WORLD INTELLECTUAL PROPERTY ORGANIZATION

GUIDE

ON

THE LICENSING

OF

INTEGRATED CIRCUITS

Produced by the World Intellectual Property Organization (WIPO)
with the assistance of
the Licensing Executives Society International (LESI)

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Cover: Integrated circuit board (Photograph Bildagentur Baumann)

PREFACE

The present publication provides an introduction to licensing practices in connection with integrated circuit technology.

Integrated circuits have been one of the cornerstones of the development of microelectronics. Few electrical or electronic products are now produced which do not incorporate an intergrated circuit that performs a function related to the control or operation of the product or a part of the product. While the use of integrated circuits pervades contemporary industry, the design and fabrication of integrated circuits lies at the forefront of high technology and requires not only the investment of very substantial human and financial resources, but also the most advanced know-how.

The objective of the present publication is to introduce interested parties in legal and industrial circles to the complexities involved in the licensing of technology related to integrated circuits. The publication gives an overview of the industrial and technological context in which integrated circuits are designed and fabricated, the intellectual property rights that may exist in relation to integrated circuits and the practices that have emerged in the licensing of integrated circuit technologies. The publication also contains a glossary of the terms most commonly encountered in licences of integrated circuit technology, as well as three samples of licences, drawn from practice, between parties in the semiconductor industry.

The publication has been produced by the World Intellectual Property Organization (WIPO) in collaboration with the Licensing Executives Society International (LESI). LESI made available to WIPO the expertise of its members in preparing drafts of the text of the publication and in collating the sample agreements that are set out in the Annexes.

WIPO wishes to record its appreciation to LESI for making available the expertise of its members and to those members for the time, energy and expertise which they devoted to the preparation of this publication.

Arpad Bogsch
Director General
World Intellectual Property Organization

Geneva, September 1995

NOTE

This publication is intended as an introduction to the licensing of integrated circuit technology. While much of its teaching will be found to be common to many areas of the world, it is to be understood that a dynamic area of the law in a rapidly evolving field of technology is addressed. No attempt has been made to reflect comprehensively the laws of all countries or the laws of any particular country involved in the licensing of integrated circuit technology. Before any agreement to transfer technology is consummated, therefore, the advice of local counsel should be sought in the affected countries.

TABLE OF CONTENTS

CHAPTER 1

INTEGRATED CIRCUITS : THE INDUSTRIAL AND TECHNOLOGICAL CONTEXT

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From today's perspective, the first integrated circuit, which combined several transistors in a device the size of a cigarette pack, appears to be a clumsy, almost primitive device. Consider that it is possible to design 4 million such transistors onto a piece of silicon the size of a fingernail, forty times the number of transistors in the ENIAC, the world's first 30-ton digital electronic computer. In only thirty years, this invention has become the critical component in the central nervous system of modern information economies. By allowing electronic functions to be combined and miniaturized, these devices have made possible innovations in virtually every sphere of modern life. Wherever information can be utilized and transmitted, we find integrated circuits and the limits of the potential for integrated circuit technology have not yet been conceived.

A worldwide industry has developed to serve the growing demand for the design and production of integrated circuits. Initially, small, innovative start-up companies were most successful in developing and exploiting the technology involved in commercializing integrated circuits. As research and development ("R & D") and capital costs have become more formidable, larger, more integrated companies have captured a larger and larger share of the world market. However, the industry continues to evolve with a worldwide orientation in production and marketing. International competition is intense, and successful companies continue to be characterized by their focus on R & D, their ability to attract the capital needed for ever more expensive production facilities and their responsiveness to the worldwide needs of their customers.

Technological developments are at the heart of the semiconductor industry. Probably more than any other manufactured product, integrated circuits embody technological advances in their design and manufacturing. Miniaturization creates an entirely new dimension which requires the most advanced scientific instruments available. Inventors must manipulate the movement of electrons, one of the smallest components of matter. Each new generation of products calls for a quadrupling of the density of circuits on a semiconductor substrate. These technological advances in integrated circuit designs require parallel advances in the materials, equipment and processes involved.

To protect this technology and preserve the economic incentive for its development, a complicated network of legal rights and obligations has been developed. Every country that has successfully fostered a semiconductor industry has responded to the needs of that industry by adapting its legal protection for intellectual property rights or by creating new forms of intellectual property rights for the technologies involved. Virtually every form of intellectual property is used to protect the intellectual property involved in the design or manufacturing of integrated circuits: patents; copyrights; trademarks; layout-design, topography, mask-work or other sui generis rights; and trade secrets. To complement and reinforce protection at the national level, international treaties have been developed to establish international standards and to regulate the interaction of national regimes in an increasingly interdependent world. The technological and commercial interdependence of international economies requires constant attention to the maintenance of these international norms.

The pervasiveness of integrated circuits in both product and manufacturing applications creates the need for effective tools to permit the diffusion of technology, while preserving the incentives needed to foster its continuing development. Adequate and effective intellectual property protection provides the basis for the diffusion of technological innovations through licensing. Extensive cross-licensing arrangements are employed by manufacturers and between customers and manufacturers.

The purpose of this Guide is to provide a basic introduction to the licensing of integrated circuits. To understand the role of licensing, it is important to understand the products involved, the industry, the technology and the importance and function of the various applicable forms of intellectual property rights.

1.1 THE INTEGRATED CIRCUIT

An integrated circuit is an electronic device that combines circuit elements always linked on, or in, a continuous material. More broadly, it is an active electronic device, or a combination of active electronic devices (such as transistors or diodes) and passive electronic devices (such as resistors and capacitors), configured in and upon a single semiconductor crystal (such as silicon) in a manner which facilitates the performance of an electronic function.

1.1.1 Types of Integrated Circuits

The most advanced integrated circuits can be broadly classified into two categories: microprocessors and memories. The *microprocessor* is often referred to as a "computer on a chip" because it has logic circuits capable of electronically performing various information-processing functions. It serves as the "brains" of electronic equipment in deciding how certain information is to be manipulated in accordance with pre-set instructions. A *memory*, on the other hand, is an integrated circuit whose function is simply to record and retrieve certain data. These data could provide input for the microprocessor to act upon or could be the output from the microprocessor which is needed for future computations. In many advanced integrated circuits, the functions of the memory and microprocessor have been integrated on the same device in ever more complicated configurations.

From a design and manufacturing point of view, integrated circuits are also divided into commodity and custom devices. A *commodity integrated circuit* is typically one which performs a standard electronic function and is normally available "off-the-shelf" from a variety of manufacturers. Customers use these devices as the standard building blocks for their products, combining them to achieve a particular objective. Examples of these types of products include dynamic random access memory (DRAMs), static random access memory (SRAMs) and electronically programmable read only memories (EPROMs).

Custom integrated circuits are designed and manufactured in accordance with a particular user's specifications in order to achieve a unique electronic function. Custom semiconductors are generally referred to in the industry as ASICs or Application Specific Integrated Circuits. The design and manufacture of custom products typically involve intense interaction between customer and vendor, using sophisticated software tools to combine circuit elements. An important category of

semi-custom ASIC is the gate array which allows a customer to wire together an array of transistors to implement a particular design. Most custom integrated circuit vendors will have libraries of basic building blocks or standard cell designs which can be used by a customer where a pre-determined function is needed. As technology evolves, one generation of commodity products will become the standard cells for the next generation of custom designs. Similarly, a custom design that is sufficiently popular could become a commodity product.

1.1.2 Applications of Integrated Circuits

Because integrated circuits are small, relatively inexpensive, highly reliable and very fast at performing multiple electronic functions, they are used in most electronic systems. They are widely used in computers, communications equipment, copying equipment, automobiles, programmable and automated machinery, pocket calculators, electronic cameras, toys and watches.

A typical use of an integrated circuit could be to control the flow rate of fuel into an automobile carburetor. The integrated circuit would be programmed to maintain a particular flow rate. A sensing device would measure the actual flow rate and provide data to the circuit which would compare the actual flow rate to the desired flow rate. The device would control the opening or closing of a valve to adjust the actual flow rate to make it equal to the desired flow rate.

1.1.3 The Manufacture of Integrated Circuits

Integrated circuits require one of the most technologically advanced manufacturing processes of any product in the world. As designs become more complex, larger and larger numbers of circuits must be built into the device and new manufacturing techniques must be developed.

The manufacture of an integrated circuit begins with the design. The circuit designer must decide how to use the various electronic circuits to perform the function that is required. Typically the designer develops the circuit by making a "schematic" representation of the manner in which transistors must be connected to implement the appropriate electronic function. Originally, many large sheets of paper were used to draw the entire schematic of a complex device, which was then converted to digital information and stored on a magnetic tape. Now, powerful computers are used to design and portray the design.

The circuit schematic must then be fabricated onto a semiconductor material, typically silicon crystal that has been grown and sliced into a wafer. The original method for transferring these patterns from the tape to the wafer consisted of converting the tape to glass reticles, converting the glass reticles to glass or chromerome masks and then using the mask to imprint the pattern on the wafer. A reticle must be made for each pattern which will be printed on the wafer. The reticle is referred to as a "mask." The actual reticle may be 10 or more times the actual size of the circuit and has a single device imprinted on it.

Next a working mask is made from the reticle. One mask must be made for each pattern. The masks are glass or metal plates and multiple copies of the same integrated circuit are contained on the mask. The pattern is now the actual size which must appear on the wafer. The mask is placed in a printer which is basically a camera. The camera prints (i.e. projects light through) the mask and the pattern is then imprinted on the entire wafer. Multiple devices are imprinted at the same time. The set of all patterns successively imprinted is referred to as a "mask work."

The technology for imprinting these patterns has advanced to the point where the generation of the working mask can be eliminated. This can be done by the use of a "stepper" to imprint the pattern on the wafer. This is typically a more expensive manufacturing step but it is also more accurate. When a stepper is used, the tape is again used to make a reticle for each pattern. As before, the reticle has a pattern for a single device on it. The reticle is placed in a printer known as a stepper. The pattern is imprinted on the wafer one device at a time and then it is "stepped" to the adjacent area of the wafer where another device is imprinted on the wafer.

The newest technology eliminates the reticle with added expense and greater accuracy. The tape is entered into a direct write machine which writes the pattern directly onto the wafer similar to the way a picture is written on a television screen. The machine then steps to the adjacent area of wafer and writes the pattern for another device.

Many techniques exist to minimize errors in creating the pattern of the circuits. There are computer-aided design programs which assist in comparing the circuit schematic to the layout before it is imprinted on the wafer. Nevertheless, it is very rare that a device having upwards of 250,000 transistors on it will work the first time. Inevitably, there will be errors in the circuit design, the layout, or the interaction between the layout, the circuit design and the wafer processing. It is only after numerous iterations at a cost of millions of dollars that the device is fully functional and copies can be sold publicly to customers.

1.2 A DESCRIPTION OF THE INDUSTRY

There are three types of integrated circuit companies: captive producers, merchant producers, and the design houses.

Three important trends have become apparent in the integrated circuit industry. First, the Japanese market has gained in strength at the expense of the United States market. In 1989, global integrated circuit shipments were valued at $46.6 billion, of which 32 percent (an 18 percentage point decline since 1982) was shipped to the U.S. market, 38 percent (a 13 percentage point increase since 1982) was shipped to the Japanese market, and 17 and 12 percent were shipped to Europe and the rest of the world (primarily the Republic of Korea) markets, respectively.

Second, globalization is on the rise. Integrated circuit producers are expanding into foreign markets to serve their customers better, and to avoid trade barriers. The increased globalization also includes agreements signed between companies seeking to share the huge costs of integrated circuit fabrication.

Third, "fabless" companies (that is, companies that design, but do not fabricate, integrated circuits) are increasing in number.

1.2.1 Captive Producers

Captive consumption popularly refers to the internal consumption of non-standard devices which can be used only within the company and for which no outside market exists. Specifically, captive producers share the following characteristics: (a) sales of less than 25 percent of their production to the open market; (b) few open market device development programs; (c) the primary goal of serving in-house needs (in their computer, communications, aerospace, automotive, or other high-tech systems); and (d) the general lack of a dedicated open market sales force.

Captive producers accounted for 11 percent of total worldwide integrated circuit production in 1989. They are a United States phenomenon, as all European and Japanese integrated circuit manufacturers sell at least one-quarter of their products to the merchant market. The largest captive producer--by far--is IBM, which commands a 75 percent share of total captive integrated circuit production; however, there are as many as eight captive producers with integrated circuit production valued at over $50 million annually, with IBM ($4.3 billion) and Commodore ($70 million) setting the outer parameters.

Depending on their size, some captive producers will attempt to supply their total integrated circuit needs through in-house production. Others will make proprietary integrated circuits in-house, and purchase commodity devices from merchant companies. Still others will keep all integrated circuit production at the research and development level.

Captive production has both advantages and disadvantages. The most important advantages and the reasons for which captive production exists are the need for proprietary circuits and continuity of supply. The major disadvantage is the enormous capital investment required to design and fabricate chips for in-house use.

1.2.2 Merchant Producers

Merchant producers manufacture integrated circuits for the open market. They comprise the bulk of worldwide integrated circuit production. The top merchant integrated circuit manufacturers --ranked by sales volume--in 1989 include NEC ($4.2 million), Toshiba, Hitachi, TI, Fujitsu, Motorola, Intel, Mitsubishi, Matsushita, National and Samsung ($1.5 million).

1.2.3 Design Houses and Foundries

The cost of building a state-of-the-art integrated circuit fabrication facility has skyrocketed to $400+ million. As a result, there has been an increase in the number and capabilities of design houses--companies that design custom integrated circuits, but source out their manufacturing work to other firms. Examples of such companies include Chips and Technologies, Cirrus Logic, and Aspen Semiconductor. Merchant producers that manufacture integrated circuits designed by "fabless" companies are called foundries.

1.3 INTEGRATED CIRCUIT TECHNOLOGY

The technology licensed with respect to integrated circuit manufacturing is usually one of three types: design technology, process technology or packaging technology. Use of each type of technology may require special equipment, skilled personnel or protected software. In licensing technology necessary for a phase in manufacturing an integrated circuit, both licensor and licensee should consider each of these types of technology and the necessary equipment, personnel and software to make the technologies effective.

1.3.1 Design Technology

The design of integrated chips is the process through which designers determine how the individual circuits and interconnects that make up an integrated circuit are to be arranged on the silicon substrate. The "product" of design is the mask works that can be utilized to manufacture chips. Two types of design intellectual property tend to be licensed : computer-aided design (CAD) and cell libraries.

A license of CAD involves the right to utilize the licensor's equipment and software (and sometimes personnel) in the design of a new chip. The use of cell libraries (designs for groups of circuits that perform specific functions and that can be utilized as building blocks to design more complex integrated circuits) can also be licensed either alone or in combination with CAD techniques.

Generally, the licensee of design technology has the right to use the newly designed chip, but does not have the exclusive right to the use of the CAD techniques or the cell libraries. In fact, the licensee is unlikely to be able to prevent the use by other manufacturers of the CAD or cell libraries to develop similar chips. The licensee can only seek to prevent divulgation of its particular development to future licensees.

1.3.2 Process and Manufacturing Technology

A series of technologies are necessary to convert the mask work to a physical, operational chip. Individual process technologies are largely the same, even when design and process are integrated.

In licensing the process for fabrication of a chip from the layout, the type of method used for fabrication is a critical element. The process of converting design to actual chips can involve several methods of actually depositing the design on the silicon. These include:

MOS (Metal-Oxide-Semiconductor): With bipolar, MOS is one of the two main methods of producing a chip. It consists of a semiconductor body of silicon with silicon dioxide gate dielectric (to control electronic switching) and metal gate.

CMOS (Complementary-Metal-Oxide-Semiconductors): CMOS chips possess n-channel (negative-conducting properties) MOS transistors and p-channel MOS transistors on the same chip. These chips tend to have low power dissipation and density of electrical elements per unit area.

Bipolar: Bipolar technology was the dominant method used in semiconductor devices of the 1950s, but bipolar chips' ability to operate at higher speeds than CMOS makes them especially useful.

BiCMOS: Combining the best features of CMOS and bipolar, BiCMOS has the low power use of CMOS with three times the speed.

GaAs.: Gallium Arsenide is a type of material used for chip production (as an alternative to silicon). GaAs chips are much harder to manufacture, but permit operations at much higher speeds.

As with design, licensing the series of process technologies necessary for successful fabrication may require provisions for use or licensing of personnel, equipment, software or other know-how. In particular, successful fabrication requires special manufacturing techniques not directly related to the theoretical ability to convert a design to silicon (or other semiconducting material)--such as the maintenance of a clean room.

1.3.3 Packaging Technology

Even after the process of fabrication is complete, an integrated circuit must be packaged for interconnection with other electrical devices, usually on a circuit board. The package must protect the chip, provide wire leads (or "pins") for connection to the board and interconnect the integrated circuit itself to the package. The packaging technology must be capable of preventing harm to the semiconductor chip and permitting successful transfer of electrical information from the board to the chip and vice-versa. (Advanced techniques may eliminate the necessity for packaging.)

Packaging technology, while clearly the least sophisticated of the three types of technologies necessary for complete production of an integrated circuit, is still crucial.

1.4 THE IMPORTANCE OF PROTECTING INTELLECTUAL PROPERTY IN INTEGRATED CIRCUITS

Given the intensive efforts of research and development necessary for semiconductor manufacture, the economic costs associated with inadequate intellectual property rights protection are severe--for the innovative semiconductor firms as well as, in the long term, those countries seeking to develop and maintain semiconductor technology. Conversely, the enforcement of integrated circuit intellectual property rights results in numerous benefits for both groups.

1.4.1 Innovative Semiconductor Firms

The unauthorized copying of innovative semiconductor chips causes substantial losses of revenue to innovative semiconductor companies. Firms that engage in unauthorized use of semiconductor technology, which bear no product or market research and development costs, have far lower fixed costs than do innovative firms. As a result, infringing firms are able to set much lower prices than innovative firms, and can therefore take market share previously held by innovative firms. The combination of price suppression and market share reduction leads to a significant decline in the profits and revenues of innovative firms and may actually drive innovative firms out of competition in the product lines they pioneered.

Even if the innovative firms succeed in retaining some market share, it is unlikely that they will be able to remain competitive for any extended period. The innovative firm, with an inherently higher fixed cost, will have serious difficulties remaining competitive. Furthermore, infringement immediately reduces funds available to innovative firms for investment and further R & D, without which they cannot stay abreast of their competitors on the cutting edge of semiconductor technology. The mere threat of infringement has a significant negative impact on the willingness of firms to invest in new products, because the new products, if copied, may not provide the investing firm with an adequate return on its enormous investment.

On the other hand, the elimination of chip technology infringement through the establishment of a global intellectual property rights regime for integrated circuits would yield increases in innovation. Existing evidence indicates that the total revenue loss due to a single incident of unauthorized use of chip technology can be in the sum of tens of millions of dollars per year for an innovative firm. As innovative companies are likely to use these "recaptured" funds for R&D and reinvestment in new plants and equipment (while infringers are less likely to engage in such activity), the pace of innovation will increase accordingly if such companies are protected.

1.4.2 Countries Seeking Semiconductor Technology

There are many countries without laws that protect the layout-design of integrated circuits. Most of those countries also have, as a primary goal, the development of their own technological base. In an effort to do so rapidly, they may choose not to protect chip technology. On the one hand, a change toward enhanced intellectual property protection could impose identifiable short-term costs on their economies. On the other hand, however, such a change will also promote the formation of their infrastructure, which can lead to increased rates of long-term economic growth.

In addition, countries without laws that protect the layout-design of integrated circuits fail to take into account the economic cost of not protecting integrated circuit technology. Developing countries, like developed countries, depend on the utilization of new technologies to improve their standard of living, but they lack the trained manpower and sophisticated infrastructures necessary to produce their own technologies as rapidly as more developed nations, and must instead rely on technology imports. Yet, the flow of technological knowledge to the developing world may be severely limited because innovative firms are determined to retain as much product control as they can in countries lacking adequate intellectual property rights protection.

Finally, there are significant benefits which any nation can obtain by putting into place an effective regime of intellectual property protection for integrated circuits. Specifically, such a regime provides an incentive to businesses to conduct domestic R & D activity, encourages the transfer of state-of-the-art technology into the economy and its diffusion within the economy, and creates an incentive for foreign direct investment.

CHAPTER 2

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Given the complexity and technological intensity of the design and manufacturing of integrated circuits, virtually all intellectual property rights come into play in protecting the rights of those that invest in the design and production of such circuits. An adequate and effective regime for the protection of such rights would seem to be an essential element in healthy markets for the production and sale of integrated circuits.

2.1 PATENT LAW

Patents provide protection for inventions that satisfy certain criteria established in the applicable patent legislation. In general, those criteria require that, in order to qualify for patent protection, an invention must be new, involve an inventive step (meaning that the invention must not be obvious to a person skilled in the technical field to which the invention relates) and be useful or capable of industrial application.

A patent generally gives the owner the right to exclude others from making, using or selling the invention. The standard term of the patent is 20 years from the filing date of the application for the patent, which is considered to be the appropriate term to enable the patent owner to recover research and development costs and to encourage re-investment in research and development.

Patents are probably the most frequently encountered intellectual property rights embodied in integrated circuits and serve, in many countries, as the basis for protecting inventions concerning the basic electronic circuitry of an integrated circuit. Some countries extend patent protection also to the intellectual property embodied in the layout of the integrated circuit, or the mask work, although most countries use other intellectual property laws to protect the results of developing layout and art work to adapt the circuitry to a specific, efficient and economic use. This latter group believes that mask works do not rise to the level of inventiveness (or non-obviousness) required by patent law because the design is generally well known. Furthermore, the processing time required to obtain a patent is usually too long for the needs of the integrated circuit manufacturing industry, where the pace of technological development has been particularly rapid.

2.2 COPYRIGHT LAW

Copyright protects original works of authorship fixed in a tangible means of expression from which they can be reproduced or communicated independently or with the aid of a machine. Authors of works protected by copyright have the exclusive rights to reproduce, prepare derivative works, distribute (including the right to first public distribution), and to authorize another to perform any of these acts. Unlike a patent, a copyright does not prevent the independent development, or any other original expression, of the same idea. In addition, although the scope of copyright protection is not as broad as that afforded by a patent, the term of copyright is longer than the term of patent protection (lasting usually until 50 to 75 years after the death of the author).

Copyright in general (in all countries party to the Berne Convention for the Protection of Literary and Artistic Works) arises from the creation of the work in question. Registration is not a requirement to obtain protection.

The owner of a copyright may, during the life of the copyright, prevent others from copying his or her protected work within the territory of the country whose government issued the copyright. Through the main international treaty, namely, the Berne Convention for the Protection of Literary and Artistic Works, the territorial reach of the protection which copyright offers extends to other countries party to the Berne Convention, provided that the work was first published in a country party to that Convention.

Most countries apply copyright protection to computer software, including that used in the design, fabrication or testing of integrated circuits. Some countries without specific, sui generis protection for integrated circuits use copyright law for the protection of integrated circuit layout-designs. Other countries have rejected copyright law as a basis for protecting such layout-designs on the ground that their copyright laws generally do not protect useful articles, which lack distinguishable artistic features (e.g., an eligible form of expression of an idea). In addition, although the schematic layout drawing of a design may be a copyrightable "technical drawing," copyright law generally does not protect the owner from unauthorized copying of the final useful article represented by the drawing.

2.3 TRADE SECRET LAW

A trade secret comprises information that is not generally known to the public or within the branch of commerce or industry to which it relates and which, because of its usefulness, usually confers on its possessor a competitive advantage over those who do not know the information. Trade secret protection is used to protect the information that constitutes the trade secret, whether that information consists of ideas or expressions or embodiments of ideas, from unauthorized disclosure or use. The unauthorized nature of the disclosure or use derives from the fact that the disclosure or use is made contrary to the terms of a contract or of a fiduciary or special relationship of trust.

