receipt requested. In any judicial action to compel arbitration or to enforce an arbitral award, the prevailing Party shall be entitled to an award of its reasonable expenses, including attorneys' fees. The arbitrator in this proceeding may require any Party to reimburse all or a portion of the other Party's costs and expenses (including legal fees and travel expenses), if the arbitrator determines that such an award is warranted by the circumstances.

10.5 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.6 Successors and Assigns. Each Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to an Acquirer as part of a merger or consolidation of such Party or its Semiconductor Group with or into such Acquirer or a merger of such Acquirer into such Party, or as part of a sale of all or substantially all of the assets or business of such Party or its Semiconductor Group to such Acquirer, *provided* that the assigning Party's right to make such assignment is contingent and conditioned upon the non-assigning Party being accorded the right to terminate this Agreement or invoke the provisions of Section 9.3.3 following such merger, consolidation or sale of assets or business, as applicable, in accordance with the terms of Section 9.2; and *provided further* that such Acquirer assumes all of the assigning Party's obligations under this Agreement, including the obligation to grant, under all Licensed Patents of the assigning Party and its Subsidiaries licensed as of the Change of Control Date and all Acquirer Licensed Patents (subject to Section 3.3), the rights, licenses and immunities granted to the non-assigning Party and its Subsidiaries under Sections 2, 3 and 4 (as may be limited under Sections 9.3.2 and 9.3.3). In addition, each Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to a Subsidiary of such Party to which such Party transfers all or substantially all of the assets or business of its Semiconductor Group (for purposes of clarification, such transfer shall not be deemed a Change of Control of such Party or its Semiconductor Group). Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by a Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by either Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party shall assign its rights under any of its Licensed Patents unless such assignment is made subject to the terms of this Agreement.

10.7 Entire Agreement; Amendment. This Agreement and the other Transaction Documents and Offering Documents constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supersede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter; *provided, however*; that the rights, licenses and immunities granted to the Parties in such prior agreements shall survive the execution of this Agreement and the other Transaction Documents and Offering Documents to the extent set forth in, and in accordance with the terms of, the Termination Agreement (including Section 3.6 thereof). This Agreement may not be altered or amended except by a written instrument signed by authorized legal representatives of both Parties and, for so long as Fujitsu's Aggregate Ownership Interest is greater than ten percent (10%), Fujitsu. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice

such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or any other Transaction Document or Offering Document.

10.8 Notices and Other Communications. All notices required or permitted under this Agreement shall refer to this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Spansion:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Attn: General Counsel
Telephone: (408) 962-2500
Facsimile: (408) 774-7443

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
Attn: General Counsel
Telephone: (408) 749-2202
Facsimile: (408) 774-7399

With a copy to (which shall not constitute notice):

Advanced Micro Devices, Inc.
5204 East Ben White Boulevard
Mail Stop 563
Austin, Texas 78741
Attn: Vice President, Intellectual Property
Telephone: (512) 602-0148
Facsimile: (512) 602-4932

or to such other address or facsimile number as a Party may have specified to the other Party in writing delivered in accordance with this Section 10.8.

10.9 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

10.10 **Severability.** If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

10.11 **Construction.** This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

10.12 **Execution.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

10.13 **Confidentiality of Terms.** Neither Party shall disclose the terms of this Agreement to any third parties, except that either Party may disclose to third parties the existence of this Agreement and may disclose the terms of this Agreement to the extent reasonably necessary, in confidence, to its legal counsel, accountants, and banks and their advisors, and to its present or future financing sources for, potential investors in, and potential successors to, all or any portion of the assets or business of such Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

ADVANCED MICRO DEVICES, INC.

By: /s/ Hollis M. O'Brien
Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

SPANSION INC.

By: /s/ Bertrand F. Cambou
Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

CONSENT TO SUBSTITUTION

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Spansion LLC consents to the substitution of Spansion Inc. for Spansion LLC as a party to this Agreement as amended and restated.

SPANSION LLC

By: /s/ Bertrand F. Cambou
Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

**AMENDED AND RESTATED
FUJITSU-AMD PATENT CROSS-LICENSE AGREEMENT**

THIS AMENDED AND RESTATED FUJITSU-AMD PATENT CROSS-LICENSE AGREEMENT (this “**Agreement**”) is made and entered into as of December 21, 2005 (the “**Amendment Date**”), by and between Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”) and Fujitsu Limited, a Japanese corporation (“**Fujitsu**”). AMD and Fujitsu are hereinafter also referred to, collectively, as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, as of June 30, 2003 (the “**Effective Date**”), Fujitsu and AMD entered into that certain Fujitsu-AMD Patent Cross-License Agreement;

WHEREAS, the Parties hereby desire to Amend and Restate that Fujitsu-AMD Patent Cross-License Agreement;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and other terms and conditions contained herein, Fujitsu and AMD agree as follows:

AGREEMENT

1. DEFINITIONS; INTERPRETATION

1.1 **Terms Defined in this Agreement.** The following terms when used in this Agreement shall have the following definitions:

1.1.1 “**AMD**” has the meaning set forth in the first paragraph of this Agreement.

1.1.2 “**AMD Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by AMD, or as to which, and only to the extent and subject to the conditions under which, AMD has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless Fujitsu undertakes to pay directly or to reimburse AMD for any such royalties or other consideration, in which case such Patents shall be included within the AMD Licensed Patents), except for payments to a Subsidiary of AMD sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of AMD or any Subsidiary of AMD sublicensed hereunder.

1.1.3 “**Assignee**” has the meaning set forth in Section 9.5.

1.1.4 “**Assignee Licensed Patents**,” with respect to an Assignee to which this Agreement is assigned pursuant to Section 9.5, means all Patents that, as of the effective date of such assignment or thereafter during the Term, are wholly owned by Assignee, or as to which, and only to the extent and subject to the conditions under which, Assignee has the right, as of the effective date of such assignment or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other

consideration to third parties (unless the non-assigning Party undertakes to pay directly or to reimburse Assignee for any such royalties or other consideration, in which case such Patents shall be included within the Assignee Licensed Patents), except for payments to a Controlling Affiliate of Assignee or a Subsidiary of Assignee sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Assignee, a Controlling Affiliate of Assignee, or any Subsidiary of Assignee sublicensed hereunder.

1.1.5 “**Auxiliary Part**” means input/output means, supporting means, terminal members, conductors or equivalent interconnecting members, housing means, any environmental controlling means included within such housing means or unitary with such housing means and active and/or passive elements unitarily or separately combined with a Semiconductor Product and any other parts, primarily useable in or for manufacturing, assembling or packaging Semiconductor Products.

1.1.6 “**Change of Control**” shall be deemed to have occurred, with respect to a Person (which, for purposes of this Section 1.1.6 also includes the Semiconductor Group of either Party), when: (a) any “person” or “group” (as such terms are used in Sections 13(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of shares representing more than fifty percent (50%) of the combined voting power of the then-outstanding securities entitled to vote generally in elections of directors of such Person, or in the case such Person is a non-corporate Person, equivalent interests; (b) such Person consolidates with or merges with or into any other Person, or any other Person merges into such Person, unless immediately after such consolidation or merger, the Persons that, prior to such consolidation or merger, owned the then-outstanding securities of such Person entitled to vote generally in elections of directors, or in the case such Person is a non-corporate Person, equivalent interests, own in the aggregate at least fifty percent (50%) of such securities or equivalent interests of the surviving entity; or (c) such Person sells or otherwise transfers all or substantially all of the assets or business of such Person.

1.1.7 “**Control**” (including “**Controlled**,” “**Controlling**” and other forms thereof), with respect to a Person, means beneficial ownership, directly or indirectly, of securities representing more than fifty percent (50%) of the power to elect such Person’s board of directors or other managing authority, or in the case of a non-corporate Person, equivalent interests.

1.1.8 “**Controlling Affiliate**” of a Person means any other Person that Controls such Person.

1.1.9 “**Effective Date**” has the meaning set forth in the recitals of this Agreement.

1.1.10 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

1.1.11 “**Fujitsu**” has the meaning set forth in the first paragraph of this Agreement.

1.1.12 “**Fujitsu Licensed Patents**” means all Patents that, as of the Effective Date or thereafter during the Term, are wholly owned by Fujitsu, or as to which, and only to

the extent and subject to the conditions under which, Fujitsu has the right, as of the Effective Date or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless AMD undertakes to pay directly or to reimburse Fujitsu for any such royalties or other consideration, in which case such Patents shall be included within the Fujitsu Licensed Patents), except for payments to a Subsidiary of Fujitsu sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of Fujitsu or any Subsidiary of Fujitsu sublicensed hereunder.

1.1.13 “**Governmental Authority**” means any foreign, domestic, national, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

1.1.14 “**Licensed Patents**” means, collectively, the AMD Licensed Patents, the Fujitsu Licensed Patents, and the Subsidiary Licensed Patents of each Subsidiary of a Party that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to such Party under Sections 2, 3 and 4.

1.1.15 “**Licensed Product**” means any of the items described in the following clauses (a) through (d) and/or parts thereof:

- (a) Semiconductive Material;
- (b) Auxiliary Part;
- (c) Semiconductor Product; or
- (d) Manufacturing Apparatus.

1.1.16 “**Manufacturing Apparatus**” means any instrumentality or aggregate of instrumentalities primarily designated for use in the making of any of the items set forth in clauses (a) through (c) of Section 1.1.15 and/or parts thereof.

1.1.17 “**Non-Semiconductor Group**,” with respect to a Party, means any of such Party’s internal groups or other organizations that is not the Semiconductor Group of such Party.

1.1.18 “**Party**” and “**Parties**” have the respective meanings set forth in the first paragraph of this Agreement.

1.1.19 “**Patents**” means all classes or types of patents (including design patents) and utility models of all countries of the world issued or issuing on patent or utility model applications entitled to an effective filing date that is on or before the end of the Term, and respective applications therefor, together with any divisions, continuations and continuations-in-part and reissues and results of re-examinations thereof.

1.1.20 “**Person**” means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or Governmental Authority.

1.1.21 “**Semiconductive Element**” means an element consisting primarily of a body of Semiconductive Material having a plurality of electrodes associated therewith, whether or not said body consists of a single Semiconductive Material or of a multiplicity of such materials, whether or not said body has, therein and/or thereon, one or more junctions and whether or not said body includes one or more layers or other regions (constituting substantially less than the whole of said body) of a material or materials which are of a type other than Semiconductive Material, and if provided as a part thereof, said element includes passivating means thereof.

1.1.22 “**Semiconductive Material**” means any material whose conductivity is intermediate to that of metals and insulators at room temperature and whose conductivity increases with increasing temperature over some temperature range.

1.1.23 “**Semiconductor Group**,” with respect to a Party, means the internal group or other organization of such Party having as its primary activities the research and development and making of Semiconductor Products for, and selling of Semiconductor Products to, the semiconductor merchant market. The Fujitsu Semiconductor Group currently consists of (and is limited to) the Electronic Devices Group of Fujitsu. The AMD Semiconductor Group currently consists of AMD in its entirety.

1.1.24 “**Semiconductor Product**” means:

(a) a Semiconductive Element; or

(b) a Semiconductive Element and one or more films of conductive, semiconductive or insulating materials formed on a surface or surfaces of such Semiconductive Element, said film or films comprising one or more conductors, active or passive electrical circuit elements or any combination thereof;

(c) a unitary assembly consisting of one or more of the elements described in clauses (a) and/or (b) of this Section 1.1.24 having a fixed permanent physical relationship established therebetween; or

(d) a unitary assembly consisting primarily of (i) one or more of the elements described in clauses (a), (b) and/or (c) of this Section 1.1.24, and (ii) one or more film devices having a fixed permanent physical relationship established therebetween.

Semiconductor Product includes, if provided therewith as a part thereof, (A) Auxiliary Parts and (B) additional electrical circuits constituted thereby and integrally included therein, *provided* that such Auxiliary Parts and additional electrical circuits are incidental to the functionality of such Semiconductor Products.

1.1.25 “**Spansion**” means Spansion Inc., a Delaware corporation.

1.1.26 “**Spansion Japan**” means Spansion Japan Limited, a company organized under the laws of Japan, and a wholly-owned subsidiary of Spansion.

1.1.27 “**Subsidiary**” of a Party means any other Person that is Controlled by such Party, but such other Person shall be deemed to be a Subsidiary only so long as such Control exists. Notwithstanding the foregoing, the following entities shall not be deemed a Subsidiary of either Fujitsu or AMD: Spansion and all Subsidiaries of Spansion.

1.1.28 “**Subsidiary Licensed Patents**,” with respect to a Subsidiary of a Party that, pursuant to Section 5.1, is granted sublicenses of the rights, licenses and immunities granted to such Party under Sections 2, 3 and 4, means all Patents that, as of the date of sublicense or thereafter during the Term, are wholly owned by such Subsidiary, or as to which, and only to the extent and subject to the conditions under which, such Subsidiary has the right, as of the date of sublicense or thereafter during the Term, to grant licenses or sublicenses without such grant resulting in the payment of royalties or other consideration to third parties (unless the other Party undertakes to pay directly or to reimburse such Subsidiary for any such royalties or other consideration, in which case such Patents shall be included within the Subsidiary Licensed Patents), except for payments to such Party or any other Subsidiary of such Party sublicensed hereunder or payments to Persons for inventions made by such Persons while employees or contractors of such Subsidiary or any other Subsidiary of such Party sublicensed hereunder.

1.1.29 “**Successor**” has the meaning set forth in Section 9.5.

1.1.30 “**Term**” means the period commencing on the Effective Date and ending on the effective date of the termination of this Agreement pursuant to Section 8.

1.1.31 “**Termination Agreement**” means that certain Termination Agreement entered into as of June 30, 2003 by and among AMD, Fujitsu and Fujitsu AMD Semiconductor Limited (now Spansion Japan).

1.2 Interpretation.

1.2.1 Certain Terms. The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.” The words “make” and “have made” include the acts of developing, assembling, packaging and/or testing.

1.2.2 Section References; Titles and Subtitles. Unless otherwise noted, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.2.3 Reference to Persons, Agreements, Statutes. Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. MUTUAL RELEASE

2.1 **Release by Fujitsu.** Fujitsu hereby releases, acquits and forever discharges AMD hereunder from any and all claims or liability for infringement or alleged infringement of any Fujitsu Licensed Patent by performance of acts prior to the date on which such Patent becomes a Fujitsu Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

2.2 **Release by AMD.** AMD hereby releases, acquits and forever discharges Fujitsu hereunder from any and all claims or liability for infringement or alleged infringement of any AMD Licensed Patent by performance of acts prior to the date on which such Patent becomes an AMD Licensed Patent that, if performed on or after such date, would be acts licensed, sublicensed or immunized hereunder.

3. GRANTS OF LICENSE

3.1 **Grant by Fujitsu.** Subject to the terms and conditions of this Agreement, Fujitsu hereby grants to AMD a non-exclusive and non-transferable (except pursuant to Section 9.5) license under Fujitsu Licensed Patents:

3.1.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.1.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.2 **Grant by AMD.** Subject to the terms and conditions of this Agreement, AMD hereby grants to Fujitsu a non-exclusive and non-transferable (except pursuant to Section 9.5) license under AMD Licensed Patents:

3.2.1 to make, have made, use, sell, offer to sell, lease, import or otherwise dispose of Licensed Products (other than Manufacturing Apparatuses) anywhere in the world; and

3.2.2 to make, have made and use Manufacturing Apparatuses anywhere in the world, and to sell, offer to sell, lease, import or otherwise dispose of such Manufacturing Apparatuses anywhere in the world.

3.3 Non-Semiconductor Groups.

3.3.1 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by Fujitsu hereunder to AMD (and the definition of Fujitsu Licensed Patents included in such grant) shall exclude Licensed Patents of any Fujitsu Non-Semiconductor Group. No Fujitsu Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to Fujitsu for Licensed Products, except with respect to Licensed Products that are made by or for the Fujitsu Semiconductor Group or a Subsidiary sublicensed hereunder.

3.3.2 Notwithstanding anything to the contrary in this Agreement, the rights, licenses and immunities granted by AMD hereunder to Fujitsu (and the definition of AMD Licensed Patents included in such grant) shall exclude Licensed Patents of any AMD Non-Semiconductor Group. No AMD Non-Semiconductor Group may exercise the rights, licenses and immunities granted hereunder to AMD for Licensed Products, except with respect to Licensed Products that are made by or for the AMD Semiconductor Group or a Subsidiary sublicensed hereunder.

3.4 **Full Consideration.** Each Party agrees that it has given full consideration to the value of the Licensed Patents of the other Party (and its Subsidiaries, if applicable) and to the costs, benefits, burdens and uncertainties of assessing such value. Each Party further agrees that it has given full consideration to the possibility that one or more Licensed Patents of the other Party (and its Subsidiaries, if applicable) may be invalid or unenforceable. Based on the foregoing, the Parties have determined that neither Party shall pay any consideration to the other for the releases, the licenses and the immunities contained in this Agreement and that any change in the circumstances under which this Agreement is entered into (including a final determination as to the invalidity or unenforceability of a Patent) shall not affect such determination.

4. IMMUNITY FOR CUSTOMERS AND USERS

4.1 **Grant of Immunity by Fujitsu.** The licenses granted to AMD pursuant to Section 3 shall include immunity for (and Fujitsu hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of AMD for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of AMD as set forth herein (whether such products are used, imported, sold, offered for sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Licensed Products). With respect to products made by AMD on a foundry basis where a customer engages AMD as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any AMD materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to AMD and its resellers, distributors, users and other customers (to the extent such other customers are not engaging AMD as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by AMD does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

4.2 **Grant of Immunity by AMD.** The licenses granted to Fujitsu pursuant to Section 3 shall include immunity for (and AMD hereby covenants not to sue) the resellers, distributors, users and other customers, direct or indirect, of Fujitsu for Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of Fujitsu as set forth herein (whether such products are used, imported, sold, offered for sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other

products or services other than the Licensed Products). With respect to products made by Fujitsu on a foundry basis where a customer engages Fujitsu as a foundry to make products for resale in the semiconductor merchant market by such customer based on designs, logic and/or specifications of such customer, the immunities granted to such customer pursuant to this Section 4 shall extend only to any Fujitsu materials, information or technology supplied to such customer or incorporated in such products, or the process or method used to make such products. For purposes of clarification, the foregoing shall not affect in any way the licenses and immunities granted to Fujitsu and its resellers, distributors, users and other customers (to the extent such other customers are not engaging Fujitsu as a foundry as described above), direct or indirect, by this Agreement, including Sections 3 and 5 and this Section 4. The sale or other disposition to resellers, distributors, users and other customers, direct or indirect, of products by Fujitsu does not convey any license or immunity, by implication, estoppel, or otherwise, to such resellers, distributors, users and other customers, direct or indirect, under Patent claims covering combinations of such products with other devices or elements.

5. EXTENSION OF LICENSE

5.1 **Right of Parties.** Each Party shall have the right to grant sublicenses of the rights, licenses and immunities granted to such Party under Sections 2, 3 and 4, to a Subsidiary of such Party that is subject to control by the Semiconductor Group, but subject to the condition that such Subsidiary grants a license to the other Party under its Subsidiary Licensed Patents, if any. Any such grant-back license shall otherwise be of a scope equivalent to that of Section 3.1 or 3.2, as applicable. For purposes of clarification, (a) except as set forth in Section 5.2, it is an option, and not an obligation, for a Subsidiary to grant back such a license, unless and until such Subsidiary elects to be granted a sublicense of such rights, licenses and immunities, and (b) even without obtaining such a sublicense, a Subsidiary of a Party (whether subject to control by the Semiconductor Group or a Non-Semiconductor Group) may exercise the rights, licenses and immunities granted hereunder to such Party solely for Licensed Products that are made by or for the Semiconductor Group of such Party or a Subsidiary of such Party sublicensed hereunder.

5.2 **Semiconductor Group Subsidiaries.** If requested by a Party, the other Party shall cause a Subsidiary actually controlled by the Semiconductor Group of such other Party to grant a license to such Party under Section 5.1, in which case such Subsidiary shall be deemed sublicensed pursuant to Section 5.1.

5.3 **No Other Right.** A Party shall not have the right to grant sublicenses of the Patents licensed hereunder except as provided in this Section.

6. WARRANTIES AND DISCLAIMERS

6.1 **Warranties.** Subject to Section 9.1, each Party represents and warrants to the other Party that it has the right, and will continue during the term of this Agreement to have the right, to grant to or for the benefit of the other Party the rights and licenses granted hereunder in accordance with the terms of this Agreement and such grant of rights and licenses does not, and will not during the term of this Agreement, conflict with the rights and obligations of such Party under any other license, agreement, contract or other undertaking.

6.2 Disclaimer. NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS), WITH RESPECT TO THIS AGREEMENT, ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

7. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. TERM AND TERMINATION

8.1 Term. This Agreement will be effective as of the Effective Date, and will continue in full force and effect until the tenth (10th) anniversary of the Effective Date, unless earlier terminated as set forth in this Section 8.

8.2 Termination for Change of Control. Either Party shall have the right to terminate this Agreement or any licenses surviving hereunder after termination of this Agreement, by giving thirty (30) days' written notice of termination to the other Party, in the event such other Party (a) undergoes a Change of Control (including a Change of Control in connection with bankruptcy proceedings of such other Party) or (b) assigns this Agreement pursuant to the first sentence of Section 9.5 in connection with a Change of Control of such other Party's Semiconductor Group, *provided* that the terminating Party must exercise such right no later than ninety (90) days after receiving notice of such Change of Control or assignment, as applicable.

8.3 Effect on Licenses.

8.3.1 Upon termination of this Agreement pursuant to Section 8.1, the rights, licenses and immunities granted by each Party and its Subsidiaries hereunder shall survive such termination and shall, and subject to Sections 8.2 and 8.3.2, continue until the expiration of the last to expire of the Licensed Patents.

8.3.2 Upon termination, pursuant to Section 8.2, of this Agreement or any licenses surviving hereunder after termination of this Agreement, the rights, licenses and immunities granted to each Party and its Subsidiaries hereunder shall terminate.

8.4 Continuing Liability. The termination of this Agreement for any reason shall not release either Party from any liability, obligation or agreement which has already accrued at the time of termination. Termination of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a Party may have hereunder, at law or otherwise, or which may arise out of or in connection with such termination.

8.5 **Survival.** The provisions of Sections 1, 2, 4 (with respect to Licensed Products made, imported, sold, offered for sale, leased or otherwise disposed of prior to termination of the Agreement), 7, 8.2, 8.3, 8.4, 8.5 and 9, and any other sections of this Agreement to the extent expressly provided herein, shall survive any termination of this Agreement.

9. MISCELLANEOUS

9.1 **Limitation.** Nothing contained in this Agreement shall be construed as:

9.1.1 a warranty or representation by either Party or its Subsidiaries sublicensed hereunder as to the validity, enforceability or scope of any Licensed Patents; or

9.1.2 conferring upon either Party or its Subsidiaries sublicensed hereunder any license, right or privilege under any patents, utility models or design patents except the licenses, rights and privileges expressly granted hereunder; or

9.1.3 a warranty or representation that any acts licensed or sublicensed hereunder will be free from infringement of patents, utility models, design patents, copyrights, mask work rights or trade secrets other than those Patents under which licenses, rights and privileges have been expressly granted hereunder; or

9.1.4 an obligation of either Party or its Subsidiaries to file or maintain any patent application, secure any patent or maintain any patent in force; or

9.1.5 an arrangement to bring or prosecute actions or suits against third parties for infringement or conferring any right to bring or prosecute actions or suits against third parties for infringement;

9.1.6 conferring any right to use in advertising, publicly or otherwise, any trademark, service mark, trade name or their equivalent, or any contraction, abbreviation or simulation thereof, of either Party or its Subsidiaries sublicensed hereunder; or

9.1.7 derogating from or otherwise affecting AMD's or Fujitsu's non-competition obligations in Sections 2 and 3 of that certain Amended and Restated Non-Competition Agreement entered into as of December 21, 2005 by and among Spansion, AMD, AMD Investments, Inc., and Fujitsu, for so long as such obligations remain in effect.

9.2 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

9.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

9.3.1 **Dispute Resolution.** The parties hereby agree that claims, disputes, or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance, or breach of this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in Schedule A.

9.4 **Language.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

9.5 **Successors and Assigns.** Subject to and without limitation of Section 8.2 or 8.3.2, if a Party or a Party's Semiconductor Group undergoes a Change of Control with any other Person ("**Successor**"), such Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to Successor or any Controlling Affiliate of Successor; *provided* that such Party's right to make such assignment is contingent and conditioned upon the non-assigning Party being accorded the right to terminate this Agreement following such Change of Control or assignment in accordance with the terms of Section 8.2; and *provided further* that the Person receiving such assignment (i.e., either Successor or a Controlling Affiliate of Successor, as the case may be) ("**Assignee**") assumes all of the assigning Party's obligations under this Agreement, including the obligation to grant, under all Licensed Patents of the assigning Party and its Subsidiaries licensed as of the effective date of such assignment and under all Assignee Licensed Patents (subject to Section 3.3), the rights, licenses and immunities granted to the non-assigning Party and its Subsidiaries under Sections 2, 3 and 4. In addition, each Party shall have the right (with written notice to the other Party, but without the need to obtain the consent of the other Party) to assign this Agreement, together with all of its rights and obligations hereunder, to a Subsidiary of such Party to which such Party transfers all or substantially all of the assets or business of its Semiconductor Group (for purposes of clarification, such transfer shall not be deemed a Change of Control of such Party or its Semiconductor Group). Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by a Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by either Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party shall assign its rights under any of its Licensed Patents unless such assignment is made subject to the terms of this Agreement.

9.6 **Entire Agreement; Amendment.** This Agreement (including the Schedules hereto) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supersede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter, including the Technology Cross-License Agreement between AMD and Fujitsu, dated March 26, 1993; provided, however, that the rights, licenses and immunities granted to the Parties in such prior agreements shall survive the execution of this Agreement to the extent set forth in, and in accordance with the terms of, the Termination Agreement (including Section 3.6 thereof). This Agreement may not be altered or amended except by a written instrument signed by authorized legal representatives of both Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the

provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or in any other agreement between the Parties.

9.7 Notices and Other Communications. All notices required or permitted under this Agreement shall refer to this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Fujitsu:

Fujitsu Limited
Akiruno Technology Center
50 Fuchigami, Akiruno
Tokyo 197-0833
Japan
Attn: General Manager
Intellectual Property & Technical Standards Division
Electronic Devices Group
Telephone: +81-42-532-1375
Facsimile: +81-42-532-2405

With a copy to (which shall not constitute notice):

Fujitsu Limited
1-1, Kamikodanaka 4-chome
Kawasaki 211-8588
Japan
Attn: General Manager, Industry Relations Division
Telephone: +81-44-754-8641
Facsimile: +81-44-754-8505

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
U.S.A.
Attn: General Counsel
Telephone: +1 (408) 749-2202
Facsimile: +1 (408) 774-7399

With a copy to (which shall not constitute notice):

Advanced Micro Devices, Inc.
5204 East Ben White Boulevard
Mail Stop 563
Austin, Texas 78741 Attn: Vice President, Intellectual Property
Telephone: +1 (512) 602-0148
Facsimile: +1 (512) 602-4932

or to such other address or facsimile number as a Party may have specified to the other Party in writing delivered in accordance with this Section 9.7.

9.8 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

9.9 Severability. If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

9.10 Construction. This Agreement shall be deemed to have been drafted by both Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

9.11 Execution. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

9.12 **Confidentiality of Terms.** Neither Party shall disclose the terms of this Agreement to any third parties, except that either Party may disclose to third parties the existence of this Agreement and may disclose the terms of this Agreement to the extent reasonably necessary, in confidence, to its legal counsel, accountants, and banks and their advisors, and to its present or future financing sources for, potential investors in, and potential successors to, all or any portion of the assets or business of such Party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

ADVANCED MICRO DEVICES, INC.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

FUJITSU LIMITED

By: /s/ Hiroaki Hurokawa

Name: Hiroaki Hurokawa
Title: President

**AMENDED AND RESTATED
INTELLECTUAL PROPERTY CONTRIBUTION
AND ANCILLARY MATTERS AGREEMENT**

THIS AMENDED AND RESTATED INTELLECTUAL PROPERTY CONTRIBUTION AND ANCILLARY MATTERS AGREEMENT (“Agreement”) is made and entered into as of December 21, 2005 (“**Amendment Date**”) by and among Fujitsu Limited, a Japanese corporation (“**Fujitsu**”), Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”), AMD Investments, Inc. (“**AMD Investments**”), Spansion Inc., a Delaware corporation (“**Spansion**”) and Spansion Technology Inc., a Delaware corporation, a wholly owned subsidiary of Spansion to be the successor-in-interest to Spansion LLC (“**STI**”). Fujitsu, AMD, AMD Investments, Spansion and STI are herein referred to as the “**Parties**” and individually as a “**Party**.” Fujitsu and AMD Investments are herein referred to as the “**Contributing Parties**” and individually as a “**Contributing Party**.” Fujitsu and AMD are herein referred to as the “**Parents**” and individually as a “**Parent**.”

RECITALS

WHEREAS, in connection with formation of Spansion LLC, a Delaware limited liability company (“**LLC**”), certain of the parties hereto entered into that certain Intellectual Property Contribution and Ancillary Matters Agreement (the “**IPCAAMA**”), dated as of June 30, 2003 (the “**Effective Date**”);

WHEREAS, the parties hereto hereby desire to amend and restate the IPCAAMA, including substituting Spansion and STI for LLC as parties hereto;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and other terms and conditions contained herein, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS; INTERPRETATION

1.1 Terms Defined in this Agreement. The following terms when used in this Agreement shall have the following definitions:

1.1.1 “**Acquirer Competitive Product**” has the meaning set forth in Section 5.3.

1.1.2 “**Acquired Party Covered Product**” has the meaning set forth in Section 5.3.

1.1.3 “**Action**” means any action, litigation, arbitration, suit, claim, proceeding, or investigation or review of any nature, civil, criminal, regulatory or otherwise, before any Governmental Authority.

1.1.4 “**Affiliate**” of any Party means any other Person controlling, controlled by or under common control with such Party, but such other Person shall be

deemed to be an Affiliate only so long as such control exists. For purposes of this Section 1.1.4, "control," with respect to a Person, means beneficial ownership, directly or indirectly, of securities representing forty percent (40%) or more of the power to elect such Person's board of directors or other managing authority, or in the case of a non-corporate Person, equivalent interests. For purposes of clarification, AMD is an Affiliate of AMD Investments as of both the Effective and the Amendment Date.

1.1.5 "**Aggregate Ownership Interest**" shall have the meaning set forth in the Certificate of Incorporation.

1.1.6 "**Amended and Restated AMD-Spansion Patent Cross-License Agreement**" shall mean that Amended and Restated AMD-Spansion Patent Cross-License Agreement, dated as of December 21, 2005, by and between AMD and Spansion.

1.1.7 "**Amended and Restated Fujitsu-Spansion Patent Cross-License Agreement**" shall mean that Amended and Restated Fujitsu-Spansion Patent Cross-License Agreement, dated as of December 21, 2005, by and between Fujitsu and Spansion.

1.1.8 "**AMD**" has the meaning set forth in the first paragraph of this Agreement.

1.1.9 "**AMD Flash Memory Business**" means the research and development, manufacture, marketing, distribution, promotion and sale of Stand-Alone NVM Products (excluding distribution and sales-related activities) by AMD and its Affiliates.

1.1.10 "**AMD Investments**" has the meaning set forth in the first paragraph of this Agreement.

1.1.11 "**Assigned Patent Rights**" means the STI Patent Rights and the Spansion Patent Rights.

1.1.12 "**Assigned Trademark Rights**" means (a) the Trademarks set forth in Schedule 1.1.12, (b) the registrations of, and applications for, such Trademarks set forth in Schedule 1.1.12, and the right to apply for and prosecute any of such applications, (c) all goodwill associated with such Trademarks, and (d) all rights and causes of action for past, present and future infringement of the Trademarks set forth in Schedule 1.1.12.

1.1.13 "**Background IP Right**" means any Intellectual Property Right which is (a) owned by Fujitsu or any of its Subsidiaries as of the Effective Date or (b) conceived, developed, written, or otherwise created (other than by Seconded Employees) or acquired by Fujitsu or any of its Subsidiaries on or after the Effective Date.

1.1.14 "**Coatue**" means Coatue Corporation, a Delaware corporation.

1.1.15 "**Certificate of Incorporation**" means the Certificate of Incorporation of Spansion, as of the Amendment Date.

1.1.16 "**Conditional Patent Rights**" means rights under one or more of (a) the Patents and applications for Patents set forth in Schedule 1.1.16, (b) any Patents that may issue from the applications for Patents described in subsection (a) above, (c) any divisionals, continuations, continuations-in-part, results of reexamination, substitutions, reissues,

extensions and renewals of the Patents and applications for Patents described in subsections (a) and (b) above, whether or not in existence as of the Amendment Date, or (d) any foreign counterparts to the Patents and applications for Patents described in this Section 1.1.16, as determined by Fujitsu and STI pursuant to Section 2.4.

1.1.17 “**Confidential Information**” means all proprietary or nonpublic information and materials of Discloser that (a) are provided to or otherwise obtained by Recipient as described in Section 9.1, and (b) are either (i) marked or otherwise designated as “proprietary” or “confidential” or (ii) provided to or otherwise obtained by Recipient under circumstances reasonably indicating that they constitute confidential and proprietary information of Discloser. Notwithstanding the foregoing, Confidential Information will not include information or materials that: (A) were already known by Recipient, other than under an obligation of confidentiality to Discloser or any other Person, at the time they were provided to or otherwise obtained by Recipient from Discloser hereunder, as evidenced by Recipient’s tangible (including written or electronic) records in existence at such time; (B) were generally available to the public or otherwise part of the public domain at the time they were provided to or otherwise obtained by Recipient hereunder; (C) became generally available to the public or otherwise part of the public domain after they were provided to or otherwise obtained by Recipient hereunder, other than through any act or omission of Recipient in breach of this Agreement; (D) were subsequently lawfully disclosed to Recipient by a Person other than Discloser not subject to any duty of confidentiality with respect thereto; (E) were developed by Recipient without reference to any Confidential Information of Discloser, as evidenced by Recipient’s tangible (including written or electronic) records in existence at such time; or (F) constitute Parent Confidential Information or Spansion Technology.

1.1.18 “**Contributed Entities**” means (a) with respect to Fujitsu, Fujitsu AMD Semiconductor Limited, a Japanese corporation now named Spansion Japan (“**Spansion Japan**”) and Fujitsu Microelectronics (Malaysia) Sdn. Bhd., a company organized under the laws of Malaysia, and (b) with respect to AMD and AMD Investments, Spansion Japan, FASL (Penang) Sdn. Bhd., a company organized under the laws of Malaysia, AMD Holdings (Singapore) Pte. Ltd., a company organized under the laws of Singapore, AMD (Thailand) Limited, a company organized under the laws of Thailand, and Advanced Micro Devices (Suzhou) Limited, a company organized under the laws of China and a wholly-owned Subsidiary of AMD Holdings (Singapore) Pte. Ltd.

1.1.19 “**Contributed Entity Other IP Rights**” means Other IP Rights that, as of the Effective Date, are owned in whole or in part by any Contributed Entities.

1.1.20 “**Contributing Party**” and “**Contributing Parties**” have the respective meanings set forth in the first paragraph of this Agreement.

1.1.21 “**Contribution Agreement**” means that certain Contribution Agreement, dated June 30, 2003, by and among AMD, AMD Investments, Fujitsu, FMH and LLC.

1.1.22 “**Control**” (including “**Controlled**,” “**Controlling**” and other forms thereof), with respect to a Person, means beneficial ownership, directly or indirectly, of securities representing more than fifty percent (50%) of the power to elect such Person’s board of directors or other managing authority, or in the case of a non-corporate Person, equivalent interests. In no case shall Fujitsu’s Class D shares of Spansion be considered securities entitled to vote for the election of Spansion’s board of directors or other managing authority for purposes of this definition.

1.1.23 “**Copyrights**” means all copyrights and all other rights arising under common law, state law, federal law or laws of foreign countries or jurisdictions therein corresponding to works of authorship and other copyrightable works, whether published or unpublished, including rights to prepare, reproduce, perform, display and distribute copyrighted works and copies, compilations and derivative works thereof, and including all Moral Rights.

1.1.24 “**Development**” means any Intellectual Property Right or Technology conceived, developed, written, or otherwise created by Seconded Employees, whether solely or jointly with others, after the Effective Date and during the applicable Secondment Period (as defined in the Fujitsu Secondment Agreement), expressly excluding Background IP Rights.

1.1.25 “**Discloser**” has the meaning set forth in Section 9.1.

1.1.26 “**Disclosing Parent**” has the meaning set forth in Section 9.2.

1.1.27 “**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

1.1.28 “**Existing Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person and being made (or have made) and offered for sale by such Person on or prior to such date.

1.1.29 “**Flash Memory Business**” of a Parent means, as applicable, either the AMD Flash Memory Business or the Fujitsu Flash Memory Business. “**Flash Memory Business**” of AMD Investments means the AMD Flash Memory Business.

1.1.30 “**FMH**” means Fujitsu Microelectronics Holding, Inc., a Delaware corporation, a wholly owned subsidiary of Fujitsu.

1.1.31 “**Fujitsu**” has the meaning set forth in the first paragraph of this Agreement.

1.1.32 “**Fujitsu Flash Memory Business**” means the research and development, manufacture, marketing, distribution, promotion and sale of Stand-Alone NVM Products (excluding (i) Ferro-electric non-volatile memory technology and products and (ii) distribution and sales-related activities) by Fujitsu and its Affiliates.

1.1.33 “**Fujitsu Secondment Agreement**” shall mean that Fujitsu Secondment and Transfer Agreement, dated as of June 30, 2003, between Fujitsu and LLC, as amended.

1.1.34 “**Governmental Authority**” means any foreign, domestic, national, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

1.1.35 “**Immunized Products**” has the meaning set forth in Section 2.3.

1.1.36 “**Intellectual Property Rights**” means, collectively, (a) Patents, Trade Secrets, Copyrights, Trademarks, mask work rights, industrial design rights, and all other intellectual property rights and proprietary rights, whether arising under common law, state law, federal law or laws of foreign countries or jurisdictions therein, (b) all registrations and applications for registration of any of the rights described in subsection (a) above, and (c) all rights to apply for or register any of the rights described in subsection (a) above.