Trade secret protection is usually exhausted when the trade secret looses its confidential character and becomes common knowledge. For example, once a product embodying the trade secret is sold or otherwise distributed to the public, without a contractual restriction on the recipient's use or disclosure of the subject matter of the trade secret, in a form in which the subject matter of the trade secret is discoverable from the product as sold or otherwise distributed, the rights in the trade secret usually are considered to be extinguished. Thus, trade secret laws do not protect against independent discovery by honest means, accidental discovery or reverse engineering.

In many countries, trade secret protection is available for integrated circuit layout-designs and related computer programs. In some countries, however, governmental regulations limiting use and disclosure restrictions in technology licenses can abrogate the rights conferred under trade secrets laws.

Since the secrecy of a layout-design is dissipated once the integrated circuit is sold, reliance on trade secret law as the sole means for protecting integrated circuits is inadvisable. A licensor must exercise substantial diligence in investigating and selecting potential licensees to ensure that its proprietary rights will not be compromised, particularly where the protection, effective relief or scope of protectable trade secret subject matter in a country of interest is very limited and other forms of relief do not adequately protect the licensor's interests.

2.4 TRADEMARK LAW

Trademarks, which are signs consisting a word, number, symbol or design used in association with a product to identify its source, are protected forms of intellectual property from the time of registration (or, in some countries, use), usually for an initial period of ten years. Trademarks are often used in relation to integrated circuits. Where so used, they should be visible both on the integrated circuit package used to mount the integrated circuit to a printed circuit board and, if possible, on the shipping container for such packaged integrated circuit.

2.5 UNFAIR COMPETITION LAW

Unfair competition law generally refers to legal protection against a broad spectrum of acts of competition that, in the words of Article 10bis(2) of the Paris Convention for the Protection of Industrial Property (the "Paris Convention"), are "contrary to honest practices in industrial and commercial matters." The Paris Convention contains the following non-exhaustive list of such acts in Article 10bis(3):

> "1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
>
> 2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
>
> 3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."

In many of the countries having no separate trade secret law, unfair competition laws are used to protect against trade secret misappropriation.

2.6 SUI GENERIS LAWS PROTECTING LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Special or sui generis laws on the protection of the layout-design or topography of integrated circuits have been enacted by a large number of countries, including Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States of America.

The United States of America was the first country to enact such sui generis protection, which was directed to the layout-designs or mask works of integrated circuits. The law is referred to as the Semiconductor Chip Protection Act (SCPA) of 1984. The SCPA is limited to the protection of mask works, the related three-dimensional patterns of metallic, insulating or semiconductor material comprising a semiconductor product. It also covers mask works stored in a database magnetic tape or other storage media. The Act does not extend to magnetic film products, printed circuit boards, or information, such as a computer program, stored in a semiconductor chip.

The SCPA confers on mask work owners the right to prevent unauthorized persons from reproducing the mask work, importing or distributing a product embodying the mask work, or inducing another to commit one of these acts. This protection lasts for ten years. These exclusive rights are limited in the sense that the rights to distribution and importation (but not reproduction) of a chip are lost once that chip has been sold either alone or in a product. "Reverse engineering" does not constitute infringement when the resulting new mask work is original, not substantially identical, and involves significant toil and investment, and innocent infringers are only liable for a reasonable royalty on all unsold inventory, and not the full resale value of the chips.

The SCPA may be extended to protect the mask works of nationals of a foreign country which is a party to a treaty affording protection to mask works (to which treaty the United States also is a party), or if the United States President finds that their country accords to United States mask works either substantially equivalent protection to that provided by the SCPA, or protection on substantially the same basis as is provided to mask works of their own nationals.

2.7 PROTECTION OF LAYOUT-DESIGNS UNDER INTERNATIONAL TREATIES

WIPO initiated efforts to draft an international treaty to protect the layout-designs or topographies of integrated circuits, which led to the adoption, on May 26, 1989, of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (the "IPIC Treaty"). Under the IPIC Treaty, each Contracting Party is obliged to secure, throughout its territory, intellectual property protection of original layout-designs (topographies) of integrated circuits, whether or not the integrated circuit concerned is incorporated in an article (Article 3).

Each Contracting Party must accord the same treatment to natural persons and legal entities of other Contracting Parties as it accords to its own nationals (national treatment) (Article 4).

The Contracting Parties must, as a minimum, consider the following acts to be unlawful if performed without the authorization of the holder of the right: the reproduction of the layout-design, and the importation, sale or other distribution for commercial purposes of the layout-design or an integrated circuit in which the layout-design is incorporated (Article 6(1)). However, the act of reproduction may be freely perfomed for private purposes or for the sole purpose of evaluation, analysis, research or teaching (Article 6(2)).

The Contracting Parties may make protection of layout-designs dependent on their commerical exploitation or on the filing of an application for their registration or their registration (Article 7).

The IPIC Treaty has not entered into force. Most of its substantive provisions are, however, taken up in the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (the "TRIPS Agreement), which also augments the protection provided for in the IPIC Treaty.

Article 35 of the TRIPS Agreement requires members of the World Trade Organization to provide protection to the layout-designs (topographies) of integrated circuits in accordance with the provisions of the IPIC Treaty, with three main differences:

First, the scope of protection accorded to layout-designs is extended. Members must consider unlawful the following acts if performed without the authorization of the holder of the right in the layout-design: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design (Article 36). Nevertheless, any such act shall not be unlawful in respect of an integrated circuit incorporating an unlawfully reproduced layout-design, or an article incorporating such an integrated circuit, where the person performing or ordering the act did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. After receiving notice that the layout-design was unlawfully reproduced, the person may perform the otherwise illegal act in relation to stock on hand or ordered before the notice, subject to the payment of a reasonable royalty to the holder of the right (Article 37(1)).

Secondly, the TRIPS Agreement provides for different conditions with respect to the circumstances under which compulsory licenses of rights in a layout-design may be granted (see Article 37(2)).

Thirdly, the TRIPS Agreement requires members to provide for a minimum ten-year term of protection (Article 38).

CHAPTER 3

LICENSING OF INTEGRATED CIRCUIT TECHNOLOGY

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LICENSING OF INTEGRATED CIRCUIT TECHNOLOGY

3.1 THE NATURE OF A LICENSE

A license agreement grants to a licensee the right to engage in conduct which otherwise may infringe the licensor's intellectual property rights. A sale, by comparison, involves a one-time transfer of rights which gives the purchaser irrevocable possession of the object sold, with the rights to use, repair (but not wholly manufacture), and re-sell. A sale thus "exhausts" the rights of the seller in the object sold--this is the effect of the "exhaustion of rights by sale" doctrine. For example, the owner of a patent or layout-design rights, upon completing a sale, will be able to prohibit the purchaser from making the patented product or additional integrated circuits incorporating that layout-design, but will not be able to prohibit the purchaser from using or re-selling the purchased product. A license, on the other hand, will usually include limitations (concerning, for example, duration, territory, field of use, etc.) and the licensor retains ownership of the intellectual property protected by the patent, layout-design or other intellectual property right.

A license is an efficient method of distributing and transferring advances in technology to a larger number of potential users, while remunerating the developer for the effort and success of its accomplishments. Without the licensing system, intellectual property rights holders would have little incentive to disclose their technological discoveries or creations outside of their own family of affiliated firms.

Licensing can play an important role in the diffusion of technology, influencing the evolution and structure of both the integrated circuit industry and the industries that use these critical components. In the United States of America, the birth of the semiconductor industry was catalyzed in the 1950's when AT&T was required for antitrust reasons to license all parties interested in obtaining access to its newly developed semiconductor technology. Many companies interested in developing this new technology took advantage of the reasonable royalty rates to obtain access to technological advances which formed the basis for future product development and the rapid diffusion of know how.

Licensing can also be an important tool for penetrating foreign markets. Customers will frequently insist that their vendors have local manufacturing facilities so that their engineers can work closely together on product development. An integrated circuit manufacturer may decide that expansion of its operations in a local market is not immediately feasible, and it may elect to license a local manufacturer to produce its products. Licensing in markets that are otherwise inaccessible can contribute to the general acceptance of a company's products by encouraging users to design them into a broader set of user applications.

3.2 SPECIAL CONCERNS TO BE ADDRESSED

Special concerns of the parties that should be addressed in the agreement or investigated during the negotiations prior to entering into an agreement include:

- restrictions on the transfer of technology into a country because of security issues or potential military applications of the technology,

- liability and tax laws incidental to the transfer of technology,

- the willingness of one party (commonly the licensor in the underlying agreement) to license its CAD (Computer Aided Design) and other design tools or cell libraries to the other party for laying out or jointly implementing such other party's logic circuit design, and

- the availability of either software or data for design, layout or fabrication equipment which the vendor may only license under restrictions as its to use.

3.3 CROSS-LICENSING AND SECOND SOURCING

The most common areas of inter-firm licensing occur between two integrated circuit manufacturers. This licensing is typically referred to as cross-licensing or second-sourcing.

In cross-licensing, manufacturers seek to exchange the rights in their respective intellectual property portfolios. By obtaining all the rights in a competitor's intellectual property, a company can avoid the prospect of infringment actions. Typically, companies agree to royalty-free cross-licenses by balancing off the rights obtained with the rights granted. The popularity of this practice particularly in the early days of the industry has led to a complicated network of cross-licensing arrangements in the industry.

Second-source licensing is usually dictated by customer concerns. Typically, a customer will seek to ensure that it has a reliable source of supply of a critical component as a condition of designing a particular integrated circuit into its finished product. To that end, the customer may require the manufacturer to demonstrate that there are a sufficient number of second sources for the device. To accommodate these concerns, manufacturers may license competitors to provide such an alternative supply, including, where necessary, the know how to utilize the particular design or process.

3.4 LICENSING BETWEEN CUSTOMER AND PRODUCER OF INTEGRATED CIRCUITS

Technology trends are constantly leading to the integration of more and more electronic functions into the integrated circuit. As a consequence, the manufacturers of finished products, be they computer systems, communications devices or consumer electronic products, are always interested in owning a piece of the technology that goes into the design and manufacture of their products.

Individual companies follow different strategies in pursuit of this objective. Some companies seek greater vertical integration by developing in-house capability to design and manufacture integrated circuits. Alternatively, companies participate in joint product development with an integrated circuit manufacturer. Technology has developed to facilitate this kind of relationship as integrated circuit manufacturers with highly specialized design capabilities have emerged. These CAD (Computer Aided Design) tools permit a customer to design their own integrated circuit by translating their functional specifications into a circuit design and then simulating the performance of that product in order to determine whether it will operate as required for the application desired.

These types of joint product initiatives raise complicated licensing issues and customer and the design house will negotiate to determine the rights exchanged. The customer is seeking to maximize the benefit to it of developing an innovative product which will attract a significant market. Accordingly, the customer will want to own the rights in the design it develops in order to prevent others from copying it.

At the same time, the design house must be concerned that the customer not be able to prevent it from using the design tools that are its basic stock in trade, even though these design tools could be used to produce a similar, or even identical, integrated circuit to the one developed for the first customer. These issues are typically settled by the terms of the licensing agreement.

3.5 TECHNOLOGY SHARING INITIATIVES

Large scale research and development joint ventures are becoming more and more common as firms decide to pool their resources to reduce their costs and eliminate expensive duplication. In many cases, these ventures are encouraged by direct government support in the form of subsidies or other indirect policies aimed at encouraging such ventures. In Japan, the VLSI project, in Europe the JESSI project, and SEMATECH in the United States all reflect a growing trend toward this type of technological cooperation.

These ventures pose especially challenging problems for those concerned with protecting the technological innovations developed in the context of such operations.

Companies that bring their own technology to such ventures are typically concerned that the technology not leak to non-participants in the venture. Similar, complicated rules must be developed to regulate the extent to which new technology that is developed can be used by participants and can flow through their existing networks of licensing and cross-licensing arrangements with other companies. Where such ventures involve participation of companies from across national frontiers, the different regimes in the countries involved must be taken into account.

The global nature of the integrated circuit industry has generated considerable interest in developing effective international standards for the protection and enforcement of intellectual property rights. The technology pool is an international one and countries and companies in a position to draw on that international technology pool by virtue of intellectual property protection are finding that economic development is thereby significantly enhanced.

CHAPTER 4

GLOSSARY OF TERMS

CHAPTER 4

GLOSSARY OF TERMS

This chapter contains a glossary explaining the meaning of the main terms encountered in integrated circuits technology and in the licensing of that technology.

ASSIGNMENT:

An assignment is a written instrument transferring all or some of an owner's interest in an intellectual property right. For example, in the case of a patent application, upon assignment of the entire right, title and interest, the assignee becomes the sole owner of the patent application and any patent issuing on the application. Assignment of an undivided interest gives the assignee full ownership rights of a part.

BASE TECHNOLOGY (MOS, CMOS):

(a) MOS is an abbreviation for Metal-Oxide-Semiconductor. MOS devices operate as field effect transistors.

(b) CMOS is an abbreviation for Complementary-Metal-Oxide-Semiconductor. CMOS devices, formed by two MOS devices, allow for a large density of circuit elements on a single chip because of their low power dissipation.

BIPOLAR:

Bipolar transistors are the more traditional junction transistors. Their fabrication can be more difficult than CMOS designs, especially at higher densities of transistors. Bipolar circuits are used where higher logic speed is desired.

CELL LIBRARY:

A data base containing the layout for Macro-Cells and/or Standard Cells laid out according to a particular gate array pattern and/or process design rules, and available for the user to implement portions of the design.

CLEAN ROOM:

A room, carefully protected from dust, smoke and any other contaminating agents, used for the fabrication, assembly or testing of precision electronic devices such as integrated circuits. In addition to elaborate air filtration in the room, workers in a clean room must wear special dust-free clothing and hats.

COMMODITY INTEGRATED CIRCUITS:

An integrated circuit which performs a standard electronic function and is normally available from a number of integrated circuit manufacturers. Examples of these are a Dynamic Random Access Memory (DRAM), a Static Random Access Memory (SRAM) and an Electronically Programmable Read Only Memory (EPROM).

COMPUTER AIDED DESIGN (CAD):

This technology utilizes computers to assist in the design of integrated circuits by defining circuit functions in terms of groupings of semiconductor devices. Using gate array layout design technology, the CAD tool assists the operator in selecting one or more Macro-Cells or Standard Cells from a database (a cell library of groups of electronic circuits with established functions), and in positioning and interconnecting the Macro-Cells on the die surface.

CROSS-LICENSE:

A cross-license is an agreement that provides for the licensing of rights in intellectual property by one owner in return for license rights in different intellectual property rights owned by another owner.

CUSTOM INTEGRATED CIRCUITS:

An integrated circuit designed and manufactured in accordance with particular user specifications in order to achieve a unique electronic function. This may include a Read Only Memory (ROM), which contains specific proprietary instructions.

DATA BASE:

A collection of information files stored in a directly accessible electronic storage device. A data base may contain all of the information necessary to directly produce photo masks for making an integrated circuit and, in that instance, under some country's laws the data base itself may be considered to be a "mask work."

DEFECT DENSITY:

An empirical number which reflects the percentage of good die expected to be formed on a wafer. This number also reflects the complexity of the circuit design, the density of devices per die, the fabrication process tolerances, the degree of cleanliness of the clean room, etc. As a general rule, the higher the degree of cleanliness, the lower the defect density. Also, as a general rule, the lower the defect density, the higher the yield of the fabrication process per wafer. Finally, the higher the yield per wafer, the cheaper the integrated circuits will be to produce.

DESIGN:

Designing integrated circuits is a highly sophisticated process. Hundreds of thousands of transistors are often assembled onto a semiconductor with a surface area of less than one-half centimeter squared. The designer works to maximize use of this high density of components by optimizing the positioning of groups of components to perform various functions. For full custom designs, electrical schematic logic designs, logic data bases, etc. are translated to a semiconductor chip layout design. For semi-custom designs, the translation is accomplished by using mostly pre-existing Standard Cells or Macro-Cells to create a layout design.

DIE:

A small portion of a semiconductor substrate in which a circuit is fabricated. A substrate can have a large number of die, each of which may contain an integrated circuit.

ELECTRO-OPTICAL CHIP:

A chip utilizing related electrical and optical phenomena, such as generating an electrical response in response to an impinging light beam.

EQUIPMENT/FACILITIES:

Manufacturing equipment includes diffusion and sputtering furnaces, ion implanters, photo-resist applicators and developers using photo-resist mask works, chemical etchers, various cleaning apparatus and test equipment. Facilities include clean rooms. If processing is to be carried beyond wafer processing, then sophisticated cutting machines are required to slice the wafer into individual semiconductor integrated circuit die. If the processing is to be carried further into mounting the die into an integrated circuit package, equipment to perform this function is needed.

EXCLUSIVE LICENSE:

Under an exclusive license, the licensor agrees not to use the licensed rights, nor to grant licenses to third parties.

FABRICATION:

The fabrication (manufacture) of integrated circuits requires sophisticated materials, processes and design principles to produce an integrated structure with precisely defined metallic, insulating and semiconducting regions. Typically, successive photo masks are used to form patterns of openings on or above a semiconductor substrate. The selective introduction of dopants through the openings and into the substrate create electrical interconnections and other necessary structures within the integrated circuit.

GATE ARRAYS:

A form of semi-custom integrated circuit design and fabrication technology which utilizes basic gates (arrangements of electrical currents) that are capable of performing logic functions and that are assembled to form an integrated circuit according to particular specifications. One form of gate array places the gates in rows and columns, with open spaces (channels) between the rows or columns. The metalizing interconnects between the gates are, where possible, routed through the channels. A newer technology, called a sea of gates, eliminates the wasted space in the channels, and fills essentially all of the integrated circuit die surface with gates.

GEOGRAPHICAL RESTRICTIONS:

The permission to use granted under a license agreement may be restricted to specific geographical areas within the scope of the licensor's intellectual property rights.

GRANT-BACK RIGHTS:

An intellectual property owner, as partial consideration for a license, may require that the licensee "grant-back" or "license-back" to the licensor part or all of its rights in any improvements that the licensee may make to the licensed subject matter. A grant-back usually is not exclusive.

HEAT SINK:

A device to remove heat from electronic components. Such a device may be in the form of a metallic mounting base or a series of protruding parts or fins. It serves to radiate accumulated heat into the surrounding air to prevent injury to the integrated circuit from excessive heat.

LAYOUT DESIGN:

The physical arrangement of circuit components on a semiconductor chip. This is in accordance with process design rules and the logic circuitry desired to be implemented. For gate arrays this is usually in accordance with the gate size, shape, and arrangement pattern, and for standard cells, the size, shape and positioning of the selected standard cells, along with the metalizing interconnection of the gates or standard cells to define the logic circuit design.

LICENSEE:

The licensee is the recipient of a permission to utilize the subject matter protected under the licensor's intellectual property rights, free of any claim of infringement or misappropriation by the licensor. The licensee typically pays consideration to the licensor for the right to use the intellectual property in the form of ongoing royalties, a lump-sum fee, a grant-back of a right to use technology or products resulting from the licensee's use of the licensor's intellectual property, a cross-license of intellectual property rights in related or unrelated technologies, or a combination of any of the above.

LICENSOR:

The licensor is usually the owner of the intellectual property, or is a licensee from such an owner which has the right to grant a sub-license.

LOGIC DESIGN:

The predetermined integration of individual logic circuits to perform a desired logical function. Usually the term is used to designate the overall logic function of the entire integrated circuit.

MACRO-CELL:

A primary cell used as a basic building block in a semi-custom integrated circuit layout utilizing a gate array. The cell has a pre-defined function. It has a pre-defined interconnection of selected gate sites positioned in a portion of the gate array.

MASK WORK:

A mask work is one of a series of related images representing the pre-determined, three-dimensional pattern of metallic, insulating or semiconductor material forming an integrated circuit. Each of the related images is used in the process of fabricating an integrated circuit.

MOUNTING:

A process by which an integrated circuit component is attached to a printed circuit board, typically by means of a number of metallic leads (pins, prongs, contact pads or TAB tape contacts).

NON-EXCLUSIVE LICENSE:

Under a non-exclusive license, the licensor maintains the right to use the licensed subject matter and to grant other non-exclusive licenses to third parties. The non-exclusive license is merely an assurance that the intellectual property owner will not charge the licensee with infringement for use in accordance with the existence of the license.

PACKAGING/MOUNTING TECHNOLOGY:

An integrated circuit is mounted in a package that facilitates the interconnection to other electronic elements, usually by attaching the package to a printed circuit board. A typical integrated circuit package has external connectors, e.g., pins, along the length of, or entirely around the periphery of, the package. The integrated circuit is electrically connected with the package pins, e.g., by wire bonding or fusing circuit connector pads to mating pads in the package. Advanced package and mounting techniques are appearing which may enable mounting of the integrated circuit directly to the printed circuit board, or other board or module, without intervening wires.

PACKAGING:

The enclosure, or housing, for an integrated circuit device.

PHOTO-LITHOGRAPHY:

A method of defining an integrated circuit by transmitting light through a mask work to project an image on a semiconductor substrate when the surface has been previously coated with a light sensitive material, which either softens or hardens when exposed to light. The softened portion is washed away, leaving a pattern on the surface. The pattern can be used to shield portions of the surface from deposition of a further layer of material or define openings for deposition or implantation of other material. For example, another layer of material can be deposited or grown where the photo-resist remains behind, and subsequently a chemical wash may be used to remove the photo-resist and that part of the subsequently deposited or grown material which is above the photo-resist. The photo-resist can also be used as a shield against chemical etchants such that etching only occurs where the photo-resist has been removed. The resultant product is a printed circuit.

PIN COUNT:

The number of input/output leads (pins) on a die for connection to the packaging of an integrated circuit, or the number of input/output connections or leads on an integrated circuit package.

PROBE:

An instrument with pointed metal tips used to make electrical contact with various points on a circuit for testing purposes. This can be done while the die is still part of a wafer, after die separation or after packaging.

PROGRAMMABLE LOGIC ARRAY (PLA):

An array of logic gates which can be programmed for a specific function by mask during manufacture, or by diffusible links after manufacturer. The programming operation involves the elimination of connections to certain elements in the array.

QUANTUM EFFECT:

A relatively new transistor device construction using quantum mechanical properties of electrons to control the ON and OFF condition of the quantum effect transistor.

RETICLE:

Generally considered to be synonymous with mask work.

SEMI-CUSTOM INTEGRATED CIRCUIT:

An integrated circuit which includes a number of standard building blocks (Macro-Calls or Standard Cells) which are connected in a way which meets particular specifications and which achieves a unique logic circuit design.

SEMICONDUCTOR CHIP:

An electronic device having two or more layers of metallic, insulating, or semiconductor material arranged in a precise pattern to perform an electronic function or functions.

SEMICONDUCTOR:

A material having an electrical conductivity greater than insulators and less than metals, which can be electrically influenced to conduct or cease conducting.

SOLE LICENSE:

Under a sole license, the licensor maintains the right to use the licensed subject matter, but agrees not to grant any other licenses to third parties.

STANDARD CELL:

A usually complex and sophisticated primary cell for use as a basic building block in a semi-custom integrated circuit. The standard cell has a pre-defined function.

SUB-LICENSE:

A sub-license is a license granted by a sub-licensor which is, in turn, a licensee under a license which grants the licensee the right to sub-license. The license to the licensee may allow the licensee to sub-license, whether the license is exclusive or non-exclusive. Sometimes the right to grant sub-licenses will be allowed only with the approval of the licensor on a case-by-case basis. A sub-license ordinarily cannot survive the term of, or be broader than, the license itself.

TECHNOLOGICAL FIELD-OF-USE RESTRICTION:

A technological field-of-use restriction is a restriction of the permission to use to a particular technical purpose, to a certain class of products, to use in association with certain specified technologies, or another similar restriction which has as its basis a technological, rather than a customer, product market or a geographical limitation. Technological field of use restrictions may be acceptable in some countries of the world only so long as they do not foster an anti-competitive effect such as the allocation of customers, or the horizontal division of markets.

TERM:

The "term" of a license agreement is the period during which the provisions of the agreement will be given full force and effect. Upon the expiration of the term, the parties to the license agreement may still be required to honor confidentiality restrictions by not disclosing to third parties confidential information learned from the other party as a result of the license agreement. The parties also may have continuing rights in technology developed under the license agreement.

TEST CELL/TEST CHIP:

A cell is one die of a semiconductor substrate which is used as a test sample, often destructively, in testing the fabricated integrated circuits, portions thereof or the fabrication processes employed.

TEST PATTERNS:

Electric signals used in testing a circuit.

TESTING:

Testing of integrated circuits is difficult and expensive, but reliability is essential. Various tests are performed to uncover processing and handling errors, to determine operating life and various other factors. Testing occurs after wafer fabrication, packaging and mounting of the integrated circuit. Automatic computer-controlled test equipment is typically employed in integrated circuit testing.

WAFER:

A thin slice of semiconductor material in which circuits are formed.

YIELD:

The percentage of successfully fabricated integrated circuit devices per wafer. This may be measured after wafer completion, for example, to determine the number of good die sites in relation to the total available die sites.

ANNEXES

CONTENTS

The following Annexes contain examples of the types of agreements used in the semiconductor industry. ***These sample agreements are for teaching purposes only, and are not recommended for use in any line of business in any jurisdiction without review by counsel under local laws.*** Each example agreement is preceded by a descriptive summary of the provisions of the agreement.

Annex I	contains an example of a cross-license between a foundry and a customer for fabricating chips and for developing and marketing products embodying such chips.
Annext II	contains an example of a cross-license between a foundry and a customer for joint product design and development of products marketed by each party.
Annex III	contains an example of an agreement under which the customer's design is used to customize the foundry's Base Gate Array and Standard Cells for use in the customer's computer systems.

ANNEX I

CROSS-LICENSE BETWEEN FOUNDRY AND CUSTOMER FOR FABRICATING CHIPS AND FOR DEVELOPING AND MARKETING PRODUCTS EMBODYING SUCH CHIPS

Summary of the Provisions of the Agreement

The example agreement in Annex I is a cross-license and cross-technology transfer agreement under which X and Y each transfer technology relating to the functionality of semiconductor chips, or portions thereof, in order to develop a chip set for a computer peripheral which they wish to become a standard in the industry. To this end X licenses Y to its technology for purposes of manufacture and sale, lease or other disposal to the general market. Y licenses X to its technology for the purpose of manufacturing or having manufactured, solely for X, this chip set. Y is permitted to sub-license the technology of X. Y, and its sub-licensees, pay a royalty to X for a period of years.

The **DEFINITIONS Section** of the Agreement contains the definitions of a number of terms used throughout the Agreement. Some of the key terms include definitions of what products of Y are LICENSED PRODUCTS, what will be transferred under the technology transfer as part of the TECHNOLOGY PACKAGE, and what are X's PRODUCTS, into which X will be permitted to incorporate the technology received from, and licensed to X by, Y.

The **OWNERSHIP AND LICENSES Section** provides that ownership of intellectual property rights to existing and future technology created by either party independently remains with that party. It grants a license to X from Y to make, or have made on behalf of X, LICENSED PRODUCTS. It grants a license from X to Y to make and sell integrated circuits, without any customer or field-of-use limitations, and with a right to sub-license. The Section also provides for royalties to be paid by Y or any sub-licensee of Y, and for the keeping of adequate records, submission of reports and allowance of audits to facilitate payment of and collection of proper royalty payments.

There is an express disclaimer of the grant of any licenses under any intellectual property rights covering a LICENSED PRODUCT in combination with additional apparatus, equipment, circuitry and/or software, i. e., no implied licenses.

There is also a copyright license regarding documentation received as part of the technology transfer from X to Y.

This Section provides that jointly developed technology will be jointly owned and provides a mechanism for determining who, if either party, will file for any patents thereon and prosecute and maintain such patent.

Sections 3 and 4, TRANSFER OF TECHNICAL INFORMATION, provide for the mechanics of the technology transfer form X to Y - what will be transferred initially, what UPDATES need to be transferred, and for mutual cooperation to keep the transferred technology, and Y's version thereof in line with applicable technical standards.

Section 5, PRICING, provides that Y will charge X for integrated circuits made using, in part, the technology of X, along with Y's technology, prices which are at least as good as the industry standards for comparable integrated circuits devices, and at its best price offered to other customers. The agreement provides that X is not obligated to purchase any integrated circuits from Y, but will do so, if at all, by issuing Purchase Order(s) in the future.

The **EXCLUSIVITY Section** provides that for all integrated circuits produced by Y, containing X's technology, X will have access to review the integrated circuits some months before the general purchasing public, and that Y will present to X for review new product proposals before any such presentation is made to other customers. X also has the right for some months to purchase up to some percentage of Y's output of these integrated circuits during the early stages of volume production of each.

This gives X some exclusivity advantage over other competitors who would purchase these chips for incorporation into products competing with X's. This exclusivity is largely in return for X's transfer of technology and license to Y.

Section 7, TERM, TERMINATION AND ASSIGNABILITY provides for an initial term of a certain number of years for this Agreement, with a renewal for a certain number of years unless either party gives notice, within a certain number of months of the end of the initial term, that the party does not wish to renew. It also provides for termination for cause for a breach of a provision of the agreement which is not cured within a certain period of time after the defaulting party receives notice of the breach from the non-defaulting party. It also provides for termination in the event one party voluntarily or involuntarily goes into bankruptcy. The Section also provides that neither party can assign its rights or obligations under the agreement to a third party without written consent of the other party to the Agreement. It provides that in the event of an assignment, the assignee must agree in writing to performance under the Agreement and any assignment which is not consented to or in which the assignee does not so agree is null and void and constitutes a termination of the Agreement. The Section also delineates which licenses remain and which are terminated in the event of a termination by either party under the various scenarios for termination.

The **CONFIDENTIALITY Section** defines what is to be treated as confidential information received from the other party and how it is to be protected.

The **PUBLICATION Section** prohibits publicizing the existence or terms and conditions of the Agreement.

In the **WARRANTY and INDEMNIFICATION Section,** each party indemnifies the other for any lawsuits filed for infringements of intellectual property rights of a third party, due to the use of technology received from the one party by the other party, under the Agreement, unless the infringement results from changes made to the technology by the other party. The indemnity simply provides for the one party to replace the technology with non-infringing technology or to obtain a license for the other party from the intellectual property owner at no cost to the other party.

Each party represents and warrants that it has the right to grant the licenses granted to the other party in the Agreement. It is also warranted that the technology transferred will be that currently in use by the transferor. All other warranties are expressly disclaimed.

Section 11, GENERAL PROVISIONS, contains the "boiler-plate" provisions which are common to these types of agreements and perhaps many others as well. These include an integration clause; an express denial of implied license grants; a designation of recipient of notices under the agreement; a force majeure clause; a denial of waiver of enforcement rights for having previously so waived; a separation clause; a clause providing for the retention of the status of employee of one party while on the premises of the other in performing under the agreement; a disclaimer of agency clause; and clauses indemnifying each party for claims for injury by employees of the other party in the performance under the Agreement.

SAMPLE AGREEMENT

TABLE OF CONTENTS

This Agreement, together with the appendices referenced herein and attached hereto, having an EFFECTIVE DATE as defined herein, is entered into by and between Y, a _____ corporation having an office at _____, (hereinafter called "Y"), and X, a corporation duly organized and existing under the laws of _____, with principal offices at _____, together with its subsidiaries, (hereinafter called "X").

WHEREAS X has significant experience in [computer peripherals], and has developed an ABC CORE; and

WHEREAS X desires to transfer certain technical information relating to such ABC CORE to Y to enable Y to manufacture integrated circuits containing such ABC CORE and other parts of [peripheral] for X and for the general market, and to consult with Y in the continued development of ABC CORE; and

WHEREAS Y has significant experience in the design and manufacture of semiconductor circuits and is involved in [computer peripheral] development programs, and desires to manufacture such circuits for X and for the general market, and to consult with X to further the [peripheral] and ABC CORE development.

NOW, THEREFORE, Y and X agree as follows:

SECTION 1 - DEFINITIONS

1.1 EFFECTIVE DATE shall mean the date upon which both parties shall have executed this Agreement.

1.2 LICENSED PRODUCTS shall mean the [peripheral] of X's DESIGN and the ABC CORE of X's design to the extent that Y includes the ABC CORE separate from the [peripheral] in Y products, and which are more fully described in Appendices A and B respectively.

1.3 ABC CORE shall mean that portion of the [peripheral] containing the components as defined in Part III of Appendix A.

1.4 TECHNOLOGY PACKAGE shall mean one set each of the items contained in Appendices A and B and UPDATES thereto which are to be transferred by X to Y or by Y to X under this Agreement.

1.5 INFORMATION shall mean proprietary and confidential information transferred under this Agreement in accordance with Article 3 or exchanged by the parties in accordance with Article 8.

1.6 X INFORMATION shall mean INFORMATION provided by X to Y.

1.7 Y INFORMATION shall mean INFORMATION provided by Y to X.

1.8 UPDATES shall mean INFORMATION regarding modifications to a LICENSED PRODUCT which are made by Y or X to improve the LICENSED PRODUCT, or to modify the LICENSED PRODUCT in order to make it compatible with the IEEE _____ standard, or to correct an error in an item of INFORMATION which is reflected as an error in the associated LICENSED PRODUCT or the testing thereof, excluding process improvement and/or process enhancement modifications made by Y.

1.9 MASK WORK shall have the same meaning as set forth in Section 910 of Title 17 U.S.C.

1.10 INTELLECTUAL PROPERTY RIGHTS shall mean all rights below listed which have been, or will be, acquired or otherwise secured by either party before or during the term of this Agreement, throughout the world:

1.10.1 All right, title and interest in and to all Patent and applications for Letters Patent, Industrial Models, Industrial Designs, Petty Patents, Patents of Importation, Utility Models, Certificates of Invention, and other indicia of invention ownership, including any such rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed; and

1.10.2 All right, title and interest in and to all trade secret rights arising under the common law, State law, federal law or the laws of any foreign country; and

1.10.3 All right, title and interest in and to all semiconductor MASK WORK rights, and in all copyright and all other literary property and author rights including derivative works; and

1.10.4 All right, title and interest in all know how and show how.

1.11 VERIFICATION shall mean testing of the [peripheral] LICENSED PRODUCT to be performed by X using the then current versions of developed test sets for the ABC CORE component of the design.

1.12 PRODUCTION DEVICE shall mean a peripheral device as qualified by Y and X.

1.13 X PRODUCTS shall mean any computer, computer system and/or computer peripheral hardware or software product which X, now or hereafter, designs, manufactures or has designed and/or manufactured on its behalf, and markets, sells, leases, licenses, distributes or otherwise disposes of (hereinafter collectively "markets" or "marketed") in the ordinary course of its business and which specifically includes any spare parts, maintenance or upgrade kit which X itself markets or which spare parts, maintenance or upgrade kit X has authorized or authorizes another to market. X PRODUCT shall include any computer or computer system product made and sold, leased, licensed or otherwise distributed by any third party, so long as such computer or computer system product contains as a substantial part thereof an X PRODUCT as described in the preceding sentence to which such third party adds substantial hardware or software added value, prior to such sale, lease, license or other distribution. Exclusion from specific mention in this definition shall not exclude any other product which X now or hereafter designs, manufactures, or has designed and/or manufactured on its behalf, and markets, except that X shall not market, nor authorize the marketing of, any LICENSED PRODUCT separate from such computer, computer system or computer peripheral, other than as part of any spare parts, upgrade or maintenance kit.

SECTION 2 - OWNERSHIP AND LICENSES

2.1 Y acknowledges that as between X and Y, X owns and shall retain all right, title and interest in and to all X INTELLECTUAL PROPERTY RIGHTS relating to any LICENSED PRODUCT and any other INFORMATION contained in the TECHNOLOGY PACKAGE.

2.2 X acknowledges that as between X and Y, Y owns and shall retain all right, title and interest in and to all Y INTELLECTUAL PROPERTY RIGHTS relating to Y's DEF and GHI designs and all changes, improvements or modifications thereto made by Y which do not incorporate any INTELLECTUAL PROPERTY RIGHTS of X.

2.3 Y grants and agrees to grant to X a worldwide, non-exclusive, non-assignable, fully paid up, irrevocable (except as provided in Article 7) right and license under Y's INTELLECTUAL PROPERTY RIGHTS to use the Y INTELLECTUAL PROPERTY RIGHTS to manufacture, and have manufactured solely for X, and to use, lease, sell, or otherwise dispose of, such LICENSED PRODUCTS and Y's DEF and GHI designs and UPDATES thereof so manufactured as a part of, or for use in X PRODUCTS. Y shall have the opportunity to supply LICENSED PRODUCTS to X.

2.4.1 X grants and agrees to grant to Y a worldwide, non-exclusive, non-assignable, royalty-bearing, irrevocable, (except as provided in Article 7) right and license, with the right to grant sub-licenses, under X INTELLECTUAL PROPERTY RIGHTS, to design and to manufacture, have manufactured, use, lease, sell, or otherwise dispose of integrated circuits embodying or incorporated in any LICENSED PRODUCT, and UPDATES thereto.

2.4.2 Y shall pay a royalty of 3% to X on the gross sale price of all LICENSED PRODUCTS sold or otherwise transferred to internal or external customers, other than X, in accordance with the schedule of Appendix D. Such royalty will be due to X for any LICENSED PRODUCT sold by Y or by any sub-licensee of Y for a period of six (6) years from the first availability of the [peripheral] in integrated circuit form in production quantities. Y, in any sub-license permitted under this Agreement shall require such sub-licensee to remit to X such royalty payments and shall provide for same record keeping, royalty statements and audit rights of such sub-licensee as are set forth in Articles 2.4.3 and 2.4.4. Royalties shall accrue at the time of the invoice by Y or its sub-licensee of the LICENSED PRODUCT to a third party, or transfer of the LICENSED PRODUCT by Y or its sub-licensee to internal manufacturing for incorporation into another product having as a component thereof a LICENSED PRODUCT, or to a manufacturer for incorporation into another product having a LICENSED PRODUCT as a component thereof on behalf of Y or its sub-licensee.

2.4.3 Within thirty (30) days after the end of each fiscal quarter, Y or its sub-licensee shall furnish X with written statements in the format specified in Appendix D. Such statements shall be certified as to their correctness and accuracy by a responsible Officer of Y or its sub-licensee. So long as royalties are due on any LICENSED PRODUCT, such reports shall be required whether or not any royalty has accrued during the reporting period. Y or its sub-licensee shall keep for three (3) years after the date of submission of each statement true and accurate records, files and books of account containing all the data reasonably required for the full computation and verification of Y or its sub-licensee's sales and royalties paid hereunder.

2.4.4 X shall have the right, at its expense and upon not less than ten (10) working days of notice to Y or its sub-licensee, to have an examination and audit conducted of the records specifically relating to LICENSED PRODUCT sales by Y or its sub-licensee to determine compliance with Article 2.4.2 and Appendix D of this Agreement. Such audit shall be conducted by a mutually agreed upon independent auditor, consisting of a Certified Public Accountant of any established accounting firm. Y or its sub-licensee shall grant access to all relevant records to such auditor and shall

render all assistance reasonably required by such auditors. X shall make use of its right to have such audit conducted no more than once a calendar year. In the event that an audit indicates a Y or its sub-licensee underpayment of X royalties equal to at least fifteen percent (15%) of the total amount of royalties payable to X during the applicable time period, then all expenses associated with such audit shall be borne by Y or its sub-licensee, as applicable.

2.4.5 Y or its sub-licensee will mail royalty payments and reports to:

_____.

2.4.6 Royalty payments shall be reduced by the amount of any tax required to be withheld by a government or governmental agency. Where reduced or nil rates of withholding tax apply under the provisions of double taxation treaties, X shall provide Y or its sub-licensee with the authorizations necessary to apply such rates. Y or its sub-licensee shall provide to X any certification of the amounts withheld furnished by a withholding jurisdiction.

2.5 Neither party grants to the other, under any of Y INTELLECTUAL PROPERTY RIGHTS or X INTELLECTUAL PROPERTY RIGHTS, respectively, any licenses under any such INTELLECTUAL PROPERTY RIGHTS, either expressly, by implication, estoppel, or otherwise, which require, for the utilization of such INTELLECTUAL PROPERTY RIGHT, the combination of a LICENSED PRODUCT with additional apparatus, equipment, circuitry and/or software.

2.6 X grants to Y a worldwide, non-exclusive, non-assignable right and license, under applicable copyrights, to make, use, sell, and distribute to customers or potential customers copies of any documentation contained in the [peripheral] specification of Appendix A, provided all documentation has removed therefrom any markings identifying the document or any portion thereof as having been of X authorship, subject to the conditions set forth in Article 6 and provided that confidentiality provisions at least as protective of X's INFORMATION as the provisions of Article 8 of this Agreement are entered into between Y and any such customer or potential customer.

2.7 All discoveries, improvements, inventions, and trade secrets made in the performance of this Agreement solely by Y personnel and all INTELLECTUAL PROPERTY RIGHTS relating thereto shall be the sole and exclusive property of Y subject to the licenses granted herein to X, and Y shall retain any and all rights to file any patent applications thereon.

2.8 All discoveries, improvements, inventions, and trade secrets made in the performance of this Agreement solely by X personnel and all INTELLECTUAL PROPERTY RIGHTS relating thereto shall be the sole and exclusive property of X subject to the licenses granted herein to Y, and X shall retain any and all rights to file any patent applications thereon.

2.9 All discoveries, improvements, inventions, and trade secrets made in the performance of this Agreement jointly by X personnel and Y personnel shall be the joint property of Y and X subject to the licenses granted herein to Y or X.

2.10 In the case of each discovery, improvement or invention jointly developed by X and Y in accordance with Article 2.9, X shall have the first right of election to file patent applications in the United States and other countries. X shall notify Y in writing, at the earliest practicable date, whether or not, and in which countries of the world, X elects to file such patent application. Y, subject to an agreement on its part to assume the costs thereof, shall have the right to file patent applications on such discovery, improvement or invention in other countries selected by Y.

Each party, at its own expense, shall cooperate fully with the filing party as may be necessary for the proper preparation, filing and prosecution of each patent application and the maintenance, renewal and defense of each patent covering such discovery, improvement or invention. The expense for preparing, filing and prosecuting each application, and for issuance of the respective patent shall be borne by X in the case of applications in countries originally selected by X and by Y in additional countries in which Y elects to file an application.

2.11 In the event that either Y or X shall determine to abandon, or otherwise not to prosecute or to continue to assume the expense of, any patent application for a jointly developed invention, or not to maintain, defend or renew any patent for a jointly developed invention, such party shall notify the other party thereof, in writing, at the earliest practicable date, and such other party shall have the right, at its expense, to prosecute such application or to take up such maintenance or defense, or prosecute such renewal, as the case may be, and such party shall assign all right, title and interest in such application to such other party. Each party agrees, at its own expense, to cooperate fully with the other party to assist the other party in obtaining, maintaining, defending and renewing such patent rights hereunder.

2.12 Each party shall have the right to grant non-exclusive licenses under each patent application or patent for a jointly developed invention, on any terms and conditions that it desires; and such party shall retain any consideration that it may receive therefor without having to account to the other party. Each party consents to the granting of such non-exclusive licenses by the other party, and agrees, upon notification of such license, not to assert any claim with respect to any such patent or application licensed by the other party against the licensee or licensees thereunder for the term of any such license.

SECTION 3 - TRANSFER OF TECHNICAL INFORMATION

3.1 X shall complete the transfer of the INFORMATION contained in the TECHNOLOGY PACKAGE relating to each LICENSED PRODUCT to Y within thirty (30) days after the EFFECTIVE DATE of this Agreement. The transfer of such INFORMATION contained in the TECHNOLOGY PACKAGE shall be complete when all items of the appropriate Appendices have been received by Y. Y shall complete the transfer of the INFORMATION contained in the TECHNOLOGY PACKAGE relating to the DEF and GHI to X within thirty (30) days after the EFFECTIVE DATE of this Agreement.

3.2 On a continuing basis, during the term of this Agreement, and for 2 years thereafter, if the parties do not agree to an extension of the TERM for 2 years pursuant to Article 7.1, each party shall furnish UPDATES to the other party within thirty (30) days after their first successful implementation in hardware or simulation.

3.3 With regard to UPDATES to any LICENSED PRODUCT or the DEF or GHI, furnished by Y, which Y believes are necessary for compliance with the IEEE Standard, Y shall so notify X. X shall confer with Y within thirty (30) days of such notification to determine whether or not such change is to be implemented.

SECTION 4 - [PERIPHERAL] DEVELOPMENT

4.1 The parties wish for LICENSED PRODUCTS to comply with industry standards for use in [peripheral] applications, and shall collaborate on the design and implementation of such products to ensure one interoperable solution. Y agrees to use its best efforts to induce third parties to purchase the LICENSED PRODUCTS.

4.2 X and Y agree that their appropriate corporate officers or their designated representatives shall meet or conduct telephone conferences, not less than quarterly, or at such other periodic time as shall be agreed upon by the parties, to reaffirm the status of their respective programs for, and commitments to, the [peripheral] program.

4.3 Written reports on the progress of the work are to be provided by each party to the other bi-monthly, or as otherwise agreed upon by the parties.

SECTION 5 - PRICING

5.1 Y agrees to sell LICENSED PRODUCTS to X at prices which shall reflect the semiconductor industry learning curve for devices of like size and complexity, which are being manufactured on an equivalent process. Y further agrees to provide to X long term price schedules for LICENSED PRODUCTS, as set forth in Appendix C. The price charged to X for such products shall not exceed Y's lowest price for like specifications at the point of sale for such products regardless of quantities. Y agrees that all prices charged to X are lawful.

5.2 Nothing in this Agreement shall obligate X to purchase any minimum number of PRODUCTION DEVICES.

5.3 All purchases by X under this Agreement shall be made by Purchase Order subject to the terms and conditions of the Basic Order Agreement between X and Y in effect at the time the Purchase Order is issued, and insofar as the Basic Order Agreement is not in conflict with any provision of this Agreement.

SECTION 6 - EXCLUSIVITY

6.1 Y agrees that all newly designed products incorporating the X INFORMATION will be made available to X for review _____ months prior to the new product being disclosed to the general market. All new product proposals for any such newly designed product shall be presented to X first, prior to presentation to any other customer or potential customer of Y.

6.2 Y agrees that all new PRODUCTION DEVICES will be offered first to X in production volume. X will have the option of purchasing up to _____ percent of Y's monthly production for such new PRODUCTION DEVICES for the first _____ months of volume production subject to X having provided to Y, prior to each of such first _____ months of volume production, a _____ day non-binding rolling forecast, including also a _____ day confirmed order.

6.3 Y agrees that the ABC CORE design or minor variations thereof incorporating X INFORMATION will not be made part of Y's publicly available Macro-Cell library for a period of at least _____ years following availability of the first PRODUCTION DEVICES.

SECTION 7 - TERM, TERMINATION AND ASSIGNABILITY

7.1 This Agreement shall remain wholly executory until its EFFECTIVE DATE, and shall remain in effect for _____ years from the EFFECTIVE DATE; provided, however, that after the initial term of this Agreement, the Agreement shall be renewed, upon mutual agreement by the parties, under the same terms and conditions, for additional _____ year periods, unless a party hereto gives written notice to the other at least _____ months before the end of the initial term or any succeeding two-year term to the other party of its intention not to renew.

7.2 If either party shall at any time be in default of any of its obligations or any conditions hereof and such default shall not be cured within _____ days after written notice from the complaining party to the defaulting party and, upon giving of such notice of intent to terminate, this Agreement shall terminate on the _____ day after such notice is given. The defaulting party shall have the right to cure any such default up through the day of termination, or such other date set by agreement of the parties.