1.1.37 “**Liability**” means, with respect to a Person, any liability, indebtedness, expense, guaranty, endorsement or obligation of or by such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

1.1.38 “**Licensed Parent Software**” means the software set forth in Schedule 1.1.38.

1.1.39 “**Licensed Product**” has the meaning set forth in the Amended and Restated Fujitsu-Spansion Patent Cross-License Agreement.

1.1.40 “**LLC**” has the meaning set forth in the recitals of this Agreement.

1.1.41 “**Losses**” means any and all costs, losses, taxes, Liabilities, damages, lawsuits, deficiencies, claims, demands, and expenses (whether or not arising out of third-party claims), including, without limitation, interest, penalties, costs of mitigation or remediation, reasonable attorneys’ fees and all amounts paid in investigation, defense or settlement of any of the foregoing.

1.1.42 “**Material Adverse Effect**” means any facts and circumstances that would result in a material adverse effect on the business, operations, affairs, financial condition, results of operations, assets, Liabilities, reserves or any other aspect of a Person, taken as a whole, assuming consummation of the transactions contemplated hereby.

1.1.43 “**Moral Rights**” means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under common law, state law, federal law or laws of foreign countries or jurisdictions therein.

1.1.44 “**Non-Competition Agreement**” means that certain Amended and Restated Non-Competition Agreement means dated as of December 21, 2005 among Spansion, AMD, AMD Investments and Fujitsu.

1.1.45 “**Non-Provider Party**,” with respect to any particular Technology or Intellectual Property Right, means any Contributing Party that is not a Provider Party with respect to such Technology or Intellectual Property Right.

1.1.46 “**NVM**” means a non-volatile memory device wherein information stored in a memory cell is maintained without power consumption and the write time (including erase time if there is an erase operation prior to a write operation) exceeds the read time, allowing the device to function primarily as a reading device.

1.1.47 “**Offering Documents**” means the agreements set forth on Schedule 1.1.47.

1.1.48 “**Other IP Rights**” means all Intellectual Property Rights, excluding Patents and Trademarks, all registrations and applications for registration of Patents and Trademarks, and all rights to apply for or register Patents and Trademarks.

1.1.49 “**Owner Party**,” with respect to any Shared Other IP Right or Shared Patent, means each of (a) STI, (b) Fujitsu, if Fujitsu is a Provider Party with respect to such Shared Other IP Right or Shared Patent, and (c) AMD, if AMD Investments is a Provider Party with respect to such Shared Other IP Right or Shared Patent.

1.1.50 “**Parent**” and “**Parents**” have the respective meanings set forth in the first paragraph of this Agreement.

1.1.51 “**Parent Confidential Information**” means all proprietary or nonpublic information and materials of Disclosing Parent that (a) are provided to or otherwise obtained by Spansion or any its Subsidiaries (collectively, “Spansion for purposes of this Section 1.1.51), (b) are subsequently provided to or otherwise obtained by Receiving Parent from Spansion, and (c) are either (i) marked or otherwise designated as “proprietary” or “confidential” or (ii) provided to or otherwise obtained by Receiving Parent under circumstances reasonably indicating that they constitute confidential and proprietary information of Disclosing Parent. Notwithstanding the foregoing, Parent Confidential Information will not include information or materials that: (A) were already known by Receiving Parent, other than under an obligation of confidentiality to Disclosing Parent, Spansion or any other Person, at the time they were provided to or otherwise obtained by Receiving Parent from Spansion hereunder, as evidenced by Receiving Parent’s tangible (including written or electronic) records in existence at such time; (B) were generally available to the public or otherwise part of the public domain at the time they were provided to or otherwise obtained by Receiving Parent hereunder; (C) became generally available to the public or otherwise part of the public domain after they were provided to or otherwise obtained by Receiving Parent hereunder, other than through any act or omission of Receiving Parent in breach of this Agreement; (D) were subsequently lawfully disclosed to Receiving Parent by a Person other than Disclosing Parent or Spansion not subject to any duty of confidentiality with respect thereto; (E) were developed by Receiving Parent without reference to any Parent Confidential Information of Disclosing Parent, as evidenced by Receiving Parent’s tangible (including written or electronic) records in existence at such time; or (F) constitute Spansion Technology.

1.1.52 “**Party**” and “**Parties**” have the respective meanings set forth in the first paragraph of this Agreement.

1.1.53 “**Patents**” mean all classes or types of patents (including design patents) and utility models of all countries of the world.

1.1.54 “**Pending Product**” of a Person, as of a certain date, means a Licensed Product developed by or for such Person that such Person reasonably expects to tapeout within eighteen (18) months of such date (as specified in a then-current written product roadmap as of such date) and that such Person reasonably expects to make (or have made) and sell commencing reasonably promptly thereafter.

1.1.55 “**Person**” means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or Governmental Authority.

1.1.56 “**Provider Party**” means (a) with respect to any Shared Other IP Right and any Shared Patent that may issue with respect thereto, any Contributing Party that owns, or any of whose Subsidiaries (or Affiliates, where such Contributing Party is AMD Investments) owns, in whole or in part, such Shared Other IP Right immediately prior to the Effective Date, (b) with respect to any Licensed Parent Software, each Parent that owns, or any of whose Subsidiaries owns, in whole or in part, such Licensed Parent Software immediately prior to the Effective Date, (c) with respect to any Third Party Other IP Right, each Parent that has been granted, or any of whose Subsidiaries has been granted, a license by a Third Party of such Third Party Other IP Right in effect as of the Effective Date, and (d) with respect to any Assigned Patent Rights, each of AMD Investments and Fujitsu.

1.1.57 “**Receiving Parent**” has the meaning set forth in Section 9.2.

1.1.58 “**Recipient**” has the meaning set forth in Section 9.1.

1.1.59 “**Residual Information**” means (a) with respect to Confidential Information, information in non-tangible form which may be incidentally retained in the unaided memory of Recipient’s personnel having had access to the Confidential Information of Discloser, and which such personnel cannot identify as Confidential Information of Discloser, and (b) with respect to Parent Confidential Information, information in non-tangible form which may be incidentally retained in the unaided memory of Receiving Parent’s personnel having had access to the Parent Confidential Information of Disclosing Parent, and which such personnel cannot identify as Parent Confidential Information of Disclosing Parent. Such personnel’s memory is “unaided” if the personnel have not intentionally memorized any Confidential Information of Discloser or Parent Confidential Information of Disclosing Parent, as applicable.

1.1.60 “**Seconded Employee**” shall mean any employee that is a Seconded Employee, Seconded Expatriate Employee, or deemed Seconded Expatriate Employee under the terms of the Fujitsu Secondment Agreement.

1.1.61 “**Semiconductor Group**” with respect to a Parent, means the internal group or other organization of such Parent having as its primary activities the research and development and making of Semiconductor Products for, and selling of Semiconductor Products to, the semiconductor merchant market. The Fujitsu Semiconductor Group currently consists of (and is limited to) the Electronic Devices Group of Fujitsu. The AMD Semiconductor Group currently consists of AMD in its entirety.

1.1.62 “**Semiconductor Product**” has the meaning set forth in the Amended and Restated Fujitsu-Spansion Patent Cross-License Agreement.

1.1.63 “**Shared Other IP Rights**” means all Other IP Rights in the Shared Technology that, immediately prior to the Effective Date, are owned in whole or in part by

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Parent (and/or any of its Subsidiaries) or AMD Investments (and/or any of its Subsidiaries), but excluding any Contributed Entity Other IP Rights. Notwithstanding the foregoing, Shared Other IP Rights will not include any Assigned Patent Rights or Assigned Trademark Rights.

1.1.64 “**Shared Patents**” has the meaning set forth in Section 4.1.

1.1.65 “**Shared Technology**” means all Technology that has been used, is in use or is planned to be used by any Contributed Entity or any other portion of the Flash Memory Business of a Parent, but excluding all Licensed Parent Software and the software set forth in [Schedule 1.1.65](#).

1.1.66 “**Software License Terms**” means the terms and conditions set forth in [Schedule 1.1.38](#).

1.1.67 “**Spansion**” has the meaning set forth in the first paragraph of this Agreement.

1.1.68 “**Spansion Japan**” has the meaning set forth in Section 1.1.18.

1.1.69 “**Spansion Non-Process Technology**” means Spansion Technology other than Spansion Technology that is related to (a) processes for designing and/or making Licensed Products, including equipment used therefor, (b) materials comprising or used in the manufacturing of Licensed Products, or (c) structures for the arrangement or interrelationship of regions, layers, electrodes or contacts of Licensed Products.

1.1.70 “**Spansion Patent Rights**” means (a) the Patents and applications for Patents set forth in [Schedule 1.1.70](#), (b) any applications for Patents that may be filed on or after the Effective Date based on the invention disclosures set forth in [Schedule 1.1.70](#), if any, (c) any Patents that may issue from the applications for Patents described in subsections (a) and (b) above, (d) any divisionals, continuations, continuations-in-part, results of reexamination, substitutions, reissues, extensions and renewals of the Patents and applications for Patents described in subsections (a), (b) and (c) above, whether or not in existence as of the Effective Date, (e) the right to apply for and prosecute any of the applications for Patents described in subsections (a), (b) and (d) above, (f) all foreign counterparts to the Patents and applications for Patents described in this Section 1.1.70, and (g) all rights and causes of action for past, present and future infringement of Patents set forth in [Schedule 1.1.70](#).

1.1.71 “**Spansion Technology**” means all Technology in which any Other IP Rights are owned, on or after the Effective Date, in whole or in part by Spansion or any of its Subsidiaries.

1.1.72 “**Spansion Technology Delivery Date**” has the meaning set forth in Section 5.3.

1.1.73 “**Stand-Alone NVM Product**” means a semiconductor product (including a single chip or a multiple chip or system product) containing NVM dedicated to data storage wherein all circuitry (including logic circuitry) contained therein is solely to accept, store, retrieve or access information or instructions and cannot manipulate such information or execute instructions.

1.1.74 “**STI**” has the meaning set forth in the first paragraph of this Agreement.

1.1.75 “**STI Patent Rights**” means (a) the Patents and applications for Patents set forth in Schedule 1.1.75, (b) any applications for Patents that may be filed on or after the Effective Date based on the invention disclosures set forth in Schedule 1.1.75, if any, (c) any Patents that may issue from the applications for Patents described in subsections (a) and (b) above, (d) any divisionals, continuations, continuations-in-part, results of reexamination, substitutions, reissues, extensions and renewals of the Patents and applications for Patents described in subsections (a), (b) and (c) above, whether or not in existence as of the Effective Date, (e) the right to apply for and prosecute any of the applications for Patents described in subsections (a), (b) and (d) above, (f) all foreign counterparts to the Patents and applications for Patents described in this Section 1.1.75, and (g) all rights and causes of action for past, present and future infringement of Patents set forth in Schedule 1.1.75.

1.1.76 “**Subsidiary**” of any Party means any other Person that is Controlled by such Party, but such other Person shall be deemed to be a Subsidiary only so long as such Control exists. Notwithstanding the foregoing, the following entities shall not be deemed a Subsidiary of either Fujitsu or AMD: Spansion, any Subsidiaries of Spansion, or any Contributed Entities. For purposes of clarification, as of the Effective Date, the Contributed Entities shall be deemed Subsidiaries of Spansion and, as of the Amendment Date, the Contributed Entities and STI shall be deemed Subsidiaries of Spansion

1.1.77 “**Successor Product**” means a subsequent or follow-on version of an Acquired Party Covered Product or Acquirer Competitive Product that is based on substantially the same technology (including “process shrinks” of such products and other incremental improvements thereto) as such Acquired Party Covered Product or Acquirer Competitive Product, without the benefit of fundamental advances in design, and that is intended to replace such Acquired Party Covered Product or Acquirer Competitive Product and to be used in the same type of application (e.g., personal computer, mobile phone, etc.).

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

1.1.79 “**Termination Agreement**” means that certain Termination Agreement entered into as of June 30, 2003 by and among Parent, AMD, and Fujitsu AMD Semiconductor Limited (now Spansion Japan).

1.1.80 “**Third Party**” means any Person other than the Parties and their Subsidiaries.

1.1.81 “**Third Party Other IP Rights**” means (a) with respect to AMD and /or AMD Investments, all Other IP Rights in the Shared Technology that are licensed to AMD and/or AMD Investments by one or more Third Parties as of the Amendment Date, and (b) with respect to Fujitsu, all Other IP Rights in the Shared Technology that are licensed to Fujitsu by one or more Third Parties in the Shared Technology listed on Schedule 1.1.81.

1.1.82 “**Trademarks**” means all rights in trademarks, service marks, trade names, trade designations, trade dress and domain names and associated goodwill arising under common law, state law, federal law or laws of foreign countries or jurisdictions therein.

1.1.83 “**Trade Secrets**” means trade secrets and any other rights under any law (including common law, state law, federal law or laws of foreign countries or jurisdictions therein) in know-how and confidential and proprietary information that provides the owner thereof with advantages over its competitors that do not know or use such know-how or information.

1.1.84 “**Transaction Document**” has the meaning set forth in the Contribution Agreement.

1.2 Interpretation.

1.2.1 Certain Terms. The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.” The words “make” and “have made” include the acts of developing, assembling, packaging and/or testing.

1.2.2 Section References; Titles and Subtitles. Unless otherwise noted, all references to Sections and Schedules herein are to Sections and Schedules of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.2.3 Reference to Persons, Agreements, Statutes. Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. TRANSFER OF IP RIGHTS TO SPANSION

2.1 STI Patent Rights. Effective as of the Effective Date, each Contributing Party hereby assigns, transfers and conveys to STI such Contributing Party’s entire right, title and interest in and to the STI Patent Rights, subject to (a) any rights, licenses or immunities relating to the STI Patent Rights that have been granted to any Persons prior to the Effective Date, and (b) retention and reservation by each Parent for itself, its successors and assigns (and STI hereby grants to each Parent, its successors and assigns) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license under the STI Patent Rights to (i) make, have made, use, sell, offer to sell, lease, import and otherwise dispose of any products and to use and practice any invention, process, art or method for any purpose, and (ii) grant sublicenses of any of the foregoing rights and licenses to (A) Subsidiaries and Affiliates of such Parent and (B) a successor-in-interest to such Parent’s Semiconductor Group.

2.2 Spansion Patent Rights. Effective as of the Amendment Date, each Contributing Party hereby assigns, transfers and conveys to Spansion such Contributing Party's entire right, title and interest in and to the Spansion Patent Rights, subject to (a) any rights, licenses or immunities relating to the Spansion Patent Rights that have been granted to any Persons prior to the Amendment Date, and (b) retention and reservation by each Parent for itself, its successors and assigns (and Spansion hereby grants to each Parent, its successors and assigns) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license under the Spansion Patent Rights to (i) make, have made, use, sell, offer to sell, lease, import and otherwise dispose of any products and to use and practice any invention, process, art or method for any purpose, and (ii) grant sublicenses of any of the foregoing rights and licenses to (A) Subsidiaries and Affiliates of such Parent and (B) a successor-in-interest to such Parent's Semiconductor Group.

2.3 Immunity. The rights and licenses retained and reserved by Parents (and granted to Parents by STI and Spansion) pursuant to Sections 2.1 and 2.2, and any sublicenses granted by Parents pursuant to Sections 2.1 and 2.2, shall include immunity for (and STI and Spansion hereby covenant not to sue) the resellers, distributors, users and other customers, direct or indirect, of any products made, imported, sold, offered for sale, leased or otherwise disposed of by or for or on behalf of Parents and such sublicensees as set forth herein ("**Immunized Products**") (whether such Immunized Products are used, imported, sold, offered for sale, leased or otherwise disposed of alone or in combination with other products or services, although such immunity will not extend to any such combinations or parts of such other products or services other than the Immunized Products).

2.4 Conditional Patent Rights. In the event (i) a claim of patent infringement is brought against Spansion or STI in any judicial tribunal by a bona fide Third Party ("**Third Party Claim**"), and (ii) STI promptly notifies Fujitsu in writing of (a) such Third Party Claim, (b) STI's desire to obtain Conditional Patent Rights to use in responding to such Third Party Claim, and (c) STI's good faith belief that (I) there are no patents in its patent portfolio on which to base a claim or counterclaim against such Third Party for patent infringement in any jurisdiction at the time such Third Party Claim is brought, (II) such Third Party Claim will have a material adverse effect on STI's Flash Memory Business, and (III) one or more of the patents listed on Schedule 1.1.16 is a patent on which a non-frivolous counterclaim against such Third Party for patent infringement may be based and obtaining rights under such patent (which could include rights to grant sublicenses under such patents or enforce such patents) will help STI minimize, to the extent reasonably possible, any Losses of STI, then STI and Fujitsu shall first meet and discuss in good faith how to maximize STI and Fujitsu's respective interests and any terms and conditions in connection with any grant of Conditional Patent Rights to STI prior to any grant of Conditional Patent Rights by Fujitsu to STI. Fujitsu shall have the right to reject STI's request if Fujitsu has a good faith belief that a grant to STI of Conditional Patent Rights may have an adverse effect on Fujitsu business interests at the time of STI's request or thereafter. Any use by STI against such Third Party of such Conditional Patent Rights shall be solely for the purpose of defense against and/or settlement of the Third Party Claim. Any extension of Conditional Patent Rights to STI by Fujitsu and to such Third Party by STI (including in the form of a release, license, or covenant not to sue) shall also be set forth in a written agreement or agreements that (A) is in a form reasonably acceptable to Fujitsu (such acceptance not to be unreasonably withheld),

(B) contains terms and conditions deemed necessary by Fujitsu to protect its interests, such as the terms set forth in Sections 7.2, 8 and 10.1.1 through 10.1.5 of the Fujitsu-Spansion Patent Cross-License Agreement, royalty obligations, releases and grants of rights to Fujitsu, restrictions on assignment, loss of rights on change of control, and the like, (C) provides that any rights granted to the Third Party are subject to the terms and conditions of this Agreement and that Fujitsu is an express third party beneficiary under such license agreement and shall have rights to terminate and enforce such license agreement against such Third Party to the same extent as STI itself, and (D) does not permit any further sublicensing by any Third Party licensee. Without limiting any of the foregoing, all rights and remedies available under law for breach of any such agreement between Fujitsu and STI shall be available to Fujitsu, including the right to terminate any such agreement. Fujitsu's obligations under this Section 2.4 and STI's rights under any agreement relating to Conditional Patent Rights shall terminate when the Third Party Claim is dismissed, withdrawn or terminated, without STI exercising any of the Conditional Patent Rights granted by Fujitsu. Notwithstanding anything to the contrary in this Section 2.4, the parties agree that it is their intention that, should a mutual agreement be made between Fujitsu and STI under which STI obtains Conditional Patent Rights for use with respect to a Third Party Claim, Fujitsu's grant of rights to STI will be sufficient to allow STI to enforce such Conditional Patent Rights against such Third Party in response to such Third Party Claim. Fujitsu makes no commitment hereunder to assign any patent to STI or initiate or join any litigation under any circumstances. Fujitsu's obligations under this Section 2.4 shall be effective until earlier of (x) the second anniversary of the date of filing of the Certificate of Incorporation, or (y) the date that the Board of Spansion sets for conversion of the Class D Common Stock following a determination that such conversion is in the best interest of Spansion pursuant to Section 3(ii) of the Certificate of Incorporation, and (z) any Third Party taking Control of Spansion.

2.5 Assigned Trademark Rights. Effective as of the Effective Date, each Contributing Party hereby assigns, transfers and conveys to STI such Contributing Party's entire right, title and interest in and to the Assigned Trademark Rights, subject to any licenses or other rights in or to the Assigned Trademark Rights that have been granted to any Persons prior to the Effective Date. In addition, STI shall have the right to continue using the part numbers and project names (i.e., pre-release product designations) used in connection with the products of the Flash Memory Businesses of the Contributing Parties.

2.6 Shared Other IP Rights.

2.6.1 Subject to Section 2.6.3, with respect to each Shared Other IP Right, effective as of the Effective Date, Fujitsu hereby assigns, transfers and conveys to STI (and agrees to cause its Subsidiaries to assign, transfer and convey to STI) an equal, undivided, joint interest in and to all of Fujitsu's and its Subsidiaries' right, title and interest in such Shared Other IP Right.

2.6.2 Subject to Section 2.6.3, with respect to each Shared Other IP Right, effective as of the Effective Date, AMD Investments hereby assigns, transfers and conveys to STI its entire right, title and interest in and to such Shared Other IP Right.

2.6.3 With respect to any Shared Other IP Rights that are owned jointly by both (a) AMD Investments and/or any of its Subsidiaries or Affiliates on the one hand, and (b) Fujitsu and/or any of its Subsidiaries on the other hand, effective as of the Effective Date, each Contributing Party hereby assigns, transfers and conveys (and agrees to cause its Subsidiaries to assign, transfer and convey) to STI a sufficient interest in and to all of such

Contributing Party's and its Subsidiaries' right, title and interest in such Shared Other IP Rights such that, following such assignments, transfers and conveyances, each of AMD (collectively with its Subsidiaries), Fujitsu (collectively with its Subsidiaries) and STI owns an equal, undivided, joint interest in and to all right, title and interest in such Shared Other IP Rights.

2.6.4 The Parties acknowledge and agree that it is the intent of the Parties that as of the Effective Date, STI will have a joint ownership interest in all Shared Other IP Rights that, immediately prior to the Effective Date, are owned in whole or in part by AMD and/or any of its Subsidiaries.

2.7 Contributed Entity Other IP Rights. Each of Fujitsu, AMD and AMD Investments hereby consents (and agrees to consent), effective as of the Effective Date, to the assignment to STI of any Contributed Entity's ownership interest in Contributed Entity Other IP Rights.

2.8 Licensed Parent Software. Subject to the Software License Terms, each Parent hereby grants, effective as of the Effective Date, to STI a non-exclusive and non-transferable license, under its Other IP Rights, to use internally the Licensed Parent Software for which such Parent is Provider Party.

2.9 Third Party Other IP Rights.

2.9.1 **Fujitsu.** With respect to each Third Party Other IP Right listed on Schedule 2.9.1, Fujitsu shall, subject to Section 2.9.3, for six (6) months following the Amendment Date, use commercially reasonable efforts (and shall cause any of its Subsidiaries to use commercially reasonable efforts) to, as soon as reasonably possible, either (i) assign such license to STI or (ii) grant to STI a non-exclusive and non-transferable sublicense of the rights and benefits received by Fujitsu or such Subsidiary, as applicable, under such license necessary to enable STI to exploit such Third Party Other IP Right, with STI assuming any payment obligations of Fujitsu or such Subsidiary, as applicable, under such license corresponding to STI's exercise of its rights under such sublicense, or if neither subsection (i) nor (ii) above is reasonably practicable, (iii) effect an alternative arrangement reasonably satisfactory to STI under which STI, from and after the Amendment Date, would obtain the rights and benefits and assume the costs, liabilities and burdens with respect to such licenses. Such arrangements could include the design, development, manufacturing, marketing, sales or other distribution of STI products and services by Fujitsu and/or its Subsidiaries. During the six (6) months following the Amendment Date, Fujitsu shall make available to AMD reasonable information with respect to Third Party Other IP Rights that are subject to this Section 2.9.1.

2.9.2 **AMD.** Subject to 2.9.3, with respect to each Third Party Other IP Right (a) that is necessary for the operation of the Flash Memory Business of STI as conducted immediately prior to the Amendment Date and (b) to which AMD or any of its Subsidiaries has been granted a license in effect as of the Amendment Date, AMD shall, subject to Section 2.9.3, for six (6) months following the Amendment Date, use commercially reasonable efforts (and cause any of its Subsidiaries to use commercially reasonable efforts) to, as soon as reasonably possible, either (i) assign such license to STI or (ii) grant to STI a non-exclusive and non-transferable sublicense of the rights and benefits received by AMD or such Subsidiary, as applicable, under such license necessary to enable STI to exploit such Third Party Other IP Right in the manner exploited by STI in the

operation of its Flash Memory Business as conducted immediately prior to the Amendment Date, with STI assuming any payment obligations of AMD or such Subsidiary, as applicable, under such license corresponding to STI's exercise of its rights under such sublicense, or if neither subsection (i) nor (ii) above is reasonably practicable, (iii) effect an alternative arrangement reasonably satisfactory to STI under which STI, from and after the Amendment Date, would obtain the rights and benefits and assume the costs, liabilities and burdens with respect to such licenses. Such arrangements could include the design, development, manufacturing, marketing, sales or other distribution of STI products and services by AMD and/or its Subsidiaries. During the six (6) months following the Amendment Date, AMD shall make available to Fujitsu reasonable information with respect to Third Party Other IP Rights that are subject to this Section 2.9.2.

2.9.3 Limitations. Sections 2.9.1 and 2.9.2 shall not apply to any Third Party Other IP Rights to which any ownership interest is assigned to Spansion or STI elsewhere in this Agreement, and no Parent shall be obligated to undertake any assignment, sublicense or other activity described in Sections 2.9.1 and 2.9.2 if such assignment, sublicense or other activity would result in the payment of royalties or other consideration to Third Parties (unless STI undertakes to pay directly or to reimburse such Parent for any such royalties or other consideration) or would, in such Parent's reasonable judgment, have a material adverse effect on the business of such Parent or any of its Subsidiaries.

2.9.4 After Six-Month Period. Without limiting or affecting any other provision in this Section 2.9, each Parent agrees that if STI shall submit a request for a license, sublicense or other arrangement with respect to a Third Party Other IP Right as provided in Sections 2.9.1 or 2.9.2 after the expiration of the six-month period referenced therein, such Parent shall consider the request; *provided, however,* that such request can be denied by Parent in its sole and absolute discretion.

2.10 Delivery of Technology. Each Contributing Party shall, upon the Amendment Date, deliver (if not already delivered to LLC pursuant to the terms of the IPCAAMA) to STI tangible (including machine-readable, as appropriate) embodiments of all Shared Technology and Licensed Parent Software in its possession through the transfer of facilities, personal property contained therein and employees. Without limiting the generality of the foregoing, (a) with respect to any such tangible embodiment in a Contributing Party's possession that, through inadvertence or for any other reason, is not delivered by such Contributing Party through the transfer of facilities, personal property contained therein and employees, such Contributing Party shall promptly deliver, at no charge, such tangible embodiment following the Amendment Date to a location reasonably designated by STI, and (b) with respect to any such tangible embodiment provided by a Contributing Party to STI for which, through inadvertence or for any other reason, such Contributing Party fails to retain a complete copy, STI shall promptly deliver, at no charge, a complete copy of such tangible embodiment following the Amendment Date to a location reasonably designated by such Contributing Party. If STI discovers that it erroneously received materials that are outside the scope of this Agreement, STI shall either destroy or return (as reasonably determined by the Contributing Party that provided such materials), at no charge, all such materials to such Contributing Party promptly upon becoming aware of such fact. If a Contributing Party discovers any tangible embodiment of Shared Technology or Licensed Parent Software in its possession that was required to be, but was not, delivered to STI, such Contributing Party shall promptly inform STI of any such error and promptly deliver, at no charge, such tangible embodiment to a location reasonably designated by STI. If STI discovers that it did not

receive from a Contributing Party any tangible embodiment of Shared Technology or Licensed Parent Software that was required to be delivered by such Contributing Party, such Contributing Party shall promptly deliver, at no charge, such tangible embodiment (to the extent that such Contributing Party finds such tangible embodiment after using commercially reasonable efforts to locate them) to a location reasonably designated by STI upon receiving written notice thereof from STI. The obligations of such Contributing Party under this Section 2.10 shall terminate upon the expiration of the six-month period following the Amendment Date. Without limiting or affecting any other provision in this Section 2.10, each Contributing Party agrees that if STI shall submit a request for a tangible embodiment with respect to Shared Technology or Licensed Parent Software as provided in Sections 2.10 after the expiration of the six-month period, such Contributing Party shall consider the request; *provided, however*, that such request can be denied by Parent in its sole and absolute discretion.

3. RIGHTS OF JOINT OWNERS

3.1 Right to Use. With respect to each Shared Other IP Right and Shared Patent, each Owner Party shall have the right to use such Shared Other IP Right or Shared Patent for any internal purposes.

3.2 Right to License. Subject to Section 6, with respect to each Shared Other IP Right and Shared Patent, STI (only with Spansion's approval and subject to the provisions of Section 2.11 and Schedule 2.11 of the Bylaws of Spansion) and each other Owner Party shall have the right to license, and each Owner Party hereby consents to such licensing of, such Shared Other IP Right or Shared Patent to Third Parties (a) without restriction, except that no such license of a Shared Other IP Right, if granted by an Owner Party, shall permit any Third Party to engage in any activities that, if engaged in by such Owner Party, would constitute a breach of such Owner Party's (or, in the case of STI, Spansion's) non-competition obligations in Section 2 or 3 (as applicable) of the Non-Competition Agreement, and (b) without accounting to any other Owner Party unless otherwise mutually agreed upon in writing.

3.3 Right to Transfer. STI shall have the right to assign its ownership interest in Assigned Patent Rights and Assigned Trademark Rights, only with Spansion's approval and subject to the provisions of Section 2.11 and Schedule 2.11 of the Bylaws of Spansion. STI (only with Spansion's approval and subject to the provisions of Section 2.11 and Schedule 2.11 of the Bylaws of Spansion) and each other Owner Party shall each have the right to assign its ownership interest in Shared Other IP Rights and Shared Patents to Third Parties without restriction and without accounting to any other Party, *provided* that such Third Parties shall receive the rights of the assigning Party, and shall be bound by the obligations of the assigning Party, under Sections 3, 4 and 6 (as applicable) with respect to such Shared Other IP Rights, any Shared Technology related thereto and such Shared Patents.

4. COOPERATION OF THE PARTIES

4.1 Patents. Any Patents that may issue with respect to any Shared Other IP Right ("**Shared Patents**") shall be jointly owned by the Owner Parties of such Shared Other IP Right, and each such Owner Party filing applications for, or otherwise obtaining ownership of, such Shared Patents shall assign to the other Owner Parties an equal, undivided, joint interest in and to such Shared Patents. The Owner Parties shall cooperate in maintaining such Shared Patents and shall equally divide the expenses thereof.

4.2 Registration and Maintenance of Spansion IP. STI shall have the right to engage AMD, Fujitsu or any of their Subsidiaries to register and enforce, solely for the benefit of Spansion and its Subsidiaries, any Intellectual Property Rights owned by Spansion and its Subsidiaries, *provided* that none of AMD, Fujitsu or any of their Subsidiaries shall have any obligation to accept such engagement except as otherwise provided in any other Transaction Documents or Offering Documents. The out-of-pocket expenses reasonably incurred by AMD, Fujitsu or any of their Subsidiaries in performing such registration and enforcement shall be reimbursed by STI.

4.3 Access to Inventors. If (a) any employees of Spansion or any of its Subsidiaries, or any Seconded Employees, are named as inventors on any Patent or Patent application of a Parent or any of its Subsidiaries, or were otherwise involved in or familiar with the conception, development or reduction to practice of any Technology relating to a Patent or Patent application of a Parent or any of its Subsidiaries, and (b) such Patent or Patent application relates to one or more inventions conceived, developed or reduced to practice prior to the Effective Date, then at such Parent's request, Spansion and STI shall cause such employees of Spansion and its Subsidiaries and such Seconded Employees to provide such Parent and its Subsidiaries with reasonable assistance and cooperation (which may include executing written instruments as may be reasonably requested by such Parent and its Subsidiaries) in applying for, prosecuting, obtaining, perfecting and enforcing such Patent or Patent application. The out-of-pocket expenses reasonably incurred by such employees of Spansion and its Subsidiaries and such Seconded Employees in providing such assistance and cooperation shall be reimbursed by such Parent.

5. SPANSION TECHNOLOGY

5.1 Identification. Spansion shall identify to each Parent any Spansion Technology in Spansion's or any of its Subsidiaries' possession at such Parent's requests, which may be made from time to time.

5.2 Delivery to Parents. Spansion shall deliver to each Parent any Spansion Technology in Spansion's or any of its Subsidiaries' possession (excluding any Spansion Technology with respect to which such Parent is a Provider Party) at such Parent's requests, which may be made from time to time, and such Parent shall reimburse Spansion for reasonable out-of-pocket expenses incurred by Spansion in performing such delivery. Spansion shall perform such delivery by providing such Parent with (a) tangible (including machine-readable) embodiments of such Spansion Technology in Spansion's or any of its Subsidiaries' possession, (b) training on such Spansion Technology conducted by appropriate Spansion or Spansion Subsidiary personnel, and (c) reasonable telephone and email access to appropriate Spansion or Spansion Subsidiary personnel for the purpose of answering questions from, and otherwise providing support to, such Parent's personnel regarding such Spansion Technology. Notwithstanding anything to the contrary, Spansion shall owe no obligations under Sections 5.1 and 5.2 (i) to any Parent during any period in which such Parent's Aggregate Ownership Interest is less than twelve and one-half percent (12.5%), or (ii) to the extent that performance of such obligations would constitute a breach by Spansion of any obligations of confidentiality owed by Spansion to a Third Party, or a breach of any obligations of confidentiality owed by Spansion to the non-requesting Parent that, if breached, would result in breach of an obligation of confidentiality owed by the non-requesting Parent to a Third Party.

5.3 License to Parents. Spansion and STI hereby grant (and agree to cause their respective Subsidiaries to grant) to each Parent a non-exclusive, perpetual, irrevocable, fully paid-up, royalty-free license to (a) prepare derivative works of, modify, reproduce and otherwise use the Spansion Technology solely in connection with the design, development, testing, manufacture, support, and use of Licensed Products and (b) make, have made, sell, offer for sale and otherwise distribute, transmit, import, and otherwise use and exploit Licensed Products (whether alone or as incorporated into other products) based on, incorporating, or otherwise using all or any portion of the Spansion Technology. The rights and licenses set forth in this Section 5.3 include the right to disclose the Spansion Technology, to the extent that such disclosure (i) is inherent in the sale, distribution, use or other exploitation of any Licensed Products (whether alone or as incorporated into other products) based on, incorporating, or otherwise using all or any portion of the Spansion Technology, (ii) is reasonably necessary or useful for use and exploitation of any such Licensed Products, or (iii) is otherwise reasonably necessary or useful in connection with the use or exploitation of the Spansion Technology authorized by Section 5.3. The rights and licenses set forth in this Section 5.3 also include the right to grant sublicenses of any of the foregoing rights and licenses (A) to Subsidiaries and Affiliates of such Parent, (B) to manufacturers, subcontractors and other service providers for the purpose of, and to the extent necessary for, providing services for or on behalf of such Parent and its Subsidiaries and Affiliates (and not for the benefit of any Third Parties other than Affiliates), and (C) otherwise reasonably necessary for the use and exploitation of Licensed Products (whether alone or as incorporated into other products). In addition, each Parent shall have the right to grant sublicenses of the rights and licenses set forth in this Section 5.3 to any Third Party as part of a transfer to such Third Party of any or all of the business or operations of such Parent's Semiconductor Group or any of such Parent's Subsidiaries or Affiliates sublicensed under this Section 5.3, *provided* that such sublicenses shall only apply to Spansion Technology that has been used in the transferred business or operations on or before the date of such transfer, and *provided further* that such sublicenses, with respect to any Spansion Non-Process Technology, shall only apply to (x) each Existing Product and Pending Product of such Parent and its Subsidiaries and Affiliates sublicensed hereunder as of the date of such transfer ("**Acquired Party Covered Product**"), (y) each Existing Product and Pending Product of such Third Party as of the date of such transfer that would have been in direct competition with an Acquired Party Covered Product if both such products were offered for sale contemporaneously by different Persons ("**Acquirer Competitive Product**"), and (z) Successor Products. Notwithstanding anything to the contrary, no license or sublicense of any item of Spansion Technology granted under this Section 5.3 shall cover any Licensed Product that is competitive with Existing Products or Pending Products of Spansion as of the date Spansion delivers to such Parent such item of Spansion Technology as described in Section 5.2 ("**Spansion Technology Delivery Date**"), unless and until Spansion discontinues sales of such Existing Products of Spansion that were competitive with such Licensed Product as of such Spansion Technology Delivery Date and Spansion discontinues sales or development (as applicable) of such Pending Products of Spansion that were competitive with such Licensed Product as of such Spansion Technology Delivery Date, at which time the licenses and sublicenses to such item of Spansion Technology granted under this Section 5.3 shall cover such Licensed Product.

6. PROTECTION OF TECHNOLOGY

6.1 Spansion Obligation. Spansion and STI shall use (and shall cause its Subsidiaries to use) the same care and measures to protect the confidentiality of the Shared

Technology and Licensed Parent Software provided by each Parent as STI uses for its other confidential or proprietary information or material of a similar nature (including the Shared Technology and Licensed Parent Software provided by the other Parent), but no less than a reasonable degree of care. Such measures may include instructing and requiring (through written nondisclosure agreement or otherwise) Third Party recipients of such Shared Technology and Licensed Parent Software to maintain the confidentiality thereof, and limiting internal disclosures of such Shared Technology and Licensed Parent Software to those employees of Spansion and its Subsidiaries who have a need to access such Shared Technology and Licensed Parent Software and who are bound to retain the confidentiality thereof. If Spansion or any of its Subsidiaries becomes aware of any unauthorized (whether intentional or accidental) use or disclosure of any Shared Technology or Licensed Parent Software that Spansion believes has or will have a Material Adverse Effect on Spansion, STI or either Parent, Spansion will promptly notify the Provider Party(ies). Notwithstanding anything in this Section 6.1 to the contrary, Spansion may disclose any Shared Technology that was generally available to the public or otherwise part of the public domain at the time it was provided to Spansion or STI hereunder, or that became generally available to the public or otherwise part of the public domain after it was provided to Spansion or STI hereunder other than through any act or omission of Spansion or any of its Subsidiaries in breach of this Agreement.

6.2 Parent Obligation. Each Parent shall use the same care and measures to protect the confidentiality of (a) any Shared Technology for which such Parent is an Owner Party and (b) any Spansion Technology delivered and licensed to such Parent at such Parent's request pursuant to Section 5 as Parent uses for its other confidential or proprietary information or material of a similar nature, but no less than a reasonable degree of care. Such measures may include instructing and requiring (through written nondisclosure agreement or otherwise) Third Party recipients of such Shared Technology and Spansion Technology to maintain the confidentiality thereof, and limiting internal disclosures of such Shared Technology and Spansion Technology to those employees of such Parent and its Subsidiaries who have a need to access such Shared Technology and Spansion Technology and who are bound to retain the confidentiality thereof. If such Parent becomes aware of any unauthorized (whether intentional or accidental) use or disclosure of any such Shared Technology or Spansion Technology that such Parent believes has or will have a Material Adverse Effect on Spansion or STI, such Parent will promptly notify Spansion. Notwithstanding anything in this Section 6.2 to the contrary, such Parent may disclose any such Shared Technology and Spansion Technology that was generally available to the public or otherwise part of the public domain at the time it was provided by Spansion, STI or LLC to such Parent under Section 5, or that became generally available to the public or otherwise part of the public domain after it was provided by Spansion, STI or LLC to such Parent under Section 5 other than through any act or omission of such Parent or any of its Subsidiaries in breach of this Agreement.