7.3 This Agreement is personal to each of the parties hereto, and either party shall have the right to notify the other of its intent to terminate this Agreement by giving written notice of such intent to the other party at any time upon or after:

(1) the filing by the other party of a petition in bankruptcy or insolvency;

(2) any adjudication that the other party is bankrupt or insolvent;

(3) the filing by the other party under any law relating to bankruptcy or insolvency;

(4) the appointment of a receiver for all or substantially all of the property of the other party;

(5) the making by the other party of any assignment or attempted assignment of this Agreement for the benefit of creditors; or

(6) the institution of any proceedings for the liquidation or winding up of the other party's business or for the termination of its corporate charter.

Upon the giving of such notice of intent to terminate, this agreement shall be terminated upon the expiration of ten (10) working days, provided such other party shall not have dissolved such proceedings or demonstrated the lack of merit of such proceedings.

7.4 This Agreement and any rights or licenses granted herein are personal to each party and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign any of its rights or privileges hereunder without the prior written consent of the other party. In the event that either party assigns its rights or privileges hereunder, with consent of the other party, to a successor in ownership of all the relevant

assets of the assigning party, the successor shall expressly assume in writing the performance of all terms and conditions of this Agreement. Any attempted assignment in derogation of this Section 7.4 shall be null and void and shall automatically terminate all rights of the assigning party under this Agreement.

7.5 If this Agreement is terminated by Y in accordance with Section 7.2, 7.3 or 7.4, any INFORMATION of Y previously transferred to X, as set forth in Appendices C and D, shall be returned to Y forthwith, and all licenses to X under Section 2 shall terminate, and all licenses under Section 2 granted to Y shall continue. X shall agree, and hereby does agree, to hold all INFORMATION of Y in confidence under the terms and conditions set forth herein in Section 8.

7.6 If this Agreement is terminated by X in accordance with Section 7.2, 7.3 or 7.4 any INFORMATION of X previously transferred to Y, as set forth in Appendices C and D, shall be returned to X forthwith, and all licenses to Y under Section 2 shall terminate, and all licenses under Section 2 granted to X shall continue. Y shall agree, and hereby does agree to hold all INFORMATION of X in confidence under the terms and conditions set forth herein under Section 8.

7.7 No termination of this Agreement, by expiration or otherwise, shall release either party from any of its obligations of Sections 8 and 9.

SECTION 8 - CONFIDENTIALITY

8.1 X and Y have developed and will develop certain confidential information, including that described in the Appendices A and B. Both party's exchange of INFORMATION is for the sole purpose of performance under this Agreement.

8.2 Unless otherwise agreed upon by the parties INFORMATION shall be maintained in confidence for five (5) years from date of disclosure, except as provided in Section 2.6 above respecting INFORMATION provided by X to Y in the TECHNOLOGY PACKAGE. Recipient shall maintain in confidence Discloser's INFORMATION, provided that it

(a) is clearly marked with Discloser's name and confidential, proprietary or the substantial equivalent thereof, and the date of disclosure; and

(b) if orally disclosed, is summarized in writing or corporeal form and is clearly marked with Discloser's name and confidential, proprietary or the substantial equivalent thereof and the date of disclosure and delivered to Recipient within thirty (30) days thereafter. During the confidentiality period of INFORMATION disclosed by Discloser, Recipient agrees that Recipient may disclose such INFORMATION only to Recipient's employees having a need to know such INFORMATION for performance of this Agreement, that Recipient shall use the same degree of care to avoid disclosure of INFORMATION as it employs with respect to its own confidential/proprietary information, using at least a reasonable standard of care, and that Recipient shall notify its employees who receive such INFORMATION of the obligations hereunder.

8.3 Discloser shall prevent Recipient from being exposed to third party confidential information which is in Discloser's possession.

8.4 Recipient shall have no obligation as to Discloser's INFORMATION that

(a) is known to Recipient at the time of disclosure; or

(b) is independently developed by Recipient provided Recipient can show that such development was accomplished by or on behalf of Recipient without the use of or any reference to such INFORMATION; or

(c) becomes known to Recipient from another source without confidentiality restriction on subsequent disclosure or use; or

(d) is or becomes part of the public domain through no wrongful act of Recipient; or

(e) is disclosed with the prior written approval of Discloser; or

(f) is or becomes part of the public domain through no wrongful act of Recipient; or

(g) is disclosed pursuant to any judicial or governmental request, requirement or order; provided that Recipient takes reasonable steps to give Discloser sufficient prior notice in order to contest such request, requirement or order; or

(h) is furnished to a third party by Discloser without similar confidentiality restriction on the third party.

8.5 Title to all tangible forms of Discloser's INFORMATION and any copies thereof shall be and remain with Discloser. Recipient shall not copy or reproduce in whole or in part any such INFORMATION without written approval of Discloser, except as is necessary to fulfill the purposes of this Agreement. Upon written request, in the event of any asserted breach of the confidentiality provisions of this Section 8 by a recipient, or upon termination of this Agreement, all such tangible forms of such INFORMATION, with the exception of an archive copy to be used solely for complying with Recipient's obligations hereunder, shall be promptly returned to Discloser or destroyed at Discloser's option.

8.6 No rights or obligations other than those expressly recited herein are to be implied solely from the transfer and/or receipt of INFORMATION. Nothing except that expressly stated herein shall affect either party's present or prospective rights under any country's patent, copyright or mask works rights laws, or be construed as granting any license under any present or future patent or copyright rights or mask works rights, or application therefor, or preclude marketing any product unless such marketing constitutes unauthorized use and/or disclosure of INFORMATION.

8.7 Consistent with other provisions of this Agreement, each party assures that it will not export or re-export, directly or indirectly, the technical data received pursuant to this Agreement or the direct product of such technical data to _____ unless prior authorization is obtained from the US Department of Commerce.

8.8 All INFORMATION transmitted by X to Y or by Y to X pursuant to those certain Non-Disclosure Agreements dated _____ shall be considered to have been transmitted in accordance with this Section 8 and this Section 8 shall apply thereto.

SECTION 9 - PUBLICATION

All of the notices to third parties and all other publicity concerning the terms and conditions of this Agreement shall be jointly planned and coordinated by the parties. Neither of the parties shall act unilaterally in this regard without the prior written approval of the other party, which approval, however, shall not be withheld unreasonably. Y shall have the right to announce publicly that any LICENSED PRODUCT is based upon an X design for the ABC CORE.

SECTION 10 - WARRANTY AND INDEMNIFICATION

10.1 X agrees to defend at its expense any suits against Y based upon a claim that the X INFORMATION furnished to Y hereunder infringes a U.S. patent or copyright or constitutes a misappropriation of trade secrets and to pay any costs and damages awarded in any such suit, provided that X is notified promptly in writing of the suit and, at X's request and at its expense, is given control of said suit and all requested reasonable assistance for defense of same. This indemnity shall not apply as to any LICENSED PRODUCT which, but for Y having changed, enhanced upon, or otherwise modified X INFORMATION, would not infringe upon such rights of another. If the use or sale of a LICENSED PRODUCT produced by Y is enjoined as a result of such suit, then X, at its option and at no expense to Y shall use its best efforts to obtain a license for Y from the owner of such rights, at no cost to Y, not less than coextensive with the licenses granted herein by X to Y, or to change the X INFORMATION to eliminate such claim of infringement or misappropriation. In the event that X is unable to do either of the acts set forth in the preceding sentence, the parties will confer and determine the advisability of continuing under this Agreement or terminating this Agreement. The indemnity shall not apply to any claim of infringement or misappropriation by a LICENSED PRODUCT in combination with any other hardware or software as to which, but for such combination, such claim of infringement or misappropriation would not exist.

10.2 Y agrees to defend at its expense any suits against X based upon a claim that the Y INFORMATION furnished to X hereunder infringes a U.S. patent or copyright or constitutes a misappropriation of trade secrets and to pay any costs and damages awarded in any such suit, provided that Y is notified promptly in writing of the suit and, at Y's request and at its expense, is given control of said suit and all requested reasonable assistance for defense of same. This indemnity shall not apply as to any LICENSED PRODUCT which, but for X having changed, enhanced upon, or otherwise modified Y INFORMATION, would not infringe upon such rights of another. If the use or sale of a LICENSED PRODUCT produced by X is enjoined as a result of such suit, then Y, at its option and at no expense to X shall use its best efforts to obtain a license for X from the owner of such rights, at no cost to X, not less than coextensive with the licenses granted herein by Y to X, or to change the Y INFORMATION to eliminate such claim of infringement or misappropriation. In the event that Y is unable to do either of the acts set forth in the preceding sentence, the parties will confer and determine the advisability of continuing under this Agreement or terminating this Agreement. The indemnity shall not apply to any claim of infringement or misappropriation by a LICENSED PRODUCT in combination with any other hardware or software as to which, but for such combination such claim of infringement or misappropriation would not exist.

10.3 X and Y represent that they have the right to grant the licenses under Section 2 hereof, and that the terms and conditions of this Agreement do not violate their respective Articles of Incorporation or By-Laws and do not conflict with any other agreements to which they are a party or by which they are bound.

10.4 Each transferor warrants that the items of INFORMATION transferred hereunder, if pertinent to manufacturing, shall be substantially the same as those then used by the transferor in its own manufacturing operation.

10.5 NEITHER PARTY MAKES ANY WARRANTY AS TO THE ACCURACY, SUFFICIENCY, OR SUITABILITY FOR THE OTHER'S USE OF ANY INFORMAT10N OR ASSISTANCE PROVIDED HEREUNDER FOR THE MANUFACTURE OF LICENSED PRODUCTS, OR THE YIELD FROM THE MANUFACTURE THEREOF, OR FOR THE QUALITY OF SUCH PRODUCT MADE THEREBY, AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR LOSS OR DAMAGES, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL, OR INCIDENTAL, WHICH MIGHT ARISE OUT OF THE OTHER'S USE THEREOF, WHICH SHALL BE ENTIRELY AT THE USER'S RISK AND PERIL.

SECTION 11 - GENERAL PROVISIONS

11.1 This Agreement, and the Appendices A through F attached hereto and made a part hereof, embody the entire understanding of the parties with respect to the subject matter contained herein and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding upon the parties unless in writing signed by their respective, duly authorized officers.

11.2 Nothing contained in this Agreement shall be construed as:

(a) conferring any rights to use in advertising, publicity, or other marketing activities, any name, trademark, or other designation of either party hereto, including any contraction, abbreviation, or simulation of any of the foregoing, provided such restriction shall not apply to device identification numbers and descriptions and each party hereto agrees not to use the existence of this Agreement in any marketing activity without the express written approval of the other party; or

(b) conferring by implication, estoppel, or otherwise upon either party hereunder any license or other right except the licenses and rights expressly granted hereunder to a party hereto; or

(c) an obligation to bring or prosecute actions or suits against third parties for infringement, or to secure and/or maintain any of its INTELLECTUAL PROPERTY RIGHTS; or

(d) limiting the rights which a party has outside the scope of this Agreement.

11.3 All notices required or permitted to be given hereunder (except for notices to be addressed to the Documentation Managers) shall be in writing and shall be valid and sufficient if dispatched by registered mail, return receipt requested, postage prepaid, in any post office in the United States, or in the case of international delivery, dispatched by a delivery service providing a receipt of delivery, addressed as follows:

If to Y:

_____
_____
_____

Copy to:

_____
_____
_____

If to X:

_____
_____
_____

Copy to:

_____
_____
_____

Copy to:

_____
_____
_____

Either party may change its address by a notice given to the other party in the manner set forth above. Notices given as herein provided shall be considered to have been given seven (7) days after the mailing thereof.

11.4 Anything contained in this Agreement to the contrary notwithstanding, the performance of the obligations of the parties hereto shall be subject to all laws, both present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions, or requests of any such government, or any department, agency, or corporation thereof, and to any contingencies resulting from war, acts of public enemies, strikes, or other labor disturbances, fires, floods, acts of God, or any causes of like or different kind beyond the control of the parties, and the parties hereto shall be excused from any failure to perform or any delay in the performance of any obligation hereunder to the extent such failure or delay is caused by any such law, order, regulation, direction, request, or contingency.

11.5 Any failure or delay on the part of either party in the exercise of any right or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right or privilege preclude other or further exercise thereof or of any other right or privilege.

11.6 If any provisions of this Agreement shall be held to be overbroad by a court of competent jurisdiction, such provision may be reduced in scope by the court to the extent it deems necessary to render the provision reasonable and enforceable. If any provision shall be held to be invalid, illegal, or unenforceable, all other provisions of the Agreement shall remain in full force and effect.

11.7 The captions used in this Agreement are for convenience only and are not to be used in interpreting the obligations of the parties under this Agreement.

11.8 The applicable law governing any cause of action arising out of this Agreement, or the performance by either party hereto, shall be governed by the laws of the State of _____, United States of America.

11.9 Nothing contained herein, or done in pursuance of this Agreement, shall constitute the parties as entering upon a joint venture or shall constitute either party hereto the agent for the other party for any purpose or in any sense whatsoever.

11.10 Representatives and personnel of each party, during the time they are present on the premises of the other party, shall be subject to all reasonable rules and regulations prevailing on such premises. Each party shall be responsible for the payment of all compensation and expense of its respective representatives and personnel. None of the representatives or personnel of either party shall be considered, for any reason, to be an employee of the other.

11.11 Each party agrees that if any person connected with it, or assigned by it to work hereunder, or his legal representative, shall present any claim or institute any suit or action against the other party, or their directors, officers, agents or employees, for any property damage or personal injury, including death, connected with, related to, or arising out of the performance of this Agreement, the party associated with such a person shall defend and indemnify the other party, and their directors, officers, agents and employees, against any and all such claims, suits or actions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as the date below written.

Y	X
By: _____ Signature	By: _____ Signature
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ANNEX II

CROSS-LICENSE BETWEEN FOUNDRY AND CUSTOMER FOR JOINT PRODUCT DESIGN AND DEVELOPMENT OF PRODUCTS MARKETED BY EACH PARTY

Summary of the Provisions of the Agreement

This Agreement is a cross-license and technology transfer agreement under which X transfers to Y technology relating to the functionality of a semiconductor computer peripheral chip for the purpose of making, using or selling, leasing or otherwise disposing thereof to the general public. The license is initially exclusive and then becomes non-exclusive. The license covers future generations of the computer peripheral chip which embody the technology, and X gets to have first access to the chip and future generation chips for the purpose of designing the chips into X's products. Y cross-licenses X to its own technology which will be embodied in the chip for purposes of making the chip, or having the chip made, solely for X. Y can sub-license the technology of X. Y and its sub-licenses must pay a royalty to X for a period of years.

The **DEFINITIONS SECTION** serves the same purpose as in the Agreement in Annex I. It contains some definitions unique to the Agreement in Annex II. Among these are LICENSED PRODUCT TECHNOLOGY, which is licensed in some circumstances for use other than in making LICENSED PRODUCTS. Also included are certain milestones and/or time periods, CONCEPTUALIZATION PERIOD, PRODUCT DEFINITION PERIOD, VOLUME PRODUCTION and OUTPUT OPTION PERIOD related to certain rights of access to the products resulting from use of the transferred technology, granted to the technology licensor by the licensee.

The **OWNERSHIP and LICENSING SECTION** grants a license by X to Y for Y to make integrated circuits and related software LICENSED PRODUCTS. Y grants to X a license to make or have make solely for X LICENSED PRODUCTS. An existing product of Y is excluded from LICENSED PRODUCTS but updates to this product which incorporates X's technology are to be considered LICENSED PRODUCTS for royalty purposes. The license to Y for a LICENSED PRODUCT is exclusive for time, extendable as X's option for an additional year of exclusivity. The license granted to Y for UPDATED LICENSED PRODUCTS is exclusive for some time, with Y having the option to extend for an additional year of exclusivity.

The royalties vary depending upon whether the license during a given royalty period is exclusive or non-exclusive. After Y has paid a certain amount of royalties for exclusive rights, the royalty during any exclusive period is reduced. X must enforce its patent rights against third party infringers during any period of the license being exclusive, otherwise Y can reduce its royalty payments or itself enforce the patents and credit damages recovered, if any, to the portion of the royalty payments which are for exclusivity.

In othe ways the **OWNERSHIP and LICENSING SECTION** is essentially the same as in the Agreement in Annex I.

The **PRODUCT DEVELOPMENT SECTION** provides for how X will transfer information to Y concerning X's technology, how Y will design LICENSED PRODUCTS using that information and what support X will provide in that effort. It is contemplated that a third party (ies) might be brought in to collaborate in the design of LICENSED PRODUCTS.

In the **PRICING AND COMPENSATION SECTION**, Y agrees to charge X "most favored customer" prices for the integrated circuits constituting LICENSED PRODUCTS. Also the actual mechanism for making royalty payments and for accounting for the accuracy thereof is set forth.

The **EXCLUSIVITY OF ACCESS AND SUPPLY SECTION** provides that X will have earliest access to new product information relating to Y's LICENSED PRODUCTS, before other potential customers of Y, to allow X to have some head start over its own competition in designing end products using the integrated circuit LICENSED PRODUCTS. It also provides that for some period of time Y will give X the option to purchase up to 80% of Y's output.

The **TERM, TERMINATION AND ASSIGNABILITY SECTION** is essentially the same as in the Agreement in Annex I. There is added a provision that, if Y does not complete the design of any cooperatively developed product using X's Technology, Y agrees to turn over to X the existing chip design/mask work fabrication data bases and gives X the right to make, use and sell such integrated circuits and sub-license others to do so.

The remaining provisions in the Agreement are essentially the same as in the Agreement in Annex I.

LICENSE AGREEMENT

TABLE OF CONTENTS

This Agreement, having an EFFECTIVE DATE as defined herein, is entered into by and between Y CORPORATION, having an office at _____, and all of its subsidiaries, now owned or hereafter acquired or formed, (hereinafter called "Y"), and X, a corporation duly organized and existing under the laws of the _____, USA, with principal offices at _____, and all of its subsidiaries, now owned or hereafter acquired or formed, (hereinafter "X").

WHEREAS X has significant experience in X [peripheral] Architecture; and

WHEREAS X desires to transfer certain technical information relating to such X [peripheral] Architecture to Y for Y to manufacture integrated circuits for X and the general market; and

WHEREAS Y has significant experience in the design and manufacture of [peripheral] circuits and is involved in [peripheral] development programs, and desires to manufacture such devices for X and the general market, and to consult with X to further the development of [peripheral] and related [peripheral] products utilizing X [peripheral]; and

WHEREAS X and Y desire to establish the conditions for the cooperative implementation of the X [peripheral] Architecture in [peripheral] related product development; and

WHEREAS X and Y desire to establish the ground work for future cooperative development efforts to enhance and evolve the current X [peripheral] Architecture to improve functionality and be consistent with future revisions and generations of the [I] standard.

NOW, THEREFORE, Y and X agree as follows:

SECTION 1 - DEFINITIONS

1.1 EFFECTIVE DATE shall mean the date upon which both parties shall have executed this Agreement.

1.2 INFORMATION shall mean proprietary and confidential information exchanged under this Agreement in accordance with Section 7.

1.3 X INFORMATION shall mean INFORMATION provided by X to Y.

1.4 Y INFORMATION shall mean INFORMATION provided by Y to X.

1.5 UPDATED INFORMATION shall mean INFORMATION regarding modifications to the X [periperhal] Architecture which are made by Y or X to improve the X [periperhal] Architecture, or to modify it in order to make it compatible with the [I] standard and future revisions of the standard or to correct an error in an item of INFORMATION which is reflected as an error in a product using X [peripheral] Architecture or the testing thereof, excluding integrated circuit fabrication process improvement and/or process enhancement modifications made by Y which do not affect functionality.

1.6 MASK WORK shall have the same meaning as set forth in Section 910 of Title 17 U.S.C.

1.7 INTELLECTUAL PROPERTY RIGHTS shall mean all rights below listed which have been, or will be, acquired or otherwise secured by either party before or during the term of this Agreement, throughout the world:

1.7.1 All right, title and interest in and to all Patent and applications for Letters Patent, Industrial Models, Industrial Designs, Petty Patents, Patents of Importation, Utility models, Certificates of Invention, and other indicia of invention ownership, including any such rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed; and

1.7.2 All right, title and interest in and to all trade secret rights arising under the common law, State law, federal law or the laws of any foreign country; and

1.7.3 All right, title and interest in and to all semiconductor MASK WORK rights, and in all copyright rights and all other literary property and author rights; and

1.7.4 All right, title and interest in all know-how and show-how.

1.8 LICENSED PRODUCT shall mean any integrated circuit or related software product developed and produced by or on behalf of Y, alone or in conjunction with X, or in conjunction with X and/or a THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT, which incorporates some or all of the LICENSED PRODUCT TECHNOLOGY.

1.9 UPDATED LICENSED PRODUCT shall mean any LICENSED PRODUCT developed and produced by or on behalf of Y, alone or in conjunction with X, or in conjunction with X and/or a THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT, which incorporates some part or all of the LICENSED PRODUCT TECHNOLOGY, as embodied in whole or in part in a prior LICENSED PRODUCT or UPDATED LICENSED PRODUCT, and which constitutes any upgrade, enhancement, modification, revision, or improvement to such prior LICENSED PRODUCT or UPDATED LICENSED PRODUCT, and which has its own separate PRODUCT INITIATION FORM.

1.10 LICENSED PRODUCT TECHNOLOGY shall mean any X INTELLECTUAL PROPERTY RIGHTS necessary or useful in implementing a [peripheral] ENGINE incorporating some part or all of such X INTELLECTUAL PROPERTY RIGHTS, and specifically excluding any X INTELLECTUAL PROPERTY RIGHTS necessary or useful for the design, development, implementation or manufacture of hardware or software products other than a [peripheral] ENGINE, regardless of whether such hardware or software products are utilized with or form a part or parts of a system incorporating such [peripheral] ENGINE.

1.11 [Peripheral] ENGINE shall mean hardware or software, or a combination thereof which provides an interface between a computer [peripheral] output and a [peripheral], and controls the implementation of the [peripheral] data on the [peripheral].

1.12 CONCEPTUALIZATION PERIOD shall include any time prior to the existence of a final PRODUCT INITIATION FORM for a LICENSED PRODUCT or an UPDATED LICENSED PRODUCT and after an initial concept for a LICENSED PRODUCT or an UPDATED LICENSED PRODUCT has occurred.

1.13 PRODUCT DEFINITION PERIOD shall mean the period of time between the execution of a final PRODUCT INITIATION FORM for a LICENSED PRODUCT or an UPDATED LICENSED PRODUCT and the date upon which Y first ships SAMPLES of such LICENSED PRODUCT or UPDATED LICENSED PRODUCT.

1.14 VOLUME PRODUCTION shall mean production by or on behalf of Y of an integrated circuit LICENSED PRODUCT or UPDATED LICENSED PRODUCT, on other than a pilot or prototype fabrication line, beyond the first one thousand units of such LICENSED PRODUCT or UPDATED LICENSED PRODUCT.

1.15 OUTPUT OPTION PERIOD shall mean the six (6) month period from the date of the commencement of VOLUME PRODUCTION by or on behalf of Y of any such LICENSED PRODUCT or UPDATED LICENSED PRODUCT.

1.16 X PRODUCTS shall mean any product which X now or hereafter, designs, manufactures or has manufactured on its behalf, and markets, sells, leases, licenses, distributes or otherwise disposes of (hereinafter collectively "markets" or "marketed") in the ordinary course of its business and which specifically includes any spare parts, maintenance or upgrade kit which X itself markets or which spare parts, maintenance or upgrade kit X has authorized or authorizes another to market. X PRODUCT shall include any computer or computer system product made and sold, leased, licensed or otherwise distributed by any third party, so long as such computer or computer system product contains as a substantial part thereof an X PRODUCT as described in the preceding sentence to which such third party adds substantial hardware or software added value, prior to such sale, lease, license or other distribution.

1.17 PRODUCT INITIATION FORM shall mean the internally used form which must be approved by management at Y to start the PRODUCT DEFINITION PERIOD. The PRODUCT INITIATION FORM contains at least specification of the architectural and functional definition, performance targets, and date for prototype availability of the LICENSED PRODUCT or UPDATED LICENSED PRODUCT.