7. DEFENSE OF SPANSION

7.1 AMD Cross-Licenses to Protect Spansion. For so long as Spansion is Controlled by AMD, AMD shall enforce its applicable Patents in order to minimize, to the extent reasonably possible, any Losses of Spansion and its Subsidiaries, provided that the details of the manner in which AMD enforces its Patents, including which of such Patents AMD enforces, shall be left to AMD's reasonable discretion. For so long as Spansion is Controlled by AMD, AMD may grant licenses under Patents separately owned by Spansion

and its Subsidiaries, provided that (i) each such license shall be of no broader scope than, and shall be subject to the same terms and conditions that apply to, any license of any Patents of AMD granted in connection with such license, and (ii) the recipient of each such license grants to Spansion and its Subsidiaries a license of similar scope under such recipient's patents.

7.2 Responsibility for Spansion Losses. Without limiting the obligations of AMD under Section 7.1, Spansion shall be responsible for any Losses to Persons that Spansion or its Subsidiaries incur arising out of or relating to the claims, allegations, assertions, suggestions or invitations to license of such Persons, including any claim of misuse, disclosure without authorization, infringement, or misappropriation of any Intellectual Property Right.

8. SECONDED EMPLOYEES

8.1 Assignment of Developments. Fujitsu hereby assigns and agrees to assign, and will cause its Subsidiaries, as applicable, to assign, to Spansion Japan (a) an equal, undivided, joint interest in and to its and their right, title, and interest in Developments created by Seconded Employees jointly with employees of Fujitsu or any of its Subsidiaries, except as otherwise agreed to by Fujitsu and Spansion Japan, and (b) its and their right, title, and interest in all other Developments. With respect to Developments owned solely by Spansion Japan, Spansion Japan shall have the sole right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such Developments and to prepare, file and prosecute patent applications and to obtain and hold any other registrations or similar protections which may be available with respect to such Developments. Fujitsu will, and will cause its relevant Subsidiaries to, provide Spansion Japan with reasonable assistance and cooperation (which may include executing written instruments as may be reasonably requested by Spansion Japan) in applying for, prosecuting, obtaining, perfecting and enforcing its Intellectual Property Rights in such Developments; *provided* that the out-of-pocket expenses reasonably incurred by Fujitsu and its Subsidiaries in providing such assistance and cooperation are reimbursed by Spansion Japan. All Developments that are Patents are hereby deemed to be Spansion Licensed Patents under the AMD-Spansion Patent Cross-License Agreement and the Fujitsu-Spansion Patent Cross-License Agreement. All other Developments are hereby deemed to be Spansion Technology.

8.2 Fujitsu Policies and Interaction. The Parties hereby agree and acknowledge that during his or her Secondment Period (as defined in the Fujitsu Secondment Agreement), each Seconded Employee shall continue to be bound by Fujitsu's and Fujitsu's Subsidiaries' existing rules, policies and agreements regarding confidential information and inventions ("**Fujitsu Policies**"), *provided, however*, that Fujitsu agrees not to enforce against any Seconded Employee any right it may have under the Fujitsu Policies to prohibit such Seconded Employees from disclosing Developments to Spansion Japan. Spansion Japan shall be responsible for providing instructions to the Seconded Employees concerning the disclosure of Developments to Spansion Japan. Insofar as matters with respect to technology are concerned, Fujitsu will, and Spansion will cause Spansion Japan to, take reasonable efforts to limit the interaction of Fujitsu's employees other than the Seconded Employees (the "**Non-Seconded Employees**"), with the Seconded Employees. Fujitsu (or the applicable Fujitsu subsidiary) will each instruct the Non-Seconded Employees not to initiate conversations with its Seconded Employees about confidential work being performed by either Fujitsu or Spansion Japan, other than joint confidential work involving Fujitsu and Spansion Japan. Spansion will cause Spansion Japan to instruct the Seconded Employees not

to initiate conversations with the Non-Seconded Employees about confidential work being performed by either the Fujitsu Entities or Spansion Japan, other than joint confidential work involving Fujitsu and Spansion Japan.

8.3 No Transfer of Background IP Rights. Notwithstanding any provision to the contrary, nothing in this Section 8 shall constitute (a) an assignment or agreement to assign by Fujitsu or any of its Subsidiaries to Spansion Japan any right, title, or interest (including any license rights or rights of use) in Background IP Rights; or (b) a waiver by Fujitsu or any of its Subsidiaries of the enforcement of any right or any claim or causes of action of any kind against Spansion Japan with respect to Background IP Rights, or a grant or agreement by any Fujitsu Entity to grant to Spansion Japan a license under any Background IP Right. For purposes of clarification, nothing in this Section 8.3 shall affect, or be deemed to affect, any of the assignments, transfers, conveyances or licenses set forth in Section 2.

9. CONFIDENTIAL INFORMATION

9.1 Contiguous Facilities. The Parties acknowledge that the transactions relating to the Transaction Documents and the Offering Documents contemplate certain arrangements in which (a) personnel of a Parent (and/or its Subsidiaries) may be assigned to work at the facilities of STI (and/or its Subsidiaries), or personnel of STI (and/or its Subsidiaries) may be assigned to work at the facilities of a Parent (and/or its Subsidiaries), and (b) a Parent (and/or its Subsidiaries) and STI (and/or its Subsidiaries) may occupy contiguous facilities in which their respective personnel will share certain common areas. The Parties further acknowledge that, as a result of such arrangements, one Party and/or its Subsidiaries (collectively, “**Recipient**”) may inadvertently be provided with, or may otherwise obtain, Confidential Information of another Party and/or its Subsidiaries (collectively, “**Discloser**”). Recipient shall not use or disclose Discloser’s Confidential Information for any purpose, and shall promptly return to Discloser any tangible (including machine-readable) embodiments of any such Confidential Information.

9.2 Parent Confidential Information. The Parties acknowledge that one Parent and/or its Subsidiaries (collectively, “**Receiving Parent**”) may be provided by Spansion or its Subsidiaries with, or may otherwise obtain from Spansion or its Subsidiaries, Parent Confidential Information of the other Parent and/or its Subsidiaries (collectively, “**Disclosing Parent**”). Except as otherwise permitted by Disclosing Parent, Receiving Parent shall not use or disclose Parent Confidential Information of Disclosing Parent for any purpose, and shall promptly return to Spansion any tangible (including machine-readable) embodiments of any such Parent Confidential Information. Nothing in this Section 9.2 shall be construed to authorize Spansion or its Subsidiaries to disclose or otherwise provide any information or materials of a Parent to the other Parent.

9.3 Residual Information.

9.3.1 Notwithstanding Section 9.1, Recipient shall not be liable to Discloser for the inadvertent use of Discloser’s Residual Information for Recipient’s own business purposes by Recipient’s personnel who no longer have access to any tangible (including machine-readable) embodiments of any Confidential Information of Discloser; *provided, however*, that the foregoing shall not release or excuse Recipient from any liability to Discloser for any disclosure of Discloser’s Confidential Information by Recipient to any other Persons, including Recipient’s former personnel, or any use of such Confidential Information by such other Persons. This Section 9.3.1 shall not be deemed to (A) grant to

Recipient a license under any Patents, Copyrights or other Intellectual Property Rights (excluding Trade Secrets) of Discloser or (B) authorize any use of the tangible (including machine-readable) embodiments of any Confidential Information of Discloser.

9.3.2 Notwithstanding Section 9.2, Receiving Parent shall not be liable to Disclosing Parent for the inadvertent use of Disclosing Parent's Residual Information for Receiving Parent's own business purposes by Receiving Parent's personnel who no longer have access to any tangible (including machine-readable) embodiments of any Parent Confidential Information of Disclosing Parent; *provided, however*; that the foregoing shall not release or excuse Receiving Parent from any liability to Disclosing Parent for any disclosure of Disclosing Parent's Parent Confidential Information by Receiving Parent to any other Persons, including Receiving Parent's former personnel, or any use of such Parent Confidential Information by such other Persons. This Section 9.3.2 shall not be deemed to (A) grant to Receiving Parent a license under any Patents, Copyrights or other Intellectual Property Rights (excluding Trade Secrets) of Disclosing Parent or (B) authorize any use of the tangible (including machine-readable) embodiments of any Parent Confidential Information of Disclosing Parent.

9.4 Third Party Confidentiality Obligations. Spansion shall use (and will cause its Subsidiaries to use) commercially reasonable efforts to avoid (a) any obligations that would restrict or prohibit Spansion or its Subsidiaries from disclosing to Parents any information and materials owned or controlled by Third Parties, and (b) any obligations that would prohibit or place restrictions on Spansion's or its Subsidiaries' disclosure of any such information or materials to one Parent but not to the other Parent.

10. REPRESENTATIONS, WARRANTIES, COVENANTS AND DISCLAIMERS

10.1 Representations, Warranties & Covenants. Each of AMD Investments and Fujitsu, as a Provider Party, represents and warrants to Spansion and the other Provider Party as follows as of the Amendment Date:

10.1.1 Provider Party has the right to grant to or for the benefit of Spansion and STI the rights assigned or granted hereunder in accordance with the terms of this Agreement and such assignment or grant of rights does not, and will not during the term of this Agreement, conflict with the rights and obligations of such Provider Party (or AMD, where such Provider Party is AMD Investments) under any other license, agreement, contract or other undertaking.

10.1.2 Except as set forth in Schedule 10.1.2, Provider Party: (a) has no knowledge (and, where Provider Party is AMD Investments, AMD has no knowledge) that any Actions are currently pending or threatened against Provider Party or its Subsidiaries or Contributed Entities (or Affiliates, where Provider Party is AMD Investments, or FMH, where Provider Party is Fujitsu) alleging or asserting that any products or activities of Provider Party's Flash Memory Business infringe or misappropriate any Intellectual Property Right of any Person; and (b) has not received, and Provider Party's Subsidiaries and Contributed Entities (and Affiliates, where Provider Party is AMD Investments, and FMH, where Provider Party is Fujitsu) have not received, any oral, written, or other communication alleging or asserting that any products or activities of Provider Party's Flash Memory Business infringe or misappropriate any Intellectual Property Right of any Person, or suggesting or inviting Provider Party or its Subsidiaries or Contributed Entities (or Affiliates, where Provider Party is AMD Investments, or FMH, where Provider Party is

Fujitsu) to take a license under the right or claimed right of any Person with respect to any Intellectual Property Right in connection with any products or activities of Provider Party's Flash Memory Business.

10.1.3 The execution, delivery, and performance of this Agreement and the other Offering Documents, and the consummation of the transactions contemplated by this Agreement and the other Offering Documents, will not (i) result in Spansion or any of its Subsidiaries or the Non-Provider Party granting to any Third Party any right to, or with respect to, any Intellectual Property Right owned by, or licensed to, Spansion or any of its Subsidiaries or the Non-Provider Party, as applicable, except as set forth in Schedule 10.1.3(i), and except to the extent that such grant to such Third Party is under Spansion's or its Subsidiaries' patent rights and, in return for such grant, such Third Party grants to Spansion and its Subsidiaries a license of similar scope under such Third Party's patent rights; (ii) result in Spansion or its Subsidiaries or the Non-Provider Party being bound by, or subject to, any non-competition or other restriction on the operation or scope of its businesses other than the restrictions set forth in the Non-Competition Agreement, or (iii) result in Spansion or its Subsidiaries or the Non-Provider Party being obligated to pay any royalties or other fees of any kind to any Third Party with respect to Intellectual Property Rights, except as set forth in Schedule 10.1.3 (iii).

10.1.4 This Agreement and the Amended and Restated AMD-Spansion Patent Cross-License Agreement (in the case AMD Investments is the Provider Party), and the Amended and Restated Fujitsu-Spansion Patent Cross-License Agreement (in the case Fujitsu is the Provider Party) grant to Spansion and its Subsidiaries ownership or license rights under all of the Intellectual Property Rights owned in whole or in part by Provider Party and its Subsidiaries (and its Affiliates, where Provider Party is AMD Investments) that are necessary to enable Spansion and its Subsidiaries following the Amendment Date to conduct the Flash Memory Business of Provider Party in all material respects as such Flash Memory Business is conducted immediately prior to the Amendment Date.

10.2 AMD Intellectual Property Rights. AMD represents and warrants to Spansion and Fujitsu that: (a) all right, title and interest held by AMD at any time prior to the Amendment Date in and to the Spansion Patent Rights being assigned as of the Amendment Date have been assigned, transferred and conveyed to AMD Investments, and AMD Investments has not assigned, transferred or conveyed any such right, title or interest to any Person, except as expressly provided herein; and (b) AMD, AMD Investments, and their respective Subsidiaries have each assigned, transferred or conveyed to Spansion or one of its Subsidiaries or otherwise caused Spansion or one of its Subsidiaries to hold all right, title and interest held by AMD, AMD Investments, or any of their respective Subsidiaries immediately prior to the Amendment Date in and to any Intellectual Property Right, Technology, or license thereunder or thereto that Coatue at any point in time owned, held, controlled, used or developed, except the agreements listed on Schedule 10.2.

10.3 FMH. Fujitsu represents and warrants to Spansion and AMD that prior to the Amendment Date, FMH has never (a) conducted any activities other than owning its limited liability company interests of LLC, and (b) held any right, title or interest at any time in and to any Intellectual Property Right or Moral Right.

10.4 Survival and Remedies. All representations and warranties contained in this Agreement shall survive for a period of eighteen (18) months after the Amendment Date. The indemnification provisions of Article X of the Contribution Agreement shall provide the exclusive remedy for any breach of the representations and warranties set forth in this Agreement.

10.5 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ANY TRANSACTION DOCUMENT OR ANY OFFERING DOCUMENT, NO PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. NOTWITHSTANDING ANYTHING IN ANY AGREEMENT TO THE CONTRARY, FUJITSU DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH CONDITIONAL PATENT RIGHTS, INCLUDING WITHOUT LIMITATION, THE AVAILABILITY TO STI OF SUCH RIGHTS OR THEIR SUFFICIENCY TO RESPOND TO ANY THIRD PARTY CLAIM.

11. MISCELLANEOUS

11.1 No Implied Rights. Except as otherwise expressly provided herein, nothing in this Agreement shall be deemed to grant to any Party, directly or by implication, estoppel or otherwise, any right or license with respect to any Intellectual Property Rights of any other Party.

11.2 Relationship of the Parties. In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. No Party will bind, or attempt to bind, any other Party hereto to any contract or other obligation, and no Party will represent to any Third Party that it is authorized to act on behalf of any other Party to this Agreement.

11.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

11.4 Dispute Resolution. The parties hereby agree that claims, disputes, or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance, or breach of this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in Schedule A.

11.5 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

11.6 Predecessors, Successors and Assigns. It is understood and agreed that (i) the obligations of Parents or Contributing Parties to STI arising hereunder prior to the

Amendment Date shall have been fully satisfied by performance thereof tendered to STI's predecessor-in-interest, LLC, which was a party to the IPCAAMA as of June 30, 2003, (ii) the obligations of STI to Parents or Contributing Parties arising hereunder prior to the Amendment Date shall have been fully satisfied by performance thereof tendered by LLC, and (iii) STI is responsible for performance from the Effective Date of any obligation of STI to Parents and Contributing Parties hereunder. Except as expressly provided herein (including Section 3.3), the rights and obligations hereunder may not be assigned or delegated (a) by Spansion or STI without the prior written consent of both Parents, (b) by either Parent without the prior written consent of Spansion and the other Parent, or (c) by AMD Investments without the prior written consent of Spansion and Fujitsu. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by a Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. No Party shall assign its rights under any of the Intellectual Property Rights assigned to such Party pursuant to this Agreement unless such assignment by such Party is made subject to the terms of this Agreement other than Section 2.4.

11.7 Entire Agreement; Amendment. This Agreement (including the Schedules hereto) and the other Transaction Documents and Offering Documents constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supersede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter; *provided, however*, that the rights, licenses and immunities granted to the Parties in such prior agreements shall survive the execution of this Agreement and the other Transaction Documents and Offering Documents to the extent set forth in, and in accordance with the terms of, the Termination Agreement (including Section 3.6 thereof). This Agreement may not be altered or amended except by a written instrument signed by authorized legal representatives of all Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or any other Transaction Document and Offering Documents. For purposes of clarity, this Agreement, in amending and restating the IPCAAMA dated as of June 30, 2003, is not intended to reduce the scope of any Party's license to intellectual property rights. If any intellectual property right licensed under the IPCAAMA cannot be licensed under this Agreement to the full scope of the license set forth in the IPCAAMA, such intellectual property right shall continue to be licensed under the terms and conditions of the IPCAAMA.

11.8 Notices and Other Communications. All notices required or permitted under this Agreement shall refer to this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Spansion:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94086
Attention: General Counsel
Telephone: +1 (408) 962-2500
Facsimile: +1 (408) 774-7443

If to STI:

Spansion Technology Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94086
Attention: General Counsel
Telephone: +1 (408) 962-2500
Facsimile: +1 (408) 774-7443

If to Fujitsu:

Fujitsu Limited
Akiruno Technology Center
50 Fuchigami, Akiruno
Tokyo 197-0833
Japan
Attn: General Manager
Intellectual Property & Technical Standards Division
Electronic Devices Group
Telephone: +81-42-532-1375
Facsimile: +81-42-532-2405

With a copy to (which shall not constitute notice):

Fujitsu Limited
1-1, Kamikodanaka 4-chome
Kawasaki 211-8588
Japan
Attn: General Manager, Industry Relations Division
Telephone: +81-44-754-8641
Facsimile: +81-44-754-8505

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
Attn: General Counsel
Telephone: +1 (408) 749-2202
Facsimile: +1 (408) 774-7399

With a copy to (which shall not constitute notice):

Advanced Micro Devices, Inc.
5204 East Ben White Boulevard
Mail Stop 563
Austin, Texas 78741
Attn: Vice President, Intellectual Property
Telephone: +1 (512) 602-0148
Facsimile: +1 (512) 602-4932

If to AMD Investments:

AMD Investments, Inc.
c/o Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
Attn: General Counsel
Telephone: +1 (408) 749-2202
Facsimile: +1 (408) 774-7399

or to such other address or facsimile number as a Party may have specified to the other Parties in writing delivered in accordance with this Section 11.8.

11.9 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

11.10 Severability. If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

11.11 Construction. This Agreement shall be deemed to have been drafted by all Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

11.12 Execution. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

11.13 Further Assurances. Each Party agrees to (a) execute and deliver to each other Party such other documents, and (b) do such other acts and things, all as another Party may reasonably request for the purpose of carrying out the intent of this Agreement; *provided, however,* that no Party shall be required to make any additional representations or warranties or to incur any material expense or potential exposure to legal liability pursuant to this Section 11.13.

11.14 Confidentiality of Terms. No Party shall disclose the terms of this Agreement to any Third Parties, except that any Party may disclose to Third Parties the existence of this Agreement and may disclose the terms of this Agreement to the extent reasonably necessary, in confidence, to its legal counsel, accountants, and banks and their advisors, and to its present or future financing sources for, potential investors in, and potential successors to, all or any portion of the assets or business of such Party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the date first above written.

ADVANCED MICRO DEVICES, INC.

By: /s/ Hollis M. O'Brien
Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

FUJITSU LIMITED

By: /s/ Hiroaki Hurokawa
Name: Hiroaki Hurokawa
Title: President

SPANSION TECHNOLOGY INC.

By: /s/ Bertrand F. Cambou
Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

SPANSION INC.

By: /s/ Bertrand F. Cambou
Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

AMD INVESTMENTS, INC.

By: /s/ Hollis M. O'Brien
Name: Hollis M. O'Brien
Title: VP & Secretary

**AMENDED AND RESTATED
INFORMATION TECHNOLOGY SERVICES AGREEMENT**

THIS AMENDED AND RESTATED INFORMATION TECHNOLOGY SERVICES AGREEMENT (this “**Agreement**”), is made and entered into as of December 21, 2005, (the “**Amendment Date**”) by and between SPANSION INC., a Delaware corporation (“**Spansion**”), on behalf of itself and its Affiliates, and **ADVANCED MICRO DEVICES, INC.**, a Delaware corporation (“**AMD**”), on behalf of itself and its Affiliates. Spansion and AMD are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, in connection with the creation of Spansion LLC, Spansion Inc.’s predecessor, the Parties executed an Information Technology Agreement dated as of June 30, 2003 (the “**Effective Date**”); and

WHEREAS, the Parties hereby desire to amend and restate that Information Technology Agreement.

NOW, THEREFORE, in consideration of the mutual representations, covenants and other terms and conditions contained herein, the Parties hereby amended and restate that Information Technology Services Agreement and agree as follows:

1. **DEFINITIONS**

1.1 **Definitions.** The defined terms used in this Agreement shall have the meanings set forth in Exhibit 1 or as defined in the text below.

1.2 **Interpretation.**

(a) **Certain Terms.** The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.”

(b) **Section References; Titles and Subtitles.** Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(c) **References to Persons, Agreements and Statutes.** Unless otherwise expressly provided herein, (i) references to a person or Entity include its successors and permitted assigns, (ii) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (iii) references to any statute or regulation are

to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation. In addition, any references to "either Party" and/or the "other Party," etc. shall be deemed to refer to AMD and Spansion, respectively, as the context indicates.

2. **TERM**

2.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and continue until 23:59 (Pacific Daylight Time) on June 30, 2007, or such earlier date upon which this Agreement may be terminated in accordance with its terms (the "**Initial Term**").

2.2 **Extension.** The Parties may extend the Initial Term of this Agreement by mutual written agreement; each such agreed upon extension period shall be referred to as an "**Extension Period.**"

3. **MANAGEMENT, COMMUNICATION, INFORMATION AND ESCALATION RIGHTS**

3.1 **In General.** Spansion shall have day-to-day management control over its receipt of the Services and its implementation of Systems. Subject to the terms of this Agreement, this will include decisions regarding (a) its information technology budget, (b) the level of Services it requires, (c) the Systems it chooses to implement, and (d) the performance of its service providers, including its response to failures by AMD to provide Services in accordance with the Service Levels and any material breach by AMD of its obligations under this Agreement. To administer its receipt and use of these Services and Systems, Spansion will employ a Spansion Services Manager as described below, and will consult with the AMD Services Advisor and Fujitsu Services Advisor in Spansion's reasonable judgment.

3.2 **Spansion Services Manager.** Spansion shall employ an individual reasonably knowledgeable about the provision of information technology services similar to those provided by AMD under this Agreement (the "**Spansion Services Manager**"). The Spansion Services Manager shall (a) have overall responsibility for managing and coordinating the performance of Spansion's obligations under this Agreement and for monitoring the performance of obligations by AMD under this Agreement, (b) be authorized to act for and on behalf of Spansion with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the AMD Services Advisor and Fujitsu Services Advisor. The Spansion Services Manager will report to and be supervised by a member of the senior management of Spansion.

3.3 **AMD Services Advisor.** AMD shall appoint at AMD's expense an individual (the "**AMD Services Advisor**") who will serve as the primary AMD representative under this Agreement. The AMD Services Advisor shall (a) have overall responsibility for managing and coordinating the performance of AMD's obligations under this Agreement and (b) be authorized to act for and on behalf of AMD with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the Spansion Services Manager and Fujitsu Services Advisor.

3.4 **Fujitsu Services Advisor.** Fujitsu shall appoint at Fujitsu's expense an individual (the "**Fujitsu Services Advisor**") who will serve as the primary Fujitsu representative to Spansion regarding Spansion's receipt of the Services. The Fujitsu Services Advisor will serve

in an advisory capacity to Spansion only and will not have independent veto rights or other day-to-day decision-making authority over Spansion's receipt, use and oversight of the Services. The Fujitsu Services Advisor will act in the best interests of Spansion, not Fujitsu. Spansion shall make available to the Fujitsu Services Advisor office space and facilities upon the Fujitsu Services Advisor's reasonable request as and when reasonably required by the Fujitsu Services Advisor to enable the Fujitsu Services Advisor to perform his or her responsibilities hereunder. In the event that Fujitsu's Aggregate Ownership Interest falls below ten percent (10%) and Fujitsu no longer provides services to Spansion that are similar to the Services, either Spansion or Fujitsu may, but shall not be required to, by written notice to the other and AMD, terminate the role of the Fujitsu Services Advisor, and, upon such termination, the Fujitsu Services Advisor shall have no further rights or obligations hereunder.

3.5 Information Exchange and Information Rights. Spansion shall keep AMD informed about those aspects of Spansion's business that could reasonably be expected to have an effect on the demand for, or provision of, the Services. AMD will provide to the Fujitsu Services Advisor copies of all reports and other written information relating specifically to the Services that AMD provides Spansion herein, at the same time AMD provides such reports and information to Spansion, including a copy of the monthly service reports provided Spansion under Section 4.8. At any time, upon the Fujitsu Services Advisor's reasonable request, the Spansion Services Manager shall provide the Fujitsu Services Advisor additional information regarding the performance of the Services and the associated Fees. AMD and Spansion, through the AMD Services Advisor and the Spansion Services Manager, will give notice, and otherwise keep the Fujitsu Services Advisor informed, of all proposals and discussions between the Spansion Services Manager and the AMD Services Advisor, or their respective supervisors, relating to material aspects of this Agreement and the provision of the Services herein, including all Changes proposed under the Change Control Procedures set forth in Section 3.9, any Special Projects proposed pursuant to Section 5, all audits conducted by Spansion, and all budget meetings relating to the Services or Systems. Such notice shall be given by the Parties promptly upon initiation of such discussions. In addition, AMD and Spansion will, upon the Fujitsu Service Advisor's request and subject to applicable confidentiality restrictions, grant access to the Fujitsu Service Advisor to any meeting, whether telephonic or in-person, between the Spansion Services Manager and the AMD Services Advisor regarding performance of the Services, the Fees, and any proposed Special Projects or Changes.

3.6 Services Advisor Escalation Rights. If at any time, the Fujitsu Services Advisor believes in good faith that (a) the Services being provided to Spansion under this Agreement are not being provided in accordance with the applicable Service Levels, (b) AMD is in material breach under this Agreement, (c) an audit pursuant to Section 10.12 should be conducted, or (d) Spansion is not being charged fairly for the Services it is receiving under this Agreement, then the Fujitsu Services Advisor will notify the Spansion Services Manager in writing. If after a reasonable period of time the Fujitsu Services Advisor does not believe that the concern raised has been adequately addressed, the Fujitsu Services Advisor shall be entitled to notify Spansion's Board of Directors (the "**Board of Directors**") of the Fujitsu Service Advisor's concerns. Any such notice shall be in writing and shall be provided to all Board members simultaneously, with a copy also provided simultaneously to Spansion's chief financial officer and the AMD Services

Advisor. The Board of Directors shall consider the Fujitsu Service Advisor's concerns in good faith and may take any action it deems reasonable in the circumstances.

3.7 Contract Amendments.

(a) Spansion and AMD may only amend this Agreement upon the approval of the Board of Directors. The Board of Directors may delegate its decision-making authority to Spansion management as it deems appropriate; provided, however, that any Special Project, or Systems or Services purchase of greater than Five Hundred Thousand Dollars (\$500,000) payable in any Contract Year will require specific approval from the Board of Directors.

(b) For so long as Fujitsu maintains at least a ten percent (10%) Aggregate Ownership Interest, AMD and Spansion may not amend this Agreement without the prior written consent of Fujitsu (such consent not to be unreasonably conditioned, delayed or withheld) to the extent an amendment: (i) reduces the rights of the Fujitsu Services Advisor; (ii) reduces Fujitsu's right to consent to amendments set forth in this Section; (iii) establishes a basis for charging Spansion for the Services which is different than AMD's reasonable, good faith estimates of actual costs plus five percent (5%), as set forth in Section 10.7, or materially alters the cost allocation methodologies described in Section 10.7; (iv) eliminates or reduces AMD's obligation to treat Spansion on par with other AMD divisions and Affiliates (taking into account that this Agreement provides for a cost plus allocation budgeting structure that may not apply to other AMD divisions or Affiliates); or (v) materially affects Spansion's rights under this Agreement (e.g., eliminates the requirement that all Changes require Spansion's consent). Notwithstanding any of the foregoing, changes to Fees or Services resulting from the Change Order Procedures, the Annual Budget Process or the Fee reconciliation process described in Section 10.9 do not constitute amendments of the Agreement for purposes of this Section 3.7.

3.8 Approvals. Spansion shall reasonably cooperate with AMD by making available, as requested by AMD, management decisions, information, approvals or disapprovals, and acceptances or rejections in a reasonably timely manner so that AMD may fulfill its obligations under this Agreement.

3.9 Change Control Procedures. The Parties shall use the following procedures (the "**Change Control Procedures**") to implement Changes.

(a) General.

(i) **Changes.** Changes shall be implemented only by mutual agreement of the Parties through these Change Control Procedures, except as may be necessary on an emergency, temporary basis to maintain the continuity of the Services. The Parties acknowledge and agree that the implementation of a Change does not necessarily require an increase in the Fees or other fees payable by Spansion or a reduction in the scope of Services or in Service Levels provided hereunder, and that any change in the Fees or other amounts payable by Spansion as a result of a Change will be an adjustment in accordance with the provisions of Section 10. All decisions regarding Changes are subject to the approval by the Board of Directors, which may delegate its decision-making authority to Spansion management as it deems appropriate. The Parties acknowledge and agree that not all modifications to the Services

or Systems may constitute Changes; as part of the routine operation of Spansion and AMD, modifications that are not material or significant, as determined by AMD in its reasonable judgment, may be conducted without recourse to the Change Control Procedures; provided that the Spansion Services Manager is notified — on a regular basis consistent with AMD’s internal processes — of the modifications being implemented on Spansion’s behalf or that affect Spansion Systems, with a copy of such report provided to the Fujitsu Services Advisor.

(ii) **Schedule.** Unless otherwise agreed by Spansion, with respect to all Changes, AMD shall (a) schedule Changes so as not to unreasonably interrupt Spansion’s business operations, other than those Changes made on an emergency basis to maintain the continuity of the Services, (b) prepare and deliver to Spansion each month a rolling schedule for ongoing and planned agreed upon Changes for the next thirty (30) day period, and (c) monitor the status of Changes against the applicable schedule. AMD shall implement and maintain a continuously updated, electronic log of such emergency Changes that will be accessible to the Spansion Services Manager and the Fujitsu Services Advisor at all times.

(iii) **Meetings.** The AMD Services Advisor and the Spansion Services Manager shall meet on a mutually agreed schedule (no less frequently than each quarter) for the purpose of reviewing Change requests submitted by either Party in accordance with these Change Control Procedures. The Spansion Services Manager will provide the Fujitsu Services Advisor written notice of this meeting and the Fujitsu Services Advisor may attend.

(b) **Requests for Changes.** Requests for Changes shall be submitted for review in accordance with the Change Control Procedures, and shall include a reasonably detailed description of the requested Change together with the basis for such Change. All requests for Changes by Spansion shall be communicated to AMD through the Spansion Services Manager, his or her supervisor, or his or her authorized designee.

(i) **Changes Initiated by Spansion.** Within ten (10) business days after AMD receives a request from Spansion for a Change, either AMD or a joint project team working on the Service to be impacted, as appropriate, shall prepare and provide to Spansion an initial written proposal for the Change (a “**Change Proposal**”), which proposal will include AMD’s initial proposals regarding (A) the Services and the applicable schedule for performing the Services, including but not limited to Spansion’s related obligations, to effect the Change, (B) the applicable Service Levels resulting from the Change, (C) the resources required to perform Services effecting the Change and resulting from the Change, (D) the Fees for Services, and (E) any additional Systems or areas that are reasonably likely to be impacted by the proposed Change. The Change Proposal shall also contain a description of any other anticipated costs that Spansion will incur as a result of the Change that it would otherwise not have incurred. AMD will also indicate the areas of the Change Proposal where additional analysis may be required to complete the Change Proposal. On a schedule to be agreed upon by the Parties in the circumstances, but presumed not to exceed thirty (30) days after receipt of Spansion’s request, AMD will deliver to Spansion a completed Change Proposal. Within ten (10) business days after receiving such Change Proposal, Spansion shall either approve the Change Proposal, notify AMD that Spansion desires to discuss the Change Proposal further, or withdraw the request for such Change. Spansion’s failure to approve the Change Proposal or notify AMD that Spansion

desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of the Change Proposal, and the Change shall not be implemented.

(ii) **Changes Initiated by AMD.** Concurrent with the submission of a request for a Change by AMD, either AMD or a joint project team working on the impacted Service, as appropriate, shall provide to Spansion a Change Proposal containing the information specified in subparagraph (i) above. Within ten (10) business days after receiving such proposal, Spansion shall either approve the Change Proposal, notify AMD that Spansion desires to discuss the Change Proposal further, or reject the requested Change. Spansion's failure to approve the Change Proposal or notify AMD that Spansion desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of such request, and the Change shall not be implemented. If Spansion rejects the request or does not respond to the request, then the AMD Services Advisor may notify all members of the Board of Directors by simultaneous notice, with a copy to the Spansion chief financial officer (or other officer who supervises the Spansion Services Manager, if applicable) and to the Fujitsu Services Advisor, of the rejection of the Change Proposal and may request that the Board of Directors determine whether the Change should be made by or for Spansion.

(c) **Further Discussion of Changes.** If within ten (10) business days after receipt of a Change Proposal, Spansion notifies AMD that Spansion desires to discuss the proposed Change further, the Spansion Services Manager and AMD Services Advisor will promptly consider the Change Proposal in person or by telephone and will attempt in good faith to develop a mutually acceptable Change Proposal. The Spansion Services Manager will notify the Fujitsu Services Advisor of the proposed meeting and the Fujitsu Services Advisor may attend any such meeting.

(d) **Outside Bids.** Notwithstanding any discussions regarding Change Proposals, Spansion shall have the right to request, evaluate and accept proposals from third parties regarding Changes; provided that such Changes are only for Location Based Services and not for Enterprise Services and such Changes do not relate to AMD-proprietary Software or Systems, do not affect the AMD Infrastructure, the provision of Services, and would not result in the breach of an obligation that AMD may have with a third party. Spansion will notify AMD when Spansion is considering seeking proposals from third parties regarding Changes and provide AMD the first opportunity to perform the Change. In the event AMD rejects such Change Proposal, and the Parties, after reasonable negotiations, fail to come to an agreement in connection therewith, Spansion shall have the right to escalate the issue to the Board of Directors.

(e) **Implementation of Changes.** All Changes are subject to the written approval of the Parties. Only following receipt of each Party's written approval may AMD begin to implement the approved Change. Costs and fees for performance of additional work to implement the Change, if any, will be invoiced and paid in accordance with the schedule set forth in the agreed-upon Change Proposal; however, any Fee adjustments resulting from the Change will be implemented as part of the quarterly budget reconciliation process set forth in Section 10.9.

(f) **Emergency Changes.** If a Service Level failure, reasonable safety concern, Governmental Authority or change in Applicable Law, requires an immediate Change to a System or Service, then AMD may implement such Change immediately upon notice to Spansion, with a copy to the Fujitsu Services Advisor. Any change in Fees, any System purchases for which AMD seeks reimbursement from Spansion, or any long-term, material degradation in Service Levels resulting from such Change, unless such degradation is unavoidably required in the circumstances (in which event AMD shall use all reasonable efforts to mitigate the impact of such degradation), shall be subject to the Change Control Procedures.

4. SERVICES

4.1 **Services; Parity.** AMD, either itself or through its Affiliates or subcontractors (subject to Section 4.6), shall provide the Systems and perform the services, functions, and responsibilities for Spansion identified in Exhibit 4.1 (the “**Services**”). Exhibit 4.1 may be updated by the Parties from time to time upon mutual agreement pursuant to the Change Control Procedures or the annual review of the Spansion IT budget and the Services described in Section 10.8 (the “**Annual Budget Process**”). The Services will include those services and Systems that AMD will also provide Spansion that AMD also provides on an enterprise-wide basis for AMD facilities generally (“**Enterprise Services**”) as well as Spansion Service Location-specific services and Systems that may be unique to any such Service Location (“**Location Based Services**”). AMD will provide Spansion the Services under terms (including those related to charges, cost allocation, service levels and technology) that are at least as favorable as those it provides any other AMD business unit, division or AMD Affiliate receiving similar services from AMD (or an AMD subcontractor), subject to any deviations agreed to by the Parties to address Spansion’s specific requirements as communicated to AMD and taking into account that this Agreement provides for a cost plus allocation budgeting structure that may not apply to other AMD divisions or Affiliates. The Services (including any new Services or Systems added pursuant to mutual agreement by the Parties) will evolve and be supplemented, modified, enhanced or replaced, reduced or eliminated over time as agreed upon by the Parties pursuant to the Change Control Procedures or as part of the Annual Budget Process. Fees are subject to the quarterly budget reconciliation process described in Section 10.9.

4.2 **Compliance with AMD Infrastructure.** Exhibit 4.2 contains a list of any necessary telecommunications systems, software and hardware requirements, including existing and currently-planned and approved upgrades to any of the foregoing, that must be implemented in any Spansion Systems to make such systems compatible with the AMD Infrastructure as of the Effective Date (to the extent such compatibility is necessary for Spansion to receive the Services). Any implementations required under Exhibit 4.2 to the extent necessary for Spansion to receive the Services shall be provided at Spansion’s cost (including AMD’s mark-up as applicable) and such costs shall be set forth in Exhibit 10 hereto. Spansion acknowledges that for it to receive the benefits intended under this Agreement, including lower costs and conformity with AMD Systems, it must undertake such implementations. Once such implementations have been completed, any unilateral change by Spansion of its systems which results in a material failure to be compliant with the AMD Infrastructure will excuse any AMD failure to perform the affected Service, solely to the extent such failure is caused by such non-compliance, until Spansion restores its compliance, and may result in additional charges to Spansion for AMD to

assist Spansion's return to compliance. AMD agrees to notify Spansion upon AMD's discovery of any such non-compliance and will continue to provide all Services to the extent unaffected by such non-compliance. AMD will provide Spansion advance notice of any AMD Infrastructure changes, including technology upgrades, that may require Spansion to make changes to its own technical architecture.