1.18 A THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT shall be a party, other than X or Y, who has been mutually deemed to be able to make significant contributions at the architectural definition, product implementation, marketing and/or distribution levels towards future LICENSED PRODUCT or UPDATED LICENSED PRODUCT. The THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT shall be mutually agreed upon by X and Y on a per LICENSED PRODUCT or UPDATED LICENSED PRODUCT basis.

SECTION 2 - OWNERSHIP AND LICENSES

2.1 Y acknowledges that, as between X and Y, X owns and shall retain all right, title and interest in and to all X INTELLECTUAL PROPERTY RIGHTS relating to [periperhal] Architecture and any other INFORMATION contained in the attached Appendices.

2.2 X acknowledges that as between X and Y, Y owns and shall retain all right, title and interest in and to all Y INTELLECTUAL PROPERTY RIGHTS relating to Y's existing [peripheral] versions and all changes, improvements or modifications thereto made by Y which do not incorporate any INTELLECTUAL PROPERTY RIGHTS of X.

2.3 Y grants and agrees to grant to X a worldwide, non-exclusive, non-assignable, fully paid up, irrevocable (except as provided in Section 6), right and license under Y's INTELLECTUAL PROPERTY RIGHTS to use the Y INTELLECTUAL PROPERTY RIGHTS to manufacture, and have manufactured solely for X, and to use, lease, sell, or otherwise dispose of LICENSED PRODUCTS and UPDATED LICENSED PRODUCTS so manufactured as a part of, or for use in X PRODUCTS.

2.4 X grants and agrees to grant to Y a worldwide, non-exclusive (except as provided in Section 2.5), non-assignable, irrevocable, (except as provided in Section 6), right and license, with the right to grant sublicenses, under X INTELLECTUAL PROPERTY RIGHTS, to use the INTELLECTUAL PROPERTY RIGHTS to design integrated circuit and related software LICENSED PRODUCTS, and UPDATED LICENSED PRODUCTS, and to manufacture, have manufactured, use, lease, sell, or otherwise dispose of such integrated circuit and related software LICENSED PRODUCTS and UPDATED LICENSED PRODUCTS.

2.5 Up until the end of _____ years after the commencement ofVOLUME PRODUCTION for a LICENSED PRODUCT, the licenses granted to Y by X in Section 2.3 shall be exclusive. X, at its sole option, shall have the right to extend the period of exclusivity provided for in this Section 2.5 for up to one additional year. After the end of such _____ years, or such one additional year, or a portion thereof, extension granted at X's option, such licenses shall become non-exclusive.

2.6 Up until the end of _____ years after the commencement of VOLUME PRODUCTION for an UPDATED LICENSED PRODUCT, the licenses granted by X to Y, in regard to any upgrade, enhancement, modification, revision, or improvement of a preceding LICENSED PRODUCT or UPDATED LICENSED PRODUCT, as the case may be, shall be exclusive. Y, at its sole option, shall have the right to extend the period of exclusivity provided for in this Section 2.6 for up to one and one-half additional years. After the end of such _____ years, or such one and one-half additional years, or a portion thereof, extension granted at Y's option, such licenses shall become non-exclusive.

2.7 As to any LICENSED PRODUCT or UPDATED LICENSED PRODUCT, during any period of time in which the licenses to Y are exclusive, as provided for in Sections 2.5 and 2.6, Y shall pay to X a royalty at a rate of _____ per cent (_____%) of its gross sales income and _____ per cent (_____%) of its gross royalty income from any sub-license granted by Y. As to any LICENSED PRODUCT or UPDATED LICENSED PRODUCT, subsequent to the licenses granted herein by X becoming non-exclusive, Y shall pay to X a royalty of _____ per cent (_____%) of its gross sales income, and/or _____ per cent (_____%) of its gross royalty income from any sub-license granted by Y. For the purpose of this Section 2.7, gross sales income shall include sales by Y of LICENSED PRODUCTS or UPDATED LICENSED PRODUCTS as part of a board, module or system, made by or on behalf of Y, and gross sales income shall be calculated for any such incorporated LICENSED PRODUCT or UPDATED LICENSED PRODUCT as the most favored customer price for such LICENSED PRODUCT or UPDATED LICENSED PRODUCT for like quantities of same as are transferred within Y or to a manufacturer for manufacture on behalf of Y, averaged over the three calendar months preceding the month of such transfer. Gross sales income shall exclude sales to X or to a manufacturer for manufacture on behalf of X.

2.8 During any period of time in which X is entitled to a _____ per cent (_____%) royalty as provided for in Section 2.7, Y's obligation to pay such _____ per cent (_____%) royalty to X is conditioned upon X enforcing its patent rights against any product of another not authorized by a sub-license from Y, in competition with any LICENSED PRODUCT or UPDATED LICENSED PRODUCT, and of which product X is aware, and believes that the manufacture, importation, sale, lease, license or other distribution thereof constitutes an infringement of any one or more patents of X. Y shall be obligated to notify X in writing of any such product believed to constitute such infringement. Should X disagree that such product constitutes such an infringement, the parties will confer in an effort to resolve such disagreement. In the event that X does not agree that such product constitutes an infringement and/or chooses not to enforce at least one of such patent rights against any such unauthorized manufacture, importation, sale, lease, license or other distribution of any

such product, then Y, at its sole option, may elect to enforce any such patent or patents of X. Should Y elect not to enforce at least one of such patents of X, or any patent of its own, against any such unauthorized manufacture, importation, sale, lease, license or other distribution of any such product, and X shall have agreed that such product constitutes such infringement, then the royalty rate Y shall be obligated to pay to X during the remainder of any applicable period of exclusive license to Y, as provided for in Sections 2.5 and/or 2.6, shall be reduced to_____ (_____%) per cent, as if Y's license were non-exclusive as provided for in Section 2.8. Should Y elect to enforce any patent of X or of Y against any such unauthorized manufacture, importation, sale, lease, license or other distribution of any such product, in the event that X shall have disagreed that such product constitutes such infringement, and successfully prevents further unauthorized manufacture, importation, sale, lease, license or other distribution, but does not recover any damages for same, Y shall receive a credit for _____ per cent (_____%) (_____ of the _____ per cent (_____%)) royalty for any remaining period of the applicable exclusive licenses to Y, up to and including the reasonable costs to Y of obtaining such relief, including reasonable attorney's fees, and thereafter shall continue to pay to X the _____ per cent (_____%) royalty for the remainder of such applicable exclusive licenses. In the event that Y shall obtain damages as part of any relief obtained in any suit by Y to prevent any such unauthorized manufacture, importation, sale, lease, license or other distribution, then Y shall, after deducting the reasonable costs to Y of obtaining such damages, including reasonable attorney's fees, apply such damages to account for any reduction of royalties paid by Y from _____ per cent (_____%) to _____ per cent (_____%) as may have been allowed by this Section 2.8.

2.9 Neither party grants to the other, under any of Y INTELLECTUAL PROPERTY RIGHTS or X INTELLECTUAL PROPERTY RIGHTS, respectively, any licenses under any such INTELLECTUAL PROPERTY RIGHTS, either expressly, by implication, estoppel, or otherwise, which require, for the utilization of such INTELLECTUAL PROPERTY RIGHT, the combination of a LICENSED PRODUCT or UPDATED LICENSED PRODUCT with additional apparatus, equipment, circuitry and/or software other than that implementing [peripheral] ARCHITECTURE.

2.10 X grants to Y a worldwide, non-exclusive, non-assignable, right and license, under applicable copyrights, to make, copy and distribute to customers or potential customers copies of documentation contained in the attached Appendices for the purpose of providing X PROPRIETARY INFORMATION necessary to implement the [periperhal] Architecture in part or in whole, or having the architecture modified into other application implementations, provided that such copies are distributed only under a Non-Disclosure Agreement between Y and such customer or potential customer.

2.11 All discoveries, improvements, inventions, and trade secrets, made in the performance of this Agreement solely by Y personnel and all INTELLECTUAL PROPERTY RIGHTS relating thereto shall be the sole and exclusive property of Y, subject to the licenses granted herein to X, and Y shall retain any and all rights to file any patent applications thereon. Y shall provide X with a copy of each such patent application and a copy of each document filed in, or received from, the appropriate Patent Office with respect to such patent application within _____ (_____) days after such filing or receipt. Y shall consider all reasonable suggestions made by X with respect to such filing or prosecution of each such patent application, but shall be under no obligation to follow any of such suggestions.

2.12 All discoveries, improvements, inventions, and trade secrets, made in the performance of this Agreement solely by X personnel shall be the sole and exclusive property of X, subject to the licenses granted herein to Y, and X shall retain any and all rights to file any patent applications thereon. X shall provide Y with a copy of each such patent application and a copy of each document filed in, or received

from the appropriate Patent Office within _____ (____) days after such filing or receipt. X shall consider all reasonable suggestions made by Y with respect to such filing or prosecution of each such patent application but shall be under no obligation to follow any of such suggestions.

2.13 All discoveries, improvements, inventions, and trade secrets, made in the performance of this Agreement jointly by X personnel and Y personnel, shall be the joint property of Y and X.

2.14 In the case of each discovery, improvement or invention jointly developed by X and Y in accordance with Subsection 2.13, X shall have the first right of election to file patent applications in the United States and other countries. X shall notify Y in writing, at the earliest practicable date, but no later than _____ (____) months after the disclosure of the invention to X's Patent Committee, either by a X employee or a Y employee, or both, of each such discovery, improvement, or invention, whether or not, and in which countries of the world X elects to file such patent application. Y, subject to an agreement on its part to assume the costs thereof, shall have the right to file patent applications on such discovery, improvement or invention in other countries selected by Y. Each party, at its own expense, shall cooperate fully with the filing party as may be necessary for the proper preparation, filing and prosecution of each patent application and the maintenance, renewal and defense of each patent covering such discovery, improvement or invention. The expense for preparing, filing and prosecuting each application, and for issuance of the respective patent shall be borne by X in the case of applications in countries originally selected by X and by Y in additional countries in which Y selects to file an application. Each party shall provide the other with a copy of each such patent application and a copy of each document filed by such party in the appropriate Patent Office, or received by such party in the appropriate Patent Office, or received by such party from such Patent Office, with respect to each such patent application within sixty (60) days after such filing or receipt. Each party shall consider all reasonable suggestions made in writing by the other party with respect to the filing and prosecution of each such patent applications but shall not be under any obligation to follow any such suggestions.

2.15 In the event that Y shall determine to abandon, or otherwise not to prosecute, or X shall determine not to continue to assume the expense of, any patent application for a jointly developed invention, or not to maintain, defend or renew any patent for a jointly developed invention, it shall notify the other party thereof, in writing, at the earliest practicable date, and such other party shall have the right, at its expense, to prosecute such application or to take up such maintenance or defense, or prosecute such renewal, as the case may be and in the case of Y it shall assign all right, title and interest in such application to X. Each party agrees, at the other party's expense, to cooperate fully with the other party to assist the other party in obtaining, maintaining, defending and renewing such patent right hereunder.

2.16 Each party shall have the right to grant non-exclusive licenses under each patent application or patent for a jointly developed invention, on any terms and conditions that it desires; and such party shall retain any consideration that it may receive therefor without having to account to the other party. Each party consents to the granting of such non-exclusive licenses by the other party, and agrees not to assert any claim with respect to any such patent or application licensed by the other party against the licensee or licensees thereunder for the term of any such license.

2.17 X agrees that past and future sales of the present implementation of the Y [peripheral product] shall not be considered subject to the royalty payment considerations of Sections 2.7, 2.8 or 2.18 of this Agreement. X agrees that modifications, enhancements or updates to the [peripheral product], solely implemented to improve the present product's manufacturability, resulting in no architectural change to the present [peripheral product] product shall be considered not to be subject to the royalty payment considerations of Sections 2.7, 2.8 or 2.18 of this Agreement. Y and X agree that future modifications,

enhancements or updates to the [peripheral product] which are solely within the extensibility defined by the present [peripheral product] architecture and internal register definition format and programming content shall be considered to be a LICENSED PRODUCT or an UPDATED LICENSED PRODUCT and subject to the terms of this Agreement, however the royalty payment defined in Sections 2.7, 2.8 and 2.18 will be reduced to three and one-half per cent (3.5%) for both exclusive and non-exclusive licenses for a period of two and one-half (2.5) years from the date of execution of this agreement. After the two and one-half year period, all LICENSED PRODUCTS or UPDATED LICENSED PRODUCTS which contain modifications, enhancements or updates derived from the (peripheral product) architecture shall become subject to all terms of Sections 2.7 and 2.8, such that all LICENSED PRODUCT or UPDATED LICENSED PRODUCT that exist or are planned at that time are subject to the (_____) per cent (_____%) royalty while under exclusive license subject to the terms of Section 2.18. Y and X agree that all other future modifications, enhancements or updates to the [peripheral product] shall be considered to be a LICENSED PRODUCT or an UPDATED LICENSED PRODUCT and subject to all terms of this Agreement. Y and X agree that future LICENSED PRODUCTS or UPDATED LICENSED PRODUCTS which contain window priority display control functionality as outlined in the APPENDIX, shall have register level compatibility from a software definition perspective for the specific window display related registers contained in the present [peripheral product], unless mutually agreed by both X and Y that an alternative window display architecture should be pursued.

2.18 After Y shall have paid royalties of _____ Dollars ($_____) for a LICENSED PRODUCT or UPDATED LICENSED PRODUCT in accordance with the provisions of Section 2.7 of this Agreement in consideration for the exclusive licenses specified in Sections 2.5 and 2.6 of this Agreement, the royalty rate of _____ per cent (_____%) for future sales and future royalties as specified in paragraph 2.7 for such exclusive licenses shall become _____ per cent (_____%) for that LICENSED PRODUCT or UPDATED LICENSED PRODUCT.

SECTION 3 - [Peripheral] PRODUCT DEVELOPMENT

3.1 X shall complete the transfer of the [peripheral] Architectural INFORMATION, as outlined in the Appendices I and II, to Y within sixty (60) days after the EFFECTIVE DATE of the Agreement. The transfer of such INFORMATION shall be complete when all items of the appropriate Appendices have been received by Y.

3.2 The parties wish to conform X [peripheral] Architecture to an industry standard for use in [peripheral] applications, and shall collaborate on the design and implementation of such products to ensure one interoperable solution.

3.3 X and Y agree that their appropriate corporate officers or their designated representatives shall meet or conduct telephone conferences, not less than quarterly, to reaffirm the status of their respective programs for, and commitments to, the X [peripheral] Architecture support.

3.4 At X's option, there will be a minimum of two formal reviews by X for any LICENSED PRODUCT or UPDATED LICENSED PRODUCT developed by Y or by X and Y jointly using X [periperhal] architecture with appropriate representatives of both X and Y. The initial review will occur prior to the commencement of the PRODUCT DEFINITION PERIOD, will cover the LICENSED PRODUCT or UPDATED LICENSED PRODUCT functional specification, system application and software constraints and price targets and whether or not to include a THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT, the decision regarding which shall be in the PRODUCT INITIATION FORM for each LICENSED PRODUCT or UPDATED LICENSED PRODUCT. The final review will occur prior to VOLUME PRODUCTION, will confirm that the LICENSED PRODUCT or UPDATED LICENSED PRODUCT design is a complete implementation of the functional specification, and that other performance and price goals have been met. The reviews will take the form of face-to-face meetings, written communication, or oral conversations with written confirmation and summary to both X and Y representatives following in a timely manner.

3.5 X will provide Y with design related support to have X's [peripheral] Architecture implemented in LICENSED PRODUCT or UPDATED LICENSED PRODUCT as part of Y commodity part offerings. The type and level of X design support to Y in the development of these commodity parts will be determined by X.

SECTION 4 - PRICING & COMPENSATION

4.1 Y agrees to sell any LICENSED PRODUCT or UPDATED LICENSED PRODUCT to X at prices which shall reflect the semiconductor industry learning curve for devices of like size and complexity, and being manufactured on an equivalent process. Y further agrees to provide to X long term price schedules for LICENSED PRODUCTS. In any event, the price charged to X for such LICENSED PRODUCT or UPDATED LICENSED PRODUCT shall not exceed Y's most favored customer price for like specifications at the point of sale for such products, regardless of quantities.

4.2 Y shall pay royalties to X in accordance with the Payment Schedule appended hereto as Appendix III. Any royalties that are payable under Appendix III shall be paid quarterly within thirty (30) days of the close of Y's fiscal quarter during which the royalties accrue. Royalties shall accrue at the time of Y's invoice of the LICENSED PRODUCT to a third party, or invoice of royalties due from a third party, or transfer of the LICENSED PRODUCT to internal manufacturing for incorporation into another product having as a component thereof a LICENSED PRODUCT, or to a manufacturer for incorporation into another product on behalf of Y, having a LICENSED PRODUCT as a component thereof.

4.3 Within thirty (30) days after the end of each fiscal quarter, Y shall furnish X with written statements in the format specified in Appendix III. Such statements shall be certified as to their correctness and accuracy by a responsible officer of Y. So long as this Agreement is in effect, such reports shall be required whether or not any royalty has accrued during the reporting period. Y shall keep for eight (8) years after the date of submission of each statement supported thereby true and accurate records, files and books of account containing all the data reasonably required for the full computation and verification of Y and its Subsidiaries' sales and royalties paid hereunder.

4.4 Y will mail royalty payments and reports to: _____

4.5 Royalty payments shall be reduced by the amount of any tax required to be withheld by a government or governmental agency. Where reduced or nil rates of withholding tax apply under the provisions of double taxation treaties, X shall provide Y with the authorizations necessary to apply such rates. Y shall provide to X any certification of the amounts withheld furnished by a withholding jurisdiction.

4.6 During the term of this Agreement and for one (1) year thereafter, X shall have the right, at its expense and upon not less than ten (10) working days of notice to Y, to have an examination and audit conducted of Y's records specifically relating to product royalties to determine compliance with Sections 2.7 and 2.8 and Appendix III of this Agreement. Any such audit will be conducted during regular business hours by Certified Public Accountants of any established accounting firm selected by X and approved by Y and in such a manner as not to interfere unreasonably with Y's normal business activities. In the event that an audit indicates a Y underpayment of X royalties equal to at least fifteen per cent (15%) of the total amount of royalties payable to X during the applicable time period, then all expenses associated with such audit shall be borne by Y. Approval of such Certified Public Accountant selected by X shall not be unreasonably withheld by Y.

SECTION 5 - EXCLUSIVITY OF ACCESS AND SUPPLY

5.1 In addition to, or in lieu of X participation during the PRODUCT DEFINITION PERIOD, Y agrees that for each LICENSED PRODUCT or UPDATED LICENSED PRODUCT incorporating the X Proprietary [peripheral] Technology Y will not make available other than to X or a THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT for such LICENSED PRODUCT or UPDATED LICENSED PRODUCT any information relating to the LICENSED PRODUCT or UPDATED LICENSED PRODUCT, other than information Y is permitted to provide during the CONCEPTUALIZATION PERIOD, for a period of five months from the date of commencement of the PRODUCT DEFINIT1ON PERIOD, and that Y will allow X to have access to such information during such five month period.

5.2 Y agrees that as to any LICENSED PRODUCT or UPDATED LICENSED PRODUCT incorporating the X [peripheral] Architecture, Y hereby grants to X the option of purchasing up to eighty percent (80%) of Y's monthly production for any such LICENSED PRODUCT or UPDATED LICENSED PRODUCT during the OUTPUT OPTION PERIOD. In the event that one or more THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(S) has participated in PRODUCT DEFINITION during the PRODUCT DEFINITION PERIOD, then following the first three months of the OUTPUT OPTION PERIOD, such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s) shall in total have an option for up to forty percent (40%) of Y's monthly production and X shall have an option for up to forty percent (40%) of Y's production, during the remainder of such six-month period. In the event that either X or such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), in total, shall elect not to fully exercise such option, or any portion thereof, the option or any unexercised portion thereof shall be exerciseable by the other of X and such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), in total, if the other has previously exercised all of its options. If options are not exercised up to the full 80%, Y shall have the right to sell to third parties the portion of Y's production represented by such unexercised option or options.

5.3 Not less than four (4) months prior to Y's projected date of the commencement of VOLUME PRODUCTION for any LICENSED PRODUCT or UPDATED LICENSED PRODUCT, Y shall notify X and any THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(S) in writing of such projected date along with a written projection of production volumes for each of the first six months of VOLUME PRODUCTION of such LICENSED PRODUCT or updated LICENSED PRODUCT. Not less than three months prior to such projected date, X shall notify Y and such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s) in writing of its intent to exercise some part or all of its option referred to in section 5.2 above, for the first three months. Within twenty (20) days after the date of the actual commencement of VOLUME PRODUCTION, Y shall provide to X, and any THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s) a written update of such projection of production volumes for the final three months of the OUTPUT OPTION PERIOD. Within twenty (20) days of the receipt of such updated projection of the last three months of the OUTPUT OPTION PERIOD volume production, X shall notify Y and such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), in writing, of its intent to exercise some part or all of its option referred to in section 5.2 for each month of such three-month period. Such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(S) shall also be required within such twenty (20) day period to notify Y and X in writing of its intent to exercise some part or all of its option referred to in section 5.2 for each of such last three months. Within ten (10) days after such notification by X and each of such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), X or such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), in total, having exercised all of its or their option(s) shall notify Y in writing if it wishes to exercise any portion of the option not exercised by the other of X or such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(s), in total, and if so, the portion of the unexercised option which it wishes to exercise. Y shall have the right to sell to third parties the portion of Y's production represented by the unexercised portion of the options of X and such THIRD PARTY LICENSED DEVELOPMENT PARTICIPANT(s).

5.4 Notification by X and any THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(S) shall include a purchase order for the portion of the production by Y of the LICENSED PRODUCT or UPDATED LICENSE PRODUCT exercised by X and such THIRD PARTY LICENSED PRODUCT DEVELOPMENT PARTICIPANT(S) under their options.

SECTION 6 - TERM, TERMINATION AND ASSIGNABILITY

6.1 This Agreement shall remain wholly executory until its EFFECTIVE DATE, and shall remain in effect for three (3) years from the EFFECTIVE DATE; provided, however, that after the initial term of this Agreement, the Agreement may be renewed, under the same terms and conditions, for additional two (2) year periods, provided each party hereto gives written notice to the other not more than six (6) months and not less than three (3) months before the end of the initial term, or any succeeding two year term, to the other party of its intention to renew.

6.2 If either party shall at any time default in fulfilling any of its material obligations, or conditions hereof and such default shall not be cured within sixty (60) days after written notice from the complaining party to the defaulting party, the complaining party shall have the right to terminate this Agreement upon a further notice of at least thirty (30) days in writing to the defaulting party unless the defaulting party shall have cured such default within such thirty (30) day period.

6.3 This Agreement is personal to each of the parties hereto, and either party shall have the right to notify the other of its intent to terminate this Agreement by giving written notice of such intent to the other party at any time upon or after : (1) the filing by the other party of a petition in bankruptcy or insolvency; (2) any adjudication that the other party is bankrupt or insolvent; (3) the filing by the other party under any law relating to bankruptcy or insolvency; (4) the appointment of a receiver for all or substantially all of the property of the other party; (5) the making by the other party of any assignment or attempted assignment of this Agreement for the benefit of creditors; or (6) the institution of any proceedings for the liquidation or winding up of the other party's business or for the termination of its corporate charter. Upon the giving of such notice of intent to terminate, this Agreement shall be terminated upon the expiration of ten (10) working days, provided such other party shall not have dissolved such proceedings or demonstrated the lack of merit of such proceedings.

6.4 This Agreement and any rights or licenses granted herein are personal to each party and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither party shall assign any of its rights or privileges or obligations hereunder without the prior written consent of the other party. Consent of any such assignment by either party shall not be unreasonably withheld by the other party. In the event that either party assigns its rights or privileges hereunder, with the written consent of the other party, to a successor in ownership of all the relevant assets of the assigning party, such successor in ownership must expressly assume in writing the performance of all terms and conditions of this Agreement remaining to be performed by the assigning party. Any attempted assignment in derogation of this Section 6.4 shall be null and void.