4.3 Governmental Approvals. AMD shall obtain and maintain all Governmental Approvals required for AMD to deliver the Services under this Agreement. Spansion shall obtain and maintain all Governmental Approvals required for Spansion to use the Services under this Agreement. Upon request by either Party, the other Party shall provide to the requesting Party reasonable cooperation and assistance in obtaining Governmental Approvals hereunder.

4.4 Changes in Law. If either Party becomes aware of any changes in Law that relate to AMD's delivery of the Services or Spansion's use of the Services, then such Party will notify the other Party of such changes in Law. With respect to any changes related to AMD's delivery of Services, AMD and Spansion shall work together pursuant to the Change Control Procedures to identify the impact of such changes on AMD's delivery of the Services, and any changes in the fees charged to Spansion, as a result and shall work together to implement any necessary modifications to the Services prior to the deadline imposed by the Governmental Authority having jurisdiction for such requirement or change. AMD will use reasonable efforts to minimize the incremental cost to Spansion of compliance with such Laws.

4.5 Compliance With Laws. AMD shall comply with all Laws governing the provision of the Services and the performance of its obligations, including identifying and procuring permits, certificates, approvals and inspections required under such Laws. If a charge of non-compliance by AMD with any such Laws occurs, AMD shall promptly notify Spansion of such charge in writing and AMD shall promptly remedy such non-compliance in accordance with Law.

4.6 Subcontractors. Spansion acknowledges that AMD may outsource to a third party or third parties the performance of some or all of the Services that AMD is obligated to provide under this Agreement; provided however, that in the event such outsourcing will lead to any Change in such Services, such outsourcing shall be subject to the Change Control Procedures. Nothing in this Agreement shall be construed as requiring AMD to perform any Services outside of the United States and to the extent that Services will be performed outside the United States, AMD may engage an Affiliate, subsidiary or subcontractor to perform such Services (subject to the Change Control Procedures in accordance with the foregoing). No subcontracting shall release AMD from its responsibility for its obligations under this Agreement. AMD shall be responsible for the work and activities of each of the AMD Agents, including compliance with the terms of this Agreement. AMD shall be responsible for all payments to its subcontractors unless the Parties agree that Spansion will pay directly to an AMD Affiliate providing Services to Spansion.

4.7 Spansion Agents. AMD will coordinate and cooperate in good faith with Spansion Agents hired by Spansion from time to time to the extent reasonably required by Spansion and with Fujitsu to the extent that Fujitsu supplies similar or complementary services to

Spansion. AMD will promptly notify Spansion if Fujitsu or any Spansion Agent act or omission will cause, or has caused, a problem or delay in providing the Services. AMD will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by the interference of a Spansion Agent or Fujitsu; provided such interference was not at the direction of AMD; and provided that AMD continues to use reasonable efforts to perform despite such interference and works with Spansion to resolve the problem and resume conformance with the Service Levels and performance of AMD's obligations under this Agreement as soon as practicable.

4.8 AMD Monitoring and Reporting; Monitoring Tools. In accordance with the schedules set forth in Exhibit 6.1, or if not specified therein, when AMD generates the reports for itself, but no less frequently than quarterly, AMD shall measure and report to Spansion, with a copy to the Fujitsu Services Advisor, AMD's performance of the Services against the applicable Service Levels. Such measurement and monitoring shall permit reporting at a level of detail reasonably sufficient to verify AMD's compliance with the Service Levels; unless otherwise agreed by the Parties, AMD may determine the format and level of detail contained in any such reports (provided such detail is sufficient in accordance with the foregoing). If AMD makes available additional services monitoring reports and/or tools to other AMD business units or AMD Affiliates to monitor and/or report on services similar to the Services, AMD agrees to make such tools and reports available to Spansion. Spansion acknowledges, unless it rejects the offer for such tools and reports, that it will pay any applicable fees or allocated portion of fees to use such additional monitoring tools or obtain such additional reports.

4.9 Spansion Benchmarking. In addition to receiving AMD's Service Level performance report pursuant to Section 4.8, Spansion may also independently analyze AMD's compliance with the Service Levels and provide AMD feedback regarding AMD's performance. If as part of that benchmarking, Spansion in good faith determines that the pricing it is charged for the Services is not within a reasonable range, Spansion may notify AMD and the Parties will consider whether changes are appropriate to the Services to enable the Parties to enjoy better pricing. Any such benchmarking shall be subject to the confidentiality restriction set forth in Section 13. If Spansion requests AMD's participation in the benchmarking process and such participation results in incremental work to be performed by AMD that was not otherwise included in the budget, then AMD will be entitled to charge Spansion at the Spansion T&M Rates or other mutually-agreed rates for AMD's participation in the benchmarking process.

5. SPECIAL PROJECTS

5.1 Special Projects. Spansion may from time to time during the Term request that AMD perform Special Projects. Upon receipt of such a request from Spansion, AMD shall provide Spansion with a written proposal for such Special Project which shall include:

- (a) a description of the services, functions and responsibilities AMD anticipates performing in connection with such Special Project;
- (b) any impact on Service Levels, Spansion Systems, the AMD Infrastructure or the Enterprise Services, if any, associated with such Special Project;

- (c) a description of obligations of Spansion, if any, required for AMD to perform such Special Project;
- (d) a schedule for commencing and completing such Special Project;
- (e) AMD's prospective Fees for such Special Project, either on a fixed fee or time and materials basis; and
- (f) when appropriate, a description of any new software or equipment required in connection with such Special Project.

AMD shall not begin performing any Special Project until the Parties have agreed in writing upon the specifications, requirements, schedule and Fees for such Special Project pursuant to the Change Control Procedures. If AMD reasonably believes that a proposed Special Project would negatively affect the Services, the AMD Infrastructure, any AMD proprietary Software or AMD's implementation of third party Software, either by reducing its performance or functionality, or increasing the cost to AMD, and Spansion still desires to continue with the Special Project despite AMD's objections, the AMD Services Advisor may submit the matter to the Board of Directors for resolution; provided that any such notice to the Board of Directors must be in writing, must be submitted to all members of the Board of Directors simultaneously, and must also be provided to the Spansion chief financial officer (or other officer supervising the Spansion Services Manager, if applicable) and to the Fujitsu Services Advisor.

5.2 Third Party Services. Spansion shall have the right to contract with a third party to perform any Special Project, provided that the Special Project is only for Location Based Services and not for Enterprise Services and the Special Project does not relate to AMD-proprietary Software or Systems, does not affect the AMD Infrastructure, the provision of Services, and would not result in the breach of an obligation that AMD may have with a third party. Spansion will notify AMD of any proposal that Spansion wants to make to a third party to perform a Special Project instead of having AMD perform that Special Project. If the Parties do not agree upon terms by which AMD will perform a Special Project, or if AMD objects to Spansion retaining a third party to perform the Special Project because AMD reasonably believes in good faith that such Special Project, or the third party's performance of that Special Project, will negatively affect the Enterprise Services, the AMD Infrastructure, any AMD proprietary Software or AMD's implementation of third party Software, either by reducing its performance or functionality, or increasing the cost to AMD, or by causing AMD to breach an obligation to a third party, each Party shall have the right to escalate the issue to the Board of Directors, and the Parties shall in good faith negotiate a mutually-acceptable resolution to the matter. If Spansion does retain a third party to perform a Special Project hereunder, then AMD and Spansion will agree in writing upon any changes to the Services, Service Levels, Fees or Spansion Systems that result from Spansion retaining the third party and commissioning the Special Project.

6. SERVICE LEVELS

6.1 Service Levels. Commencing upon the applicable date identified in Exhibit 4.1 (the "**Service Level Effective Date**"), AMD shall perform the Services at a minimum in conformance with the Service Levels identified on Exhibit 6.1 (the "**Service Levels**").

6.2 Adjustment of Service Levels. The Parties shall review the Service Levels for the preceding twelve (12) months during the meeting described in Section 10.8, and, (a) with respect to any Service Levels that require periodic adjustment pursuant to this Agreement or are no longer appropriate because of an increase, decrease or change to the Services, shall by mutual agreement adjust the Service Levels for the subsequent Contract Year, and (b) with respect to all other Service Levels, may adjust by mutual agreement the Service Levels for the subsequent Contract Year. In addition, either Party may, at any time upon written notice to the other Party, with a copy to the Fujitsu Services Advisor, initiate negotiations to review and adjust any Service Level at any time pursuant to the Change Control Procedures. Any adjustment to the Service Levels made pursuant to this Section 6.2 shall not be considered an amendment to this Agreement for purposes of Section 3.7. If the Parties cannot reach Agreement, then the Service Levels agreed upon for the preceding Contract Year shall continue to apply.

6.3 Root-Cause Analysis. With respect to any (a) AMD failure to provide the Services in accordance with the applicable Service Levels that gives rise to a Severity Level 1 failure (as defined in Exhibit 6.4), or (b) AMD failure to provide the Services in accordance with the applicable Service Levels that gives rise to a repeated Severity Level 2 failure (as defined in Exhibit 6.4), AMD shall, as soon as reasonably practicable, (x) perform a root-cause analysis to identify the cause of such failure or incident, (y) provide Spansion with a report detailing the cause of, and procedure for correcting, such failure or incident, and (z) implement such procedure for correcting such failure or incident.

6.4 Remedies for Failure to Meet Service Levels.

(a) Spansion agrees that the remedies available to it in the event of a failure of AMD to provide the Services in accordance with the Service Levels should be addressed to correcting problems that resulted in such failure, rather than to penalizing AMD. In recognition of this, (1) a single instance of a failure to meet a Service Level shall not automatically be deemed a material breach by AMD and (2) the Parties agree to follow to procedures set forth in this Section 6.4 as well as Section 6.5 to rectify such failures.

(b) For failures to meet the Service Levels or for any other material failure of an AMD-maintained System, AMD will provide the error correction and workaround services detailed in Exhibit 6.4 in accordance with the terms and timelines set forth therein.

(c) If, despite the remediation efforts being undertaken as set forth in Exhibit 6.4, the affected Service or Spansion System continues to fail to comply with the applicable Service Level or continues to suffer from a material defect after fifteen (15) days of remediation efforts, then the Parties shall undertake the corrective action process outlined in Section 6.5 below. If no reasonable, mutually-acceptable resolution is achieved after the conclusion of these processes, then Spansion may terminate the affected Service pursuant to Section 16.1.

6.5 Dispute Escalation Process.

(a) Initial Notice; Good Faith Discussion. If the Spansion Services Manager determines that AMD has failed to perform its obligations under Section 6.4 and Exhibit 6.4, the Spansion Services Manager may initiate contact with the AMD Services Advisor to discuss the

deficiency, and if necessary may submit a Change Proposal regarding a corrective action plan in accordance with the Change Control Procedures. Upon such contact, the Spansion Services Manager and AMD Services Advisor will promptly consider the corrective action plan in person or by telephone and will attempt in good faith to agree to a mutually acceptable corrective action plan. The Spansion Services Manager will invite the Fujitsu Services Advisor to attend any such meetings. If the Parties cannot agree upon a corrective action plan within a fifteen (15) day business day period, the issue will be escalated in accordance with clause (b) below.

(b) Management Escalation. If the issue is not resolved in accordance with clause (a) above, the Spansion Services Manager will notify the Spansion chief financial officer or other designated Spansion officer supervising the Spansion Services Manager of the issue. The Spansion chief financial officer or other designated supervising officer will then contact the AMD chief information officer to 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 the Parties, with such ten (10) business day period, the issue will be escalated in accordance with clause (c) below.

(c) Board Escalation. If the Spansion chief financial officer (or other designated Spansion officer) reasonably determines that AMD has failed to offer an acceptable remedy for the material breach, then the Spansion officer shall notify the Board of Directors (a) indicating the nature and the basis of the issue, and (b) listing the measures that Spansion proposes to take against AMD in order to remedy the material breach. The Board of Directors shall consider the measures proposed by the Spansion officer against AMD and shall provide its recommendation or approval for any measures Spansion shall take to remedy the material breach.

(d) Termination. In the event that the unremediated material breach has a material adverse impact on Spansion's business or operations, and subject to Board of Directors approval, Spansion may terminate the affected Service in accordance with the provisions set forth in Section 16 (presuming the applicable cure period has elapsed as set forth therein) and shall have the right to contract with a third party to perform such Service.

(e) Right to Arbitrate. In the event that the Board of Directors approves Spansion's proposed measures, and AMD believes that such measures are inappropriate, AMD shall have the right to institute dispute resolution proceedings in accordance with Section 15.

6.6 Service Level Credits. Spansion acknowledges that no Service Level credits are applicable to a failure by AMD to provide Services in accordance with Service Levels. Notwithstanding the foregoing, the Parties agree that if the cost plus arrangement in Section 10 is materially altered so that the Services are provided on commercial terms permitting AMD to achieve profit margins substantially similar to those of a commercial outsourcer providing the same scope of services to Spansion, then the Parties will adopt mutually-acceptable, commercially-standard Service Level credits. Further, the Parties agree that if AMD receives service level credits from a third party outsourcer regarding Services AMD provides Spansion under this Agreement, AMD will apportion any service level credits it receives to Spansion in a manner proportionate to Spansion's cost allocation by AMD for the affected Service, and any

such credit will offset the next payment obligation of Spansion (to the extent of the credit) which follows AMD's accrual of such credit. AMD will promptly notify Spansion of any such credits.

7. **SERVICE LOCATIONS AND SECURITY**

7.1 **Service Locations.**

(a) The Services shall be provided to Spansion from (i) the Spansion Service Locations and (ii) the AMD Service Locations as established on the Effective Date or subsequently changed in accordance with the terms hereof. In the event AMD desires to establish or move Services to a Spansion Service Location, such action must go through the Change Order Procedure or be approved in writing by the Spansion Services Manager.

(b) Except as provided in Section 10 and unless otherwise agreed by Spansion, any incremental expenses incurred by Spansion or AMD and any costs incurred in connection with the performance or use of the Services, in each case as a result of AMD's relocation to, or use of, any different Service Locations at AMD's request, shall be paid by AMD or reimbursed to Spansion by AMD. Any incremental expenses incurred by Spansion or AMD as a result of a relocation to, or use of, any different Service Locations at Spansion's request or direction shall be paid by Spansion or reimbursed to AMD by Spansion.

7.2 **Spansion Resources.**

(a) **Spansion Systems.** At its own expense and in accordance with the Change Control Procedures, Spansion may replace and upgrade the Spansion Systems from time to time in Spansion's business judgment; provided that in replacing and upgrading such Spansion Systems, Spansion will comply with Section 4.2 and will not otherwise adversely impact AMD's ability to provide the Services in accordance with the Service Levels. AMD will promptly notify Spansion if any Spansion implementation of a new Spansion System, or any Spansion failure to replace or upgrade existing Spansion Systems will cause, or has caused, a problem or delay for AMD in providing the Services. AMD will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement to the extent that failure to meet such Service Level or otherwise perform its obligations was caused by the Spansion System upgrade, or the Spansion failure to replace or upgrade Spansion Systems as notified by AMD. AMD shall work with Spansion to mitigate the effects of such degradation.

(b) **Spansion Facilities.**

(i) For so long as AMD requires the same for the performance of the Services, subject to Spansion's agreement (not to be unreasonably conditioned, delayed or withheld), Spansion shall provide to AMD at no charge access to and the use of the space in the Spansion Service Locations, together with personal computers, workstations, terminals, printers, and other equipment utilized by Spansion, office furnishings, telephone equipment, janitorial services, utilities, and other reasonable resources, in connection with AMD's performance of the Services. Use of Spansion Service Locations by AMD does not constitute a leasehold interest in favor of AMD, and AMD shall not have exclusive access or control of the space provided to AMD under this Agreement.

(ii) AMD and AMD Agents shall not commit or permit waste or damage to such facilities, nor use such facilities for any unlawful purpose or act, and shall comply with all of Spansion's general and site-specific policies and procedures generally applicable to the applicable Spansion Service Location (as in effect from time to time and of which Spansion has provided notice to AMD), including procedures for the physical security of the Spansion Service Locations.

(iii) AMD shall permit Spansion and Spansion Agents to enter into those portions of the Spansion Service Locations occupied by AMD's staff at any time to perform facilities-related services. Spansion shall ensure that Spansion and Spansion Agents shall not interfere with AMD's performance of Services while exercising access rights under this Agreement, and AMD shall not be liable under this Agreement for its non-performance or its failure to meet the applicable Service Levels to the extent such non-performance or failure is caused by interference by Spansion or Spansion Agents.

7.3 Conduct of AMD Personnel. While at the Spansion Service Locations, AMD and AMD Agents shall (a) comply with the requests, standard rules and regulations of Spansion regarding safety and health, personal and professional conduct (including adhering to general safety practices or procedures) generally applicable to such Spansion Service Locations, as notified to AMD from time to time and (b) otherwise conduct themselves in a businesslike manner. If Spansion notifies AMD that a particular member of the AMD Personnel is not conducting himself or herself in accordance with this Section, AMD shall promptly (y) investigate the matter and take appropriate action which may include (i) removing the applicable personnel from the AMD Personnel and providing Spansion with prompt notice of such removal and (ii) replacing the applicable personnel with a similarly qualified individual, or (z) take other appropriate disciplinary action to prevent a recurrence. In the event of multiple violations of this Section 7.3 by a particular member of the AMD Personnel, AMD shall promptly remove the individual from the AMD Personnel.

7.4 Safety and Security Procedures.

(a) AMD agrees to comply with Spansion's physical safety and security procedures for all Services it provides at Spansion Service Locations.

(b) AMD will promptly notify Spansion if any Spansion failure to maintain and enforce (except for enforcement with respect to AMD Personnel) physical safety and security procedures at Spansion Service Locations will cause, or has caused, a material problem or delay for AMD in providing the Services. AMD will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by the Spansion failure to maintain and enforce (except for enforcement with respect to AMD Personnel) physical safety and security procedures at Spansion Service Locations; provided that AMD continues to use reasonable efforts to perform despite such failure and works with Spansion to resolve the failure and resume conformance with the Service Levels and performance of AMD's obligations under this Agreement as soon as practicable.

7.5 Data Security.

(a) AMD shall establish and maintain for Spansion environmental, security, and other safeguards against the destruction, loss or alteration of Spansion Data in the possession of AMD and during the electronic transmission, storage, and shipping thereof (the “**Data Safeguards**”) that (i) with respect to the Spansion Service Locations shall be consistent with (A) AMD’s data security policies and procedures adopted for AMD in effect as of the Amendment Date or any updated policies and procedures as AMD may subsequently adopt, and (B) the safeguards required to meet any higher standard otherwise agreed by the Parties; and (ii) with respect to the AMD Service Locations shall be no less rigorous than (A) the data security policies and procedures in effect as of the Amendment Date at any of the AMD Service Locations or any updated policies and procedures as AMD may subsequently adopt, and (B) the safeguards required to meet any higher standard otherwise agreed upon by the Parties.

(b) AMD will monitor the activities of third parties who are party to Spansion Third Party Contracts and will enforce the provisions of such Spansion Third Party Contracts as they relate to Data Safeguards and resolve any disputes related thereto.

(c) In the event AMD or AMD Agents discover or are notified of a breach or potential breach of security relating to Spansion Data (whether by AMD or third parties), AMD shall immediately (i) notify the Spansion Services Manager of such breach or potential breach and (ii) if the applicable Spansion Data was in the possession of AMD or AMD Agents at the time of such breach or potential breach, AMD shall investigate and remediate the effects of the breach or potential breach. As a part of AMD’s remediation efforts, if AMD reasonably believes that recurrences of the breach of security could be prevented by a Change, AMD may propose the Change.

8. CONTINUED PROVISION OF SERVICES

8.1 **Disaster Recovery Plan.** AMD will maintain a mutually-accepted disaster recovery plan (“**DRP**”) having the characteristics (including targeted time periods) set forth in Exhibit 8.1. Without limiting AMD’s other obligations under this Agreement, including the Service Levels, in the event of an interruption in Services, AMD shall use reasonable efforts to reinstate the Services as promptly as possible.

8.2 **Force Majeure.** If and to the extent that a Party’s performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party (but specifically excluding labor and union-related activities) (each, a “**Force Majeure Event**”), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in

reasonable detail the nature of the Force Majeure Event. The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect AMD's obligation to provide either normal recovery procedures or any other disaster recovery services described in Section 8.1, except to the extent AMD is prevented, hindered or delayed from such performance by a Force Majeure Event and AMD continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If a Service cannot be resumed as a result of a Force Majeure Event for a period of time sufficient to materially hinder Spansion's ability to continue to operate, but in no event less than thirty (30) days, Spansion may obtain such needed Services from a third party; provided however, that if AMD is thereafter able to resume providing such Service, Spansion will again retain AMD to provide such Service in accordance with this Agreement.

9. ASSIGNED AND MANAGED AGREEMENTS

9.1 **Assigned Agreements.** If the Parties agree that AMD should be assigned any agreement with a third party service provider or supplier (an "**Assigned Agreement**"), the Parties will list such Assigned Agreement in Exhibit 9.1. As of the Amendment Date, there will be no Assigned Agreements for purposes of this Agreement. AMD shall assume all responsibility (including all obligations and post-assignment liability) for the Assigned Agreements. AMD may, to the extent permitted by the Assigned Agreements, renew, modify, terminate or cancel, or request or grant any consents or waivers under, any such Assigned Agreements, provided any such modification, renewal, termination or cancellation does not in any way cause a material degradation of any of the Services or materially increase the charges to Spansion under this Agreement except pursuant to the Change Control Procedures or the Annual Budget Process. AMD shall ensure that it has the right to assign the Assigned Agreements back to Spansion upon any termination or expiration of this Agreement.

9.2 **Assigned Agreement Invoices.** Following assignment to AMD, AMD shall (a) receive all Assigned Agreement invoices, (b) review and correct any errors in any such Assigned Agreement invoices after receipt thereof, and (c) pay such Assigned Agreement invoices including any late fees accruing for fees owed after the effective date of assignment in respect of such Assigned Agreement invoices.

9.3 **Managed Agreements.** Exhibit 9.3 will list any Spansion agreements with third party service providers that the Parties agree that AMD will manage on Spansion's behalf (the "**Managed Agreements**"). As of the Amendment Date, there will be no Managed Agreements for purposes of this Agreement. Without limiting Spansion's rights under the Managed Agreements, Spansion hereby appoints AMD as its representative for matters relating to the management, administration, and maintenance of the Managed Agreements to the extent necessary for AMD to perform its obligations under this Agreement. AMD shall assist Spansion in notifying all appropriate third parties of AMD's role with respect to the Managed Agreements. AMD shall manage, administer, and maintain the Managed Agreements in accordance with this Section 9.3, and shall manage such agreements in a way that does not result in any material degradation of the Services unless otherwise agreed by the Parties. AMD shall provide Spansion with reasonable notice of any renewal, termination or cancellation dates and fees with respect to the Managed Agreements. AMD shall not renew, modify, terminate, or cancel, or request or

grant any consents or waivers under, any Managed Agreements without the consent of the Spansion Services Manager. Other Spansion agreements may be managed by AMD and become Managed Agreements governed by this Section 9.3 upon the mutual agreement of the Parties. Spansion shall provide AMD with complete copies of all Managed Agreements, including any modifications to such agreements as required for AMD to manage such agreements.

9.4 Managed Agreement Invoices. Subject to Section 9.3, AMD shall (a) receive all Managed Agreement Invoices, (b) review and correct any errors in any such Managed Agreement Invoices in a timely manner after receipt thereof, (c) pay such Managed Agreement Invoices, and (d) pay any late fees in respect of such Managed Agreement Invoices; provided that, with respect to invoices to be delivered by Spansion, AMD receives such invoices in a timely manner.

9.5 Performance Under Agreements. AMD shall promptly notify Spansion of any breach of, or misuse or fraud in connection with, any Managed Agreements of which AMD becomes aware or should be aware assuming a reasonable inquiry, and shall cooperate with Spansion to prevent or stay any such breach, misuse or fraud. AMD shall monitor the activities of third parties who are party to Spansion Third Party Contracts and will enforce the provisions of such Spansion Third Party Contracts and resolve any disputes under such contracts.

9.6 Vendor Actions. If a third-party vendor's acts or omissions under a Spansion Third Party Contract (a "**Vendor Action**") prevents, hinders, or delays AMD's performance of its obligations under this Agreement, AMD will promptly notify Spansion. AMD shall be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by a Vendor Action, provided that AMD continues to use reasonable efforts to perform despite such Vendor Action and works with Spansion to resolve the problem and resume conformance with the Service Levels and performance of AMD's obligations under this Agreement as soon as practicable, and unless AMD materially failed to perform its management obligations with respect to such vendor related to the Vendor Action. If AMD obtains damages or other remedies from a vendor in connection with the Vendor Action, AMD will pass on the amount of such damages or remedies to Spansion.

9.7 Consents. AMD, at its own expense, shall obtain, maintain, and comply with all of the AMD Consents. AMD shall also comply with the Spansion Consents. Spansion shall obtain, maintain, and comply with all of the Spansion Consents; provided, however, that AMD shall, as part of the Services, (a) perform the administrative tasks and functions required in connection with obtaining the Spansion Consents (e.g., managing the list of third parties from which Spansion Consents are required from information provided by Spansion, preparing letters for execution by Spansion and sending letters executed by Spansion to such third parties, managing communications with such third parties, and preparing the forms of Spansion Consents for signature); and (b) after such Spansion Consents are obtained, maintain the Spansion Consents. In addition, AMD shall also bear and pay the third party costs of obtaining such Spansion Consents (e.g., the fees the third party may charge for granting the Spansion Consent). The Parties shall cooperate in the negotiations of the Spansion Consents. Except as set forth on Exhibit 9.7, there are no Spansion Consents required to permit AMD to provide the Services as

of the Effective Date. Any Spansion Consents obtained by AMD pursuant to this Section 9.7 shall be prepared in a manner that permits re-assignment to Spansion of the underlying consent, permission, agreement, or license, as the case may be upon any termination or the expiration of this Agreement.

10. PAYMENTS AND INVOICING

10.1 Fees.

(a) In consideration of AMD providing the Services, Spansion shall pay to AMD the Fees in accordance with the budget allocations and amounts listed on Exhibit 10 and in accordance with Section 10.3. The Fees are subject to change annually in accordance with the Annual Budget Process, as well as in accordance with the Change Control Procedures and the quarterly budget reconciliation process described in Section 10.9.

(b) As of the Amendment Date, the Parties acknowledge that there are no Assigned Agreements or Managed Agreements and accordingly Spansion shall not be charged any Managed Agreement Fees and the Assigned Agreement Fees. In the event that either Party identifies agreements that are proposed to become either Assigned Agreements or Managed Agreements, it shall notify the other Party in advance of each such agreement, including information regarding the nature of each agreement and any proposed Managed Agreement Fees or Assigned Agreement Fees. Any transfer or subcontracting of Assigned Agreements or Managed Agreements is subject to the Annual Budget Process. The Managed Agreement Fees and Assigned Agreement Fees actually charged to Spansion shall reflect the application of any discounts, including discounts for prompt or early payment.

10.2 Special Projects Fees. Subject to the Change Control Procedures, Spansion shall pay AMD any Special Project Fees agreed upon by the Parties in writing. As of the Effective Date, there are no approved Special Projects Fees.

10.3 Pass-Through Expenses. Exhibit 10.3 sets forth all Pass-Through Expenses payable by Spansion in conjunction with receipt and use of the Services. Any Pass-Through Expenses not identified in Exhibit 10.3 as of the Amendment Date must be approved through the Change Control Procedures, the quarterly reconciliation process or the Annual Budget Process. AMD shall pay all Pass-Through Expenses directly to the applicable suppliers and shall invoice Spansion for amounts paid to such suppliers.

10.4 Invoicing. After the beginning of each month of the Term, AMD shall invoice Spansion for (a) all Fees; (b) all Managed Agreement Fees and Assigned Agreement Fees, if any; (c) Special Project Fees, if any, payable for services performed during the previous month, including, in the case of clause (c) any Reimbursable Expenses incurred by AMD in performing such Special Project and reimbursable pursuant to Section 10.10; and (d) all Pass-Through Expenses paid during the previous month. Each monthly invoice shall separately identify any Pass-Through Expenses incurred by AMD for the period covered by such invoice.

10.5 Time of Payment. AMD's invoices for Fees and Pass-Through Expenses shall be due and payable within forty-five (45) days after the end of the month in which the Services

were provided or the expenses incurred. Any other sum due AMD pursuant to this Agreement shall be due and payable within forty-five (45) days after receipt by Spansion of an invoice from AMD. All payments will be made via wire transfer or other mutually-acceptable means.

10.6 Fee Dispute. Within thirty (30) days after Spansion's receipt of each invoice, Spansion shall give notice to AMD of any amount shown in such invoice that Spansion disputes in good faith, which notice shall include a reasonably detailed explanation of the disputed amount and the grounds for the dispute.

10.7 Cost Allocation. AMD will calculate Fees and costs charged to Spansion using a cost allocation methodology that accurately and fairly reflects AMD's reasonable, good faith forecasts of its actual costs associated with providing the Services and with a reasonable allocation to Spansion based on the provision of Services to Spansion and the costs therefore as a proportion of total services and costs AMD provides for itself, for Spansion and for any other division or Affiliate of AMD. AMD agrees that the target of the Fees and costs charged to Spansion will be AMD's actual costs in performing the Services. AMD shall set the Fees each year as part of the Annual Budget Process at such reasonable, good faith projection of actual costs (and any overhead costs allocated according to the principle set forth in the first sentence of this Section) plus five percent (5%) of such costs. Spansion acknowledges, however, that due to events that occur in between the quarterly reconciliations described in Section 10.9, the Fees may not accurately reflect AMD's actual costs. In such event and to such extent, AMD will not be deemed in breach of its obligation to charge Fees based on its reasonable, good faith estimates of actual costs, provided AMD uses diligent and good faith efforts to establish its actual costs as the basis for reconciling Fees under Section 10.9 and developing future budgets pursuant to the Annual Budget Process. The Parties agree that the cost allocation methodologies set forth in Exhibit 10.7 for each of the three major Spansion IT systems (Infrastructure, Business Systems and Manufacturing Systems) are reasonable methodologies for purposes of the foregoing. The Fees will be analyzed and updated pursuant to Section 10.9 and the Annual Budget Process.

10.8 Annual Budget Process. Each year, in accordance with Spansion's normal budget process, AMD shall meet with Spansion and assist Spansion as requested in developing an overall information technology budget, including expenditures for Special Projects and expenses that are to be paid directly by Spansion to third parties. Each such annual meeting will also address changes to the Services, the Service Levels and the applicable Fees for the succeeding year and the Parties will agree in writing upon the Services, Service Levels and Fees for the succeeding year. In addition, each year AMD will notify Spansion of the Spansion T&M Rates for the next year. The Fujitsu Services Advisor may advise Spansion regarding all such matters in the Fujitsu Services Advisor's reasonable judgment.

10.9 Price Protection; Quarterly Budget Reconciliation. In addition to adjustments that may be discussed pursuant to the Annual Budget Process, the Fees shall be adjusted on a prospective basis by mutual written agreement on a quarterly basis (excluding the quarter when the Annual Budget Process will take the place of the quarterly reconciliation process) if a major event has occurred during the quarter that will substantially increase or decrease the actual costs of the Services in the future versus the then-current mutually-agreed budget (e.g., AMD realizes substantial cost savings as the result of an outsourcing transaction). As part of this quarterly

reconciliation process, adjustments to budgeted Fees and Pass-Through Expenses, whether resulting in an increase or decrease in Fees and Pass-Through Expenses, will be mutually agreed upon by AMD and Spansion and will apply prospectively only.

10.10 **Expenses.** Spansion shall pay or reimburse AMD for its Reimbursable Expenses incurred in connection with its performance of Special Projects under Section 5 as may be agreed on a project by project basis. Except as provided in the previous sentence or on Exhibit 10 or Exhibit 10.3, AMD shall not charge Spansion for any Reimbursable Expenses incurred by AMD in providing the Services.

10.11 **Proration.** All periodic Fees under this Agreement are to be computed on a fiscal month basis and shall be prorated on a per diem basis for any partial month.

10.12 **Audits.** Spansion shall be entitled to appoint an auditor reasonably acceptable to AMD to audit the security standards and disaster recovery methods used by AMD herein solely as they apply to protection of Spansion Data, whether the Fees and Services have been allocated to Spansion as required by Section 4.1, the cost allocation methodologies used by AMD to calculate the Fees, the allocation of Fees and Pass Through Expenses, and to otherwise verify the accuracy of the Fees and expenses that AMD charges Spansion for provision of Services and Systems under this Agreement. Spansion may conduct one such audit annually upon reasonable advance written notice to AMD delivered through the AMD Services Advisor. AMD agrees to provide such auditor with access to all data, records, reports, resources, facilities and personnel necessary to enable the auditor to conduct appropriate audits of the issues set forth above. The auditor shall promptly report any discrepancies in writing to Spansion, with a copy to the AMD Services Advisor and the Fujitsu Services Advisor. Any copies provided to the Fujitsu Services Advisor shall only include the results of the auditor's analysis and shall be deemed the Confidential Information of Spansion. Any discrepancy discovered shall be promptly rectified as part of the next quarter's budget reconciliation process, whether such discrepancy resulted in an overpayment or underpayment of Fees. All such audits shall be at Spansion's expense. AMD agrees to retain all pertinent records to justify its allocation of Fees and costs to Spansion for a period of two (2) years after provision of the applicable Service. In addition, in the event AMD conducts an audit (either by itself or through an independent auditor) of a third party providing any Services (or any part thereof), AMD shall make all such audit results available to Spansion promptly upon AMD's receipt thereof (and shall pass on to Spansion any adjustment pursuant to the budget reconciliation process).

11. TAXES

11.1 **General.** Except as specifically set forth in this Section 11, the Fees paid to AMD are exclusive of any applicable sales, use, gross receipts, excise, value-added, personal property, services or other Taxes (other than withholding taxes) ("**Transaction Taxes**") attributable to periods on or after the Effective Date. In the event that Spansion is prohibited by law from making any payment of Fees unless withholding taxes are deducted or withheld therefrom, then Spansion shall deduct such amounts as are necessary and pay the net amount to AMD after such deduction or withholding. Spansion shall promptly furnish AMD with a copy of an official tax receipt or other appropriate evidence of any withholding taxes imposed on

payments made under this Agreement. As part of this Agreement, Spansion shall issue AMD such valid tax exemption certificate(s) for the various state and local taxing authorities as Spansion may legally issue and AMD may legally and reasonably request to cover Transaction Taxes legally imposed upon the transactions arising out of this Agreement. In the event that a Transaction Tax is assessed against AMD on the provision of the Services by AMD to Spansion or on the Fees, however levied or assessed, Spansion shall reimburse AMD for or provide acceptable proof that Spansion has paid said amounts directly to the appropriate taxing authority. Spansion shall accrue and pay the appropriate amount of Taxes due to any state or local taxing authority for Transaction Taxes. Spansion will be responsible for the proper reporting of Transaction Taxes to the taxing authorities, and any charges associated with such filings, including but not limited to, interest or penalties due to the taxing authorities. AMD and Spansion agree to mutually cooperate in a reasonable manner for the purpose of minimizing all Transaction Taxes that are to be paid directly or indirectly by Spansion. AMD grants Spansion the right to pursue a separate action against any governmental unit which asserts Transaction Taxes and AMD agrees to cooperate in a reasonable manner with Spansion if such action is taken.

11.2 Confidentiality; Disclosure to Taxing Authorities. Notwithstanding anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the Parties hereto are parties or by which they are bound, each Party shall be permitted to disclose the tax treatment and tax structure of the transactions contemplated hereby (and any related transactions or arrangements). 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 contemplated hereby (and any related transactions or arrangements). This provision is intended to comply with Section 1.6011-4(b)(3)(ii)(B) of the Treasury Regulations and shall be interpreted consistently therewith. Each Party acknowledges that this written authorization 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 Code Section 7525(a).

11.3 Other Taxes. Spansion and AMD shall each bear sole responsibility for franchise and privilege taxes on its business, taxes based on its net income, and employment taxes with respect to its employees.

11.4 New Equipment. Spansion shall bear sole responsibility for all sales, use, gross receipts, excise, value-added or personal property taxes attributable to New Equipment and any third party maintenance thereon procured by AMD on behalf of Spansion (with the consent of Spansion in connection with the Change Order Procedures) in connection with AMD's performance of Services under this Agreement (provided Spansion obtains unencumbered title to such equipment). With respect to any Software to be delivered to Spansion within the State of California, for so long as there is a tax benefit to Spansion in the delivery methods hereinafter described, AMD shall use commercially reasonable efforts to, and shall use commercially reasonable efforts to cause any third party vendor to, deliver any Software by means that minimize the tax attributable to the delivery of such Software to Spansion.

11.5 **Cooperation.** Spansion and AMD shall cooperate to segregate the Fees into the following separate payment categories: (a) those for taxable Services; and (b) those for nontaxable Services.

11.6 **Invoices.** For any Taxes that AMD is entitled to collect from Spansion hereunder for remittance to the applicable Governmental Authority, AMD shall separately state the amount of such Taxes on its invoice. If AMD fails to timely comply with the foregoing obligation, AMD shall be responsible for any resulting noncompliance with Law.

12. PROPRIETARY RIGHTS.

12.1 **In General.** The terms, conditions and license rights regarding AMD's Licensed Parent Software used in the provision or receipt of Services hereunder shall be governed by the Intellectual Property Contribution and Ancillary Matters Agreement.

12.2 **Other Software.** The license of Other Software will be agreed upon by the Parties pursuant to the Change Control Procedures, as a Special Project, or as part of the Annual Budget Process. At such time, the Parties will agree whether the Other Software will be licensed by AMD and sublicensed to Spansion, or whether Spansion will obtain the license to the Other Software directly with sufficient rights for AMD to use the Other Software on Spansion's behalf. If licensed by AMD, Spansion will bear any associated license and maintenance fees as either a Pass-Through Expense or as part of the Fees, except to the extent already included as a Fee or Pass-Through Expense, in which case AMD shall itself bear such expense and not charge Spansion therefor. In the event Spansion must pay license fees for Other Software directly, and such fees are included in the Fees or Pass-Through Expenses, AMD shall reimburse Spansion for such amount, due within ninety (90) days of Spansion's notification to AMD thereof.

12.3 **Developed Software and Work Product.** All Developed Software and Work Product created pursuant to AMD's performance of Special Projects shall be owned by AMD unless expressly agreed in advance to the contrary. If any ownership of Developed Software or Work Product is assigned to Spansion, such assignment will be subject to AMD's right in its Background Technology and to a grant-back license to AMD.

13. CONFIDENTIALITY

13.1 **Obligations.** The Parties acknowledge and agree that all proprietary or nonpublic information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with this Agreement, directly or indirectly, which information is (a) marked as "proprietary" or "confidential" or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and reduced in writing or other tangible (including electronic) form that includes a prominent confidentiality notice and delivered to the Receiving Party within thirty (30) days of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information, constitutes the confidential and proprietary information of the Disclosing Party ("Confidential Information"). The Receiving Party may disclose Confidential Information only to those employees who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including provisions relating to nonuse and nondisclosure) no less restrictive than

those required by the Receiving Party for its own confidential information. The Receiving Party shall, and shall cause its employees to, retain in confidence and not disclose to any third party (including any of its sub-contractors) any Confidential Information without the Disclosing Party's express prior written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same procedures and degree of care which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party shall be fully responsible for compliance by its employees with the foregoing, and any act or omission of an employee of the Receiving Party shall constitute an act or omission of the Receiving Party. The confidentiality obligations set forth in this Section 13.1 shall apply and continue, with regard to all Confidential Information disclosed hereunder, during the Term and for a period of ten (10) years from the date of termination of this Agreement.

13.2 Exceptions. Notwithstanding the foregoing, Confidential Information will not include information that: (a) was already known by the Receiving Party, other than under an obligation of confidentiality to the Disclosing Party or any third party, at the time of disclosure hereunder, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder; (c) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was subsequently lawfully disclosed to the Receiving Party by an Entity or person other than the Disclosing Party not subject to any duty of confidentiality with respect thereto; or (e) was developed by the Receiving Party without reference to any Confidential Information disclosed by the Disclosing Party, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time.

13.3 Confidentiality of Agreement; Publicity. Each Party agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and that no reference shall be made thereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld) except (a) as required by Applicable Law, *provided* that in the case of any filing with a Governmental Authority that would result in public disclosure of the terms hereof, the Parties shall mutually cooperate to limit the scope of public disclosure to the greatest extent possible, (b) to its accountants, banks, financing sources, lawyers and other professional advisors, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, (c) in connection with the enforcement of this Agreement, or (d) pursuant to agreed joint press releases prepared in good faith. The Parties will consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements with respect to the transactions contemplated hereby.

14. REPRESENTATIONS AND WARRANTIES.

14.1 Services. AMD represents and warrants that it will perform the Services in a workmanlike and reasonable manner.

14.2 **DISCLAIMER.** EXCEPT AS SPECIFIED IN THIS SECTION 14, NEITHER SPANSION NOR AMD MAKES ANY OTHER WARRANTIES WITH RESPECT TO THE SERVICES OR THE SYSTEMS AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

15. **DISPUTE RESOLUTION**

15.1 The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement shall be resolved first in accordance with any dispute escalation procedures set forth in Section 6.5 above, and, to the extent not resolved after such procedures, in accordance with the dispute resolution procedure set forth in Schedule A attached hereto.

16. **TERMINATION**

16.1 **Service Termination.** If AMD has failed to comply with the applicable Service Levels for a particular Service and has failed to rectify its performance failure pursuant to the procedures set forth in Section 6 above, then Spansion may terminate AMD's provision of such Service after sixty (60) days have elapsed since initial notification and no cure has successfully been implemented and Spansion either perform such Service itself or obtain the services of a third party. The Fees will be adjusted accordingly. Notwithstanding the foregoing, if the Service at issue is an Enterprise Service, then Spansion may not terminate such Service for a period of ninety (90) days without adequate cure following initial notice of material breach. In the event of a termination of an Enterprise Service, the Parties agree to work together to mitigate the effect on other Services provided by AMD.

16.2 **Termination for Cause.**

(a) If AMD defaults in the performance of any of its material obligations under this Agreement, and does not cure such default within ninety (90) days after receipt of a notice of default from Spansion, then Spansion may, without limiting Spansion's other rights or remedies under this Agreement, by giving notice to AMD, terminate this Agreement, in whole or in affected part, as of the termination date specified in the notice.

(b) If Spansion fails to make payments due to AMD under this Agreement and does not cure such default within ninety (90) days after receipt of a notice of default from AMD, then AMD may, by giving notice to Spansion, terminate this Agreement in its entirety as of the termination date specified in the notice of default.

16.3 **Termination Assistance Services.** AMD shall, upon Spansion's request during the Termination Assistance Period, provide the Termination Assistance Services for (a) the Fees attributable to the Services received by Spansion pursuant to the termination plan, and (b) for the Termination Assistance Services other than continued provision of the Services, at the applicable Spansion T&M Rates. After the expiration of the Termination Assistance Period, (y) AMD shall provide consulting services to Spansion regarding the Services on an "as requested" basis at the Spansion T&M Rates and (z) each Party shall deliver to the other Party any remaining reports,

documentation and materials still in its possession and owned by the other Party, other than reports, documentation and materials licensed to the Party possessing the same after the expiration or termination of this Agreement in accordance with the terms of this Agreement.

16.4 Exit Rights For Agreement Termination or Expiration. Upon the later of the expiration or termination of this Agreement and the last day of the Termination Assistance Period (the “**End Date**”):

(a) Upon Spansion’s request, with respect to (i) any agreements for maintenance, disaster recovery services, or other third party services, or any AMD Systems leased by AMD and being used by AMD or AMD Agents solely to provide the Services as of the End Date and (ii) the Assigned Agreements then in effect, AMD shall, and shall cause AMD Agents to, transfer or assign such agreements to Spansion or Spansion’s designees, on terms and conditions acceptable to all applicable parties. If AMD cannot make such transfer after the exercise of reasonable efforts to do so, AMD shall provide to Spansion at Spansion’s expense equivalent and sufficient rights in replacement of the agreements that cannot be transferred. The applicable assignment and assumption agreement governing such transfer or assignment shall include an indemnity by Spansion protecting AMD from any liability under such third-party agreements arising after the date of transfer or assignment thereof to the extent AMD is not otherwise released from liability. Upon Spansion’s request, AMD will assist Spansion in obtaining directly from third parties any third party services for which Spansion does not elect to assume the applicable third party agreements.

(b) Upon Spansion’s request, AMD shall sell to Spansion or its designee, on an “as is, where is basis,” (i) the AMD Systems (other than AMD Systems leased by AMD) being used by AMD or AMD Agents solely to perform the Services as of the End Date and (ii) any assets transferred by Spansion to AMD or AMD Agents, free and clear of all liens, security interests or other encumbrances at the lesser of the fair market value, as shall be determined by an agreed-upon appraiser, or book value. AMD shall also furnish to Spansion all user and other documentation in its possession that relates to such Systems.

Where any of the foregoing rights may be requested by Spansion, Spansion may request such rights on or before the End Date, but not after the End Date.

16.5 Survival. Sections 10, 11, 13, 14, 15, 16.4, 16.5, 17, and 18 shall survive any termination or expiration of this Agreement.

17. DAMAGES

17.1 Consequential Damages. Except for breaches of confidentiality obligations, in no event will either Spansion or AMD be liable for, nor shall the measure of damages include, any damages for lost profits, lost income or lost revenue, or for any indirect, incidental, special, or consequential damages, arising out of or relating to its performance or failure to perform under this Agreement, whether based on an action or claim in contract, equity, negligence or otherwise, and even if advised of the possibility of such damages.

17.2 **Direct Damages.** Each of the Parties shall be liable to the other for any direct damages arising out of or relating to its performance or failure to perform under this Agreement; provided, however, that the liability of Spansion and AMD, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions shall not exceed, in the aggregate, an amount equal to the amounts paid under this Agreement during the twelve (12) months preceding the claim.

17.3 **Basis of the Bargain.** Each Party acknowledges that the foregoing limitations are an essential element of the Agreement between the Parties and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be substantially different.

18. **MISCELLANEOUS PROVISIONS.**

18.1 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

18.2 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction and without regard to the United Nations Convention on Contracts for the International Sale of Goods).

18.3 **Language.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

18.4 **Successors and Assigns.** Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by any Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by a Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

18.5 **Entire Agreement; Amendment.** This Agreement (including the Exhibits hereto) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supercede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter. Except as expressly provided otherwise herein, this Agreement may not be altered except by a written instrument signed by authorized legal representatives of both Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this

Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

18.6 Notices and Other Communications. All notices required or permitted under this Agreement shall reference this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Spansion:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, CA 94088
Attention: General Counsel
Telephone: (408) 962-2500
Facsimile: (408) 774-7443

If to AMD:

Advanced MicroDevices, Inc.
One AMD Place M/S 150
P.O. Box 3453
Sunnyvale, CA 94086
Attention: General Counsel
Telephone: (408) 749-2400
Facsimile: (408) 774-7399

If to Fujitsu:

Fujitsu Limited
Akiruno Technology Center
50 Fuchigami, Akiruno
Tokyo, 197-0833, Japan
Attention: General Manager
Device Business Systems Div.
Corporate IT Group
Telephone: +81-42-532-1373
Facsimile: +81-42-532-2403

or to such other address or facsimile number as a Party may have specified to the other Parties in writing delivered in accordance with this Section 18.6.

18.7 **Expenses.** Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

18.8 **Severability.** If any provision in this Agreement will be found or be held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the Parties' intent in entering into this Agreement.

18.9 **No Third Party Beneficiaries.** The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors and permitted assigns, and the Parties do not intend to confer third party beneficiary rights upon any other Entity or person. However, notwithstanding the foregoing, Fujitsu shall be deemed a third party beneficiary to the rights of the Fujitsu Services Advisor herein and to Fujitsu's rights under Sections 3.5, 3.6 and 3.7(b), and Fujitsu shall have the right to directly enforce such rights against AMD and/or Spansion for so long as those rights exist.

18.10 **Construction.** This Agreement shall be deemed to have been drafted by all Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

18.11 **Execution.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

18.12 **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to any Party at law, in equity or otherwise.

[Signature page follows]

IN WITNESS WHEREOF, each of Spansion and AMD has caused this Agreement to be signed and delivered by its duly authorized representative.

Spansion Inc.

By: /s/ Bertrand F. Cambou

Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

Advanced Micro Devices, Inc.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

EXHIBIT 1

DEFINITIONS

“**Affiliate**” of a person or Entity means any other person or Entity which, directly or indirectly, controls, is controlled by, or is under common control with, such person or Entity. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any person or Entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or Entity, whether through the ownership of voting securities, by contract or otherwise. A person or Entity shall be deemed an Affiliate of another person or Entity only so long as such control relationship exists. Notwithstanding the foregoing, neither Spansion nor any of its directly or indirectly majority owned subsidiaries (whether organized as corporations, limited liability companies or other legal entity) shall be deemed to be an Affiliate of AMD, except to the extent expressly provided in this Agreement.

“**Aggregate Ownership Interest**” has the meaning set forth in Spansion’s Certificate of Incorporation.

“**AMD Agents**” means the agents, subcontractors, and representatives of AMD, including AMD Affiliates.

“**AMD Consents**” means all licenses, consents, permits, approvals and authorizations that are necessary to (a) allow AMD and AMD Agents to use, in providing Services during the Term and the Termination Assistance Period, in accordance with the terms of this Agreement (i) any AMD Software, (ii) any assets owned or leased by AMD (including the AMD Systems), and (iii) any third-party services retained by AMD to provide the Services; and (b) allow Spansion to access, during the Term and thereafter, the AMD Software.

“**AMD Infrastructure**” means, collectively the AMD methodologies, processes, Systems and Software that AMD uses in its own business to provide the Services or equivalent services within AMD or by AMD to its business units, Affiliates or subsidiaries, as well as the associated telecommunications infrastructure and technical environment at the AMD Service Locations.

“**AMD Personnel**” means the personnel of AMD and AMD Agents who provide the Services.

“**AMD Service Location(s)**” means any AMD service location and any other service location owned, leased, or operated by AMD, or used by AMD with the consent of a third party other than Spansion, from which AMD provides Services.

“**Background Technology**” means any patents, trade secrets, copyright rights, trademark rights, service mark rights, mask work rights and any and all other intellectual property or proprietary rights now known or hereafter recognized in any jurisdiction in any and all media which is (a) owned by AMD as of the Effective Date or (b) conceived, developed, written, or otherwise created or acquired by AMD on or after the Effective Date.

“Change(s)” means any material change to (a) the Services, (b) the Software used to provide the Services, (c) the Systems used to provide the Services, or (d) the technical environment of the Services that, in each case, would materially alter the service content, scope, or performance standards of the Services, or materially alter the cost to Spansion of the Services. Examples of Changes would include replacing a Software application from one vendor with that from another vendor, but not day-to-day operational issues normally handled by IT staff in the routine performance of their activities, such as implementing a software patch to correct a Software error, or updating a field in an application.

“Consents” means, collectively, the Spansion Consents and AMD Consents.

“Contract Year” means June 30, 2003 to December 28, 2003, and thereafter each fiscal year during the remainder of the Initial Term.

“Developed Software” means any Software, modifications or enhancements to Software, and Related Documentation, developed pursuant to this Agreement by or on behalf of (a) AMD, (b) AMD Agents, (c) AMD and/or AMD Agents and Spansion and/or Spansion Agents jointly, or (d) AMD and/or AMD Agents and Spansion and/or Spansion Agents jointly.

“Effective Date” means June 30, 2003.

“Entity” means a corporation, partnership, limited liability company, or other enterprise, association, organization, or entity.

“Fees” means the fees for the Services set forth in Exhibit 10, but not any Assigned Agreement Fees and Managed Agreement Fees.

“Fujitsu” means Fujitsu limited, a company organized under the laws of Japan.

“Governmental Approvals” means all licenses, consents, permits, approvals and authorizations of any Governmental Authority, or any notice to any Governmental Authority, the granting of which is required by Law, for the consummation of the transactions contemplated by this Agreement.

“Governmental Authority” means any Federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international.

“Intellectual Property Contribution and Ancillary Matters Agreement” means that certain Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement, dated as of December 21, 2005, by and among AMD, AMD Investments, Inc., a Delaware corporation, Fujitsu and Spansion.

“Law” means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Governmental Authority.

“Licensed Parent Software” has the meaning set forth in the Intellectual Property Contribution and Ancillary Matters Agreement.

“Managed Agreement Invoice(s)” means any invoice submitted by third parties in connection with the Managed Agreements.

“Measurement Period” means the period over which performance against a Service Level will be measured, as set forth in the applicable Exhibit.

“New Equipment” means any Systems obtained by AMD on behalf of Spansion, as requested by Spansion pursuant to the procurement provisions of Exhibit 4.1.

“Other Software” means all Software which is used by AMD in the provision of the Services, or Software used by Spansion in the receipt of the Services, excluding any AMD Licensed Parent Software.

“Pass-Through Expenses” shall mean the expenses for telephone services, and allocated costs (in conformity with Section 10.7 of the Agreement) for report distributions to Spansion which are listed in Exhibit 10.3, and for any other expenses which Spansion has agreed in advance to be financially responsible, in accordance with Section 10.3 of this Agreement.

“Reimbursable Expenses” means reasonable out-of-pocket travel and travel-related expenses reasonably agreeable to Spansion and to the extent such expenses are reimbursable under the expense reimbursement policy attached to Exhibit 10.

“Related Documentation” means, with respect to Software and Systems, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describe the function and use of such Software or Systems, as applicable.

“Service Location(s)” means any Spansion Service Location or AMD Service Location, or both, as applicable.

“Services” has the meaning set forth in Section 4.1.

“Software” means the executable code and, if applicable and supplied by AMD, source code, versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

“Spansion Agents” means the agents, employees, contractors, and representatives of Spansion, other than AMD and AMD Agents.

“Spansion Consents” means all licenses, consents, permits, approvals and authorizations that are necessary to allow (a) AMD and AMD Agents to use in providing Services during the Term and Termination Assistance Period in accordance with the terms of this Agreement (i) Spansion owned and leased assets (including the Spansion Systems), (ii) Spansion facilities, (iii) the services provided for the benefit of Spansion under Spansion’s third party service contracts, (iv) the Spansion Software, and (v) Spansion third party Software; (b) AMD to manage and administer the Managed Agreements pursuant to Section 9.3; and (c) Spansion to assign to AMD the Assigned Agreements.

“Spansion Data” means all data and information (i) submitted to AMD or AMD Agents by Spansion, or (ii) otherwise obtained by AMD or AMD Agents from Spansion pursuant to the performance of the Services.

“Spansion Service Location(s)” means any Spansion service location identified in Exhibit 7.1 and any other service location requested or approved by Spansion (but excluding AMD Service Locations).

“Spansion Software” means Software owned or licensed by Spansion for which Spansion has the right to provide access to AMD for provision of the Services without incurring additional costs.

“Spansion System” means a System owned by Spansion and used by or on behalf of Spansion.

“Spansion Third Party Contracts” means the Managed Agreements and the Assigned Agreements, collectively.

“Special Project” means any service that is outside the scope of the Services generally provided by AMD and listed on Exhibit 4.1.

“Special Project Fees” means the fees for a Special Project agreed upon by the Parties.

“Systems” means computers and related equipment, including central processing units and other processors, controllers, modems, communications and telecommunications equipment (voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission and retrieval of information and data, as well as any Software installed on such machines.

“Tax” or “Taxes” means all taxes, levies, imposts and fees imposed by any Governmental Authority (domestic or foreign) of any nature including but not limited to federal, state, local or foreign net income tax, alternative or add-on minimum tax, profits or excess profits tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding or employer payroll tax, FICA or FUTA), real or personal property tax or ad valorem tax, sales or use tax, excise tax, stamp tax or duty, any withholding or back up withholding tax, value added tax, severance tax, prohibited transaction tax, premiums

tax, occupation tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax.

“**Term**” means the Initial Term and the Extension Periods (if any).

“**Termination Assistance Period**” means a period of time designated by Spansion, commencing on the earlier of (i) the date six (6) months prior to the expiration of the Term or such earlier date as Spansion may request and (ii) the date of notice by either Party that there will be a termination of this Agreement and, in the case of each of clause (i) and (ii), continuing for up to twelve (12) months after the effective date of expiration or termination of this Agreement; in the case of each of clause (i) and (ii), during which AMD shall provide the Termination Assistance Services in accordance with Section 16.

“**Termination Assistance Services**” means (a) the Services being performed (and required under this Agreement to be performed) by AMD as of the date of expiration or termination of this Agreement, to the extent Spansion requests such Services during the applicable Termination Assistance Period; (b) AMD’s cooperation with Spansion, or another service provider designated by Spansion in the transfer of the Services (or portion thereof, as applicable) to Spansion or such other service provider in order to facilitate the smooth and orderly transition of the Services (or portion thereof, as applicable) to Spansion or such other service provider; (c) AMD developing, with the cooperation of Spansion, and subject to the approval of Spansion, a plan for the smooth and orderly transition of the performance of the Services (or portion thereof, as applicable) from AMD to Spansion or to a third party designated by Spansion; (d) AMD providing reasonable training for personnel of Spansion or Spansion’s designee in the performance of the Services then being transitioned to Spansion; and (e) AMD performing the other services, functions, and responsibilities described in Section 16.

“**Work Product**” means literary work or other works of authorship created under this Agreement, including manuals, training materials, reports, deliverables, and documentation, but excluding Software and Related Documentation.

**AMENDED AND RESTATED
GENERAL ADMINISTRATIVE SERVICES AGREEMENT**

This **AMENDED AND RESTATED GENERAL ADMINISTRATIVE SERVICES AGREEMENT** (this “**Agreement**”), is made and entered into as of December 21, 2005, (the “**Amendment Date**”) by and between **SPANSION INC.**, a Delaware corporation (“**Spansion**”), on behalf of itself and its Affiliates, and **ADVANCED MICRO DEVICES, INC.**, a Delaware corporation (“**AMD**”), on behalf of itself and its Affiliates. Spansion and AMD are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, in connection with the creation of Spansion LLC, Spansion Inc.’s predecessor, the Parties executed a General Administrative Services Agreement dated as of June 30, 2003 (the “**Effective Date**”); and

WHEREAS, the Parties hereby desire to amend and restate that General Administrative Services Agreement.

NOW, THEREFORE, in consideration of the mutual representations, covenants and other terms and conditions contained herein, the Parties hereby amend and restate that General Administrative Services Agreement and agree as follows:

1. **DEFINITIONS**

1.1 **Definitions.** The defined terms used in this Agreement shall have the meanings set forth in Exhibit 1 or as defined in the text below.

1.2 **Interpretation.**

(a) **Certain Terms.** The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.”

(b) **Section References; Titles and Subtitles.** Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(c) **References to Persons, Agreements and Statutes.** Unless otherwise expressly provided herein, (i) references to a person or Entity include its successors and permitted assigns, (ii) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (iii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending,

replacing, supplementing or interpreting such statute or regulation. In addition, any references to “either Party” and/or the “other Party,” etc. shall be deemed to refer to AMD and Spansion, respectively, as the context indicates.

2. **TERM**

2.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and continue until 23:59 (Pacific Daylight Time) on June 30, 2007, or such earlier date upon which this Agreement may be terminated in accordance with its terms (the “**Initial Term**”).

2.2 **Extension.** The Parties may extend the Initial Term of this Agreement by mutual written agreement; each such agreed upon extension period shall be referred to as an “**Extension Period.**”

3. **MANAGEMENT, COMMUNICATION, INFORMATION AND ESCALATION RIGHTS**

3.1 **In General.** Spansion shall have day-to-day management control over its receipt of the Services. Subject to the terms of this Agreement, this will include decisions regarding (a) its general administrative services budget, (b) the level of Services it requires, and (c) the performance of its service providers, including its response to failures by AMD to provide Services in accordance with the Service Levels and any material breach by AMD of its obligations under this Agreement. To administer its receipt and use of these Services, Spansion will retain a Spansion Services Manager as described below and will consult with the AMD Services Advisor and Fujitsu Services Advisor in Spansion’s reasonable judgment.

3.2 **Spansion Services Manager.** Spansion shall employ an individual reasonably knowledgeable about the provision of general administrative services similar to those provided by AMD under this Agreement (the “**Spansion Services Manager**”). The Spansion Services Manager shall (a) have overall responsibility for managing and coordinating the performance of Spansion’s obligations under this Agreement and for monitoring the performance of obligations by AMD under this Agreement, (b) subject to the supervision of Spansion management, be authorized to act for and on behalf of Spansion with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the AMD Services Advisor and Fujitsu Services Advisor. The Spansion Service Manager will report to the Spansion chief financial officer or such other senior executive of Spansion as may be designated by the Spansion chief financial officer.

3.3 **AMD Services Advisor.** AMD shall appoint at AMD’s expense an individual (the “**AMD Services Advisor**”) who will serve as the AMD representative under this Agreement. The AMD Services Advisor shall (a) have overall responsibility for managing and coordinating the performance of AMD’s obligations under this Agreement, (b) be authorized to act for and on behalf of AMD with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the Spansion Services Manager and Fujitsu Services Advisor.

3.4 **Fujitsu Services Advisor.** Fujitsu shall appoint at Fujitsu’s expense an individual (the “**Fujitsu Services Advisor**”) who will serve as the Fujitsu representative to Spansion regarding Spansion’s receipt of the Services. The Fujitsu Services Advisor will serve in

an advisory capacity to Spansion only and will not have independent veto rights or other day-to-day decision-making authority over Spansion's receipt, use and oversight of the Services. The Fujitsu Services Advisor will act in the best interests of Spansion, not Fujitsu. Spansion shall make available to the Fujitsu Services Advisor office space and facilities upon the Fujitsu Services Advisor's reasonable request as and when reasonably required by the Fujitsu Services Advisor to enable the Fujitsu Services Advisor to perform his or her responsibilities hereunder. In the performance of the Fujitsu Services Advisor's functions, the Fujitsu Services Advisor shall have the right as reasonably necessary to consult with other Fujitsu employees with appropriate expertise in the respective Service areas and provide information regarding the Services to such employees. For purposes of determining the scope of the Fujitsu Services Advisor's rights and responsibilities hereunder, the term "Services" will be deemed to include any services performed by AMD pursuant to Special Projects. In the event that Fujitsu's Aggregate Ownership Interest falls below ten percent (10%) and Fujitsu no longer provides services to Spansion that are similar to the Services, either Spansion or Fujitsu may, but shall not be required to, by written notice to the other and AMD, terminate the role of the Fujitsu Services Advisor, and, upon such termination, the Fujitsu Services Advisor shall have no further rights or obligations hereunder.

3.5 Information Exchange and Information Rights. Spansion shall keep AMD informed about those aspects of Spansion's business that could reasonably be expected to have an effect on the demand for, or provision of, the Services. AMD will provide to the Fujitsu Services Advisor copies of all reports and other written information relating to the Services that AMD provides Spansion herein at the same time AMD provides such reports and information to Spansion, including a copy of the quarterly service reports provided Spansion under Section 4.7. At any time upon the Fujitsu Services Advisor's reasonable request, the Spansion Services Manager shall provide the Fujitsu Services Advisor additional information regarding the performance of the Services and the associated Fees to the extent such information is available. AMD and Spansion, through the AMD Services Advisor and the Spansion Services Manager, will give notice and otherwise keep the Fujitsu Services Advisor informed of all proposals and discussions between the Spansion Services Manager and the AMD Services Advisor relating to material aspects of this Agreement and the provision of Services herein, including all Changes proposed under the Change Control Procedures, any Special Projects, all audits conducted by Spansion and all budget meetings related to the Services. Such notice shall be given by the Parties promptly upon initiation of such discussions. In addition, AMD and Spansion will, upon the Fujitsu Services Advisor's request and subject to applicable confidentiality restrictions, grant access to the Fujitsu Services Advisor to any meeting between the AMD Services Advisor and the Spansion Services Manager, whether telephonic or in person, regarding performance of the Services, the Fees and any proposed Special Projects or Changes.

3.6 Services Advisor Escalation Rights. If at any time, the Fujitsu Services Advisor believes in good faith that (a) the Services being provided to Spansion under this Agreement are not being provided in accordance with the applicable Service Levels, (b) AMD is in material breach under this Agreement, (c) an audit pursuant to Section 8.11 should be conducted or (d) Spansion is not being charged fairly for the Services it is receiving under this Agreement, then the Fujitsu Services Advisor will notify the Spansion Services Manager and the Spansion chief financial officer in writing. If after a reasonable period of time, the Fujitsu Services Advisor does not believe that the concern raised has been adequately addressed, the Fujitsu Services Advisor shall be entitled to notify Spansion's Board of Directors (the "**Board of Directors**") of

the Fujitsu Services Advisor's concerns. Any such notice shall be in writing and shall be provided to all Board members simultaneously, with a copy also provided simultaneously to Spansion's chief financial officer and the AMD Services Advisor. The Board of Directors shall consider the Fujitsu Service Advisor's concerns in good faith and may take any action it deems reasonable in the circumstances.

3.7 Contract Amendments.

(a) Spansion and AMD may only amend this Agreement upon the approval of the Board of Directors. The Board of Directors may delegate its decision-making authority to Spansion management as it deems appropriate; provided, however, that any Special Project or new Services purchase of greater than Five Hundred Thousand Dollars (\$500,000) payable in any AMD fiscal year will require specific approval from the Board of Directors.

(b) For so long as Fujitsu maintains at least a ten percent (10%) Aggregate Ownership Interest, AMD and Spansion may not amend this Agreement without the prior written consent of Fujitsu (which consent shall not be unreasonably conditioned, delayed or withheld), to the extent an amendment (i) reduces the rights of the Fujitsu Services Advisor set forth herein, (ii) reduces Fujitsu's right to consent to amendments set forth in this Section, (iii) establishes a basis for charging Spansion for the Services other than by calculating AMD's reasonable, good faith estimates of actual costs plus five percent (5%), as set forth in Section 8.6, or materially alters the cost allocation methodologies described in Section 8.6, (iv) eliminates or reduces AMD's obligation to provide Services at a level consistent with the level of similar services AMD provides to its other divisions or Affiliates or (v) materially reduces Spansion's rights under this Agreement (e.g., eliminates the requirement that all Changes require Spansion's consent). Notwithstanding the foregoing, changes to Fees or Services resulting from Change Control Procedures, the Annual Budget Process or the Fee reconciliation process described in Section 8.6 shall not be deemed to constitute amendments to this Agreement.

3.8 **Approvals.** Spansion shall reasonably cooperate with AMD by making available, as requested by AMD, management decisions, information, approvals or disapprovals, and acceptances or rejections in a reasonably timely manner so that AMD may fulfill its obligations under this Agreement.

3.9 **Change Control Procedures.** The Parties shall use the following procedures (the "**Change Control Procedures**") to implement Changes.

(a) General.

(i) **Changes.** Changes shall be implemented only by mutual agreement of the Parties through these Change Control Procedures, except as may be necessary on an emergency, temporary basis to maintain the continuity of the Services. The Parties acknowledge and agree that the implementation of a Change does not necessarily require an increase in the Fees or other fees payable by Spansion or a reduction in the scope of Services or in Service Levels provided hereunder, and that any change in the Fees or other amounts payable by Spansion as a result of a Change will be an adjustment in accordance with the provisions of Section 8. All decisions regarding Changes are subject to the approval by the Board of

Directors, which may delegate its decision-making authority to Spansion management as it deems appropriate. The Parties acknowledge and agree that not all modifications to the Services may constitute Changes; as part of the routine operation of Spansion and AMD, modifications that are not material or significant, as determined by AMD in its reasonable judgment, may be conducted without recourse to the Change Control Procedures; provided that the Spansion Services Manager is notified — on a regular basis consistent with AMD’s internal processes — of the modifications being implemented on Spansion’s behalf, with a copy of such report provided to the Fujitsu Services Advisor.

(ii) **Schedule.** Unless otherwise agreed by Spansion, with respect to all Changes, AMD shall (a) schedule Changes so as not to unreasonably interrupt Spansion’s business operations, other than those Changes made on an emergency basis to maintain the continuity of the Services, (b) prepare and deliver to Spansion each quarter a rolling schedule for ongoing and planned agreed upon Changes for the next quarter, and (c) monitor the status of Changes against the applicable schedule.

(iii) **Meetings.** The AMD Services Advisor and the Spansion Services Manager shall meet on a mutually agreed schedule (no less frequently than each quarter) for the purpose of reviewing Change requests submitted by either Party in accordance with these Change Control Procedures. The Spansion Services Manager will provide the Fujitsu Services Advisor written or telephonic notice of these meetings and the Fujitsu Services Advisor may attend.

(b) **Requests for Changes.** Requests for Changes shall be submitted for review in accordance with the Change Control Procedures, and shall include a reasonably detailed description of the requested Change together with the basis for such Change. All requests for Changes by Spansion shall be communicated to AMD through the Spansion Services Manager or his or her authorized designee.

(i) **Changes Initiated by Spansion.** Within ten (10) business days after AMD receives a request from Spansion for a Change, either AMD or a joint project team working on the Service to be impacted, as appropriate, shall prepare and provide to Spansion an initial written proposal for the Change (a “**Change Proposal**”), which proposal will include AMD’s initial proposals regarding (A) the Services and the applicable schedule for performing the Services, including but not limited to Spansion’s related obligations, to effect the Change, (B) the resources required to perform Services effecting the Change and resulting from the Change, (C) the Fees for Services, and (D) any additional areas that are reasonably likely to be impacted by the proposed Change. The Change Proposal shall also contain a description of any other anticipated costs that Spansion will incur as a result of the Change that it would otherwise not have incurred. Within ten (10) business days after receiving such Change Proposal, Spansion shall either approve the Change Proposal, notify AMD that Spansion desires to discuss the Change Proposal further, or withdraw the request for such Change. Spansion’s failure to approve the Change Proposal or notify AMD that Spansion desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of the Change Proposal, and the Change shall not be implemented.

(ii) **Changes Initiated by AMD.** Concurrent with the submission of a request for a Change by AMD, either AMD or a joint project team working on the impacted Service, as appropriate, shall provide to Spansion a Change Proposal containing the information specified in subparagraph (i) above. Within ten (10) business days after receiving such proposal, Spansion shall either approve the Change Proposal, notify AMD that Spansion desires to discuss the Change Proposal further, or reject the requested Change. Spansion's failure to approve the Change Proposal or notify AMD that Spansion desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of such request, and the Change shall not be implemented.

(c) **Further Discussion of Changes.** If within ten (10) business days after receipt of a Change Proposal, Spansion notifies AMD that Spansion desires to discuss the proposed Change further, the Spansion Services Manager and AMD Services Advisor will promptly consider the Change Proposal in person or by telephone and will attempt in good faith to develop a mutually acceptable Change Proposal. The Spansion Services Manager will notify the Fujitsu Services Advisor of the proposed meeting and the Fujitsu Services Advisor may attend any such meeting.

(d) **Implementation of Changes.** All Changes are subject to the written approval of the Parties. Only following receipt of each Party's written approval may AMD begin to implement the approved Change, and any Change so approved by each Party that affects any Statement of Work shall be deemed to be an amendment to such Statement of Work.

(e) **Emergency Changes.** If a Service Level failure, reasonable safety concern, Governmental Authority or change in Law, requires an immediate Change to a Service, then AMD may implement such Change immediately upon notice to Spansion, with a copy to the Fujitsu Services Advisor. Any change in Fees or equipment or technology purchases for which AMD seeks reimbursement from Spansion, or any long-term, material degradation in Service Levels resulting from such Change, unless such degradation is unavoidably required in the circumstances (in which event AMD shall use all reasonable efforts to mitigate the impact of such degradation), shall be subject to the Change Control Procedures.

(f) **Omitted Services.** In the event the Parties determine that certain general and administrative services provided by AMD and/or its Affiliates to the AMD Flash Memory Business prior to Closing have not been included in a Statement of Work and are not being separately addressed within Spansion, AMD will offer such services to Spansion or its Affiliates on the terms set forth in this Agreement and Spansion shall have the option to accept or reject such additional services. In the event Spansion elects to accept such additional services, the Parties shall prepare and agree on a Statement of Work to reflect the provision of such services and the Statement of Work shall be appended to this Agreement.

3.10 **Special Projects.** Spansion may from time to time during the Term request that AMD perform Special Projects. Upon receipt of such a request from Spansion, AMD shall provide Spansion with a written proposal for such Special Project which shall include:

(a) a description of the services, functions and responsibilities AMD anticipates performing in connection with such Special Project;

- (b) a description of the obligations of Spansion, if any, required for AMD to perform such Special Project;
- (c) a schedule for commencing and completing such Special Project;
- (d) AMD's prospective fees for such Special Project, either on a fixed fee or time and materials basis; and
- (e) when appropriate, a description of any new Software or equipment required in connection with such Special Project.

AMD shall not begin performing any Special Project until the Parties have agreed in writing upon the specifications, requirements, schedule and fees for such Special Project pursuant to the Change Control Procedures. Spansion shall have the right to contract with a third party to perform any Special Project, provided that the Special Project does not affect the provision of Services and would not result in the breach of an obligation that AMD may have with a third party. Spansion will notify AMD of any proposal that Spansion wants to make to a third party to perform a Special Project instead of having AMD perform that Special Project. If the Parties do not agree upon terms by which AMD will perform a Special Project, or if AMD objects to Spansion retaining a third party to perform the Special Project because AMD reasonably believes in good faith that such Special Project, or the third party's performance of that Special Project, will negatively affect the Services, either by reducing performance or functionality, or increasing the cost to AMD, or by causing AMD to breach an obligation to a third party, each Party shall have the right to escalate the issue to the Board of Directors, and the Parties shall in good faith negotiate a mutually-acceptable resolution to the matter. If Spansion does retain a third party to perform a Special Project hereunder, then AMD and Spansion will agree in writing upon any changes to the Services, Service Levels (if applicable), Fees that result from Spansion retaining the third party and commissioning the Special Project.

4. SERVICES

4.1 **Services; Parity.** Pursuant to separate statements of work attached hereto and made a part hereof ("**Statements of Work**"), AMD, either itself or through its Affiliates or subcontractors (subject to Section 4.5), shall perform the services, functions, and responsibilities for Spansion identified in the separate Statements of Work (the "**Services**"). The Statements of Work may be updated by the Parties from time to time upon mutual agreement pursuant to the Change Control Procedures or the annual review of the Spansion general administrative services budget and the Services described in Section 8.7 (the "**Annual Budget Process**"). AMD will provide Spansion the Services under terms (including those related to charges, cost allocation and service levels) that are at least as favorable as those it provides any other AMD business unit, division or AMD Affiliate receiving similar services from AMD (or an AMD subcontractor), subject to any deviations agreed to by the Parties to address Spansion's specific requirements as communicated to AMD and taking into account that this Agreement provides for a cost plus allocation budgeting structure that may not apply to other AMD business units, divisions or Affiliates. The Services (including any new Services added pursuant to mutual agreement by the Parties) will evolve and be supplemented, modified, enhanced or replaced, reduced or eliminated over time as agreed upon by the Parties pursuant to the Change Control

Procedures or as part of the Annual Budget Process. Fees are subject to the quarterly budget reconciliation process described in Section 8.8.

4.2 Governmental Approvals. AMD shall obtain and maintain all Governmental Approvals required for AMD to deliver the Services under this Agreement. Spansion shall obtain and maintain all Governmental Approvals required for Spansion to use the Services under this Agreement. Upon request by either Party, the other Party shall provide to the requesting Party reasonable cooperation and assistance in obtaining Governmental Approvals hereunder.

4.3 Changes in Law. If either Party becomes aware of any changes in Law that relate to AMD's delivery of the Services or Spansion's use of the Services, then such Party will notify the other Party of such changes in Law. With respect to any changes related to AMD's delivery of Services, AMD and Spansion shall work together pursuant to the Change Control Procedures to identify the impact of such changes on AMD's delivery of the Services, and any changes in the fees charged to Spansion, as a result and shall work together to implement any necessary modifications to the Services prior to the deadline imposed by the Governmental Authority having jurisdiction for such requirement or change. AMD will use reasonable efforts to minimize the incremental cost to Spansion of compliance with such Laws.

4.4 Compliance With Laws. AMD shall comply with all Laws governing the provision of the Services and the performance of its obligations, including identifying and procuring permits, certificates, approvals and inspections required under such Laws. If a charge of non-compliance by AMD with any such Laws occurs, AMD shall promptly notify Spansion of such charge in writing and AMD shall promptly remedy such non-compliance in accordance with Law.