6.5 If this Agreement is terminated by Y in accordance with Section 6.2, or 6.3, any INFORMATION of Y previously transferred to X shall be immediately returned to Y, and all licenses to X of Section 2 shall terminate, and all licenses of Section 2 granted to Y shall continue. X shall agree, and hereby does agree to hold all INFORMATION of Y (as defined in Sections 1 and 2) in confidence under the terms and conditions set forth herein in Section 7.

6.6 If this Agreement is terminated by X in accordance with Section 6.2 or 6.3, any INFORMATION previously transferred to Y shall be immediately returned to X, and all licenses to Y of Section 2 shall terminate, and all licenses of Section 2 granted to X shall continue. Y shall agree, and hereby does agree to hold all INFORMATION of X (as defined in Sections I and 2) in confidence under the terms and conditions set forth herein in Section 7.

6.7 No termination of this Agreement, by expiration or otherwise, shall release either party from any of its obligations of Sections 7 and 9.

6.8 No failure or delay on the part of either party in exercising its right of termination hereunder for any one or more causes shall be construed to prejudice its right of termination for such or for any other or subsequent cause.

6.9 If for any reason Y chooses not to complete the design and implementation, make available for purchase on the commodity market or make available to X as a proprietary part at a mutually agreeable price, any [peripheral] related product which has been cooperatively developed by X and Y using the X [peripheral] technology, Y shall give X full access to any of its design databases for that product and X shall have a royalty free, worldwide, non-exclusive license to manufacture, have manufactured, use, lease, sell or otherwise dispose of that product and to sublicense others to do so.

SECTION 7 - CONFIDENTIALITY

7.1 X and Y have developed and will develop certain confidential information, (hereinafter "INFORMATION") including those described in the Appendices I and II. Both party's exchange of INFORMATION is for the sole purpose of performance under this Agreement.

7.2 The length of time for maintaining confidentiality as to a particular item of INFORMATION, shall be for five (5) years from disclosure. Recipient shall maintain in confidence Discloser's INFORMATION, provided that it (a) is clearly marked with Discloser's name and "Confidential," "Proprietary" or the substantial equivalent, and the date of disclosure; and (b) if orally disclosed, is summarized in writing or corporeal form and is clearly marked with Discloser's name and "Confidential," "Proprietary" or the substantial equivalent, and the date of disclosure; and delivered to the Recipient within thirty (30) days thereafter. Upon delivery of INFORMATION so marked (or such summary in the case of oral disclosure), Discloser, at its option, may furnish to the receiving party an acknowledgment of receipt of such INFORMATION (or such summary) which contains the identity, media, and disclosure date of each separate tangible item of such INFORMATION (or such summary) and a place for Recipient's signature acknowledging such receipt. Recipient shall, within ten (10) working days of receipt of such acknowledgment, either sign the acknowledgment and return it to Discloser, or indicate in writing that the acknowledgment cannot be so signed and returned due to the inaccuracy of the identification of each or any of such items of INFORMATION (or such summary). INFORMATION exchanged under the terms of this agreement will be considered confidential and covered under the terms of this agreement independent of a request from the Discloser for an acknowledgment of the exchange. The date of disclosure, in the event of a failure to make such date on the document shall be deemed to be the date of the creation of the corporeal form of the INFORMATION, if clearly shown on the face of such corporeal form or any physical or electronic image generated from such corporeal form of the INFORMATION, or the date of the execution of this Agreement in the event of there being neither such a making or such a showing. During the confidentiality period for INFORMATION disclosed by Discloser, Recipient agrees that Recipient may disclose such INFORMATION only to Recipient's employees having a need to know such INFORMATION for performance of this Agreement, that Recipient shall use the same degree of care to avoid disclosure of INFORMATION as it employs with respect to its own confidential/proprietary information, using at least a reasonable standard of care, and that Recipient shall notify its employees who receive such INFORMATION of the obligations hereunder.

7.3 Discloser shall prevent Recipient from being exposed to third party confidential information which is in Discloser's possession.

7.4 Recipient shall have no obligation as to Discloser's INFORMATION that (a) is known to Recipient at the time of disclosure; or (b) is independently developed by Recipient provided Recipient can show that such development was accomplished by or on behalf of Recipient without the use of or any reference to such INFORMATION; or (c) becomes known to Recipient from another source without confidentiality restriction on subsequent disclosure or use; or (d) is or becomes part of the public domain through no wrongful act of Recipient; or (e) is disclosed with the prior written approval of Discloser; or (f) is disclosed pursuant to any judicial or governmental request, requirement or order; provided that Recipient takes reasonable steps to give Discloser sufficient prior notice in order to contest such request, requirement or order; or (g) is furnished to a third party by Discloser without similar confidentiality restriction on the third party.

7.5 Title to all tangible forms of Discloser's INFORMATION and any copies thereof shall be and remain with Discloser. Recipient shall not copy or reproduce in whole or in part any such INFORMATION without written approval of Discloser, except as is necessary to fulfill the purposes of this Agreement. Upon written request, in the event of any asserted breach of the confidentiality provisions of this Section 7 by a recipient, or upon termination of this Agreement, all such tangible forms of such INFORMATION, with the exception of an archieve copy to be used solely for complying with Recipient's obligations hereunder, shall be promptly returned to Discloser or destroyed at Discloser's option with the exception of any software, which in routine use is automatically backed up with an archival copy stored within a mass storage device or on a mass storage media as to which destruction of such archival copy is not possible without the concurrent destruction of other unrelated data or software stored in such mass storage device or on such mass storage media. In such event, recipient agrees not to make any further use of such software as of the date it would otherwise be required to be returned or destroyed.

7.6 Recipient shall not remove any proprietary, copyright, semiconductor chip protection, trade secret, or other legend ("Proprietary Rights Legend") from any form of Discloser's INFORMATION. Recipient, when reasonably possible and at Discloser's expense, will add to such INFORMATION any Proprietary Rights Legend (or modify same) which Discloser deems necessary to protect its intellectual property rights and requests in writing to be so added or modified.

7.7 No rights or obligations other than expressly recited herein are to be implied solely from the transfer and/or receipt of INFORMATION. Nothing except that expressly stated herein shall affect either party's present or prospective rights under any country's patent, copyright or mask works rights laws, or be construed as granting any license under any present or future patent or copyright rights or mask works rights, or application therefor, or preclude marketing any product unless such marketing constitutes unauthorized use and/or disclosure of INFORMATION.

7.8 Consistent with other provisions herein, each party assures that it will not knowingly, without obtaining prior authorization from the U.S. Dept. of Commerce, Office of Export Administration, transmit directly or indirectly the technical data received pursuant hereto or the immediate product (including processes and services) produced directly by use of such technical data to _____ or any Country Group Q, S, W, Y, or Z country specified in Supplement No. I to Part 370 U.S. Dept. of Commerce Export Administration Regulations.

SECTION 8 - PUBLICATION

8.1 All of the notices to third parties and all other publicity concerning the terms and conditions of this Agreement shall be jointly planned and coordinated by the parties. Neither of the parties shall act unilaterally in this regard without the prior written approval of the other party, which approval, however, shall not unreasonably be withheld.

SECTION 9 - WARRANTY AND INDEMNIFICATION

9.1 X agrees to defend at its expense any suits against Y based upon a claim that the X INFORMATION furnished to Y hereunder infringes any patent or copyright or constitutes a misappropriation of trade secrets and to pay any costs and damages awarded in any such suit, provided that X is notified promptly in writing of the suit and, at X's request and at its expense, is given control of said suit and all requested reasonable assistance for defense of same. This indemnity shall not apply as to any LICENSED PRODUCT which, but for Y having changed, enhanced upon, or otherwise modified X INFORMATION, would not infringe upon such rights of another. If the use or sale of a LICENSED PRODUCT produced by Y is enjoined as a result of such suit, then X, in fulfillment of its obligation to indemnify Y under this Section 9.1, at its option and at no expense to Y shall use its best efforts to obtain a license for Y from the owner of such rights, at no cost to Y, not less than coextensive with the licenses granted herein by X to Y, or to change the X INFORMATION to eliminate such claim of infringement or misappropriation. In the event that X is unable to do either of the acts set forth in the preceding sentence, the parties will confer and determine the advisability of continuing under this Agreement or terminating this Agreement.

9.2 Y agrees to defend at its expense any suits against X based upon a claim that the Y INFORMATION furnished to X, or utilized by Y, hereunder infringes a U.S. patent or copyright or constitutes a misappropriation of trade secrets and to pay any costs and damages awarded in any such suit, provided that Y is notified promptly in writing of the suit and, at Y's request and at its expense, is given control of said suit and all requested reasonable assistance for defense of same. This indemnity shall not apply as to any LICENSED PRODUCT which, but for X having changed, enhanced upon, or otherwise modified Y INFORMATION, would not infringe upon such rights of another. If the use or sale of a LICENSED PRODUCT produced by X is enjoined as a result of such suit, then Y, in fulfillment of its obligation to indemnify X under this Section 9.2, at its option and at no expense to X shall use its best efforts to obtain a license for X from the owner of such rights, at no cost to X, not less than coextensive with the licenses granted herein by Y to X, or to change the Y INFORMATION to eliminate such claim of infringement or misappropriation. In the event that Y is unable to do either of the acts set forth in the preceding sentence, the parties will confer and determine the advisability of continuing under this Agreement or terminating this Agreement.

9.3 X and Y represent that they have the right to grant the licenses of Section 2 hereof, and that the terms and conditions of this Agreement do not violate their respective Articles of incorporation or By-Laws and do not conflict with any other agreements to which they are a party or by which they are bound.

9.4 Each transferor warrants that the items of INFORMATION transferred hereunder, if pertinent to manufacturing, shall be substantially the same as those then used by the transferor in its own manufacturing operation.

9.5 NEITHER PARTY MAKES ANY WARRANTY AS TO THE ACCURACY, SUFFICIENCY, OR SUITABILITY FOR THE OTHER'S USE OF ANY INFORMATION OR ASSISTANCE PROVIDED HEREUNDER FOR THE MANUFACTURE OF LICENSED PRODUCTS, OR THE YIELD FROM THE MANUFACTURE THEREOF, OR FOR THE QUALITY OF SUCH PRODUCT MADE THEREBY, AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR LOSS OR DAMAGES, WHETHER DIRECT OR INDIRECT, CONSEQUENTIAL, OR INCIDENTAL, WHICH MIGHT ARISE OUT OF THE OTHER'S USE THEREOF, WHICH SHALL BE ENTIRELY AT THE USER'S RISK AND PERIL.

SECTION 10 - GENERAL PROVISIONS

10.1 This Agreement, and the Appendices I and II attached hereto and made a part hereof, embody the entire understanding of the parties with respect to the subject matter contained herein and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding upon the parties unless signed by their respective, duly authorized representatives.

10.2 Nothing contained in this Agreement shall be construed as:

10.2.1 conferring any rights to use in advertising, publicity, or other marketing activities any name, trademark, or other designation of either party hereto, including any contraction, abbreviation, or simulation of any of the foregoing, provided such restriction shall not apply to device identification numbers and descriptions, and each party hereto agrees not to use the existence of this Agreement in any marketing activity without the express written approval of the other party; or

10.2.2 conferring by implication, estoppel, or otherwise upon either party hereunder any license or other right except the licenses and rights expressly granted hereunder to a party hereto; or

10.2.3 an obligation to bring or prosecute actions or suits against third parties for infringement, or to secure and/or maintain any of its INTELLECTUAL PROPERTY RIGHTS except as expressly provided for herein; or

10.2.4 limiting the rights which a party has outside the scope of this Agreement.

10.3 All notices required or permitted to be given hereunder shall be in writing and shall be valid and sufficient if dispatched by registered mail, return receipt requested, postage prepaid, in any post office in the United States, or in the case of international delivery, dispatched by a delivery service providing a receipt of delivery, addressed as follows:

If to Y: _____

_____

_____

If to X: _____

_____

_____

Copy to: _____

_____

_____

Either party may change its address by a notice given to the other party in the manner set forth above. Notices given as herein provided shall be considered to have been given seven (7) days after the mailing thereof.

10.4 Anything contained in this Agreement to the contrary notwithstanding, the performance of the obligations of the parties hereto shall be subject to all laws, both present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions, or requests of any such government, or any department, agency or corporation thereof, and to any contingencies resulting from war, acts of public enemies, strikes, or other labor disturbances, fires, floods, acts of God, or any causes of like or different kind beyond the control of the parties, and the parties hereto shall be excused from any failure to perform or any delay in the performance of any obligation hereunder to the extent such failure or delay is caused by any such law, order, regulation, direction, request, or contingency.

10.5 Any failure or delay on the part of either party in the exercise of any right or privilege hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such or privilege preclude other or further exercise thereof or of any other right or privilege.

10.6 If any provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the Agreement shall be construed as if such provision was not a part of this Agreement, unless to do so would materially prevent the accomplishment of the intent of the parties in entering into this Agreement, in which event this Agreement shall terminate.

10.7 The captions used in this Agreement are for convenience only and are not to be used in interpreting the obligations of the parties under this Agreement.

10.8 The applicable law governing any cause of action arising out of this Agreement, or the performance by either party hereto, shall be governed by the laws of _____, USA.

10.9 Nothing contained herein, or done in pursuance of this Agreement, shall constitute the parties as entering upon a joint venture or shall constitute making either party hereto the agent for the other party for any purpose or in any sense whatsoever.

10.10 Representatives and personnel of each party, during the time they are present on the premises of the other party, shall be subject to all reasonable rules and regulations prevailing on such premises. Each party shall be responsible for the payment of all compensation and expense of its respective representatives and personnel. None of the representatives or personnel of either party shall be considered, for any reason, to be an employee of the other.

10.11 Each party agrees that if any person connected with it, or assigned by it to work hereunder, or his legal representative, shall present any claim or institute any suit or action against the other Party, or its directors, officers, agents or employees, for any property damage or personal injury, including death, connected with, related to, or arising out of the performance of this Agreement, the party associated with such a person shall defend and indemnify the other party, and its directors, officers, agents and employees, against any and all such claims, suits or actions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as the date below written.

Y

By: _____
Signature

Name: _____

Title: _____
_____
_____

Date: _____

By: _____
Signature

Name: _____

Title: _____

Date: _____

X

By: _____
Signature

Name: _____

Title: _____
_____
_____

Date: _____

By: _____
Signature

Name: _____

Title: _____

Date: _____

ANNEX III

AGREEMENT UNDER WHICH CUSTOMER'S DESIGN IS USED TO CUSTOMIZE FOUNDRY'S BASIC GATE ARRAY AND STANDARD CELLS FOR USE IN CUSTOMER'S COMPUTER SYSTEMS

Summary of the Provisions of the Agreement

The Agreement in Annex III is an agreement under which Y and Z (Y's subsidiary) will produce semiconductor device layout designs using gate array or standard cell technology, according to their proprietary semiconductor fabrication process, and ultimately produce semiconductor chips embodying X's proprietary functionality. Y and Z license X to use their Computer Aided Design ("CAD") tools to do some of the layout designs for gate array "macrocells" and/or for standard cells which will be embodied in the semiconductor devices. Ownership of certain macrocells and/or standard cells designed by X or designed by Y/Z specially for X, remain in X and they are usable by Y/Z solely for the purpose of making semiconductor devices for X, i.e., not usable in Y/Z's cell libraries which it uses to design chips for other customers. X gets ownership of the mask works rights in mask works of Y/Z's making, but expressly waives any claim to ownership of mask work rights in macrocells and/or standard cells which are proprietary to Y/Z, apart from their selection, placement and interconnection to form the overall semiconductor device layout design.

The **DEFINITIONS SECTION** of Agreement III contains a number of important definitions used in agreements for the design, development and production of integrated circuits implementing the purchaser's proprietary circuit design and using GATE ARRAY and/or STANDARD CELL technology which is generally proprietary to the vendor. These include BASE GATE ARRAY, STANDARD CELL, MACROCELL, GATE ARRAY BASED DEVICE, STANDARD CELL BASED DEVICE, X MACROCELL/STANDARD CELL, Y MACROCELL/STANDARD CELL, MASK WORKS, and CELL LIBRARY.

SECTION 2, GENERIC NATURE OF THE AGREEMENT contemplates the future development of a number of OPTIONS (specific integrated circuits) which will be GATE ARRAY or STANDARD CELL BASED DEVICES. Each will have its own set of exhibits to this Agreement, e.g., purchase specification, pricing, delivery schedules, etc. which will become part of this Agreement as if attached upon original execution. Thus the Agreement acts as an umbrella, but later transactions can be covered with only what needs to vary for the later transactions needing to be accommodated through the new exhibits.

SECTIONS 3, 4, 5, 6 and 7 outline the procedure for the development of an integrated circuit layout design from a logic circuit design which is proprietary to X. This includes PROTOTYPE development using ENGINEERING SAMPLES run on an engineering process flow to verify the functionality of the PROTOTYPE and, until the commercial fabrication process line is qualified, COMMERCIAL SAMPLE run on the actual fabrication process line on which the actual OPTIONS will be fabricated.

SECTION 8, OWNERSHIP, acknowledges that as between X and Y, X is the owner of all INTELLECTUAL PROPERTY RIGHTS in the DESIGN DATA for the proprietary logic circuit design of X, provided by X to Y for Y to create a layout design of an integrated circuit embodying the functionality defined by the DESIGN DATA. Any intellectual property rights in jointly created subject matter of such rights will generally be jointly owned, but the parties agree to negotiate in good faith to vest such ownership in one party or the other under certain circumstances. Subject matter created solely by one party or the other as a general rule will result in INTELLECTUAL PROPERTY RIGHTS owned solely by that party.

The physical MASK WORKS generated by the vendor will be the property of the vendor (Y), but may not be used, without the written permission of X, to fabricate integrated circuits for anyone other than X.

This Section also deals with the situation where the vendor (Y) may not have in its CELL LIBRARY a MACROCELL or STANDARD CELL necessary to fully implement an OPTION for the purchaser (X). X may then need to ask Y, at X's expense, to create a new CELL or modify an existing CELL. In some cases, usually where the new or modified CELL gives the resulting integrated circuit a substantially unique and improved functionality or performance and/or embodies some circuitry over which the purchaser claims intellectual property rights apart from MASK WORKS rights, the purchaser (X) may not wish to allow this new or modified CELL to be used by the vendor (Y) in its CELL LIBRARY, except for the creation of layout designs for X.

X is given the option to designate such a new or improved CELL as one requiring such exclusive use only for X. Y, in turn, has the option of refusing to do the design of the new or improved CELL if it intends or had intended to do a CELL of the same or substantially the same functionality, since by allowing X to claim exclusion rights it would then interfere with Y's present or future ability to do layout designs for other customers. In this event, X then has the option of doing this new or improved CELL design itself or releasing Y to use this new or improved CELL with its other customers, notwithstanding that X is paying for Y to design this new or improved CELL.

This Section also acknowledges that X claims intellectual property rights, apart from patents, in X MACROCELLS and/or X STANDARD CELLS, only to the extent of prevention of (1) their use directly by Y in its CELL LIBRARY for layout designs for other customers, (2) the use of X's confidential information to design the same or substantially the same CELL for other customers, and (3) the utilization of design or redesign work done by Y to create an X MACROCELL or X STANDARD CELL for similar design work for inclusion of a CELL in Y's CELL LIBRARY for other customers. But, Y can independently design such CELLS from DESIGN DATA of other customers and the fact, alone, that any such CELL may turn out to be the same or substantially the same as an X MACROCELL or X STANDARD CELL is not, in and of itself, a violation of the obligation of Y under this agreement not to utilize X's intellectual property rights in X MACROCELLS or X STANDARD CELLS, except to do layout designs for X.

SECTION 9, MASK WORKS provides that X is the owner of all MASK WORK rights in MASKWORKS customized in any way to fabricate OPTIONS for X, including the selection, placement and metalization interconnection between Y's MACROCELLS or Y's STANDARD CELLS, which are proprietary to Y. Y retains ownership in any MASK WORK rights regarding such individual Y MACROCELLS or Y STANDARD CELLS. X agrees that it claims no MASK WORK rights in such individual CELLS, apart from their selection, placement and interconnection forming the overall layout design of the integrated circuit.

This Section also deals with the circumstance that could prevail when a vendor uses modern software integrated circuit layout design Computer Aided Design (CAD) tools. Different customers could, theoretically, supply Y with substantially similar DESIGN DATA. Y, using the same CAD tools and selecting CELLS from the same CELL LIBRARY, could generate for each customer an integrated circuit having the same or substantially the same MASK WORKS, even without using any information contained in the one customer's DESIGN DATA to perform the service of doing the layout design for the other. In this event, assuming the vendor has not violated the requirement to keep the DESIGN DATA of the one customer confidential and not use it to do layout designs for any other customer, the dispute of the one customer, if any, should be with the other customer, not the vendor (Y). That is, the one customer may be able to assert other intellectual property rights (e.g. patents or trade secrets) to challenge the other customer's rights to the possession and/or use of substantially similar DESIGN DATA. At the same time, it is usually a difficult burden on the vendor to analyze the similarity of DESIGN DATA from different customers before doing layout designs for each.

Therefore, this Section waives any rights of this customer (X) to assert MASK WORK rights against Y or Y's other customer in the circumstances noted above. That is, notwithstanding the fact that MASK WORKS produced independently by Y (e.g. from DESIGN DATA supplied to it by another customer) are the same or substantially the same, X agrees not to assert any intellectual property rights, including MASK WORK rights, against Y relating to the DESIGN DATA submitted by the other customer, the MASK WORKS generated therefrom, or the integrated circuits producted for the other customer using such MASK WORKS.

This Section also provides that Y will place on the MASK WORKS the copyright and mask work notices designating X as the owner thereof.

SECTIONS 10 to 18 are further provisions delineating the manner in which the business of ordering, cancelling orders, and other activities, including inspecting and testing and paying for OPTIONS, will occur. They also provide for pricing changes in the event of fluctuations in the currency exchange rate of the currencies of the purchaser and vendor.

SECTION 19 is a security of supply provision, in lieu of requiring the vendor to establish an independent second source, and/or to grant a license to the purchaser (X) to itself make or have made on its behalf, integrated circuits using Y's fabrication process if Y is unable to deliver any OPTION. Y is required to meet a certain percentage of on time deliveries, otherwise it must maintain a certain level of inventory to cover a certain number of months of projected orders from X. Also, in the event that Y decides that it is no longer economic to continue to produce any OPTION, X is given one year from the notice of same by Y to order any quantity of such OPTION deemed necessary to support the product(s) of X into which such OPTION is incorporated.

The remaining Sections are substantially similar to those contained in the Agreements in Annexes I and II, with a few notable exceptions.

In the **CONFIDENTIALITY SECTION**, other business parts of the vendor (Y), which do not need to have access to X's confidential information to design and/or fabricate integrated circuits pursuant to this agreement, are considered third parties for the purposes of the confidentiality provisions (Section 24).

Also **SECTION 23** is drafted to account for the Process Patent Infringement Act which became part of U.S. Law upon the enactment of the Omnibus Trade Bill in 1988 and the fact that production of integrated circuits under this Agreement will be done outside the U.S. In this Agreement, since there is also a United States subsidiary (Z) of Y, the agreement provides that Z will accept service of process on behalf of Y for any suit claiming infringement under 35 U.S.C. 271 (g) and will accept the responsibility of the importer to provide the information to the claimant as required by Section 271 (g).

In the **TERMINATION SECTION**, X, the purchaser, may terminate for its convenience at any time and be subject to only liability to pay for Work in Progress (WIP) at Y, amounts outstanding for PROTOTYPES and OPTIONS delivered to X and already incurred non-recurring engineering costs. Y may terminate for convenience, but only if a year has passed since X issued a purchase order for an OPTION or PROTOTYPE, with X getting sixty days, from the notice by Y of such intent to terminate, to issue such a purchase order. If no such purchase order is issued by X and, if Y so terminates, X can make an "end of life" purchase of any then existing OPTIONS for a sufficient quantity of any such OPTION to cover X's projected future needs.