4.5 Subcontractors. Spansion acknowledges that AMD may outsource to a third party or third parties the performance of some or all of the Services that AMD is obligated to provide under this Agreement; provided however, that in the event such outsourcing will lead to any Change in Service Levels or Fees, such outsourcing shall be subject to the Change Control Procedures. Nothing in this Agreement shall be construed as requiring AMD to perform directly any Services outside of the United States and to the extent that Services will be performed outside the United States, AMD may engage an Affiliate, subsidiary or subcontractor to perform such Services (subject to the Change Control Procedures in accordance with the foregoing). No subcontracting shall release AMD from its responsibility for its obligations under this Agreement. AMD shall be responsible for the work and activities of each of the AMD Agents, including compliance with the terms of this Agreement. AMD shall be responsible for all payments to its subcontractors unless the Parties agree that Spansion will pay directly to an AMD Affiliate providing Services to Spansion.

4.6 Spansion Agents. AMD will coordinate and cooperate in good faith with Spansion Agents hired by Spansion from time to time to the extent reasonably required by Spansion and with Fujitsu to the extent that Fujitsu supplies similar or complementary services to Spansion. AMD will promptly notify Spansion if a Fujitsu or any Spansion Agent act or omission will cause, or has caused, a problem or delay in providing the Services. AMD will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its

obligations was caused by the interference of a Spansion Agent or Fujitsu; provided such interference was not at the direction of AMD and provided that AMD continues to use reasonable efforts to perform despite such interference and works with Spansion to resolve the problem and resume conformance with the Service Levels and performance of AMD's obligations under this Agreement as soon as practicable.

4.7 **AMD Reporting.** On a semi-annual basis AMD shall provide a report to Spansion, with a copy to the Fujitsu Services Advisor, (a) identifying those at AMD principally responsible for providing Services in each Service area, (b) identifying any significant problems or issues encountered in delivering the Services for each of the Service areas, and (c) identifying any major changes in the amount of Services or Fees in the Service areas that are expected or planned by AMD for the upcoming two (2) quarters or year. The AMD Services Advisor will provide the Spansion Services Manager with such other reports regarding the performance of the Services and the Fees as the Spansion Services Manager shall reasonably require.

4.8 **Spansion Benchmarking.** Spansion may independently analyze AMD's compliance with the Service Levels and provide AMD feedback regarding AMD's performance. In addition, if as part of that benchmarking, Spansion in good faith determines that the pricing it is charged for the Services is not within a reasonable range, Spansion may notify AMD and the Parties will consider whether changes are appropriate to the Services to enable the Parties to enjoy better pricing. Any such benchmarking shall be subject to the confidentiality restriction set forth in Section 11.

4.9 **Use of Services.** Spansion may not remarket or sell all or any portion of the Services provided under this Agreement, or make all or any portion of the Services available to any party other than Spansion or Spansion's Affiliates, without AMD's consent.

5. SERVICE LEVELS

5.1 **Service Levels.** AMD shall perform the Services at a minimum in conformance with the level of service and with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and efficiency as was provided to the AMD Flash Memory Business prior to the Effective Date ("**Service Levels**").

5.2 Dispute Escalation Process.

(a) Initial Notice; Good Faith Discussion. If the Spansion Services Manager determines that AMD has failed to perform the Services in accordance with the applicable Service Levels, the Spansion Services Manager may initiate contact with the AMD Services Advisor to discuss the deficiency, and if necessary may submit a Change Proposal regarding a corrective action plan in accordance with the Change Control Procedures. Upon such contact, the Spansion Services Manager and AMD Services Advisor will promptly consider the corrective action plan in person or by telephone and will attempt in good faith to agree to a mutually acceptable corrective action plan. The Spansion Services Manager will invite the Fujitsu Services Advisor to attend any such meetings. If the Parties cannot agree upon a corrective action plan within a fifteen (15) day business day period, the issue will be escalated in accordance with clause (b) below.

(b) Management Escalation. If the issue is not resolved in accordance with clause (a) above, the Spansion Services Manager will notify the Spansion chief financial officer of the issue. If the Spansion chief financial officer reasonably determines that the issue warrants further escalation, the Spansion chief financial officer will then contact the person within AMD in charge of the provision of the Services at issue to 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 the Parties, within such ten (10) business day period, the issue will be escalated in accordance with clause (c) below.

(c) Board Escalation. If the Spansion chief financial officer reasonably determines that AMD has failed to offer an acceptable remedy for the Service failure, then the Spansion chief financial officer shall notify the Board of Directors (a) indicating the nature and the basis of the issue, and (b) listing the measures that Spansion proposes to take against AMD in order to remedy the Service failure. The Board of Directors shall consider the measures proposed by the Spansion chief financial officer against AMD and shall provide its recommendation or approval for any measures Spansion shall take to remedy the Service failure.

(d) Termination. In the event that the unremediated Service failure has a material adverse impact on Spansion's business or operations, and subject to Board of Directors approval, Spansion may terminate the affected Service in accordance with the provisions set forth in Section 14 (presuming the applicable cure period has elapsed as set forth therein) and shall have the right to contract with a third party to perform such Service.

(e) Right to Arbitrate. In the event that the Board of Directors approves Spansion's proposed measures, and AMD believes that such measures are inappropriate, AMD shall have the right to institute dispute resolution proceedings in accordance with Section 13.

6. SERVICE LOCATIONS AND SECURITY

6.1 Service Locations.

(a) The Services shall be provided to Spansion from the Spansion Service Locations and the AMD Service Locations established on the Effective Date or subsequently changed in accordance with the terms hereof. In the event AMD desires to establish or move Services to a Spansion Service Location, such action shall either be approved through the Change Control Procedures or be approved in writing by the Spansion Services Manager.

(b) Except as provided in Section 8 and unless otherwise agreed by Spansion, any incremental expenses incurred by Spansion or AMD and any costs incurred in connection with the performance or use of the Services, in each case as a result of AMD's relocation to, or use of, any different Service Locations at AMD's request, shall be paid by AMD or reimbursed to Spansion by AMD. Any incremental expenses incurred by Spansion or AMD as a result of a relocation to, or use of, any different Service Locations at Spansion's request or direction shall be paid by Spansion or reimbursed to AMD by Spansion.

6.2 Spansion Resources and Facilities.

(a) For so long as AMD requires the same for the performance of the Services, subject to Spansion's agreement (not to be unreasonably withheld), Spansion shall provide to AMD at no charge access to and the use of the space in the Spansion Service Locations, together with personal computers, workstations, terminals, printers, and other equipment utilized by Spansion, office furnishings, telephone equipment, janitorial services, utilities and other reasonable resources in connection with AMD's performance of the Services. Use of Spansion Service Locations by AMD does not constitute a leasehold interest in favor of AMD, and AMD shall not have exclusive access or control of the space provided to AMD under this Agreement.

(b) AMD and AMD Agents shall not commit or permit waste or damage to such facilities, nor use such facilities for any unlawful purpose or act, and shall comply with all of Spansion's general and site-specific policies and procedures generally applicable to the applicable Spansion Service Location (as in effect from time to time and of which Spansion has provided notice to AMD), including procedures for the physical security of the Spansion Service Locations.

(c) AMD shall permit Spansion and Spansion Agents to enter into those portions of the Spansion Service Locations occupied by AMD's staff at any time to perform facilities-related services. Spansion shall ensure that Spansion and Spansion Agents shall not interfere with AMD's performance of Services while exercising access rights under this Agreement, and AMD shall not be liable under this Agreement for its non-performance or its failure to meet the applicable Service Levels to the extent such non-performance or failure is caused by interference by Spansion or Spansion Agents.

6.3 Conduct of AMD Personnel. While at the Spansion Service Locations, AMD and AMD Agents shall (a) comply with the requests, standard rules and regulations of Spansion regarding safety and health, personal and professional conduct (including adhering to general safety practices or procedures) generally applicable to such Spansion Service Locations, as notified to AMD from time to time and (b) otherwise conduct themselves in a businesslike manner. If Spansion notifies AMD that a particular member of the AMD Personnel is not conducting himself or herself in accordance with this Section, AMD shall promptly (y) investigate the matter and take appropriate action which may include (i) removing the applicable personnel from the AMD Personnel and providing Spansion with prompt notice of such removal and (ii) replacing the applicable personnel with a similarly qualified individual, or (z) take other appropriate disciplinary action to prevent a recurrence. In the event of multiple violations of this Section 6.3 by a particular member of the AMD Personnel, AMD shall promptly remove the individual from the AMD Personnel.

6.4 Safety and Security Procedures.

(a) AMD agrees to comply with Spansion's physical safety and security procedures for all Services it provides at Spansion Service Locations.

(b) AMD will promptly notify Spansion if any Spansion failure to maintain and enforce (except for enforcement with respect to AMD Personnel) physical safety and security procedures at Spansion Service Locations will cause, or has caused, a material problem or delay for AMD in providing the Services. AMD will be excused from failure to meet a

Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by the Spansion failure to maintain and enforce (except for enforcement with respect to AMD Personnel) physical safety and security procedures at Spansion Service Locations; provided that AMD continues to use reasonable efforts to perform despite such failure and works with Spansion to resolve the failure and resume conformance with the Service Levels and performance of AMD's obligations under this Agreement as soon as practicable.

7. **CONTINUED PROVISION OF SERVICES**

7.1 **Force Majeure.** If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party (but specifically excluding labor and union-related activities) (each, a "**Force Majeure Event**"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If a Service cannot be resumed as a result of a Force Majeure Event for a period of time sufficient to materially hinder Spansion's ability to continue to operate, but in no event less than thirty (30) days, Spansion may obtain such needed Services from a third party; provided however, that if AMD is thereafter able to resume providing such Service, Spansion will again retain AMD to provide such Service in accordance with this Agreement.

8. **PAYMENTS AND INVOICING**

8.1 **Fees.** In consideration of AMD providing the Services, Spansion shall pay to AMD the fees set forth in the Statements of Work, as such fees may be adjusted pursuant to the terms of this Agreement (the “**Fees**”). The Fees include AMD’s reasonable, good faith estimates of pass through expenses for third party Software costs and other third party services (such portion of the Fees referred to herein as the “**Pass-Through Expenses**”). Pass-Through Expenses shall be billed at direct cost, without any mark-up. The Fees are subject to change annually in accordance with the Annual Budget Process, as well as in accordance with the Change Control Procedures and the quarterly budget reconciliation process described in Section 8.8. In the event through the Change Control Procedures or otherwise in accordance with this Agreement additional Pass-Through Expenses will be incurred, AMD will separately identify such additional Pass-Through Expenses in the applicable Statement of Work.

8.2 **Special Project Fees.** Subject to the Change Control Procedures, Spansion shall pay AMD any Special Project Fees agreed upon by the Parties in writing. As of the Amendment Date, there are no approved Special Projects Fees.

8.3 **Invoicing.** After the beginning of each fiscal month of the Term, AMD shall invoice Spansion for (i) all Fees payable for Services performed during the previous fiscal month and all Pass-Through Expenses paid during the previous fiscal month, and (ii) all Special Project Fees, if any, payable for services performed during the previous fiscal month, including in the case of clause (ii) any Reimbursable Expenses incurred by AMD in performing a Special Project and reimbursable pursuant to Section 8.9.

8.4 **Time of Payment.** AMD’s invoices shall be due and payable within forty-five (45) days after the end of the fiscal month in which the Services or, if applicable, agreed upon Special Project services, were provided or the costs incurred. Any other sum due AMD pursuant to this Agreement shall be due and payable within forty-five (45) days after receipt by Spansion of an invoice from AMD. All payments will be made via wire transfer or other mutually-acceptable means.

8.5 **Fee Dispute.** Within thirty (30) days after Spansion’s receipt of each invoice, Spansion shall give notice to AMD of any amount shown in such invoice that Spansion disputes in good faith, which notice shall include a reasonably detailed explanation of the disputed amount and the grounds for the dispute.

8.6 **Cost Allocation.** AMD will calculate Fees and costs charged to Spansion using a cost allocation methodology that accurately and fairly reflects AMD’s reasonable, good faith forecasts of its actual costs associated with providing the Services and with a reasonable allocation to Spansion based on the provision of Services to Spansion and the costs therefor as a proportion of total services and costs AMD provides for itself, for Spansion and for any other division or Affiliate of AMD. AMD agrees that the target of the Fees and costs charged to Spansion will be AMD’s actual costs in performing the Services. AMD shall set the Fees each year as part of the Annual Budget Process at such reasonable, good faith projection of actual costs (and any overhead costs allocated according to the principle set forth in the first sentence of this Section) plus five percent (5%) of AMD’s costs, excluding Pass-Through Expenses.

Spansion acknowledges, however, that due to events that occur in between the quarterly reconciliations described in Section 8.8, the Fees may not accurately reflect AMD's actual costs. In such event and to such extent, AMD will not be deemed in breach of its obligation to charge Fees based on its reasonable, good faith estimates of actual costs, provided AMD uses diligent and good faith efforts to establish its actual costs as the basis for reconciling Fees under Section 8.8 and developing future budgets pursuant to the Annual Budget Process. The Fees will be analyzed and updated pursuant to Section 8.8 and the Annual Budget Process.

8.7 Annual Budget Process. Each year, in accordance with Spansion's normal budget process, AMD shall meet with Spansion and assist Spansion as requested in developing an overall general administrative services budget, including expenditures that are to be paid directly by Spansion to third parties. Each such annual meeting will also address changes to the Services and the applicable Fees for the succeeding fiscal year and the Parties will agree in writing upon the Services, Service Levels (as applicable) and Fees for the succeeding year. The Fujitsu Services Advisor may advise Spansion regarding all such matters in the Fujitsu Services Advisor's reasonable judgment.

8.8 Price Protection; Quarterly Budget Reconciliation. In addition to adjustments that may be discussed pursuant to the Annual Budget Process, the Fees shall be adjusted on a prospective basis by mutual written agreement on a quarterly basis (excluding the quarter when the Annual Budget Process will take the place of the quarterly reconciliation process) if a major event has occurred during the quarter that will substantially increase or decrease the actual costs of the Services in the future versus the then-current mutually-agreed budget (e.g., AMD realizes substantial cost savings as the result of an outsourcing transaction). As part of this quarterly reconciliation process, adjustments to budgeted Fees (including Pass-Through Expenses), whether resulting in an increase or decrease in Fees (including Pass-Through Expenses), will be mutually agreed upon by AMD and Spansion and will apply prospectively only.

8.9 Expenses. Spansion shall pay or reimburse AMD for its Reimbursable Expenses incurred in connection with its performance of Special Projects as may be agreed on a project by project basis. Except as provided in the previous sentence or as otherwise agreed through the Change Control Procedures, AMD shall not charge Spansion for any expenses or costs incurred by AMD in providing Special Project services.

8.10 Proration. All periodic Fees under this Agreement are to be computed on a fiscal month basis and shall be prorated on a per diem basis for any partial fiscal month.

8.11 Audits. In the event Spansion in good faith believes there is a material difference between actual costs incurred by AMD and the Fees, Spansion shall be entitled to appoint an auditor reasonably acceptable to AMD to audit the cost allocation methodologies used by AMD to calculate the Fees, the allocation of Fees and Pass-Through Expenses, and to otherwise verify the accuracy of the Fees and expenses that AMD charges Spansion for provision of Services under this Agreement. Spansion may conduct one such audit annually upon reasonable advance written notice to AMD delivered through the AMD Services Advisor. AMD agrees to provide such auditor with access to all data, records, reports, resources, facilities and personnel necessary to enable the auditor to conduct appropriate audits of the Fees charged to Spansion. The auditor shall promptly report any discrepancies in writing to Spansion, with a copy to the AMD Services

Advisor and the Fujitsu Services Advisor. Any copies provided the Fujitsu Services Advisor shall only include the results of the auditor's analysis and shall be deemed Confidential Information of Spansion. Any discrepancy discovered shall be promptly rectified as part of the next quarter's budget reconciliation process, whether such discrepancy resulted in an overpayment or underpayment of Fees. All such audits shall be at Spansion's expense. AMD agrees to retain all pertinent records to justify its allocation of Fees and costs to Spansion for a period of two (2) years after provision of the applicable Service. In addition, in the event AMD conducts an audit (either by itself or through an independent auditor) of a third party providing any Services (or any part thereof), AMD shall make all such audit results available to Spansion promptly upon AMD's receipt thereof (and shall pass on to Spansion any adjustment pursuant to the budget reconciliation process).

9. TAXES

9.1 **General.** Except as specifically set forth in this Section 9, the Fees paid to AMD are exclusive of any applicable sales, use, gross receipts, excise, value-added, personal property, services or other Taxes (other than withholding taxes) ("**Transaction Taxes**") attributable to periods on or after the Effective Date. In the event that Spansion is prohibited by law from making any payment of Fees unless withholding taxes are deducted or withheld therefrom, then Spansion shall deduct such amounts as are necessary and pay the net amount to AMD after such deduction or withholding. Spansion shall promptly furnish AMD with a copy of an official tax receipt or other appropriate evidence of any withholding taxes imposed on payments made under this Agreement. As part of this Agreement, Spansion shall issue AMD such valid tax exemption certificate(s) for the various state and local taxing authorities as Spansion may legally issue and AMD may legally and reasonably request to cover Transaction Taxes legally imposed upon the transactions arising out of this Agreement. In the event that a Transaction Tax is assessed against AMD on the provision of the Services by AMD to Spansion or on the Fees, however levied or assessed, Spansion shall reimburse AMD for or provide acceptable proof that Spansion has paid said amounts directly to the appropriate taxing authority. Spansion shall accrue and pay the appropriate amount of Taxes due to any state or local taxing authority for Transaction Taxes. Spansion will be responsible for the proper reporting of Transaction Taxes to the taxing authorities, and any charges associated with such filings, including but not limited to, interest or penalties due to the taxing authorities. AMD and Spansion agree to mutually cooperate in a reasonable manner for the purpose of minimizing all Transaction Taxes that are to be paid directly or indirectly by Spansion. AMD grants Spansion the right to pursue a separate action against any governmental unit which asserts Transaction Taxes and AMD agrees to cooperate in a reasonable manner with Spansion if such action is taken.

9.2 **Confidentiality; Disclosure to Taxing Authorities.** Notwithstanding anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the Parties hereto are parties or by which they are bound, each Party shall be permitted to disclose the tax treatment and tax structure of the transactions contemplated hereby (and any related transactions or arrangements). 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 contemplated hereby (and any related transactions or arrangements). This provision is intended to comply with Section 1.6011-4(b)(3)(ii)(B) of the Treasury Regulations and shall be interpreted consistently therewith. Each Party acknowledges that this

written authorization 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 Code Section 7525(a).

9.3 **Other Taxes.** Spansion and AMD shall each bear sole responsibility for franchise and privilege taxes on its business, taxes based on its net income, and employment taxes with respect to its employees.

9.4 **New Equipment.** Spansion shall bear sole responsibility for all sales, use, gross receipts, excise, value-added or personal property taxes attributable to new equipment and any third party maintenance thereon procured by AMD on behalf of Spansion, with the consent of Spansion pursuant to the Change Control Procedures in connection with AMD's performance of Services under this Agreement (provided Spansion obtains unencumbered title to such equipment).

9.5 **Cooperation.** Spansion and AMD shall cooperate to segregate the Fees into the following separate payment categories: (a) those for taxable Services; and (b) those for nontaxable Services.

9.6 **Invoices.** For any Taxes that AMD is entitled to collect from Spansion hereunder for remittance to the applicable Governmental Authority, AMD shall separately state the amount of such Taxes on its invoice. If AMD fails to timely comply with the foregoing obligation, AMD shall be responsible for any resulting noncompliance with Law.

10. **PROPRIETARY RIGHTS.**

10.1 **In General.** In connection with this Agreement, all intellectual property developed by AMD in performing the Services will be owned by AMD.

10.2 **Other Software.** The license of Other Software will be agreed upon by the Parties pursuant to the Change Control Procedures, as a Special Project, or as part of the Annual Budget Process. At such time, the Parties will agree whether the Other Software will be licensed by AMD and sublicensed to Spansion, or whether Spansion will obtain the license to the Other Software directly with sufficient rights for AMD to use the Other Software on Spansion's behalf. If licensed by AMD, Spansion will bear any associated license and maintenance fees as either a Pass-Through Expense or as part of the AMD internal Fees, except to the extent already included as an AMD internal Fee or Pass-Through Expense, in which case AMD shall itself bear such expense and not charge Spansion therefor. In the event Spansion must pay license fees for Other Software directly, and such fees are included in the AMD internal Fees or Pass-Through Expenses, AMD shall reimburse Spansion for such amount, due within ninety (90) days of Spansion's notification to AMD thereof. The foregoing shall not apply to Software licensed to Spansion under a Statement of Work attached hereto as of the Amendment Date.

11. **CONFIDENTIALITY**

11.1 **Obligations.** The Parties acknowledge and agree that all proprietary or nonpublic information disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") in connection with this Agreement, directly or indirectly, which information is

(a) marked as “proprietary” or “confidential” or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and reduced in writing or other tangible (including electronic) form that includes a prominent confidentiality notice and delivered to the Receiving Party within thirty (30) days of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information, constitutes the confidential and proprietary information of the Disclosing Party (“**Confidential Information**”). The Receiving Party may disclose Confidential Information only to those employees who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including provisions relating to nonuse and nondisclosure) no less restrictive than those required by the Receiving Party for its own confidential information. The Receiving Party shall, and shall cause its employees to, retain in confidence and not disclose to any third party (including any of its sub-contractors) any Confidential Information without the Disclosing Party’s express prior written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same procedures and degree of care which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party shall be fully responsible for compliance by its employees with the foregoing, and any act or omission of an employee of the Receiving Party shall constitute an act or omission of the Receiving Party. The confidentiality obligations set forth in this Section 11.1 shall apply and continue, with regard to all Confidential Information disclosed hereunder, during the Term and for a period of ten (10) years from the date of termination of this Agreement.

11.2 Exceptions. Notwithstanding the foregoing, Confidential Information will not include information that: (a) was already known by the Receiving Party, other than under an obligation of confidentiality to the Disclosing Party or any third party, at the time of disclosure hereunder, as evidenced by the Receiving Party’s tangible (including written or electronic) records in existence at such time; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder; (c) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was subsequently lawfully disclosed to the Receiving Party by an Entity or person other than the Disclosing Party not subject to any duty of confidentiality with respect thereto; or (e) was developed by the Receiving Party without reference to any Confidential Information disclosed by the Disclosing Party, as evidenced by the Receiving Party’s tangible (including written or electronic) records in existence at such time.

11.3 Confidentiality of Agreement; Publicity. Each Party agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and that no reference shall be made thereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld) except (a) as required by Law, *provided* that in the case of any filing with a Governmental Authority that would result in public disclosure of the terms hereof, the Parties shall mutually cooperate to limit the scope of public disclosure to the greatest extent possible, (b) to its accountants, banks, financing sources, lawyers and other professional advisors, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, (c) in connection with the enforcement of this Agreement, or (d) pursuant to agreed joint press releases prepared in good

faith. The Parties will consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements with respect to the transactions contemplated hereby.

12. REPRESENTATIONS AND WARRANTIES.

12.1 **Services.** AMD represents and warrants that it will perform the Services in a workmanlike and reasonable manner.

12.2 **DISCLAIMER.** EXCEPT AS SPECIFIED IN THIS SECTION 12, NEITHER SPANSION NOR AMD MAKES ANY OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

13. DISPUTE RESOLUTION.

13.1 The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement shall be resolved first in accordance with any dispute escalation procedures set forth in Section 5.2 above, and, to the extent not resolved after such procedures, in accordance with the dispute resolution procedure set forth in Schedule A attached hereto.

14. TERMINATION

14.1 **Individual Services.** Upon the approval of the Board of Directors, Spansion shall have the right to terminate all or a part of any individual Service at any time and for any reason upon at least six (6) months' advance notice.

14.2 **Individual Service Termination for Cause.** If AMD has failed to comply with the applicable Service Levels for a particular Service and has failed to rectify its performance failure pursuant to the procedures set forth in Section 5 above, then subject Spansion's compliance with Section 5.2, Spansion may terminate AMD's provision of all or part of such Service after sixty (60) days have elapsed since initial notification of the failure and either perform such Service itself or obtain the services of a third party. The Fees will be adjusted accordingly.

14.3 Termination for Cause.

(a) If AMD defaults in the performance of any of its material obligations under this Agreement, and does not cure such default within ninety (90) days after receipt of a notice of default from Spansion, then Spansion may, without limiting Spansion's other rights or remedies under this Agreement, by giving notice to AMD, terminate this Agreement, in whole or in affected part, as of the termination date specified in the notice.

(b) If Spansion fails to make payments due to AMD under this Agreement and does not cure such default within ninety (90) days after receipt of a notice of default from AMD, then AMD may, by giving notice to Spansion, terminate this Agreement in its entirety as of the termination date specified in the notice of default.

14.4 **Termination Assistance Services.** AMD shall, upon Spansion's request during the Termination Assistance Period, provide the Termination Assistance Services for the Fees attributable to the Services received by Spansion pursuant to a termination plan to be agreed upon by the Parties. After the expiration of the Termination Assistance Period, (a) AMD shall provide consulting services to Spansion regarding the Services on an "as requested" basis at rates to be agreed upon by the Parties and (b) each Party shall deliver to the other Party any remaining reports, documentation and materials still in its possession and owned by the other Party, other than reports, documentation and materials licensed to the Party possessing the same after the expiration or termination of this Agreement in accordance with the terms of this Agreement.

14.5 **Survival.** Sections 8, 9, 10, 11, 12.2, 13, 14, 15 and 16 shall survive any termination or expiration of this Agreement.

15. **DAMAGES**

15.1 **Consequential Damages.** Except for breaches of confidentiality obligations, in no event will either Spansion or AMD be liable for, nor shall the measure of damages include, any damages for lost profits, lost income or lost revenue, or for any indirect, incidental, special, or consequential damages, arising out of or relating to its performance or failure to perform under this Agreement, whether based on an action or claim in contract, equity, negligence or otherwise, and even if advised of the possibility of such damages.

15.2 **Direct Damages.** Each of the Parties shall be liable to the other for any direct damages arising out of or relating to its performance or failure to perform under this Agreement; provided, however, that the liability of Spansion and AMD, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions shall not exceed, in the aggregate, an amount equal to the amounts paid under this Agreement during the twelve (12) months preceding the claim.

15.3 **Basis of the Bargain.** Each Party acknowledges that the foregoing limitations are an essential element of the Agreement between the Parties and that in the absence of such limitations the pricing and other terms set forth in this Agreement would be substantially different.

16. **MISCELLANEOUS PROVISIONS.**

16.1 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

16.2 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State

of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction and without regard to the United Nations Convention on Contracts for the International Sale of Goods).

16.3 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16.4 Successors and Assigns. Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by any Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by a Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 Entire Agreement; Amendment. This Agreement (including the Exhibits hereto) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supercede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter. Except as expressly provided otherwise herein, this Agreement may not be altered except by a written instrument signed by authorized legal representatives of both Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

16.6 Notices and Other Communications. All notices required or permitted under this Agreement shall reference this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Spansion:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Attention: General Counsel
Telephone: (408) 962-2500
Facsimile: (408) 774-7443

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
Attention: General Counsel
Telephone: (408) 749-2022
Facsimile: (408) 774-7399

or to such other address or facsimile number as a Party may have specified to the other Parties in writing delivered in accordance with this Section 16.6.

16.7 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

16.8 Severability. If any provision in this Agreement will be found or be held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

16.9 No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors and permitted assigns, and the Parties do not intend to confer third party beneficiary rights upon any other Entity or person. Notwithstanding the foregoing, Fujitsu shall be deemed a third party beneficiary to the rights of the Fujitsu Services Advisor herein and to Fujitsu's rights under Sections 3.5, 3.6 and 3.7(b), and Fujitsu shall have the right to directly enforce such rights against the Parties for so long as those rights exist.

16.10 Construction. This Agreement shall be deemed to have been drafted by all Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

16.11 Execution. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

16.12 **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to any Party at law, in equity or otherwise.

[Signature page follows]

IN WITNESS WHEREOF, each of Spansion and AMD has caused this Agreement to be signed and delivered by its duly authorized representative.

Spansion Inc.

By: /s/ Bertrand F. Cambou
Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

Advanced Micro Devices, Inc.

By: /s/ Hollis M. O'Brien
Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

EXHIBIT 1

DEFINITIONS

“**Affiliate**” of a person or Entity means any other person or Entity which, directly or indirectly, controls, is controlled by, or is under common control with, such person or Entity. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any person or Entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or Entity, whether through the ownership of voting securities, by contract or otherwise. A person or Entity shall be deemed an Affiliate of another person or Entity only so long as such control relationship exists. Notwithstanding the foregoing, neither Spansion nor any of its directly or indirectly majority owned subsidiaries (whether organized as corporations, limited liability companies or other legal entity) shall be deemed to be an Affiliate of AMD, except to the extent expressly provided in this Agreement.

“**Aggregate Ownership Interest**” has the meaning set forth in Spansion’s Certificate of Incorporation.

“**AMD Agents**” means the agents, subcontractors, and representatives of AMD, including AMD Affiliates.

“**AMD Flash Memory Business**” means the research and development, manufacture, marketing, distribution, promotion and sale of Stand-Alone NVM Products (excluding distribution and sales-related activities) by AMD and its Affiliates.

“**AMD Personnel**” means the personnel of AMD and AMD Agents who provide the Services.

“**AMD Service Location(s)**” means any service location owned, leased, or operated by AMD, or used by AMD with the consent of a third party other than Spansion, from which AMD provides Services.

“**Change(s)**” means any change to the Services that would materially alter the service content, scope, or performance standards of the Services, or materially alter the cost to Spansion of the Services. Examples of changes would include replacing a significant vendor, but not day to day operational issues normally handled by staff in the routine performance of their duties.

“**Effective Date**” means June 30, 2003.

“**Entity**” means a corporation, partnership, limited liability company, or other enterprise, association, organization, or entity.

“**Fees**” has the meaning set forth in Section 8.1.

“**Fujitsu**” means Fujitsu Limited, a company organized under the laws of Japan.

“**Governmental Approvals**” means all licenses, consents, permits, approvals and authorizations of any Governmental Authority, or any notice to any Governmental Authority, the granting of which is required by Law, for the consummation of the transactions contemplated by this Agreement.

“**Governmental Authority**” means any Federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international.

“**Law**” means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Governmental Authority.

“**Licensed Parent Software**” has the meaning given to it in the Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement among the Parties, AMD Investments, Inc. and Fujitsu of even date herewith.

“**NVM**” means a non-volatile memory device wherein information stored in a memory cell is maintained without power consumption and the write time (including erase time if there is an erase operation prior to a write operation) exceeds the read time, allowing the device to function primarily as a reading device.

“**Other Software**” means all Software, other than AMD Licensed Parent Software, which is used by AMD in the provision of the Services, or Software used by Spansion in the receipt of the Services.

“**Pass-Through Expenses**” has the meaning set forth in Section 8.1.

“**Reimbursable Expenses**” means reasonable out-of-pocket travel and travel-related expenses reasonably agreed to by Spansion and to the extent such expenses are reimbursable under Spansion’s reimbursement policy.

“**Related Documentation**” means, with respect to Software, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describe the function and use of such Software, as applicable.

“**Service Location(s)**” means any Spansion Service Location or AMD Service Location, or both, as applicable.

“**Services**” has the meaning set forth in Section 4.1.

“**Software**” means the executable code and, if applicable and supplied by AMD, source code, versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications programs, operating

system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

“Spansion Agents” means the agents, employees, contractors, and representatives of Spansion, other than AMD and AMD Agents.

“Spansion Service Location(s)” means any service location owned, leased, or operated by Spansion, or used by Spansion with the consent of a third party other than AMD, from which AMD provides Services (but excluding AMD Service Location(s)).

“Special Project” means any service that is outside the scope of the Services.

“Special Project Fees” means the fees for a Special Project agreed upon by the Parties.

“Stand-Alone NVM Products” means a semiconductor product (including a single chip or a multiple chip or system product) containing NVM dedicated to data storage wherein all circuitry (including logic circuitry) contained therein is solely to accept, store, retrieve or access information or instructions and cannot manipulate such information or execute instructions.

“Tax” or **“Taxes”** means all taxes, levies, imposts and fees imposed by any Governmental Authority (domestic or foreign) of any nature including but not limited to federal, state, local or foreign net income tax, alternative or add-on minimum tax, profits or excess profits tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding or employer payroll tax, FICA or FUTA), real or personal property tax or ad valorem tax, sales or use tax, excise tax, stamp tax or duty, any withholding or back up withholding tax, value added tax, severance tax, prohibited transaction tax, premiums tax, occupation tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax.

“Term” means the Initial Term and the Extension Periods (if any).

“Termination Assistance Period” means a period of time designated by Spansion, commencing on the earlier of (i) the date six (6) months prior to the expiration of the Term or such earlier date as Spansion may request and (ii) the date of notice by either Party that there will be a termination of this Agreement and, in the case of each of clause (i) and (ii), continuing for up to twelve (12) months after the effective date of expiration or termination of this Agreement; in the case of each of clause (i) and (ii), during which AMD shall provide the Termination Assistance Services in accordance with Section 14.

“Termination Assistance Services” means (a) the Services being performed (and required under this Agreement to be performed) by AMD as of the date of expiration or termination of this Agreement, to the extent Spansion requests such Services during the

applicable Termination Assistance Period; (b) AMD's cooperation with Spansion, or another service provider designated by Spansion in the transfer of the Services (or portion thereof, as applicable) to Spansion or such other service provider in order to facilitate the smooth and orderly transition of the Services (or portion thereof, as applicable) to Spansion or such other service provider; (c) AMD developing, with the cooperation of Spansion, and subject to the approval of Spansion, a plan for the smooth and orderly transition of the performance of the Services (or portion thereof, as applicable) from AMD to Spansion or to a third party designated by Spansion; (d) AMD providing reasonable training for personnel of Spansion or Spansion's designee in the performance of the Services then being transitioned to Spansion; and (e) AMD performing the other services, functions, and responsibilities described in Section 14.

**AMENDED AND RESTATED
GENERAL ADMINISTRATIVE SERVICES AGREEMENT**

This **AMENDED AND RESTATED GENERAL ADMINISTRATIVE SERVICES AGREEMENT** (this “**Agreement**”), is made and entered into as of December 21, 2005, (the “**Amendment Date**”) by and between **SPANSION INC.**, a Delaware corporation (“**Spansion**”), on behalf of itself and its Affiliates, and **ADVANCED MICRO DEVICES, INC.**, a Delaware corporation (“**AMD**”), on behalf of itself and its Affiliates. AMD and Spansion are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, in connection with the creation of Spansion LLC, Spansion Inc.’s predecessor, the Parties executed a General Administrative Services Agreement dated as of June 30, 2003 (the “**Effective Date**”); and

WHEREAS, the Parties hereby desire to amend and restate that General Administrative Services Agreement.

NOW, THEREFORE, in consideration of the mutual representations, covenants and other terms and conditions contained herein, the Parties hereby amend and restate that General Administrative Services Agreement and agree as follows:

1. **DEFINITIONS**

1.1 **Definitions.** The defined terms used in this Agreement shall have the meanings set forth in Exhibit 1 or as defined in the text below.

1.2 **Interpretation.**

(a) **Certain Terms.** The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limited and means “including without limitation.”

(b) **Section References; Titles and Subtitles.** Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(c) **References to Persons, Agreements and Statutes.** Unless otherwise expressly provided herein, (i) references to a person or Entity include its successors and permitted assigns, (ii) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (iii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation. In addition, any references to

“either Party” and/or the “other Party,” etc. shall be deemed to refer to Spansion and AMD, respectively, as the context indicates.

2. **TERM**

2.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and continue until 23:59 (Pacific Daylight Time) on June 30, 2007, or such earlier date upon which this Agreement may be terminated in accordance with its terms (the “**Initial Term**”).

2.2 **Extension.** The Parties may extend the Initial Term of this Agreement by mutual written agreement; each such agreed upon extension period shall be referred to as an “**Extension Period**.”

3. **MANAGEMENT, COMMUNICATION, INFORMATION AND ESCALATION RIGHTS**

3.1 **In General.** AMD shall have day-to-day management control over its receipt of the Services. Subject to the terms of this Agreement, this will include decisions regarding (a) its general administrative services budget, (b) the level of Services it requires, and (c) the performance of its service providers, including its response to failures by Spansion to provide Services in accordance with the Service Levels and any material breach by Spansion of its obligations under this Agreement. To administer its receipt and use of these Services, AMD will retain an AMD Services Manager as described below and will consult with the Spansion Services Advisor and Fujitsu Services Advisor in AMD’s reasonable judgment.

3.2 **AMD Services Manager.** AMD shall employ an individual reasonably knowledgeable about the provision of general administrative services similar to those provided by Spansion under this Agreement (the “**AMD Services Manager**”). The AMD Services Manager shall (a) have overall responsibility for managing and coordinating the performance of AMD’s obligations under this Agreement and for monitoring the performance of obligations by Spansion under this Agreement, (b) subject to the supervision of AMD management, be authorized to act for and on behalf of AMD with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the Spansion Services Advisor and Fujitsu Services Advisor.

3.3 **Spansion Services Advisor.** Spansion shall appoint at Spansion’s expense an individual (the “**Spansion Services Advisor**”) who will serve as the Spansion representative under this Agreement. The Spansion Services Advisor shall (a) have overall responsibility for managing and coordinating the performance of Spansion’s obligations under this Agreement, (b) be authorized to act for and on behalf of Spansion with respect to all matters relating to this Agreement, and (c) shall be the primary contact with the AMD Services Manager and Fujitsu Services Advisor.

3.4 **Fujitsu Services Advisor.** Fujitsu shall appoint at Fujitsu’s expense an individual (the “**Fujitsu Services Advisor**”) who will serve as the Fujitsu representative to Spansion regarding the Services. The Fujitsu Services Advisor will serve in an advisory capacity

to Spansion only and will not have independent veto rights or other day-to-day decision-making authority over Spansion's performance of the Services. The Fujitsu Services Advisor will act in the best interests of Spansion, not Fujitsu. Spansion shall make available to the Fujitsu Services Advisor office space and facilities upon the Fujitsu Services Advisor's reasonable request as and when reasonably required by the Fujitsu Services Advisor to enable the Fujitsu Services Advisor to perform his or her responsibilities hereunder. In the performance of the Fujitsu Services Advisor's functions, the Fujitsu Services Advisor shall have the right as reasonably necessary to consult with other Fujitsu employees with appropriate expertise in the respective Service areas and provide information regarding the Services to such employees. For purposes of determining the scope of the Fujitsu Services Advisor's rights and responsibilities hereunder, the term "Services" will be deemed to include any services performed by Spansion pursuant to Special Projects. In the event that Fujitsu's Aggregate Ownership Interest falls below ten percent (10%) and Fujitsu no longer provides services to Spansion that are similar to the Services, either Spansion or Fujitsu may, but shall not be required to, by written notice to the other and AMD, terminate the role of the Fujitsu Services Advisor, and, upon such termination, the Fujitsu Services Advisor shall have no further rights or obligations hereunder.

3.5 Information Exchange and Information Rights. AMD shall keep Spansion informed about those aspects of AMD's business that could reasonably be expected to have an effect on the demand for, or provision of, the Services. Spansion will provide to the Fujitsu Services Advisor copies of all reports and other written information relating to the Services that Spansion provides AMD herein at the same time Spansion provides such reports and information to AMD, including a copy of the quarterly service reports provided AMD under Section 4.7. At any time upon the Fujitsu Services Advisor's reasonable request, the AMD Services Manager shall provide the Fujitsu Services Advisor additional information regarding the performance of the Services and the associated Fees to the extent such information is available. Spansion and AMD, through the Spansion Services Advisor and the AMD Services Manager, will give notice and otherwise keep the Fujitsu Services Advisor informed of all proposals and discussions between the AMD Services Manager and the Spansion Services Advisor relating to material aspects of this Agreement and the provision of Services herein, including all Changes proposed under the Change Control Procedures, any Special Projects, all audits conducted by AMD and all budget meetings related to the Services. Such notice shall be given by the Parties promptly upon initiation of such discussions. In addition, Spansion and AMD will, upon the Fujitsu Services Advisor's request and subject to applicable confidentiality restrictions, grant access to the Fujitsu Services Advisor to any meeting between the Spansion Services Advisor and the AMD Services Manager, whether telephonic or in person, regarding performance of the Services, the Fees and any proposed Special Projects or Changes.

3.6 Services Advisor Escalation Rights. If at any time, the Fujitsu Services Advisor believes in good faith that (a) AMD is in material breach under this Agreement or (b) an audit pursuant to Section 8.11 should be conducted, then the Fujitsu Services Advisor will notify the Spansion Services Advisor in writing. If after a reasonable period of time, the Fujitsu Services Advisor does not believe that the concern raised has been adequately addressed, the Fujitsu Services Advisor shall be entitled to notify Spansion's Board of Directors (the "**Board of Directors**") of the Fujitsu Services Advisor's concerns. Any such notice shall be in writing and

shall be provided to all Board members simultaneously, with a copy also provided simultaneously to the AMD Services Manager and the Spansion Services Advisor. The Board of Directors shall consider the Fujitsu Service Advisor's concerns in good faith and may take any action it deems reasonable in the circumstances.

3.7 Contract Amendments.

(a) AMD and Spansion may only amend this Agreement upon the approval of the Board of Directors. The Board of Directors may delegate its decision-making authority to Spansion management as it deems appropriate; provided, however, that any Special Project or new Services purchase of greater than Five Hundred Thousand Dollars (\$500,000) payable in any Spansion fiscal year will require specific approval from the Board of Directors.

(b) For so long as Fujitsu maintains at least a ten percent (10%) Aggregate Ownership Interest, Spansion and AMD may not amend this Agreement without the prior written consent of Fujitsu (which consent shall not be unreasonably conditioned, delayed or withheld), to the extent an amendment (i) reduces the rights of the Fujitsu Services Advisor set forth herein, (ii) reduces Fujitsu's right to consent to amendments set forth in this Section, (iii) establishes a basis for charging AMD for the Services other than by calculating Spansion's reasonable, good faith estimates of actual costs plus five percent (5%), as set forth in Section 8.6, or materially alters the cost allocation methodologies described in Section 8.6 or (iv) materially reduces Spansion's rights under this Agreement. Notwithstanding the foregoing, changes to Fees or Services resulting from Change Control Procedures, the Annual Budget Process or the Fee reconciliation process described in Section 8.6 shall not be deemed to constitute amendments to this Agreement.

3.8 Approvals. AMD shall reasonably cooperate with Spansion by making available, as requested by Spansion, management decisions, information, approvals or disapprovals, and acceptances or rejections in a reasonably timely manner so that Spansion may fulfill its obligations under this Agreement.

3.9 Change Control Procedures. The Parties shall use the following procedures (the "**Change Control Procedures**") to implement Changes.

(a) General.

(i) **Changes.** Changes shall be implemented only by mutual agreement of the Parties through these Change Control Procedures, except as may be necessary on an emergency, temporary basis to maintain the continuity of the Services. The Parties acknowledge and agree that the implementation of a Change does not necessarily require an increase in the Fees or other fees payable by AMD or a reduction in the scope of Services or in Service Levels provided hereunder, and that any change in the Fees or other amounts payable by AMD as a result of a Change will be an adjustment in accordance with the provisions of Section 8. All decisions regarding Changes are subject to the approval by the Board of Directors, which may delegate its decision-making authority to Spansion management as it deems appropriate. The Parties acknowledge and agree that not all modifications to the Services may constitute Changes; as part

of the routine operation of AMD and Spansion, modifications that are not material or significant, as determined by Spansion in its reasonable judgment, may be conducted without recourse to the Change Control Procedures; provided that the AMD Services Manager is notified — on a regular basis consistent with Spansion’s internal processes — of the modifications being implemented on AMD’s behalf, with a copy of such report provided to the Fujitsu Services Advisor.

(ii) **Schedule.** Unless otherwise agreed by AMD, with respect to all Changes, Spansion shall (a) schedule Changes so as not to unreasonably interrupt AMD’s business operations, other than those Changes made on an emergency basis to maintain the continuity of the Services, (b) prepare and deliver to AMD each quarter a rolling schedule for ongoing and planned agreed upon Changes for the next quarter, and (c) monitor the status of Changes against the applicable schedule.

(iii) **Meetings.** The Spansion Services Advisor and the AMD Services Manager shall meet on a mutually agreed schedule (no less frequently than each quarter) for the purpose of reviewing Change requests submitted by either Party in accordance with these Change Control Procedures. The AMD Services Manager will provide the Fujitsu Services Advisor written or telephonic notice of these meetings and the Fujitsu Services Advisor may attend.

(b) **Requests for Changes.** Requests for Changes shall be submitted for review in accordance with the Change Control Procedures, and shall include a reasonably detailed description of the requested Change together with the basis for such Change. All requests for Changes by AMD shall be communicated to Spansion through the AMD Services Manager or his or her authorized designee.

(i) **Changes Initiated by AMD.** Within ten (10) business days after Spansion receives a request from AMD for a Change, either Spansion or a joint project team working on the Service to be impacted, as appropriate, shall prepare and provide to AMD an initial written proposal for the Change (a “**Change Proposal**”), which proposal will include Spansion’s initial proposals regarding (A) the Services and the applicable schedule for performing the Services, including but not limited to AMD’s related obligations, to effect the Change, (B) the resources required to perform Services effecting the Change and resulting from the Change, (C) the Fees for Services, and (D) any additional areas that are reasonably likely to be impacted by the proposed Change. The Change Proposal shall also contain a description of any other anticipated costs that AMD will incur as a result of the Change that it would otherwise not have incurred. Within ten (10) business days after receiving such Change Proposal, AMD shall either approve the Change Proposal, notify Spansion that AMD desires to discuss the Change Proposal further, or withdraw the request for such Change. AMD’s failure to approve the Change Proposal or notify Spansion that AMD desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of the Change Proposal, and the Change shall not be implemented.

(ii) **Changes Initiated by Spansion.** Concurrent with the submission of a request for a Change by Spansion, either Spansion or a joint project team working on the impacted Service, as appropriate, shall provide to AMD a Change Proposal containing the information specified in subparagraph (i) above. Within ten (10) business days after receiving such proposal, AMD shall either approve the Change Proposal, notify Spansion that AMD desires to discuss the Change

Proposal further, or reject the requested Change. AMD's failure to approve the Change Proposal or notify Spansion that AMD desires to discuss the Change Proposal further within this ten (10) business day period shall be deemed a rejection of such request, and the Change shall not be implemented.

(c) **Further Discussion of Changes.** If within ten (10) business days after receipt of a Change Proposal, AMD notifies Spansion that AMD desires to discuss the proposed Change further, the AMD Services Manager and Spansion Services Advisor will promptly consider the Change Proposal in person or by telephone and will attempt in good faith to develop a mutually acceptable Change Proposal. The AMD Services Manager will notify the Fujitsu Services Advisor of the proposed meeting and the Fujitsu Services Advisor may attend any such meeting.

(d) **Implementation of Changes.** All Changes are subject to the written approval of the Parties. Only following receipt of each Party's written approval may Spansion begin to implement the approved Change, and any Change so approved by each Party that affects any Statement of Work shall be deemed to be an amendment to such Statement of Work.

(e) **Emergency Changes.** If a Service Level failure, reasonable safety concern, Governmental Authority or change in Law, requires an immediate Change to a Service, then Spansion may implement such Change immediately upon notice to AMD, with a copy to the Fujitsu Services Advisor. Any change in Fees or equipment or technology purchases for which Spansion seeks reimbursement from AMD, or any long-term, material degradation in Service Levels resulting from such Change, unless such degradation is unavoidably required in the circumstances (in which event Spansion shall use all reasonable efforts to mitigate the impact of such degradation), shall be subject to the Change Control Procedures.

3.10 **Special Projects.** AMD may from time to time during the Term request that Spansion perform Special Projects. Upon receipt of such a request from AMD, Spansion shall provide AMD with a written proposal for such Special Project which shall include:

- (a) a description of the services, functions and responsibilities Spansion anticipates performing in connection with such Special Project;
- (b) a description of the obligations of AMD, if any, required for Spansion to perform such Special Project;
- (c) a schedule for commencing and completing such Special Project;
- (d) Spansion's prospective fees for such Special Project, either on a fixed fee or time and materials basis; and
- (e) when appropriate, a description of any new Software or equipment required in connection with such Special Project.

Spansion shall not begin performing any Special Project until the Parties have agreed in writing upon the specifications, requirements, schedule and fees for such Special Project pursuant to the Change Control Procedures. AMD shall have the right to contract with a third party to perform any Special Project, provided that the Special Project does not affect the provision of Services and would not result in the breach of an obligation that Spansion may have with a third party. AMD will notify Spansion of any proposal that AMD wants to make to a third party to perform a Special Project instead of having Spansion perform that Special Project. If the Parties do not agree upon terms by which Spansion will perform a Special Project, or if Spansion objects to AMD retaining a third party to perform the Special Project because Spansion reasonably believes in good faith that such Special Project, or the third party's performance of that Special Project, will negatively affect the Services, either by reducing performance or functionality, or increasing the cost to Spansion, or by causing Spansion to breach an obligation to a third party, each Party shall have the right to escalate the issue to the Board of Directors, and the Parties shall in good faith negotiate a mutually-acceptable resolution to the matter. If AMD does retain a third party to perform a Special Project hereunder, then Spansion and AMD will agree in writing upon any changes to the Services, Service Levels (if applicable), Fees that result from AMD retaining the third party and commissioning the Special Project.

4. SERVICES

4.1 **Services; Parity.** Pursuant to separate statements of work attached hereto and made a part hereof ("**Statements of Work**"), Spansion, either itself or through its Affiliates or subcontractors (subject to Section 4.5), shall perform the services, functions, and responsibilities for AMD identified in the separate Statements of Work (the "**Services**"). The Statements of Work may be updated by the Parties from time to time upon mutual agreement pursuant to the Change Control Procedures or the annual review of the AMD general administrative services budget and the Services described in Section 8.7 (the "**Annual Budget Process**"). Spansion will provide AMD the Services under terms (including those related to charges, cost allocation and service levels) that are at least as favorable as those it provides any other Spansion business unit, division or Spansion Affiliate receiving similar services from Spansion (or an Spansion subcontractor), subject to any deviations agreed to by the Parties to address AMD's specific requirements as communicated to Spansion and taking into account that this Agreement provides for a cost plus allocation budgeting structure that may not apply to other Spansion business units, divisions or Affiliates. The Services (including any new Services added pursuant to mutual agreement by the Parties) will evolve and be supplemented, modified, enhanced or replaced, reduced or eliminated over time as agreed upon by the Parties pursuant to the Change Control Procedures or as part of the Annual Budget Process. Fees are subject to the quarterly budget reconciliation process described in Section 8.8.

4.2 **Governmental Approvals.** Spansion shall obtain and maintain all Governmental Approvals required for Spansion to deliver the Services under this Agreement. AMD shall obtain and maintain all Governmental Approvals required for AMD to use the Services under this Agreement. Upon request by either Party, the other Party shall provide to the requesting Party reasonable cooperation and assistance in obtaining Governmental Approvals hereunder.

4.3 **Changes in Law.** If either Party becomes aware of any changes in Law that relate to Spansion's delivery of the Services or AMD's use of the Services, then such Party will

notify the other Party of such changes in Law. With respect to any changes related to Spansion's delivery of Services, Spansion and AMD shall work together pursuant to the Change Control Procedures to identify the impact of such changes on Spansion's delivery of the Services, and any changes in the fees charged to AMD, as a result and shall work together to implement any necessary modifications to the Services prior to the deadline imposed by the Governmental Authority having jurisdiction for such requirement or change. Spansion will use reasonable efforts to minimize the incremental cost to AMD of compliance with such Laws.

4.4 Compliance With Laws. Spansion shall comply with all Laws governing the provision of the Services and the performance of its obligations, including identifying and procuring permits, certificates, approvals and inspections required under such Laws. If a charge of non-compliance by Spansion with any such Laws occurs, Spansion shall promptly notify AMD of such charge in writing and Spansion shall promptly remedy such non-compliance in accordance with Law.

4.5 Subcontractors. AMD acknowledges that Spansion may outsource to a third party or third parties the performance of some or all of the Services that Spansion is obligated to provide under this Agreement; provided however, that in the event such outsourcing will lead to any Change in Service Levels or Fees, such outsourcing shall be subject to the Change Control Procedures. Nothing in this Agreement shall be construed as requiring Spansion to perform directly any Services outside of the United States and to the extent that Services will be performed outside the United States, Spansion may engage an Affiliate, subsidiary or subcontractor to perform such Services (subject to the Change Control Procedures in accordance with the foregoing). No subcontracting shall release Spansion from its responsibility for its obligations under this Agreement. Spansion shall be responsible for the work and activities of each of the Spansion Agents, including compliance with the terms of this Agreement. Spansion shall be responsible for all payments to its subcontractors unless the Parties agree that AMD will pay directly to a Spansion Affiliate providing Services to AMD.

4.6 AMD Agents. Spansion will coordinate and cooperate in good faith with AMD Agents hired by AMD from time to time to the extent reasonably required by AMD and with Fujitsu to the extent that Fujitsu supplies similar or complementary services to AMD. Spansion will promptly notify AMD if a Fujitsu or any AMD Agent act or omission will cause, or has caused, a problem or delay in providing the Services. Spansion will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by the interference of a AMD Agent or Fujitsu; provided such interference was not at the direction of Spansion and provided that Spansion continues to use reasonable efforts to perform despite such interference and works with AMD to resolve the problem and resume conformance with the Service Levels and performance of Spansion's obligations under this Agreement as soon as practicable.

4.7 Spansion Reporting. On a semi-annual basis, Spansion shall provide a report to AMD, with a copy to the Fujitsu Services Advisor, (a) identifying those at Spansion principally responsible for providing Services in each Service area, (b) identifying any significant problems or issues encountered in delivering the Services for each of the Service areas, and (c) identifying

any major changes in the amount of Services or Fees in the Service areas that are expected or planned by Spansion for the upcoming two (2) quarters or year. The Spansion Services Advisor will provide the AMD Services Manager with such other reports regarding the performance of the Services and the Fees as the AMD Services Manager shall reasonably require.

4.8 **AMD Benchmarking.** AMD may independently analyze Spansion's compliance with the Service Levels and provide Spansion feedback regarding Spansion's performance. In addition, if as part of that benchmarking, AMD in good faith determines that the pricing it is charged for the Services is not within a reasonable range, AMD may notify Spansion and the Parties will consider whether changes are appropriate to the Services to enable the Parties to enjoy better pricing. Any such benchmarking shall be subject to the confidentiality restriction set forth in Section 11.

4.9 **Use of Services.** AMD may not remarket or sell all or any portion of the Services provided under this Agreement, or make all or any portion of the Services available to any party other than AMD or AMD's Affiliates, without Spansion's consent.

5. SERVICE LEVELS

5.1 **Service Levels.** Spansion shall perform the Services at a minimum in conformance with the level of service and with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and efficiency as Spansion provides similar services to its other divisions or Affiliates ("**Service Levels**").

5.2 Dispute Escalation Process.

(a) Initial Notice: Good Faith Discussion. If the AMD Services Manager determines that Spansion has failed to perform the Services in accordance with the applicable Service Levels, the AMD Services Manager may initiate contact with the Spansion Services Advisor to discuss the deficiency, and if necessary may submit a Change Proposal regarding a corrective action plan in accordance with the Change Control Procedures. Upon such contact, the AMD Services Manager and Spansion Services Advisor will promptly consider the corrective action plan in person or by telephone and will attempt in good faith to agree to a mutually acceptable corrective action plan. The AMD Services Manager will invite the Fujitsu Services Advisor to attend any such meetings. If the Parties cannot agree upon a corrective action plan within a fifteen (15) day business day period, the issue will be escalated in accordance with clause (b) below.

(b) Management Escalation. If the issue is not resolved in accordance with clause (a) above, the AMD Services Manager will notify the Spansion chief financial officer of the issue. If the Spansion chief financial officer reasonably determines that the issue warrants further escalation, the Spansion chief financial officer will then contact the person within Spansion in charge of the provision of the Services at issue to discuss the issue in person or by telephone and the Parties shall attempt in good faith to resolve the issue for a period of twenty-five (25) business days. If the issue is not resolved, as agreed by the Parties, within such twenty-five (25) business day period, the issue will be escalated in accordance with the dispute resolution proceedings in accordance with Section 13.

6. **SERVICE LOCATIONS AND SECURITY**

6.1 Service Locations.

(a) The Services shall be provided to AMD from the AMD Service Locations and the Spansion Service Locations established on the Effective Date or subsequently changed in accordance with the terms hereof. In the event Spansion desires to establish or move Services to a AMD Service Location, such action shall either be approved through the Change Control Procedures or be approved in writing by the AMD Services Manager.

(b) Except as provided in Section 8 and unless otherwise agreed by AMD, any incremental expenses incurred by AMD or Spansion and any costs incurred in connection with the performance or use of the Services, in each case as a result of Spansion's relocation to, or use of, any different Service Locations at Spansion's request, shall be paid by Spansion or reimbursed to AMD by Spansion. Any incremental expenses incurred by AMD or Spansion as a result of a relocation to, or use of, any different Service Locations at AMD's request or direction shall be paid by AMD or reimbursed to Spansion by AMD.

6.2 AMD Resources and Facilities.

(a) For so long as Spansion requires the same for the performance of the Services, subject to AMD's agreement (not to be unreasonably withheld), AMD shall provide to Spansion at no charge access to and the use of the space in the AMD Service Locations, together with personal computers, workstations, terminals, printers, and other equipment utilized by AMD, office furnishings, telephone equipment, janitorial services, utilities and other reasonable resources in connection with Spansion's performance of the Services. Use of AMD Service Locations by Spansion does not constitute a leasehold interest in favor of Spansion, and Spansion shall not have exclusive access or control of the space provided to Spansion under this Agreement.

(b) Spansion and Spansion Agents shall not commit or permit waste or damage to such facilities, nor use such facilities for any unlawful purpose or act, and shall comply with all of AMD's general and site-specific policies and procedures generally applicable to the applicable AMD Service Location (as in effect from time to time and of which AMD has provided notice to Spansion), including procedures for the physical security of the AMD Service Locations.

(c) Spansion shall permit AMD and AMD Agents to enter into those portions of the AMD Service Locations occupied by Spansion's staff at any time to perform facilities-related services. AMD shall ensure that AMD and AMD Agents shall not interfere with Spansion's performance of Services while exercising access rights under this Agreement, and Spansion shall not be liable under this Agreement for its non-performance or its failure to meet the applicable Service Levels to the extent such non-performance or failure is caused by interference by AMD or AMD Agents.

6.3 Conduct of Spansion Personnel. While at the AMD Service Locations, Spansion and Spansion Agents shall (a) comply with the requests, standard rules and regulations of AMD regarding safety and health, personal and professional conduct (including adhering to general safety practices or procedures) generally applicable to such AMD Service Locations, as notified to Spansion from time to time and (b) otherwise conduct themselves in a businesslike manner. If AMD notifies Spansion that a particular member of the Spansion Personnel is not conducting himself or herself in accordance with this Section, Spansion shall promptly (y) investigate the matter and take appropriate action which may include (i) removing the applicable personnel from the Spansion Personnel and providing AMD with prompt notice of such removal and (ii) replacing the applicable personnel with a similarly qualified individual, or (z) take other appropriate disciplinary action to prevent a recurrence. In the event of multiple violations of this Section 6.3 by a particular member of the Spansion Personnel, Spansion shall promptly remove the individual from the Spansion Personnel.

6.4 Safety and Security Procedures.

(a) Spansion agrees to comply with AMD's physical safety and security procedures for all Services it provides at AMD Service Locations.

(b) Spansion will promptly notify AMD if any AMD failure to maintain and enforce (except for enforcement with respect to Spansion Personnel) physical safety and security procedures at AMD Service Locations will cause, or has caused, a material problem or delay for Spansion in providing the Services. Spansion will be excused from failure to meet a Service Level or otherwise perform its obligations under this Agreement only to the extent that a failure to meet such Service Level or otherwise perform its obligations was caused by the AMD failure to maintain and enforce (except for enforcement with respect to Spansion Personnel) physical safety and security procedures at AMD Service Locations; provided that Spansion continues to use reasonable efforts to perform despite such failure and works with AMD to resolve the failure and resume conformance with the Service Levels and performance of Spansion's obligations under this Agreement as soon as practicable.

7. CONTINUED PROVISION OF SERVICES

7.1 Force Majeure. If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party (but specifically excluding labor and union-related activities) (each, a "**Force Majeure Event**"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party shall be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event and describe in

reasonable detail the nature of the Force Majeure Event. If a Service cannot be resumed as a result of a Force Majeure Event for a period of time sufficient to materially hinder AMD's ability to continue to operate, but in no event less than thirty (30) days, AMD may obtain such needed Services from a third party; provided however, that if Spansion is thereafter able to resume providing such Service, AMD will again retain Spansion to provide such Service in accordance with this Agreement.

8. PAYMENTS AND INVOICING

8.1 **Fees.** In consideration of Spansion providing the Services, AMD shall pay to Spansion the fees set forth in the Statements of Work, as such fees may be adjusted pursuant to the terms of this Agreement (the "**Fees**"). The Fees include Spansion's reasonable, good faith estimates of pass through expenses for third party Software costs and other third party services (such portion of the Fees referred to herein as the "**Pass-Through Expenses**"). Pass-Through Expenses shall be billed at direct cost, without any mark-up. The Fees are subject to change annually in accordance with the Annual Budget Process, as well as in accordance with the Change Control Procedures and the quarterly budget reconciliation process described in Section 8.8. In the event through the Change Control Procedures or otherwise in accordance with this Agreement additional Pass-Through Expenses will be incurred, Spansion will separately identify such additional Pass-Through Expenses in the applicable Statement of Work.

8.2 **Special Project Fees.** Subject to the Change Control Procedures, AMD shall pay Spansion any Special Project Fees agreed upon by the Parties in writing. As of the Amendment Date, there are no approved Special Projects Fees.

8.3 **Invoicing.** After the beginning of each fiscal month of the Term, Spansion shall invoice AMD for (i) all Fees payable for Services performed during the previous fiscal month and all Pass-Through Expenses paid during the previous fiscal month, and (ii) all Special Project Fees, if any, payable for services performed during the previous fiscal month, including in the case of clause (ii) any Reimbursable Expenses incurred by Spansion in performing a Special Project and reimbursable pursuant to Section 8.9.

8.4 **Time of Payment.** Spansion's invoices shall be due and payable within forty-five (45) days after the end of the fiscal month in which the Services or, if applicable, agreed upon Special Project services, were provided or the costs incurred. Any other sum due Spansion pursuant to this Agreement shall be due and payable within forty-five (45) days after receipt by AMD of an invoice from Spansion. All payments will be made via wire transfer or other mutually-acceptable means.

8.5 **Fee Dispute.** Within thirty (30) days after AMD's receipt of each invoice, AMD shall give notice to Spansion of any amount shown in such invoice that AMD disputes in good faith, which notice shall include a reasonably detailed explanation of the disputed amount and the grounds for the dispute.

8.6 **Cost Allocation.** Spansion will calculate Fees and costs charged to AMD using a cost allocation methodology that accurately and fairly reflects Spansion's reasonable, good faith

forecasts of its actual costs associated with providing the Services and with a reasonable allocation to AMD based on the provision of Services to AMD and the costs therefor as a proportion of total services and costs Spansion provides for itself, for AMD and for any other division or Affiliate of Spansion. Spansion agrees that the target of the Fees and costs charged to AMD will be Spansion's actual costs in performing the Services. Spansion shall set the Fees each year as part of the Annual Budget Process at such reasonable, good faith projection of actual costs (and any overhead costs allocated according to the principle set forth in the first sentence of this Section) plus five percent (5%) of Spansion's costs, excluding Pass-Through Expenses. AMD acknowledges, however, that due to events that occur in between the quarterly reconciliations described in Section 8.8, the Fees may not accurately reflect Spansion's actual costs. In such event and to such extent, Spansion will not be deemed in breach of its obligation to charge Fees based on its reasonable, good faith estimates of actual costs, provided Spansion uses diligent and good faith efforts to establish its actual costs as the basis for reconciling Fees under Section 8.8 and developing future budgets pursuant to the Annual Budget Process. The Fees will be analyzed and updated pursuant to Section 8.8 and the Annual Budget Process.

8.7 Annual Budget Process. Each year, in accordance with Spansion's normal budget process, AMD and Spansion will meet and address changes to the Services and the applicable Fees for the succeeding fiscal year and the Parties will agree in writing upon the Services, Service Levels (as applicable) and Fees for the succeeding year.

8.8 Price Protection; Quarterly Budget Reconciliation. In addition to adjustments that may be discussed pursuant to the Annual Budget Process, the Fees shall be adjusted on a prospective basis by mutual written agreement on a quarterly basis (excluding the quarter when the Annual Budget Process will take the place of the quarterly reconciliation process) if a major event has occurred during the quarter that will substantially increase or decrease the actual costs of the Services in the future versus the then-current mutually-agreed budget (e.g., Spansion realizes substantial cost savings as the result of an outsourcing transaction). As part of this quarterly reconciliation process, adjustments to budgeted Fees (including Pass-Through Expenses), whether resulting in an increase or decrease in Fees (including Pass-Through Expenses), will be mutually agreed upon by Spansion and AMD and will apply prospectively only.

8.9 Expenses. AMD shall pay or reimburse Spansion for its Reimbursable Expenses incurred in connection with its performance of Special Projects as may be agreed on a project by project basis. Except as provided in the previous sentence or as otherwise agreed through the Change Control Procedures, Spansion shall not charge AMD for any expenses or costs incurred by Spansion in providing Special Project services.

8.10 Proration. All periodic Fees under this Agreement are to be computed on a fiscal month basis and shall be prorated on a per diem basis for any partial fiscal month.

8.11 Audits. In the event AMD in good faith believes that there is a material difference between actual costs incurred by Spansion and the Fees, AMD shall be entitled to appoint an auditor reasonably acceptable to Spansion to audit the cost allocation methodologies used by Spansion to calculate the Fees, the allocation of Fees and Pass-Through Expenses, and to

otherwise verify the accuracy of the Fees and expenses that Spansion charges AMD for provision of Services under this Agreement. AMD may conduct one such audit annually upon reasonable advance written notice to Spansion delivered through the Spansion Services Advisor. Spansion agrees to provide such auditor with access to all data, records, reports, resources, facilities and personnel necessary to enable the auditor to conduct appropriate audits of the Fees charged to AMD. The auditor shall promptly report any discrepancies in writing to AMD, with a copy to the Spansion Services Advisor and the Fujitsu Services Advisor. Any copies provided the Fujitsu Services Advisor shall only include the results of the auditor's analysis and shall be deemed Confidential Information of AMD. Any discrepancy discovered shall be promptly rectified as part of the next quarter's budget reconciliation process, whether such discrepancy resulted in an overpayment or underpayment of Fees. All such audits shall be at AMD's expense. Spansion agrees to retain all pertinent records to justify its allocation of Fees and costs to AMD for a period of two (2) years after provision of the applicable Service. In addition, in the event Spansion conducts an audit (either by itself or through an independent auditor) of a third party providing any Services (or any part thereof), Spansion shall make all such audit results available to AMD promptly upon Spansion's receipt thereof (and shall pass on to AMD any adjustment pursuant to the budget reconciliation process).

9. TAXES

9.1 **General.** Except as specifically set forth in this Section 9, the Fees paid to Spansion are exclusive of any applicable sales, use, gross receipts, excise, value-added, personal property, services or other Taxes (other than withholding taxes) ("**Transaction Taxes**") attributable to periods on or after the Effective Date. In the event that AMD is prohibited by law from making any payment of Fees unless withholding taxes are deducted or withheld therefrom, then AMD shall deduct such amounts as are necessary and pay the net amount to Spansion after such deduction or withholding. AMD shall promptly furnish Spansion with a copy of an official tax receipt or other appropriate evidence of any withholding taxes imposed on payments made under this Agreement. As part of this Agreement, AMD shall issue Spansion such valid tax exemption certificate(s) for the various state and local taxing authorities as AMD may legally issue and Spansion may legally and reasonably request to cover Transaction Taxes legally imposed upon the transactions arising out of this Agreement. In the event that a Transaction Tax is assessed against Spansion on the provision of the Services by Spansion to AMD or on the Fees, however levied or assessed, AMD shall reimburse Spansion for or provide acceptable proof that AMD has paid said amounts directly to the appropriate taxing authority. AMD shall accrue and pay the appropriate amount of Taxes due to any state or local taxing authority for Transaction Taxes. AMD will be responsible for the proper reporting of Transaction Taxes to the taxing authorities, and any charges associated with such filings, including but not limited to, interest or penalties due to the taxing authorities. Spansion and AMD agree to mutually cooperate in a reasonable manner for the purpose of minimizing all Transaction Taxes that are to be paid directly or indirectly by AMD. Spansion grants AMD the right to pursue a separate action against any governmental unit which asserts Transaction Taxes and Spansion agrees to cooperate in a reasonable manner with AMD if such action is taken.

9.2 Confidentiality; Disclosure to Taxing Authorities. Notwithstanding anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the Parties hereto are parties or by which they are bound, each Party shall be permitted to disclose the tax treatment and tax structure of the transactions contemplated hereby (and any related transactions or arrangements). 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 contemplated hereby (and any related transactions or arrangements). This provision is intended to comply with Section 1.6011-4(b)(3)(ii)(B) of the Treasury Regulations and shall be interpreted consistently therewith. Each Party acknowledges that this written authorization 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 Code Section 7525(a).

9.3 Other Taxes. AMD and Spansion shall each bear sole responsibility for franchise and privilege taxes on its business, taxes based on its net income, and employment taxes with respect to its employees.

9.4 New Equipment. AMD shall bear sole responsibility for all sales, use, gross receipts, excise, value-added or personal property taxes attributable to new equipment and any third party maintenance thereon procured by Spansion on behalf of AMD, with the consent of AMD pursuant to the Change Control Procedures in connection with Spansion's performance of Services under this Agreement (provided AMD obtains unencumbered title to such equipment).

9.5 Cooperation. AMD and Spansion shall cooperate to segregate the Fees into the following separate payment categories: (a) those for taxable Services; and (b) those for nontaxable Services.

9.6 Invoices. For any Taxes that Spansion is entitled to collect from AMD hereunder for remittance to the applicable Governmental Authority, Spansion shall separately state the amount of such Taxes on its invoice. If Spansion fails to timely comply with the foregoing obligation, Spansion shall be responsible for any resulting noncompliance with Law.

10. PROPRIETARY RIGHTS.

10.1 In General. In connection with this Agreement, all intellectual property developed by Spansion in performing the Services, other than intellectual property based on underlying AMD owned intellectual property, will be owned by Spansion.

10.2 Other Software. The license of Other Software will be agreed upon by the Parties pursuant to the Change Control Procedures, as a Special Project, or as part of the Annual Budget Process. At such time, the Parties will agree whether the Other Software will be licensed by Spansion and sublicensed to AMD, or whether AMD will obtain the license to the Other Software directly with sufficient rights for Spansion to use the Other Software on AMD's behalf. If licensed by Spansion, AMD will bear any associated license and maintenance fees as either a Pass-Through Expense or as part of the Spansion internal Fees, except to the extent already included as an Spansion internal Fee or Pass-Through Expense, in which case Spansion shall

itself bear such expense and not charge AMD therefor. In the event AMD must pay license fees for Other Software directly, and such fees are included in the Spansion internal Fees or Pass-Through Expenses, Spansion shall reimburse AMD for such amount, due within ninety (90) days of AMD's notification to Spansion thereof. The foregoing shall not apply to Software licensed to AMD under a Statement of Work attached hereto as of the Amendment Date.

11. CONFIDENTIALITY

11.1 **Obligations.** The Parties acknowledge and agree that all proprietary or nonpublic information disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") in connection with this Agreement, directly or indirectly, which information is (a) marked as "proprietary" or "confidential" or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and reduced in writing or other tangible (including electronic) form that includes a prominent confidentiality notice and delivered to the Receiving Party within thirty (30) days of disclosure, or (b) provided under circumstances reasonably indicating that it constitutes confidential and proprietary information, constitutes the confidential and proprietary information of the Disclosing Party ("**Confidential Information**"). The Receiving Party may disclose Confidential Information only to those employees who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions (including provisions relating to nonuse and nondisclosure) no less restrictive than those required by the Receiving Party for its own confidential information. The Receiving Party shall, and shall cause its employees to, retain in confidence and not disclose to any third party (including any of its sub-contractors) any Confidential Information without the Disclosing Party's express prior written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same procedures and degree of care which it uses to protect its own confidential information of like importance, and in no event less than reasonable care. The Receiving Party shall be fully responsible for compliance by its employees with the foregoing, and any act or omission of an employee of the Receiving Party shall constitute an act or omission of the Receiving Party. The confidentiality obligations set forth in this Section 11.1 shall apply and continue, with regard to all Confidential Information disclosed hereunder, during the Term and for a period of ten (10) years from the date of termination of this Agreement.

11.2 **Exceptions.** Notwithstanding the foregoing, Confidential Information will not include information that: (a) was already known by the Receiving Party, other than under an obligation of confidentiality to the Disclosing Party or any third party, at the time of disclosure hereunder, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time; (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder; (c) became generally available to the public or otherwise part of the public domain after its disclosure other than through any act or omission of the Receiving Party in breach of this Agreement; (d) was subsequently lawfully disclosed to the Receiving Party by an Entity or person other than the Disclosing Party not subject to any duty of confidentiality with respect thereto; or (e) was developed by the Receiving Party without reference to any Confidential Information disclosed by the Disclosing Party, as evidenced by the Receiving Party's tangible (including written or electronic) records in existence at such time.

11.3 Confidentiality of Agreement; Publicity. Each Party agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and that no reference shall be made thereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld) except (a) as required by Law, *provided* that in the case of any filing with a Governmental Authority that would result in public disclosure of the terms hereof, the Parties shall mutually cooperate to limit the scope of public disclosure to the greatest extent possible, (b) to its accountants, banks, financing sources, lawyers and other professional advisors, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, (c) in connection with the enforcement of this Agreement, or (d) pursuant to agreed joint press releases prepared in good faith. The Parties will consult with each other, in advance, with regard to the terms of all proposed press releases, public announcements and other public statements with respect to the transactions contemplated hereby.

12. REPRESENTATIONS AND WARRANTIES.

12.1 Services. Spansion represents and warrants that it will perform the Services in a workmanlike and reasonable manner.

12.2 DISCLAIMER. EXCEPT AS SPECIFIED IN THIS SECTION 12, NEITHER AMD NOR SPANSION MAKES ANY OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND EACH EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE.

13. DISPUTE RESOLUTION.

13.1 The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement shall be resolved first in accordance with any dispute escalation procedures set forth in Section 5.2 above, and, to the extent not resolved after such procedures, in accordance with the dispute resolution procedure set forth in Schedule A attached hereto.

14. TERMINATION

14.1 Individual Services. AMD shall have the right to terminate all or a part of any individual Service at any time and for any reason upon at least six (6) months' advance notice.

14.2 Individual Service Termination for Cause. If Spansion has failed to comply with the applicable Service Levels for a particular Service and has failed to rectify its performance failure pursuant to the procedures set forth in Section 5 above, then subject AMD's compliance with Section 5.2, AMD may terminate Spansion's provision of all or part of such Service after sixty (60) days have elapsed since initial notification of the failure and either perform such Service itself or obtain the services of a third party. The Fees will be adjusted accordingly.

14.3 Termination for Cause.

(a) If Spansion defaults in the performance of any of its material obligations under this Agreement, and does not cure such default within ninety (90) days after receipt of a notice of default from AMD, then AMD may, without limiting AMD's other rights or remedies under this Agreement, by giving notice to Spansion, terminate this Agreement, in whole or in affected part, as of the termination date specified in the notice.

(b) If AMD fails to make payments due to Spansion under this Agreement and does not cure such default within ninety (90) days after receipt of a notice of default from Spansion, then Spansion may, by giving notice to AMD, terminate this Agreement in its entirety as of the termination date specified in the notice of default.

14.4 Termination Assistance Services. Spansion shall, upon AMD's request during the Termination Assistance Period, provide the Termination Assistance Services for the Fees attributable to the Services received by AMD pursuant to a termination plan to be agreed upon by the Parties. After the expiration of the Termination Assistance Period, (a) Spansion shall provide consulting services to AMD regarding the Services on an "as requested" basis at rates to be agreed upon by the Parties and (b) each Party shall deliver to the other Party any remaining reports, documentation and materials still in its possession and owned by the other Party, other than reports, documentation and materials licensed to the Party possessing the same after the expiration or termination of this Agreement in accordance with the terms of this Agreement.