There is also a **DISPUTE SETTLEMENT SECTION (SECTION 21).**

DEVELOPMENT AND PRODUCTION AGREEMENT

TABLE OF CONTENTS

SECTION 24	CONFIDENTIALITY
SECTION 25	FORCE MAJEURE
SECTION 26	PARTIAL INVALIDITY
SECTION 27	NOTICES
SECTION 28	NON-WAIVER
SECTION 29	NON-ASSIGNABILITY
SECTION 30	SECTION HEADINGS
SECTION 31	GOVERNING LAW
SECTION 32	ENTIRE AGREEMENT

This Agreement together with the Appendices, Exhibits and future mutually agreed upon Amendments referenced herein and attached hereto (together referred to as the "Agreement") exclusively incorporates the terms and conditions agreed upon by X and Y.

Whereas X is, among other things, in the business of designing, developing, manufacturing and selling computer systems; and

Whereas Y is, among other things, in the business of designing, developing, manufacturing and selling semiconductor integrated circuits commonly referred to as gate arrays and/or standard cells; and

Whereas X desires to develop one or more computer systems utilizing Y gate arrays and/or standard cell devices and Y desires to sell to and support X in utilizing such devices.

NOW THEREFORE, the parties hereby agree as follows:

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 X shall mean X and all of its subsidiaries located throughout the world which it now or hereafter owns or controls.

1.2 Y shall mean Y, having a principal place of business at _____ and Z, having a principal place of business at _____, USA.

1.3 GATE ARRAY BASED DEVICE shall mean a specific integrated circuit semiconductor device fabricated using a BASE GATE ARRAY, customized or personalized by Y in accordance with the logic design provided by X, resulting in the creation of an INTERCONNECT PATTERN to make a PROTOTYPE, TEST VEHICLE or OPTION.

1.4 STANDARD CELL BASED DEVICE shall mean a specific integrated circuit semiconductor chip customized by X or by Y for X to make a PROTOTYPE, TEST VEHICLE or OPTION by positioning and interconnecting a plurality of STANDARD CELLS.

1.5 PROTOTYPE shall mean an ES or CS device, or both, to be developed for X by Y, embodying a specific logic design with the intent of establishing an OPTION or a TEST VEHICLE.

1.6 OPTION shall mean a fully qualified, packaged integrated circuit semiconductor chip which is either a GATE ARRAY BASED DEVICE or a STANDARD CELL BASED DEVICE embodying a specific unique logic design for X which evolved as a result of the efforts put forth by X and Y during the PROTOTYPE development period and which has a specific X PURCHASE SPECIFICATION.

1.7 TEST VEHICLE shall mean a test chip or other integrated circuit semiconductor circuit used for process testing and qualification, other than a PROTOTYPE or an OPTION, which may be used for CS for the purpose of qualification of a family of GATE ARRAY BASED DEVICES or a process for the fabrication of STANDARD CELL BASED DEVICES.

1.8 ENGINEERING SAMPLE ("ES") shall mean a PROTOTYPE of an OPTION which is fabricated on an engineering process flow, for the purpose of verifying functionality of the OPTION.

1.9 COMMERCIAL SAMPLE ("CS") shall mean a PROTOTYPE of, or TEST VEHICLE for, a family of GATE ARRAY BASED DEVICES or a PROTOTYPE of an OPTION, which is fabricated an the commercial process flow on which, or on a duplicate of which, will ultimately be run the family of GATE ARRAY BASED DEVICES and/or the specific OPTION, for the purpose of qualification of a family of GATE ARRAY BASED DEVICES and/or the specific OPTION.

1.10 BASE GATE ARRAY shall mean the layout of the Y basic logic cell sites (which contain active and passive electronic components), in the form of the unmetalized layers forming a large scale integrated circuit semiconductor or an intermediate form thereof with all logic cell sites being uncommitted but electrically interconnectable into an OPTION, including by use of the interconnection of a plurality of such logic cell sites and/or one or more MACROCELLS.

1.11 MACROCELL shall mean a logic circuit element designed by X and/or Y which is formed by electrically interconnecting active and passive electronic components of a plurality of logic cell sites contained within a BASE GATE ARRAY.

1.12 STANDARD CELL shall mean a low level building block for a STANDARD CELL BASED DEVICE which has a precise geometric perimeter with connector names and locations appearing at this perimeter.

1.13 Y STANDARD CELL shall mean a STANDARD CELL contained in Y's CELL LIBRARY, and which is utilized by Y for the design and fabrication of STANDARD CELL BASED DEVICES for its internal or external customers.

1.14 Y MACROCELL shall mean a MACROCELL contained in Y's CELL LIBRARY and which is utilized by Y for the design and fabrication of GATE ARRAY BASED DEVICES for its internal and external customers.

1.15 X STANDARD CELL shall mean a STANDARD CELL (1) designed specifically by X and designated by X as requiring treatment as an X STANDARD CELL under this Agreement, or (2) designed or redesigned by Y at the request of X, which the parties agree shall require treatment as an X STANDARD CELL under this Agreement, which can be used in Y's STANDARD CELL BASED DEVICE design tool system and can be utilized with other STANDARD CELLS in Y's CELL LIBRARY to create an X-specific PROTOTYPE, TEST VEHICLE or OPTION.

1.16 X MACROCELL shall mean a MACROCELL (1) designed specifically by X and designated by X as requiring treatment as a X MACROCELL under this Agreement, or (2) designed or redesigned by Y at the request of X, which the parties agree shall require treatment as an X MACROCELL under this Agreement, which can be used in Y's GATE ARRAY BASED DEVICE design tool system and can be utilized with other MACROCELLS in Y's CELL LIBRARY, and/or with other logic cell sites to create an X-specific PROTOTYPE, TEST VEHICLE or OPTION.

1.17 INTELLECTUAL PROPERTY RIGHTS ("IPR's") shall mean all rights below listed which have been, or will be, acquired or otherwise secured by either party before or during the TERM of this Agreement, throughout the world:

1.17.1 All right, title and interest in and to all Letters Patent and applications for Letters Patent, Industrial Models, Industrial Designs, Petty Patents, Patents of Importation, Utility Models, Certificates of Invention, and other indicia of invention ownership, including any such rights granted upon any re-issue, division, continuation or continuation-in-part applications now or hereafter filed; and

1.17.2 All right, title and interest in and to all trade secret rights arising under the common law, State law, federal law or the laws of any foreign country; and

1.17.3 All right, title and interest in and to all semiconductor mask work rights, and in all copyright rights and all other literary property and author rights; and

1.17.4 All right, title and interest in all know-how and show-how.

1.18 MASK WORK shall mean any "mask work" as that term is defined in Section 901(a)(2) of the Semiconductor Chip Protection Act of 1984 in the United States.

1.19 Y GENERATED MASK WORK shall mean any MASK WORK produced by Y, and shall include (1) reticles in the case of a Y GENERATED MASK WORK produced from a MASK WORK originally created by a customer, including X, and (2) both reticles and any other form of a MASK WORK, originally created by Y from DESIGN DATA provided by a customer.

1.20 X MASK WORK shall mean any MASK WORK required for Y to utilize its processes for the implementation in silicon of any PROTOTYPE, TEST VEHICLE or OPTION for X, and which is customized in any way, either by X or by Y, for the purpose of fabricating a PROTOTYPE, TEST VEHICLE or OPTION in accordance with this Agreement. For the purposes of this Agreement, an X MASK WORK shall not include any MASK WORK which now or hereafter is designed and/or developed by Y and utilized to fabricate a semiconductor integrated circuit device, or an intermediate form thereof, fabricated by Y for internal or external customers of Y, other than X, which is in no way unique to any such PROTOTYPE, TEST VEHICLE or OPTION of X, including, for example, any Y BASE GATE ARRAY or any layer of such BASE GATE ARRAY.

1.21 X PURCHASE SPECIFICATION shall mean the mutually agreed upon document which shall evolve from the mutual efforts of X and Y during the development of each specific OPTION which document defines the specific electrical, mechanical, environmental, reliability and other requirements of the OPTION. It may refer to, and thereby incorporate, other specifications, including but not limited to X's GENERAL SPECIFICATION Custom Integrated Circuits. Each PURCHASE SPECIFICATION shall be added to and become a part of the specific Exhibit A for such OPTION prior to GO-TO-MAKE for such OPTION, and thereby become incorporated by reference into this Agreement.

1.22 TERM shall mean the period of time during which this Agreement is in effect. Such period shall commence upon the execution of this Agreement by both parties. Such period shall terminate only as specified in Section 22.

1.23 CELL LIBRARY shall mean an electronic data base, and associated documentation, such as design manuals, containing design rules, layout designs and the like for any MACROCELL(S) or STANDARD CELL(S).

1.24 GO-TO-MAKE shall mean the point in time at which X approves the fabrication of ES, as evidenced by X's approval of the validation Document.

1.25 DESIGN DATA shall mean electronic circuitry designs, specifications, logic designs, test data or other design information utilized for the creation of any MASK WORK for a semiconductor integrated circuit device, exclusive of MASK WORKS or data base tapes, from which MASK WORKS can be directly produced, or from which semiconductor or other material can be directly deposited upon or removed from a semiconductor integrated circuit device or any intermediate form thereof during the fabrication of such semiconductor integrated circuit device.

1.26 X DESIGN DATA shall mean any DESIGN DATA delivered by X to Y pursuant to this Agreement.

1.27 SEMICONDUCTOR CHIP PROTECTION LAW(S) shall mean the Semiconductor Chip Protection Act of 1984 in the United States and any associated regulations and any amendments or revisions to these such law or regulations.

1.28 EVALUATOR CHIPS shall mean a test chip or other integrated circuit which is provided by Y to X for the purpose of demonstrating the functionality and/or performance of, or characterization of process technology for a family of GATE ARRAY BASED DEVICES or STANDARD CELL BASED DEVICES.

SECTION 2 - GENERIC NATURE OF THIS AGREEMENT

2.1 This Agreement shall constitute the basic terms and conditions regarding the development and production of a plurality of OPTIONS within one or more families of GATE ARRAY BASED DEVICES, and/or one or more STANDARD CELL BASED DEVICES.

2.2 For each ES, CS and/or OPTION transaction, as contemplated may occur pursuant to this Agreement, the parties will separately negotiate the schedules, terms, conditions, development processes and the like of an Exhibit A, an Exhibit B, and an Exhibit C, as appropriate. Each such Exhibit A, Exhibit B and Exhibit C, as appropriate, shall, upon mutual agreement thereto, become an amendment to this Agreement and shall become incorporated by reference into this Agreement as if attached hereto as of the time of the execution of this Agreement by the parties, and shall apply to the specific ES, CS and/or OPTION to which it refers.

2.3 Each such separate Exhibit A, Exhibit B and Exhibit C, as appropriate, shall make reference to the specific ES, CS or OPTION production transaction to which it refers, shall be numbered as a group (e.g. A3, B3, C3) according to the sequential transaction to which the group of Exhibits refers, and shall be referenced on each specific Purchase Order for the ES, CS or OPTION production to which the Exhibits in the group refer.

SECTION 3 - DEVELOPMENT PROCEDURE

3.1 TIME IS OF THE ESSENCE. X's ability to develop a manufacturing capability for certain computer systems is dependent upon Y meeting certain critical milestones as set forth in Exhibit A.

3.2 At X's option and request, Y agrees to provide X with manuals, documents, and other technical data as shown in Exhibit A to allow X to design an OPTION of a particular GATE ARRAY BASED DEVICE or STANDARD CELL BASED DEVICE, by computer aided design (hereinafter "CAD") and any other supplemental technical information or tools both parties deem necessary for X to effectively complete its design task.

3.2.1 Y agrees to provide CAD tools and/or technical assistance and training, as specifically set forth in Exhibit A, subject to the payments, if any, as specified in Exhibit C, in order for Y to design an OPTION and/or in order for X to understand and utilize the tools and information indicated in Section 3.2 above. The parties shall agree upon a license for each item of CAD tools, before Y shall be obligated to transfer such item of CAD tools to X.

3.2.2 Any tools, information, systems, data or documents required will be specified and shown in Exhibit A and shall include the procedural process which each party will follow, which the parties agree is necessary for the development and qualification of each GATE ARRAY BASED DEVICE or STANDARD CELL BASED DEVICE utilized by X.

SECTION 4 - PROTOTYPE ORDERS

4.1 Each development of a PROTOTYPE shall be subject only to the terms and conditions contained herein, notwithstanding anything to the contrary provided in X's PROTOTYPE Purchase Order or in Y's acknowledgment of such order, except to the extent that other terms and conditions are provided in a separate writing which specifically states that such other terms and conditions shall apply in lieu of or in addition to the terms and conditions provided for herein, and which separate writing is signed by an authorized representative of X and Y or upon the execution of an Amendment to this Agreement, including an Amendment comprising the addition of a new Exhibit A, Exhibit B and/or Exhibit C, as provided for in Section 2 above, which Amendment is signed by an authorized representative of X and Y and except further to the extent that terms and conditions appear on the face of any Purchase Order which are in conflict with any terms and conditions of this Agreement, and Y acknowledges and accepts such terms and conditions appearing on the face of such Purchase order.

4.2 X agrees to issue Y a Purchase order for a PROTOTYPE for each and every OPTION which X decides that it requires.

4.3 Each PROTOTYPE hereunder shall be developed through the development of ES and CS.

SECTION 5 - DEVELOPMENT OF ENGINEERING SAMPLES

5.1 Development of ES hereunder shall be effected by means of a Purchase Order duly signed and dated by X. A Purchase Order for ES shall cover only one (1) type of ES embodying a specific PROTOTYPE design as specified in Section 4.2.

5.2 Y shall produce five (5) ES except as provided in Exhibit C of the intended OPTION following Y's receipt of approval by X of Y's Validation Document ("VD"). The VD will be produced in accordance with what is specified in Exhibit A validation will be obtained in accordance with the VD as specified in Exhibit A.

5.2.1 In the event X wishes to purchase additional quantities of ES ("Additional Engineering Samples" or "AES"), X should inform Y of X's desire to purchase AES at the time of placement of X's Purchase order for a PROTOTYPE. In any event, X shall issue a Purchase Order for such AES, which may be a line item on a Purchase order for ES.

5.2.2 ES and AES will be delivered within the leadtimes shown in Exhibit C.

5.3 X understands that ES and AES may be manufactured in accordance with an engineering process flow and may, therefore, not meet reliability standards as specified in X's General Specifications. Warranties for ES and AES will be as specified in Section 20 (warranties).

5.4 X agrees to provide Y written approval or disapproval of ES or AES within four (4) weeks after receipt of the ES or AES by X. In the event of disapproval X will specify the cause for disapproval.

5.4.1 If the cause for disapproval results from a Y error and X deems it necessary, Y agrees to reprocess ES and/or AES in an accelerated manner and at no additional charge to X, and deliver the reprocessed ES/AES as shown in Exhibit C.

5.4.2 If the cause for disapproval results from a X error, and X deems it necessary, Y will reprocess ES/AES in an accelerated manner and deliver the reprocessed ES/AES as shown in Exhibit C. X will be responsible for appropriate charges as specified in Exhibit C.

5.4.3 The process described in this Section 5 will be repeated until X provides Y approval of ES or terminates development.

SECTION 6 - PROCUREMENT OF COMMERCIAL SAMPLES

6.1 Procurement of CS hereunder shall be affected by means of a Purchase Order duly signed and dated by X. A Purchase order for CS shall cover only one (1) type of CS embodying a specific OPTION design. CS will be delivered within the leadtime shown in Exhibit C.

6.2 X shall inspect and test CS in accordance with a test program based on test vectors supplied to Y as part of the development process (or in accordance with such other test program as may be mutually agreed upon in writing in advance) and notify Y in writing of approval/disapproval of CS within four (4) weeks (or such other period as may be mutually agreed upon) after X's receipt of CS. In case of disapproval, X shall notify Y in writing specifying the reasons for disapproval of CS.

6.2.1 If the cause for disapproval results from a Y error, acknowledged by Y, Y will accept the return of CS to Y for replacement.

6.2.2 If the cause for disapproval results from an X error, acknowledged by X, X will have the obligation to pay the CS charges for this CS, even though the CS is returned to Y for replacement.

SECTION 7 - DEVICE QUALIFICATION

7.1 X and Y will agree upon a qualification plan for each GATE ARRAY BASED DEVICE and each STANDARD CELL BASED DEVICE to be developed pursuant to this Agreement, clearly specifying which party will be responsible for each part of the qualification plan. Such plan will be shown in Exhibit B and will be amended as new DEVICES are utilized by X.

7.2 Qualification tests shall be performed in accordance with X's General Specification as mutually agreed upon by the parties. X will notify Y in writing of qualification/disqualification of each specific GATE ARRAY BASED DEVICE and/or STANDARD CELL BASED DEVICE. In case of disqualification, X shall notify Y in writing specifying the reasons for disqualification of the specific GATE ARRAY BASED DEVICE or STANDARD CELL BASED DEVICE, and both parties shall faithfully cooperate in order to resolve problems causing the disqualification.

7.3 Each specific GATE ARRAY BASED DEVICE or STANDARD CELL BASED DEVICE qualification by X under Section 7.2 above shall be accomplished using a CS of an OPTION. X shall promptly issue the Purchase Specification for such OPTION for Y's review and approval prior to placement of Production orders for such OPTION.

7.4 X reserves the right, at any time, to verify any qualification data provided by Y. In the event the data does not meet specifications, X shall notify Y in writing delineating which specification has been violated and X's recommendation for corrective action required of Y. Y will respond to X with its corrective action plan and, if X deems it necessary, perform additional qualification testing until such DEVICE once again meets specifications.

SECTION 8 - OWNERSHIP

8.1 Y acknowledges and agrees that, as between the parties, X owns and shall retain all IPR's in X DESIGN DATA. It is confirmed that Y hereby does not acknowledge or agree that such ownership of such IPR's of X, in such X DESIGN DATA extends to any information independently developed by Y and/or third parties without access to or use of X DESIGN DATA. Y agrees X DESIGN DATA constitutes X INFORMATION to be treated in accordance with Section 24.

8.2.1 In the case where the subject matter of any IPR is jointly created by X and Y, the parties shall jointly hold and enjoy ownership of such IPR; provided that, at the request of either party, the parties agree to negotiate in good faith regarding the option of vesting such ownership in only one party hereto and the licenses to be granted, if any, to the other party. The parties further agree that, as a guiding principle of such negotiations, if any such IPR in such jointly created subject matter embodies subject matter which is covered by the claim or claims of any patent or patents owned by one party hereto, or is copyrighted by such one party, then that fact shall create a preference for vesting such ownership with such one party.

8.2.2 In the case where the subject matter is created solely by X, the IPR for such subject matter shall be solely owned by X.

8.2.3 In the case where the subject matter is created solely by Y, the IPR for such subject matter shall be solely owned by Y.

8.3 All MASK WORKS generated by Y in the performance of its services under this Agreement shall be the property of Y. However, such ownership of those MASK WORKS shall not be deemed to give Y any IPR's in any X DESIGN DATA, even though such X DESIGN DATA may be fixed in those MASK WORKS. Y agrees that all X MASK WORKS in the performance of services under this Agreement shall be held by Y for the exclusive use for X and shall not be disclosed by Y to any third party nor used or reproduced by Y for itself or any third party for any purpose during the TERM of this Agreement or thereafter, and that Y shall not fabricate any semiconductor integrated circuit utilizing any X DESIGNS DATA for the benefit of, or sell any such semiconductor integrated circuit device to, any person or entity other than X, without X's prior written consent. Upon request from X, Y agrees to destroy such MASK WORKS and certify that such destruction has occurred.

8.4 In the course of designing and/or laying out semiconductor integrated circuit designs embodying X DESIGN DATA, Y may find it necessary, or may be expressly requested by X, to design a new MACROCELL or STANDARD CELL, or redesign a MACROCELL or STANDARD CELL designed by X or already existing in Y's CELL LIBRARY. Should Y find this necessary, and, further, such design or redesign is necessitated to produce a PROTOTYPE, TEST VEHICLE or OPTION, pursuant to a Purchase Order issued by X and covered by NRE being paid to Y by X, or should X as part of an Exhibit A specifically request such design or redesign, the parties will confer on the issue of whether such MACROCELL(S) or STANDARD CELL shall be considered to be an X MACROCELL or an X STANDARD CELL.

8.5 If X considers that any MACROCELL or STANDARD CELL to be designed or redesigned pursuant to Section 8.4 is to be an X MACROCELL or X STANDARD CELL, and Y concurs, such MACROCELL or STANDARD CELL shall be an X MACROCELL or X STANDARD CELL. Any X MACROCELL or X STANDARD CELL shall be maintained in a secure portion of Y's CELL LIBRARY accessible only to X and to Y, and accessible to Y solely for performance under this Agreement, for purposes of design, verification and test of PROTOTYPES, TEST VEHICLES or OPTIONS.

8.6 However, Y at its sole option, may choose not to perform the design or redesign work, with the reason that Y intends or had intended to perform similar design or redesign work to produce a MACROCELL or a STANDARD CELL having the same or similar functionality and that to allow X to claim IPR's in such MACROCELL or STANDARD CELL would interfere with Y's present or future ability to design and fabricate GATE ARRAY BASED DEVICES and/or STANDARD CELL BASED DEVICES for other internal or external customers of Y. It shall then be the responsibility of X, at its sole option, to inform Y of X's choice to design such MACROCELL or STANDARD CELL itself or to allow Y to include such MACROCELL or STANDARD CELL in its CELL LIBRARY available for use by Y for the design and fabrication of semiconductor integrated circuit devices for other internal or external customers of Y.

8.7 X acknowledges that, as between X and Y, X claims IPR's apart from patent rights, in regard to X MACROCELLS and X STANDARD CELLS, whether created independently by X or by Y, pursuant to Sections 8.4 through 8.6, only to the extent of preventing Y from (1) directly using the MACROCELL or STANDARD CELL from that portion of its CELL LIBRARY containing X MACROCELLS and/or X STANDARD CELLS for purposes other than designing and fabricating a semiconductor integrated circuit device for X; (2) utilizing any confidential INFORMATION provided by X to Y for the purpose of designing and fabricating the same or substantially the same MACROCELL or STANDARD CELL for an internal or external customer other than X; and (3) utilizing the results of the design or redesign work performed by Y to produce an X MACROCELL

and/or X STANDARD CELL pursuant to Sections 8.4 through 8.6, to design the same or substantially the same MACROCELL or STANDARD CELL for inclusion into Y's CELL LIBRARY for use in designing or fabricating semiconductor integrated circuit devices for internal or external customers of Y other than X.

8.8 X acknowledges that, as between X and Y, and except as provided in Section 8.7, Y shall have the right to independently design or redesign MACROCELLS and STANDARD CELLS on its own and/or in conjunction with internal or external customers of Y, other than X, including with the utilization of information provided to Y by any of such customers, and that, in and of itself, the fact that any such MACROCELL or STANDARD CELL or any portion thereof, may be the same or substantially the same as any X MACROCELL or X STANDARD CELL, or any portion thereof, shall not mean that Y has failed to comply with Section 8.7 in violation of any IPR's claimed by X in Section 8.7.

8.9 Should Y independently design a MACROCELL or STANDARD CELL, alone or in conjunction with any internal or external customer of Y without violation of any proprietary rights of X as contemplated under this Section 8, which is the same or substantially the same as any X MACROCELL or X STANDARD CELL and provided that Y is not otherwise under any restriction as to placing such independently developed MACROCELL or STANDARD CELL in that portion of its CELL LIBRARY available for use in the design and fabrication of semiconductor integrated circuit devices for internal and external customers of Y other than X, X agrees to confer with Y regarding the discontinuance of maintaining any such X MACROCELL or X STANDARD CELL as an X MACROCELL or X STANDARD CELL.