14.5 Survival. Sections 8, 9, 10, 11, 12.2, 13, 14, 15 and 16 shall survive any termination or expiration of this Agreement.

15. DAMAGES

15.1 Consequential Damages. Except for breaches of confidentiality obligations, in no event will either AMD or Spansion be liable for, nor shall the measure of damages include, any damages for lost profits, lost income or lost revenue, or for any indirect, incidental, special, or consequential damages, arising out of or relating to its performance or failure to perform under this Agreement, whether based on an action or claim in contract, equity, negligence or otherwise, and even if advised of the possibility of such damages.

15.2 Direct Damages. Each of the Parties shall be liable to the other for any direct damages arising out of or relating to its performance or failure to perform under this Agreement; provided, however, that the liability of AMD and Spansion, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions shall not exceed, in the aggregate, an amount equal to the amounts paid under this Agreement during the twelve (12) months preceding the claim.

15.3 Basis of the Bargain. Each Party acknowledges that the foregoing limitations are an essential element of the Agreement between the Parties and that in the absence of such

limitations the pricing and other terms set forth in this Agreement would be substantially different.

16. **MISCELLANEOUS PROVISIONS.**

16.1 **Relationship of the Parties.** In the exercise of their respective rights, and the performance of their respective obligations hereunder, the Parties are, and will remain independent contractors. Nothing in this Agreement will be construed to constitute the Parties as partners, or principal and agent for any purpose whatsoever. Neither Party will bind, or attempt to bind, the other Party hereto to any contract or other obligation, and neither Party will represent to any third party that it is authorized to act on behalf of the other Party to this Agreement.

16.2 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction and without regard to the United Nations Convention on Contracts for the International Sale of Goods).

16.3 **Language.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16.4 **Successors and Assigns.** Except as expressly provided herein, the rights and obligations hereunder may not be assigned or delegated by any Party without the prior written consent of the other Party. Any purported assignment, sale, transfer, delegation or other disposition of such rights or obligations by a Party, except as permitted herein, shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 **Entire Agreement; Amendment.** This Agreement (including the Exhibits hereto) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof, and supercede any prior communications, representations, understandings and agreements, either oral or written, between the Parties with respect to such subject matter. Except as expressly provided otherwise herein, this Agreement may not be altered except by a written instrument signed by authorized legal representatives of both Parties. Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect or delay by a Party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such Party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such Party's right to take subsequent action. No single or partial exercise of any right, power or privilege granted under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

16.6 Notices and Other Communications. All notices required or permitted under this Agreement shall reference this Agreement and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three (3) business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All such notices, requests, demands and other communications shall be addressed as follows:

If to Spansion:

Spansion Inc.
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
Attention: General Counsel
Telephone: (408) 962-2500
Facsimile: (408) 774-7443

If to AMD:

Advanced Micro Devices, Inc.
One AMD Place
Sunnyvale, California 94086
Attention: General Counsel
Telephone: (408) 749-2022
Facsimile: (408) 774-7399

or to such other address or facsimile number as a Party may have specified to the other Parties in writing delivered in accordance with this Section 16.6.

16.7 Expenses. Except as otherwise expressly set forth in this Agreement, each Party will bear its own costs and expenses, including fees and expenses of legal counsel and other representatives used or hired in connection with the transactions described in this Agreement.

16.8 Severability. If any provision in this Agreement will be found or be held to be invalid or unenforceable, then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly effects the Parties' intent in entering into this Agreement.

16.9 No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors and permitted

assigns, and the Parties do not intend to confer third party beneficiary rights upon any other Entity or person. Notwithstanding the foregoing, Fujitsu shall be deemed a third party beneficiary to the rights of the Fujitsu Services Advisor herein and to Fujitsu's rights under Sections 3.5, 3.6 and 3.7(b), and Fujitsu shall have the right to directly enforce such rights against the Parties for so long as those rights exist.

16.10 **Construction.** This Agreement shall be deemed to have been drafted by all Parties and, in the event of a dispute, no Party hereto shall be entitled to claim that any provision should be construed against any other Party by reason of the fact that it was drafted by one particular Party.

16.11 **Execution.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

16.12 **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to any Party at law, in equity or otherwise.

[Signature page follows]

IN WITNESS WHEREOF, each of AMD and Spansion has caused this Agreement to be signed and delivered by its duly authorized representative.

Spansion Inc.

By: /s/ Bertrand F. Cambou

Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

Advanced Micro Devices, Inc.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

EXHIBIT 1

DEFINITIONS

“**Affiliate**” of a person or Entity means any other person or Entity which, directly or indirectly, controls, is controlled by, or is under common control with, such person or Entity. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any person or Entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or Entity, whether through the ownership of voting securities, by contract or otherwise. A person or Entity shall be deemed an Affiliate of another person or Entity only so long as such control relationship exists. Notwithstanding the foregoing, neither Spansion nor any of its directly or indirectly majority owned subsidiaries (whether organized as corporations, limited liability companies or other legal entity) shall be deemed to be an Affiliate of AMD, except to the extent expressly provided in this Agreement.

“**Aggregate Ownership Interest**” has the meaning set forth in Spansion’s Certificate of Incorporation.

“**AMD Agents**” means the agents, employees, contractors, and representatives of AMD, other than Spansion and Spansion Agents.

“**AMD Service Location(s)**” means any service location owned, leased, or operated by AMD, or used by AMD with the consent of a third party other than Spansion, from which Spansion provides Services (but excluding Spansion Service Location(s)).

“**Change(s)**” means any change to the Services that would materially alter the service content, scope, or performance standards of the Services, or materially alter the cost to AMD of the Services. Examples of changes would include replacing a significant vendor, but not day to day operational issues normally handled by staff in the routine performance of their duties.

“**Effective Date**” means June 30, 2003.

“**Entity**” means a corporation, partnership, limited liability company, or other enterprise, association, organization, or entity.

“**Fees**” has the meaning set forth in Section 8.1.

“**Fujitsu**” means Fujitsu Limited, a company organized under the laws of Japan.

“**Governmental Approvals**” means all licenses, consents, permits, approvals and authorizations of any Governmental Authority, or any notice to any Governmental Authority, the granting of which is required by Law, for the consummation of the transactions contemplated by this Agreement.

“**Governmental Authority**” means any Federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international.

“Law” means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction of or by any Governmental Authority.

“Licensed Parent Software” has the meaning given to it in the Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement among the Parties, AMD Investments, Inc. and Fujitsu of even date herewith.

“Other Software” means all Software, other than AMD Licensed Parent Software, which is used by Spansion in the provision of the Services, or Software used by AMD in the receipt of the Services.

“Pass-Through Expenses” has the meaning set forth in Section 8.1.

“Reimbursable Expenses” means reasonable out-of-pocket travel and travel-related expenses reasonably agreed to by AMD and to the extent such expenses are reimbursable under AMD’s reimbursement policy.

“Related Documentation” means, with respect to Software, all materials, documentation, specifications, technical manuals, user manuals, flow diagrams, file descriptions and other written information that describe the function and use of such Software, as applicable.

“Service Location(s)” means any AMD Service Location or Spansion Service Location, or both, as applicable.

“Services” has the meaning set forth in Section 4.1.

“Software” means the executable code and, if applicable and supplied by Spansion, source code, versions of any applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

“Spansion Agents” means the agents, subcontractors, and representatives of Spansion, including Spansion Affiliates.

“Spansion Personnel” means the personnel of Spansion and Spansion Agents who provide the Services.

“Spansion Service Location(s)” means any service location owned, leased, or operated by Spansion, or used by Spansion with the consent of a third party other than AMD, from which Spansion provides Services.

“Special Project” means any service that is outside the scope of the Services.

“Special Project Fees” means the fees for a Special Project agreed upon by the Parties.

“Tax” or **“Taxes”** means all taxes, levies, imposts and fees imposed by any Governmental Authority (domestic or foreign) of any nature including but not limited to federal, state, local or foreign net income tax, alternative or add-on minimum tax, profits or excess profits tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding or employer payroll tax, FICA or FUTA), real or personal property tax or ad valorem tax, sales or use tax, excise tax, stamp tax or duty, any withholding or back up withholding tax, value added tax, severance tax, prohibited transaction tax, premiums tax, occupation tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax.

“Term” means the Initial Term and the Extension Periods (if any).

“Termination Assistance Period” means a period of time designated by AMD, commencing on the earlier of (i) the date six (6) months prior to the expiration of the Term or such earlier date as AMD may request and (ii) the date of notice by either Party that there will be a termination of this Agreement and, in the case of each of clause (i) and (ii), continuing for up to twelve (12) months after the effective date of expiration or termination of this Agreement; in the case of each of clause (i) and (ii), during which Spansion shall provide the Termination Assistance Services in accordance with Section 14.

“Termination Assistance Services” means (a) the Services being performed (and required under this Agreement to be performed) by Spansion as of the date of expiration or termination of this Agreement, to the extent AMD requests such Services during the applicable Termination Assistance Period; (b) Spansion’s cooperation with AMD, or another service provider designated by AMD in the transfer of the Services (or portion thereof, as applicable) to AMD or such other service provider in order to facilitate the smooth and orderly transition of the Services (or portion thereof, as applicable) to AMD or such other service provider; (c) Spansion developing, with the cooperation of AMD, and subject to the approval of AMD, a plan for the smooth and orderly transition of the performance of the Services (or portion thereof, as applicable) from Spansion to AMD or to a third party designated by AMD; (d) Spansion providing reasonable training for personnel of AMD or AMD’s designee in the performance of the Services then being transitioned to AMD; and (e) Spansion performing the other services, functions, and responsibilities described in Section 14.

AMENDED AND RESTATED NON-COMPETITION AGREEMENT

*** Confidential treatment has been requested as to certain portions of this agreement. Such omitted confidential information has been designated by asterisks and has been filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended, and the Commission's rules and regulations promulgated under the Freedom of Information Act, pursuant to a request for confidential treatment.***

**AMENDED AND RESTATED
NON-COMPETITION AGREEMENT**

THIS AMENDED AND RESTATED NON-COMPETITION AGREEMENT (this “**Agreement**”) is made and entered into as of December 21, 2005, by and among Advanced Micro Devices, Inc., a Delaware corporation (“**AMD**”), AMD Investments, Inc., a Delaware corporation (“**AMD Investments**,” and together with AMD, the “**AMD Entities**”), Fujitsu Limited, a corporation organized under the laws of Japan (“**Fujitsu**,” and collectively with the AMD Entities, the “**Entities**”), and Spansion Inc., a Delaware corporation (“**Spansion**” and collectively with the Entities, the “**Parties**”).

RECITALS:

- A. In connection with the creation of Spansion LLC, the Parties executed a Non-Competition Agreement dated as of June 30, 2003 (the “**Effective Date**”).
- B. The Parties hereby desire to amend and restate that Non-Competition Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants of the Parties set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby amend and restate that Non-Competition Agreement and agree as follows:

1. Certain Definitions: Interpretation.

(a) In addition to the terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings when used herein:

“**Affiliate**” of a Person, means any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The Parties acknowledge and agree that neither Fujitsu nor AMD is presently controlled by any other Person, and that Spansion and its subsidiaries shall not be deemed to be (a) Affiliates of the AMD Entities or (b) Affiliates of Fujitsu.

“**Aggregate Ownership Interest**” has the meaning set forth in Spansion’s Certificate of Incorporation.

“**Competing Business**” means any business engaged in the development, production, manufacture, marketing, distribution, promotion or sale of Stand-Alone NVM Products in any country in the world in which Spansion conducts its business; *provided,*

however, that (i) the Entities' respective ownership interests in Spansion and the conduct of Spansion's business, (ii) Fujitsu's and its Affiliates' development, production, manufacture, marketing, distribution, promotion and/or sales of Ferro-electric non-volatile memory technology and products and (iii) the performance by AMD and its Affiliates and/or Fujitsu and its Affiliates of their respective obligations under agreements between AMD and/or its Affiliates and Spansion and/or its subsidiaries or between Fujitsu and/or its Affiliates and Spansion and/or its subsidiaries (provided that any such agreement is not entered into for purposes of circumventing the intent of this Agreement), shall each be deemed not to constitute a Competing Business.

"NVM" means a non-volatile memory device wherein information stored in a memory cell is maintained without power consumption and the write time (including erase time if there is an erase operation prior to a write operation) exceeds the read time allowing the device to function primarily as a reading device.

"Person" means any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, other legal entity or governmental authority.

"Stand-Alone NVM Product" means a semiconductor product (including a single chip or a multiple chip or system product) containing NVM dedicated to data storage wherein all circuitry (including logic circuitry) contained therein is solely to accept, store, retrieve or access information or instructions and cannot manipulate such information or execute instructions.

(b) The following rules of interpretation shall apply to this Agreement:

(i) The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "including" is not limited and means "including without limitation."

(ii) Unless otherwise noted, all references to Sections, Schedules and Exhibits herein are to Sections, Schedules and Exhibits of this Agreement. The titles, captions and headings of this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(iii) Unless otherwise expressly provided herein, (a) references to a Person include its successors and permitted assigns, (b) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto or supplements thereof and (c) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such statute or regulation.

2. Competition by AMD Entities and their Affiliates with Spansion. Subject to Section 4(d), during the AMD Non-Competition Term, the AMD Entities hereby covenant and agree not to (and AMD agrees to cause its Affiliates not to), directly or indirectly, engage in a Competing Business. Notwithstanding the foregoing, in the event that (a) a customer of AMD or

its Affiliates requests the development, production, manufacture and sale or other distribution to it of a specific Stand-Alone NVM Product and (b) Spansion does not agree to engage in such activities, then AMD and its Affiliates may seek Spansion's consent to engage in such activities without being in breach of the obligations set forth in this Section 2, which consent shall not be unreasonably withheld or delayed, taking into account the customer's requested response time.

3. Competition by Fujitsu and its Affiliates with Spansion. Subject to Section 5(d), during the Fujitsu Non-Competition Term, Fujitsu hereby covenants and agrees not to (and Fujitsu agrees to cause its Affiliates not to), directly or indirectly, engage in a Competing Business. Notwithstanding the foregoing, in the event that (a) a customer of Fujitsu or its Affiliates requests the development, production, manufacture and sale or other distribution to it of a specific Stand-Alone NVM Product and (b) Spansion does not agree to engage in such activities, then Fujitsu and its Affiliates may seek Spansion's consent to engage in such activities without being in breach of the obligations set forth in this Section 3, which consent shall not be unreasonably withheld or delayed, taking into account the customer's requested response time.

4. Divestiture of Competing Business by AMD Entities. During the AMD Non-Competition Term, the AMD Entities hereby covenant and agree that:

(a) If an AMD Entity or its Affiliates (an "**AMD Acquiring Party**") acquires a majority equity or other majority ownership interest of a Person whose principal line of business is not a Competing Business, but which has a division or other operations constituting a Competing Business (any such division or operations, an "**AMD Acquired Interest**"), AMD shall (or, if applicable, shall cause AMD Investments or its other applicable Affiliates to) (i) promptly provide Spansion and Fujitsu with written notice of such acquisition (the "**AMD Acquisition Notice**") and (ii) provide Spansion with a right of first offer to acquire the AMD Acquired Interest, such right to last for a period of sixty (60) days following Spansion's receipt of the AMD Acquisition Notice (the "**AMD Offer Period**"). During the AMD Offer Period, AMD shall (or, if applicable, shall cause AMD Investments or its other applicable Affiliates to) (A) provide Spansion with an opportunity to conduct reasonable due diligence on the AMD Acquired Interest and (B) enter into exclusive discussions with Spansion concerning a sale of the AMD Acquired Interest to Spansion. Spansion shall have the right, but not the obligation, to make an offer to purchase all, but not less than all, of the AMD Acquired Interest by providing written notice to AMD ("**Spansion/AMD Offer**") at any time prior to the end of the AMD Offer Period, such written notice to include in reasonable detail the terms on which Spansion proposes to purchase the AMD Acquired Interest.

(b) Any determination as to whether to make a Spansion/AMD Offer, and the terms of such Spansion/AMD Offer, shall be made by the Board of Directors of Spansion. If a Spansion/AMD Offer is made prior to the conclusion of the AMD Offer Period, the AMD Acquiring Party shall have thirty (30) days from its receipt of Spansion/AMD Offer in which to accept or reject Spansion/AMD Offer by providing Spansion with written notice of its decision within such 30-day period, such decision to be made by the AMD Acquiring Party in its sole discretion. If the AMD Acquiring Party fails to provide Spansion with written notice of its decision within such 30-day period, the AMD Acquiring Party shall be deemed to have rejected Spansion/AMD Offer.

(c) If Spansion does not make a Spansion/AMD Offer prior to the conclusion of the AMD Offer Period, or if the AMD Acquiring Party rejects a Spansion/AMD Offer, the AMD Acquiring Party shall (and, if applicable, AMD shall cause the AMD Acquiring Party to) take all commercially reasonable steps to sell or otherwise divest the AMD Acquired Interest as soon as reasonably practicable to an unaffiliated Person following the conclusion of the AMD Offer Period or the 30-day period referenced in Section 4(b), whichever is later; *provided, however*, if the AMD Acquired Party rejected a Spansion/AMD Offer pursuant to Section 4(b), the terms of sale to the unaffiliated Person shall be no more favorable than the terms set forth in Spansion/AMD Offer. **** AMD Acquiring Party **** the AMD Acquired Interest **** the AMD Acquired Interest, **** the AMD Acquiring Party **** the AMD Acquired Interest ****.

(d) The Parties agree that an AMD Acquiring Party's acquisition of a majority interest in a Person whose principal line of business is not a Competing Business but which has a division or operations that constitute a Competing Business shall not be deemed to be a breach of the obligations set forth in Section 2 for so long as AMD and/or its applicable Affiliates are complying in all material respects with its obligations under this Section 4.

5. Divestiture of Competing Business by Fujitsu. During the Fujitsu Non-Competition Term, Fujitsu hereby covenants and agrees that:

(a) If Fujitsu or its Affiliates (a "**Fujitsu Acquiring Party**") acquires a majority equity or other majority ownership interest of a Person whose principal line of business is not a Competing Business, but which has a division or other operations constituting a Competing Business (any such division or operations, an "**Fujitsu Acquired Interest**"), Fujitsu shall (or, if applicable, shall cause its applicable Affiliates to) (i) promptly provide Spansion and the AMD Entities with written notice of such acquisition (the "**Fujitsu Acquisition Notice**") and (ii) provide Spansion with a right of first offer to acquire the Fujitsu Acquired Interest, such right to last for a period of sixty (60) days following Spansion's receipt of the Fujitsu Acquisition Notice (the "**Fujitsu Offer Period**"). During the Fujitsu Offer Period, Fujitsu shall (or, if applicable, shall cause its applicable Affiliates to) (A) provide Spansion with an opportunity to conduct reasonable due diligence on the Fujitsu Acquired Interest and (B) enter into exclusive discussions with Spansion concerning a sale of the Fujitsu Acquired Interest to Spansion. Spansion shall have the right, but not the obligation, to make an offer to purchase all, but not less than all, of the Fujitsu Acquired Interest by providing written notice to Fujitsu ("**Spansion/Fujitsu Offer**") at any time prior to the end of the Fujitsu Offer Period, such written notice to include in reasonable detail the terms on which Spansion proposes to purchase the Fujitsu Acquired Interest.

(b) Any determination as to whether to make a Spansion/Fujitsu Offer, and the terms of such Spansion/Fujitsu Offer, shall be made by the Board of Directors of Spansion. If a Spansion/Fujitsu Offer is made prior to the conclusion of the Fujitsu Offer Period, the Fujitsu Acquiring Party shall have thirty (30) days from its receipt of Spansion/Fujitsu Offer in which to accept or reject Spansion/Fujitsu Offer by providing Spansion with written notice of its decision within such 30-day period, such decision to be made by the Fujitsu Acquiring Party in its sole discretion. If the Fujitsu Acquiring Party fails to provide Spansion with written notice of its decision within such 30-day period, the Fujitsu Acquiring Party shall be deemed to have rejected Spansion/Fujitsu Offer.

**** Confidential treatment has been requested pursuant to the Confidential Treatment Request dated December 21, 2005.

(c) If Spansion does not make a Spansion/Fujitsu Offer prior to the conclusion of the Fujitsu Offer Period, or if the Fujitsu Acquiring Party rejects a Spansion/Fujitsu Offer, the Fujitsu Acquiring Party shall (and, if applicable, Fujitsu shall cause the Fujitsu Acquiring Party to) take all commercially reasonable steps to sell or otherwise divest the Fujitsu Acquired Interest as soon as reasonably practicable to an unaffiliated Person following the conclusion of the Fujitsu Offer Period or the 30-day period referenced in Section 5(b), whichever is later; *provided, however*, if the Fujitsu Acquired Party rejected a Spansion/Fujitsu Offer pursuant to Section 5(b), the terms of sale to the unaffiliated Person shall be no more favorable than the terms set forth in Spansion/Fujitsu Offer. **** Fujitsu Acquiring Party **** Fujitsu Acquired Interest **** the Fujitsu Acquired Interest, **** the Fujitsu Acquiring Party **** the Fujitsu Acquired Interest ****.

(d) The Parties agree that a Fujitsu Acquiring Party's acquisition of a majority interest in a Person whose principal line of business is not a Competing Business but which has a division or operations that constitute a Competing Business shall not be deemed to be a breach of the obligations set forth in Section 3 for so long as Fujitsu and/or its applicable Affiliates are complying in all material respects with its obligations under this Section 5.

6. No Solicitation of Employees.

(a) Without the prior written consent of Spansion, each of the AMD Entities during the AMD Non-Solicitation Term, and Fujitsu during the Fujitsu Non-Solicitation Term, shall not (and each shall cause its Affiliates not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as a director, officer, employee, partner, consultant, independent contractor or otherwise, any individual employed by or seconded to Spansion or any of its subsidiaries (*provided* that such restriction shall not apply to any secondees as to whom Spansion agrees are being seconded on a temporary basis or for a specific project) or (ii) solicit or encourage any individual to terminate his or her employment with Spansion or any of its subsidiaries, unless, in either such case, (A) Spansion (and/or its applicable subsidiary) has terminated the employment or secondment of such individual or (B) either (x) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment or secondment with Spansion (and/or its applicable subsidiary), or (y) the AMD Non-Solicitation Term or the Fujitsu Non-Solicitation Term, as applicable, has expired.

(b) Without the prior written consent of AMD or Fujitsu, as applicable, Spansion shall not (and shall cause its subsidiaries not to), directly or indirectly, either for itself or another Person, (i) hire or retain, or offer to hire or retain, as director, officer, employee, partner, consultant, independent contractor or otherwise, any individual employed by an AMD Entity or any of its Affiliates or Fujitsu or any of its Affiliates (other than employees that are dual employees or that are seconded to Spansion or its subsidiaries by an AMD Entity or its Affiliates or Fujitsu or its Affiliates) or (ii) solicit or encourage any individual to terminate his or her employment with an AMD Entity or any of its Affiliates or Fujitsu or any of its Affiliates (other than employees that are dual employees or that are seconded to Spansion or its subsidiaries by an AMD Entity or its Affiliates or Fujitsu or its Affiliates), unless, in either such case, (A) the AMD Entity (and/or its applicable Affiliate) or Fujitsu (and/or its applicable Affiliate), as applicable, has terminated the employment of such individual or (B) at least two (2) years has elapsed since such individual has voluntarily terminated his or her employment with the AMD Entity (and/or its applicable Affiliates) or Fujitsu (and/or its applicable Affiliate), as applicable.

**** Confidential treatment has been requested pursuant to the Confidential Treatment Request dated December 21, 2005.

7. Injunctive Relief. The Parties agree that (a) the provisions of Sections 2, 3, 4, 5 and 6 of this Agreement are reasonable and necessary to protect the legitimate interests of the other Parties and (b) any violation of Sections 2, 3, 4, 5 or 6 of this Agreement will result in irreparable injury to the non-breaching Party(ies), the exact amount of which will be difficult to ascertain, and that remedies at law for any such violation would not be reasonable or adequate compensation to the non-breaching Party(ies) for such violation. Accordingly, each Party agrees that if such Party violates the provisions applicable to such Party in Sections 2, 3, 4, 5 or 6 the non-breaching Party(ies) shall be entitled to specific performance and injunctive relieve, without posting bond or other security, and without the necessity of proving actual damages, in addition to any other remedy which may be available at law or in equity, including consequential damages.

8. AMD Term.

(a) AMD Non-Competition Term. Sections 2 and 4 of this Agreement shall terminate with respect to the AMD Entities (the period from the Effective Date until such termination, the “**AMD Non-Competition Term**”):

(i) immediately upon the dissolution of Spansion; or

(ii) two (2) years after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Aggregate Ownership Interest.

(b) AMD Non-Solicitation Term. Section 6 of this Agreement shall terminate with respect to the AMD Entities (the period from the Effective Date until such termination, the “**AMD Non-Solicitation Term**”):

(i) immediately upon the dissolution of Spansion; or

(ii) two (2) years after the date on which the AMD Entities and all of their Affiliates, collectively, cease to hold more than a five percent (5%) Aggregate Ownership Interest.

9. Fujitsu Term.

(a) Fujitsu Non-Competition Term. Sections 3 and 5 of this Agreement shall terminate with respect to Fujitsu (the period from the Effective Date until such termination, the “**Fujitsu Non-Competition Term**”):

(i) immediately upon the dissolution of Spansion; or

(ii) two (2) years after the date on which Fujitsu and all of its Affiliates, collectively, cease to hold more than a five percent (5%) Aggregate Ownership Interest.

(b) Fujitsu Non-Solicitation Term. Section 6 of this Agreement shall terminate with respect to Fujitsu (the period from the Effective Date until such termination, the “**Fujitsu Non-Solicitation Term**”):

(i) immediately upon the dissolution of Spansion; or

(ii) two (2) years after the date on which Fujitsu and all of its Affiliates, collectively, cease to hold more than a five percent (5%) Aggregate Ownership Interest.

10. Termination as to Spansion. The obligations of Spansion under Section 6(b) shall terminate as to any individual in the employ of any AMD Entity or Affiliate thereof upon the termination of the AMD Non-Solicitation Term pursuant to Section 8(b), and the obligations of Spansion under Section 6(b) shall terminate as to any individual in the employ of Fujitsu or any Fujitsu Affiliate upon the termination of the Fujitsu Non-Solicitation Term pursuant to Section 9(b).

11. Notices. Unless otherwise provided herein, all notices, requests, instructions or consents required or permitted under this Agreement shall be in writing and will be deemed given: (a) when delivered personally; (b) when sent by confirmed facsimile; (c) ten business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) three business days after deposit with an internationally recognized commercial overnight carrier specifying next-day delivery, with written verification of receipt. All communications will be sent as follows (or to such other address or facsimile number as may be designated by a Party giving written notice to the other Parties pursuant to this Section 11):

If to Spansion:

Spansion Inc.
Attention: General Counsel
915 DeGuigne Drive
P.O. Box 3453
Sunnyvale, California 94088
U.S.A.
Facsimile: (408) 774-7443

If to the AMD Entities:

Advanced Micro Devices, Inc.
Attention: General Counsel
One AMD Place
Sunnyvale, California 94086
Facsimile: (408) 774-7399

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
Attention: Tad Freese
505 Montgomery Street, Suite 1900
San Francisco, California 94111
Facsimile: (415) 395-8095

If to Fujitsu:

Fujitsu Limited
Electronic Devices Group
Fuchigami 50 Akiruno-shi
Tokyo 197-0833
Japan
Attention: Executive Vice President
Business Planning & Promotion Group
Facsimile: +81-42-532-2550

12. Amendments; No Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is duly executed, in the case of an amendment, by Spansion, each of the AMD Entities and Fujitsu, or, in the case of a waiver, by the Party against whom the waiver is to be enforced. No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial waiver or exercise thereof preclude the enforcement of any other right, power or privilege.

13. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including any entity that is the successor to substantially all of the assets or businesses of such Party. No Party may assign, delegate or transfer any of its rights or obligations hereunder, other than to a successor to substantially all of the assets or businesses of such Party, without the prior written consent of the other Parties. Any attempted assignment in violation of this Section 14 shall be null and void.

15. Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the Parties. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

16. Construction; Interpretation. No Party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against any Party.

17. Severability. If any provision in this Agreement should be found or be held to be invalid or unenforceable (including, without limitation, the geographic and temporal restrictions contained herein), then the meaning of said provision will be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement which will remain in full force and effect unless the severed provision is essential and material to the rights or benefits received by any Party. In such event, the Parties will use their respective reasonable efforts to negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the Parties' intent in entering into this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Execution and delivery of this Agreement by exchange of facsimile copies bearing the facsimile signature of a Party shall constitute a valid and binding execution and delivery of this Agreement by such Party.

19. Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior oral and written, and all contemporaneous oral, agreements and understandings pertaining thereto.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, United States of America, as applied to agreements among California residents entered into and wholly to be performed within the State of California (without reference to any choice or conflicts of laws rules or principles that would require the application of the laws of any other jurisdiction).

21. Dispute Resolution. The Parties hereby agree that claims, disputes or controversies of whatever nature, arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement (or any other agreement contemplated by or related to this Agreement), shall be resolved in accordance with the dispute resolution procedures set forth in **Schedule A** hereto.

22. Further Assurances. Each of the Parties does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary or advisable to effectively carry out the purposes of this Agreement.

23. Third-Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give any Person, other than the Parties hereto, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ADVANCED MICRO DEVICES, INC.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien
Title: Corporate Vice President and Secretary

AMD INVESTMENTS, INC.

By: /s/ Hollis M. O'Brien

Name: Hollis M. O'Brien
Title: VP & Secretary

FUJITSU LIMITED

By: /s/ Hiroaki Hurokawa

Name: Hiroaki Hurokawa
Title: President

SPANSION INC.

By: /s/ Bertrand F. Cambou

Name: Bertrand F. Cambou
Title: President and Chief Executive Officer

For the Nine Months Ended Sept. 25, 2005

	Actual	Pro Forma Adjustments ⁽¹⁾	Pro Forma Adjustments	Pro Forma
(in thousands, except per share amounts)				
Unaudited Pro Forma Condensed Consolidated Statement of Operations Data:				
Net sales	\$4,009,301	\$(1,425,362)		\$2,583,939
Expenses:				
Cost of sales	2,469,663	(1,313,802)	(7,221) ⁽²⁾	1,148,641
Research and development	814,724	(219,526)		595,197
Marketing, general and administrative	698,974	(137,818)		561,155
Operating income	25,940	245,784		225,234
Interest income and other, net	13,126	(3,772)		9,354
Interest expense	(80,513)	17,448		(63,065)
Income (loss) before minority interest and income taxes	(41,447)	259,461		225,234
Minority interest in net loss of subsidiaries	105,985		(118,719) ⁽³⁾	(12,734)
(Benefit) provision for income taxes	(5,358)	13,580		8,222
Equity share in net loss of Spansion			(97,247) ⁽⁴⁾	(97,247)
Net income (loss)	\$ 69,896			\$ 107,031
Net income (loss) per share:				
Basic	\$ 0.18			\$ 0.27
Diluted	\$ 0.17			\$ 0.26
Shares used in per share calculation:				
Basic	395,839			395,839
Diluted	409,586			409,586

⁽¹⁾ These pro forma adjustments are made to exclude the income statement line items of Spansion Inc. that were previously consolidated as a majority owned subsidiary.

⁽²⁾ This adjustment is made to include the amortization of the excess of fair value over net book value of assets acquired pursuant to the formation of Spansion Inc. on June 30, 2003.

⁽³⁾ This adjustment represents the elimination of minority interest share of the Spansion Inc.'s net loss.

⁽⁴⁾ This adjustment represents AMD's 37.9 percent equity share in the net loss of Spansion Inc.

	For the Year Ended Dec. 26, 2004			
	Actual	Pro Forma Adjustments ⁽¹⁾	Pro Forma Adjustments	Pro Forma
(in thousands, except per share amounts)				
Unaudited Pro Forma Condensed Consolidated Statement of Operations Data:				
Net sales	\$5,001,435	\$ (2,342,542)		\$2,658,893
Expenses:				
Cost of sales	3,032,586	(1,837,295)	(9,598) ⁽²⁾	1,185,692
Research and development	934,574	(273,467)		661,107
Marketing, general and administrative	807,011	(200,459)		606,552
Restructuring and other special charges (recoveries), net	5,456	—		5,456
Operating income	221,809	(31,320)		200,087
Interest income and other, net	(31,150)	(6,513)		(37,663)
Interest expense	(112,329)	21,115		(91,214)
Income (loss) before minority interest and income taxes	78,330	(16,719)		71,210
Minority interest in net loss of subsidiaries	18,664		(22,857) ⁽³⁾	(4,194)
(Benefit) provision for income taxes	5,838	8,908		14,746
Equity share in net loss of Spansion			(7,467) ⁽⁴⁾	(7,467)
Net income (loss)	\$ 91,156			\$ (44,803)
Net income (loss) per share:				
Basic	\$ 0.25			\$ 0.12
Diluted	\$ 0.25			\$ 0.12
Shares used in per share calculation:				
Basic	358,886			358,886
Diluted	371,066			371,066

⁽¹⁾ These pro forma adjustments are made to exclude the income statement line items of Spansion Inc. that were previously consolidated as a majority owned subsidiary.

⁽²⁾ This adjustment is made to include the amortization of the excess of fair value over net book value of assets acquired pursuant to the formation of Spansion Inc. on June 30, 2003.

⁽³⁾ This adjustment represents the elimination of minority interest share of the Spansion Inc.'s net loss.

⁽⁴⁾ This adjustment represents AMD's 37.9 percent equity share in the net loss of Spansion Inc.

As of Sept. 25, 2005

	Actual	Pro Forma Adjustments ⁽¹⁾	Pro Forma Adjustments ⁽²⁾	Pro Forma Adjustments ⁽³⁾	Pro Forma Adjustments	Pro Forma
(in thousands, except per share amounts)						
Unaudited Pro Forma Condensed Consolidated Balance Sheet Data:						
ASSETS						
Current assets:						
Cash and cash equivalents	\$ 806,115	\$ (119,024)	\$	\$		\$ 687,091
Short-term investments	536,052	—				536,052
Total cash and cash equivalents and short-term investments	1,342,167	(119,024)	—	—		1,223,143
Accounts receivable	673,211	10,756				683,967
Accounts receivable from related party	204,383	(204,383)		80,780		80,780
Allowance for doubtful accounts	(15,795)	470				(15,325)
Total accounts receivable, net	861,799	(193,157)	—	80,780		749,422
Inventories:						
Raw materials	49,738	(25,000)				24,738
Work-in-process	677,991	(384,723)				293,268
Finished goods	204,034	(72,511)				131,523
Total inventories	931,763	(482,233)	—	—		449,530
Deferred income taxes	54,232	(27,503)				26,729
Prepaid expenses and other current assets	263,878	(19,517)				244,361
Notes receivable from related party				340,886		340,886
Other receivable from related party	8,564	(8,564)				—
Total current assets	3,462,403	(849,998)	—	421,666		3,034,071
Property, plant and equipment:						
Land and land improvements	68,792	(36,232)				32,560
Buildings and leasehold improvements	2,471,263	(1,395,349)				1,075,914
Equipment	7,774,795	(4,369,352)	(39,860)			3,365,583
Construction in progress	1,168,906	(201,107)				967,799
Total property, plant and equipment	11,483,756	(6,002,040)	(39,860)	—		5,441,856
Accumulated depreciation and amortization	(7,162,372)	4,355,483				(2,806,889)
Property, plant and equipment, net	4,321,384	(1,646,557)	(39,860)	—		2,634,967
Other assets	376,169	(38,389)	(25,698)			312,082
Equity Investment		988,335	50,780	(336,802)		702,313
Total assets	\$ 8,159,956	\$ (1,546,609)	\$ (14,778)	\$ 84,864	\$ (118,560)	\$ 6,683,433
LIABILITIES AND STOCKHOLDERS' EQUITY						
Current liabilities:						
Notes payable to bank under revolving loans	\$ 75,656	(75,656)				\$ —
Accounts payable	901,708	(296,998)				604,710
Accounts payable to related party	39,943	(39,943)		203,424		203,424
Accrued compensation and benefits	232,446	(60,838)				171,608
Accrued liabilities	390,213	(41,649)				348,564
Accrued royalties to related party	4,118	(4,118)				—
Accrued liabilities to Spansion Pension Trust	8,564	(8,564)				—
Restructuring accruals, current portion	21,355	(161)				21,194
Income taxes payable	12,245	(1,934)				10,311
Deferred income on shipments to distributors	163,652	(27,277)				136,375
Current portion of long-term debt and capital lease obligations	184,872	(165,487)				19,385
Current portion of long-term debt payable to related party	40,000	(40,000)				—
Other current liabilities	137,583	187				137,770
Total current liabilities	2,212,355	(762,439)	—	203,424		1,653,340
Deferred income taxes	50,630	(26,032)				24,598
Long-term debt and capital lease obligations, less current portion	1,708,872	(158,470)				1,550,402
Long-term debt payable to related party	—	—				—
Other long-term liabilities	436,802	(21,876)	(14,778)			400,148
Minority interest	777,052	(577,791)				199,261
Commitments and contingencies						
Stockholders' equity:						
Capital stock:						
Common stock	4,020	—				4,020
Capital in excess of par value	2,528,219	—				2,528,219
Treasury stock, at cost	(89,715)	—				(89,715)
Retained earnings	378,067	—		(118,560)		259,507
Accumulated other comprehensive income	153,654	—				153,654
Total stockholders' equity	2,974,245	—	—	(118,560)		2,855,685

Total liabilities and stockholders' equity	\$ 8,159,956	(1,546,609)	(14,778)	84,864	\$ 6,683,433
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- (1) These adjustments are made to exclude the balance sheet line items of Spansion Inc. that were previously consolidated as a majority owned subsidiary.
- (2) These adjustments are made to exclude the impact of the remaining unamortized balances representing the excess of fair value over net book value of assets acquired and liabilities assumed pursuant to the formation of Spansion Inc. on June 30, 2003.
- (3) These adjustments are made to include the receivable and payable balances between the Company and Spansion Inc that were previously eliminated upon consolidation as well as the estimated loss on the dilution of the Company's ownership interest in Spansion from 60 percent to 37.9 percent as a result of Spansion's IPO. Because the estimated loss was calculated based on Spansion's net book value as of September 25, 2005 the actual amount of loss will be different as it will be based on Spansion's net book value as of December 20, 2005.