8.10 The parties contemplate that in the performance of this Agreement in the ordinary case X will not require or request that MACROCELLS or STANDARD CELLS designed or redesigned by X or Y be classified as an X MACROCELL or X STANDARD CELL. Except in the case where a MACROCELL or STANDARD CELL would give a semiconductor integrated circuit device produced by Y for X a substantially unique and improved functionality or performance, or where a STANDARD CELL embodies some part or all of an electronic circuit design over which X claims some IPR apart from the layout and design of the STANDARD CELL, X ordinarily will not require a designation of an X MACROCELL or X STANDARD CELL.

SECTION 9 - MASK WORKS

9.1 For the purposes of this Section 9, the terms MASK WORK and Semiconductor Chip Product shall have the meaning set forth in 17 U.S.C. 901. Semiconductor Chip Product(s) includes any PROTOTYPE, EVALUATOR CHIP, or X CHIP fabricated by Y for X in accordance with this Agreement.

9.2 Y understands and expressly agrees that X is the owner of the MASK WORK rights throughout the world in customized MASK WORKS embodied in the total layout and surface pattern of any X CHIP developed by Y hereunder for X, including the placement of MACROCELLS or STANDARD CELLS selected by Y and/or X from the Y CELL LIBRARY, and the external metallization interconnects between such MACROCELLS or STANDARD CELLS. Y understands that X is the owner of the MASK WORK rights throughout the world in any X MACROCELL and X STANDARD CELL. X understands and expressly agrees that Y is the owner of the MASK WORK rights throughout the world for any Y MACROCELL or Y STANDARD CELL and any Y BASE GATE ARRAY or layer thereof. X agrees that it claims no ownership of

MASK WORK rights to metallization interconnects within Y MACROCELLS or Y STANDARD CELLS or to non-customized circuitry (in addition to metallization interconnections within Y MACROCELLS or Y STANDARD CELLS) embodied in any X CHIP fabricated by Y for X, separate and apart from the placement of the selected Y MACROCELLS or Y STANDARD CELLS and non-customized circuitry, and external metallization interconnection forming the total layout and surface pattern of such X CHIP.

9.3 X hereby acknowledges that there may be cases where Y develops, during or after the term of this Agreement, semiconductor integrated circuits for a customer or customers other than X, and in addition for itself, utilizing Y MACROCELLS or Y STANDARD CELLS which may or may not be based on design data provided to Y, and/or mask work generation data provided to Y by such customers. Regardless of whether the MASK WORKS produced by Y for itself or its customers are the same or substantially the same as the MASK WORKS developed by Y for X pursuant to this Agreement, X agrees that it will not make any claim, complaint or demand against Y, including such which may be based on an infringement of MASK WORK rights, regarding, (1) the data provided to Y by such customers; (2) such MASK WORKS generated by Y, or; (3) any such semiconductor integrated circuit produced by Y for itself or its customers), provided that such MASK WORKS were produced by Y without violation of its obligations to X under Section 24 and Paragraph 8.4 of this Agreement.

9.4 Except as otherwise provided herein, all tooling developed by Y or X to manufacture Semiconductor Chip Products under this Agreement is and remains the exclusive property of the respective party which develops such tooling. Such tooling includes, but is not limited to, the mask sets, Calma data base tapes, schematics, and layer plots produced under this Agreement.

9.5 In order to protect X's MASK WORK rights and copyright rights, Y agrees to properly reproduce (or add, if applicable) a copyright notice specified by X and the MASK WORKS symbol of X, in such a manner and location which will provide reasonable notice of mask registration, on each customized MASK WORK created for each PROTOTYPE, EVALUATOR CHIP, or X CHIP that Y manufactures for X. Y may, at its sole discretion, add its MASK WORKS symbol on any PROTOTYPE, EVALUATOR CHIP, or X CHIP that Y manufactures to the extent that Y has a legal right to do so.

SECTION 10 - PURCHASE ORDERS

10.1 All purchases by X hereunder shall be authorized only upon X's issuance of a Purchase order. Each Purchase order shall make reference to the contract number of this Agreement and the applicable Exhibit A, B and/or C, and shall contain the following information relative to the purchases made under this Agreement : description of the OPTION, ES, AES and/or CS purchased (including part number and revision level), quantity purchased, routing instructions, delivery schedule, destination and confirmation of price.

10.1.1 Y shall acknowledge such order within ten (10) working days of receipt, considering the working days to be those of the Y entity receiving the order. Failure to so acknowledge will have no effect on the validity or binding nature of the Purchase Order, as Y is presumed to have accepted all Purchase orders which are issued pursuant to and in conformance with the terms of this Agreement. All Purchase orders issued hereunder shall be governed by the terms and conditions of this Agreement notwithstanding any contrary or additional provisions contained on any X Purchase order or Y shipping document, invoice or acknowledgment thereof,

except as noted above in Section 10.1, respecting terms and conditions appearing on the face of an X Purchase Order, which to the extent they are not in conformance with the terms of this Agreement, shall not be binding upon Y until such Purchase order is acknowledged by Y in writing to X pursuant to this Section 10.1.1.

10.2 Y will accept verbal, telegraphic or telephonic Purchase Orders. X will send confirming written Purchase orders within ten (10) working days, considering the working days to be those of the X entity issuing the order.

SECTION 11 - PRICING

11.1 Y agrees to sell OPTIONS, PROTOTYPES, TEST VEHICLES and EVALUATOR CHIPS and to charge appropriate non-recurring engineering and/or CAD, and/or training fees at prices no higher than those shown in Exhibit C.

11.2 Y certifies that the prices contained herein are and will continue to be as favorable to X as those extended to any customer for substantially similar items and quantities under similar conditions.

11.3 Prices include all costs of packaging and packing and all taxes except sales, use and other such similar taxes imposed upon the sale or transfer to X of material purchased hereunder. Any such sales, use or like taxes required to be paid by X shall be specifically listed in the appropriate invoices. X shall have no liability for such sales., use or like taxes if it has complied with the statutory resale tax certificate requirements of states where appropriate.

11.4 X understands and agrees that Y may be compelled from time to time to modify pricing due to operation of the existing U.S./Japanese Trade and Suspension Agreements affecting semiconductors, or in response to any action of the government of Japan or of the United States affecting the material sold hereunder, and that such modifications shall be considered within the scope of sections 11.1 and 11.2 herein and Y shall not be deemed to have breached this Agreement. Y agrees to provide X with substantiating documentation to the extent it may reasonably release same.

SECTION 12 - PACKAGING AND PACKING

12.1 Y shall be responsible for properly packing and packaging OPTION(S) purchased hereunder, to X's PURCHASE SPECIFICATION(S) and will conform to standard industry packaging and packing practices for PROTOTYPES, TEST VEHICLES and EVALUATOR CHIPS. Y shall separately number all cases and packages, showing the corresponding Purchase Order Numbers. An itemized packing slip bearing X's Purchase Order Number, and Part Number, if appropriate, must be placed on each package.

SECTION 13 - DELIVERY

13.1 X's Purchase orders shall state Y's committed delivery dates, which shall conform to the lead times set forth in Exhibit C, unless agreed upon by Y in advance and/or by acknowledging a purchase order as provided for in Section 10.1.1. TIME AND RATE OF DELIVERY ARE OF THE ESSENCE OF ALL PURCHASES MADE UNDER THIS AGREEMENT.

13.2 All shipments to X shall be made F.O.B., USA. X shall select the carrier and shall assume and pay transportation charges on a "freight collect" basis. Risk of loss for the contents of a shipment shall pass to X only upon proper delivery of the shipment by Y to the designated carrier.

13.3 X reserves the right to hold Y's invoice when any shipment is delivered more than five (5) days in advance of X's required delivery date, and hold Y's invoice until the date it would ordinarily be due if delivery had been made in accordance with X's required delivery date.

13.4 Y agrees that all shipments to X shall be classified for shipping/transportation purposes according to the directions set forth in X's Purchase orders. If Y fails to comply with this requirement, and as a result X incurs increased transportation costs, X shall have the option with notice to Y of recovering such increased costs directly from Y or deducting and offsetting such increased costs from any amounts due Y. In the absence of X instructions for freight classification, Y shall select the proper and most economical freight classification.

13.5 Y acknowledges that X will measure Y's performance quarterly against shipping commitments for the purpose of establishing Y's overall rate of timely delivery. on time delivery shall mean delivery of scheduled quantities to the specified carrier no more than one (1) X working day early or one (1) X working day late.

SECTION 14 - FORECASTS AND FLEXIBILITY

14.1 X agrees to provide Y a rolling four (4) quarter nonbinding forecast by OPTION (X Part Number) and update the forecast on a quarterly basis.

14.2 X's ability to accelerate or postpone deliveries will be specified in Exhibit C.

SECTION 15 - WORK-IN-PROGRESS LIABILITY

15.1 X shall be responsible for the appropriate work in progress ("WIP") liability for Purchase orders, cancelled for X's convenience, as specified in Exhibit C.

15.2 In the event Y does not have OPTION(S) in a state that would warrant WIP liability at the percentage determined from the appropriate schedules in Exhibit C, X respectfully requests an appropriate reduction. In addition, X recognizes that it is liable for custom components purchased by Y that are no longer usable by Y on any other X or Y product, provided that such custom component inventory at Y does not exceed a reasonable quantity to support the X forecast for the cancelled OPTION. The parties will take into account this assumption of liability by X in fixing the WIP liability schedules incorporated in each Exhibit C. At X's option and upon written request or the issuance of a purchase order by X, Y shall deliver such custom components to X, after payment by X of the custom component liability or the issuance of a Purchase order, which payment or Purchase Order shall include necessary freight, packaging and packing and duties, as appropriate.

SECTION 16 - INSPECTION AND ACCEPTANCE

16.1 Prior to shipment to X, Y shall inspect and test all OPTION(S) to the appropriate agreed upon the X PURCHASE SPECIFICATION.

16.2 The OPTION(S) must also successfully pass X's incoming acceptance tests as performed by X to determine compliance with the X PURCHASE SPECIFICATION. In lieu of such incoming acceptance, testing, at X's option, and with the consent of Y, testing may be performed, at Y, audited by a X Source Inspector.

16.3 OPTION(S) which fail to pass the tests specified in Section 16.2 shall be deemed non-conforming by X.

16.3.1 Y shall provide X with a Returned Material Authorization (hereinafter RMA) for each lot of nonconforming OPTION(S) within five (5) working days of the request for such RMA by X.

16.3.2 At X's request, and subject to Section 16.4.3 below, Y shall replace the non-conforming OPTION(S) on an expedited basis.

16.3.3 Non-conforming OPTION(S) are considered delinquent to the original committed Y delivery date listed on the original Purchase Order.

16.4 Y shall evaluate the non-conforming OPTION(S) returned under Section 16.3.1 and shall notify X of the results of such evaluation within fifteen (15) working days of receipt by the Y entity performing failure analysis.

16.4.1 If Y acknowledges the non-conformity, the OPTION(S) will be treated as a warranty return, with remedies as specified in Section 20.1. Such non-conforming OPTION(S) are considered delinquent under Section 13.5.

16.4.2 If Y determines the OPTION(S) to be conforming, X shall advise its acceptance or rejection of such determination within fifteen (15) working days of receipt of the evaluation results from Y. If X rejects such determination, the parties will negotiate in good faith a mutually acceptable disposition.

16.4.3 For any OPTION(S) which have been returned by X which are subsequently determined to be conforming, such OPTION(S) will be returned to X at X's expense upon X's concurrence in Section 16.4.2; provided, however, if X has requested expedited replacement under Section 16.3.2, then Y will apply such OPTION(S) to satisfy other X Purchase Orders. Should Y be unable to ship all such OPTION(S) to X within three (3) months of the date of such determination, X agrees to issue a Purchase order for the unshipped balance of such OPTION(S).

SECTION 17 - PAYMENT

17.1 X will issue payment net thirty (30) days from date of invoice or delivery to a common carrier, whichever is later.

17.2 Credits due to rejection of any shipment or discrepancies on paid invoices will be deducted from subsequent payments or refunded at X's option.

SECTION 18 - PRICE ADJUSTMENT

18.1 All prices set forth in each Exhibit C shall be fixed on the assumption of a rate of exchange as specified in Exhibit C within the fixed limit of flotation of exchange rate, namely, plus or minus ten percent (10%) of the said exchange rate. The parties shall review the aforesaid currency exchange rate quarterly during the term of this Agreement, namely, by calculating the two (2) month average of every Friday's daily spot currency exchange rate during January and February, April and May, July and August, and October and November, respectively, published in the Wall Street Journal. If Friday is a holiday, the daily spot currency exchange rate of the last business day of the week shall be used for such calculation. In the event that such two (2) month average of currency exchange rate is different beyond the said fixed limit of plus or minus ten percent (10%), the prices set forth in Exhibit C shall be adjusted in accordance with the following formula:

$$\text{Adjusted Price} = \left(\frac{\text{ARE} + \text{FRE}}{2\text{X ARE}}\right) \text{X Original Price}$$

Where ARE = Average Rate of Exchange (i.e., the aforesaid two (2) month average of exchange rate)

FRE = Fixed Rate of Exchange

Original Price = The original Price set forth in Exhibit C

For example:

- Exhibit "C" Fixed Rate of Exchange (FRE) #125 per $1.00
- 10% Range therefore - #113 to #137
- Average Rate of Exchange (ARE) - #110
- Original Price - $1000.00
- Formula - $\frac{\text{ARE} + \text{FRE}}{2 \text{ X ARE}}$ X $1000.00

$$\frac{110 + 125}{2 \text{ X } 110} \text{ X } \$1000.00 = \frac{235}{220} \text{ X } \$1000.00 = \$1070.00$$

- New Price - $1070.00

18.2 In case the price adjustment is to be made, the parties will agree in advance on the value of ARE and adjusted prices generated based on the above formula. Such adjusted prices shall be fixed and effective for all new orders placed by X during the next one (1) calendar quarter period following the quarter in which said two (2) month period calculation was made, namely January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st, as the case may be. For the purpose of application of such adjusted prices hereunder, the date of delivery required by X's purchase order shall be deemed the effective date of the adjusted price.

Upon the mutual concurrence of the parties, a price adjustment pursuant to this Section may be elected not to be invoked for any given quarter. Such an election shall not affect the right of either party to invoke a price adjustment under this Section for any subsequent quarter.

SECTION 19 - SECURITY OF SUPPLY

19.1 Recognizing the fact that X will be totally dependent upon Y as its sole source for OPTION(S) purchased under this Agreement Y agrees to maintain two separate manufacturing lines for OPTION(s).

19.2 Y further agrees that the two separate manufacturing lines will be a minimum of 50 kilometers distance apart from each other.

19.3 Y further agrees that the distance referred to in 19.2 applies to the full manufacturing capability of wafer fab, assembly and test.

19.4 Y further agrees that, when required pursuant to Section 19.4.1 and 19.4.2 below for any individual OPTION, Y will be obligated to establish an inventory of such OPTION equal to four (4) weeks average usage by X. Such inventory will be in place within four (4) months following the date on which Y becomes obligated to establish such inventory, and such inventory will be held by Y in, U.S.A.; provided, that inventory in-transit to will be counted as being in inventory. Such inventory will be used to insure on-time delivery to X. X will be responsible for such inventory and agrees that such inventory will be purchased in full by X. Such inventory may be eliminated no sooner than six (6) months after it is in place, and then only upon submission of a report from Y to X insuring that X's required delivery performance can be maintained. After the submission of such report, it will be the responsibility of Y to draw down such inventory against outstanding and/or subsequent X. Purchase Orders in lieu of new wafer starts, unless Y's delivery performance again requires the maintenance of such inventory in accordance with this Section 19.4. In this event Y may, at its option, retain any remaining portion of such inventory not yet shipped to X for the purpose of reestablishing such inventory required in this Section 19.4.

19.4.1 When Y's delivery performance for any individual OPTION, as measured by X, falls below the "Y Target" level specified in Section 19.4.3, Yshall be deemed obligated to begin to establish the inventory provided for in Section 19.4 as of the first day of the month following notification from X of such fact.

19.4.2 When Y's delivery performance for any individual OPTION, as measured by X, falls below the "X Target" level specified in Section 19.4.3, and yet is greater than or equal to the "Y Target" level specified in Section 19.4.3, then Y shall have two (2) months within which to establish a delivery performance which meets such "X Target." If Y fails to do so, then it shall be deemed obligated to begin to establish the inventory provided for in Section 19.4 as of the first day of the month following notification from X of such fact. Should Y's delivery performance cause this Section 19.4.2 to be invoked more than twice in any consecutive twelve (12) month period, then any subsequent failure by Y to meet such "X Target" shall mean Y is deemed obligated to begin to establish the inventory in Section 19.4 as of the first day of the month following notification from X of such fact.

19.4.3 Y agrees to meet the delivery performance specified below as the "Y Target" and will strive to meet the delivery performance specified below as the "X Target." Delivery will be deemed on time for the purposes of this Section 19.4.3 if delivery occurs within a minus one (1) day to plus five (5) days window for each OPTION which shall be measured monthly against scheduled delivery dates.

Unit Volume On Time

Calendar Year	Y Target	X Target
19XX	50%	90%
19XX	70%	95%

19.5 If at any time during the TERM of this Agreement Y decides to cease fabrication of any OPTION or GATE ARRAY BASED DEVICE family of OPTIONS, Y shall notify X in writing of such an intent. X shall have the right within one (1) year of receipt of such notice to place a Purchase Order for any quantity of any such OPTION, which X shall deem necessary for support of its own product(s) containing such OPTION, through end of life. The delivery schedule shall be negotiated at the time with Y consistent with the quantity so ordered and Y's ability to deliver such quantity.

19.6 Notwithstanding the provisions of Section 25, Y agrees that it will make its best efforts to have an alternate Y source of supply for OPTIONS which have been qualified by X, which alternate source of supply will be outside of _____. In the event that both Y and the alternate Y source of supply are prohibited by the action of any government from supplying X any such OPTION(S), or such action appears probable, Y agrees to immediately confer with X to consider and agree upon steps which will prevent an interruption of supply of OPTIONS to X.

SECTION 20 - WARRANTY

20.1 Y warrants that all OPTIONS, PROTOTYPES, TEST VEHICLES and EVALUATOR CHIPS sold hereunder will at the time of shipment be free and clear of all liens and encumbrances and all OPTIONS and CS will be free from defects in material and workmanship and will conform to X's PURCHASE SPECIFICATIONS accepted by Y as part of this Agreement. Y also warrants that its products sold hereunder and the fabrication processes by which they are made, does not infringe any patent, copyright, or mask works right of another or constitute a misappropriation of trade secrets. This warranty shall not apply as to any product which, but for Y's having complied with X's design, specifications or written instructions, would not infringe upon the IPR'S of another. If products sold hereunder are not as warranted, Y shall, refund the purchase price, repair, or replace the product as shall be mutually agreed upon by the parties. Y shall repair or replace non-conforming products, or if repair or replacement is not feasible provide a functionally equivalent substitute product, provided proof of purchase and written notice of non-conformance are received by Y within the warranty period specified in Section 20.3 below and provided said non-conforming products are returned to Y's plant within thirty (30) days after the warranty period.

20.2 This warranty shall not apply to any products which Y determines have been, by X or otherwise, subjected to testing for other than specified electrical. Characteristics or to operating and/or environmental conditions in excess of the maximum values established in applicable specifications, or have been the subject of mishandling, misuse, neglect, improper testing, repair, alteration, damage, assembly or processing that alters physical or electrical properties.

20.3 All OPTION(S) purchased under this Agreement shall be warranted for one (1) year from the date of delivery.

20.4 THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF, AND EXCLUDE, AND X HEREBY WAIVES ANY OTHER GUARANTIES AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 21 - DISPUTE SETTLEMENT

21.1 In the event of a dispute between the parties hereto, the party alleging such dispute shall serve upon the other party written notice setting forth the nature of the dispute. If the dispute is not cured to the satisfaction of the party giving such notice within sixty (60) days of such party's giving such notice, then such party shall, by written notice to the other party, request a meeting of representatives of senior management of Y and X (which meeting's attendance shall include at least one (1) Vice President from each party) to occur within thirty (30) days of such written request in _____, USA, if such written request is given by Y, or in _____, USA, if such written request is given by X, for the purpose of resolving the dispute in the spirit of mutual respect, mutual trust and mutual benefit in which this Agreement was entered into.

21.2 If the dispute is not cured as the result of the senior management meeting referred to in Section 21.1 above, or upon expiration of thirty (30) days from the giving of written notice requesting such a meeting if no such meeting shall occur within such thirty (30) days request period, the parties agree to either continue to negotiate in good faith a fair and equitable resolution to the dispute, or seek judicial remedies available in either the State or federal district court system in which either of the parties is incorporated.

SECTION 22 - TERMINATION

22.1 X may terminate this Agreement for any reason for its own convenience upon no less than ninety (90) days advance written notice to Y. X's only liabilities to Y for terminating this Agreement for convenience shall be to pay Y any unpaid balance due for PROTOTYPES, conforming OPTION(S) and non-recurring engineering expenses ordered by X and delivered to X prior to Y's receipt of X's termination notice and for any Work-In-Process according to the terms of Section 15.

22.2 Y may terminate this Agreement for its own convenience only after a period of one (1) year shall have passed during which X shall have issued no Purchase Orders, upon no less than sixty (60) days advance written notice to X. If X issues any Purchase Orders within such sixty (60) day period, Y will be deemed to have withdrawn its notice. If X fails to issue any Purchase order within such sixty (60) day period, then the Agreement will be deemed terminated, except that all existing OPTIONS, including any OPTION(S) then still under design by Y for X, will be subject to the lifetime purchase provisions of Section 19.5.

22.3 Each party may, at its discretion, and upon written notice to the other party, terminate the whole or a part of this Agreement after the dispute resolution procedure specified in Section 21 fails to result in remedying a breach of this Agreement by the other party, or upon the voluntary or involuntary initiation of bankruptcy or insolvency proceedings against the other party; provided that, for an involuntary bankruptcy or insolvency proceeding, the party subject to the proceeding shall have ten (10) working days within which to dissolve the proceeding or demonstrate to the terminating party's satisfaction the lack of grounds for the initiation of such proceeding.

SECTION 23 - INDEMNITY

23.1 X shall indemnify, defend, and hold Y harmless against all expenses, damages, costs, or losses resulting from any suit or proceeding brought for infringement of copyright, patent, trademarks or other intellectual property rights arising from compliance with X's design, specifications, or instructions.

23.2 Y shall indemnify, defend and hold X harmless against all expenses, damages, costs or losses resulting from any suit or proceeding brought against X based on a claim that any such portions of PROTOTYPES and OPTIONS or any parts thereof furnished hereunder constitute an infringement of any copyright, patent or other intellectual property rights arising from Y's design, specifications, processes or instructions, if notified promptly of such claim in writing and given authority, information and assistance in the defense of same; and Y shall pay all damages and costs awarded therein against X subject to and within the limit of Section 23.2.1.

23.2.1 If the use or sale of PROTOTYPES and OPTIONS furnished by Y hereunder is enjoined as a result of such suit, Y at its option and expense, shall (i) obtain for X the right to use or sell such PROTOTYPES and OPTIONS; (ii) modify the PROTOTYPES and OPTIONS so that they are functionally equivalent but not infringing; (iii) replace the PROTOTYPES and OPTIONS with functionally equivalent but non-infringing products; or (iv) if all of the foregoing options are mutually deemed unavailable, refund the purchase price for such PROTOTYPES and OPTIONS.

23.2.2 Y assumes no liability, consequential or otherwise, for, and X agrees to hold Y harmless against infringement of claims under patent or any other intellectual property rights covering completed equipment or any assembly, circuit, combination, method or process in which any PROTOTYPES or OPTIONS may be used.

23.3 In the event that any claim is brought against X for patent infringement under 35 U.S.C. Section 271(g), Z agrees to accept service of process to respond to such claim in its behalf and on behalf of Y. In such event, Z also agrees to accept responsibility, as the importer of any PROTOTYPE, TEST VEHICLE or OPTION asserted by the claimant to infringe a United States process patent, for providing information from Y from which a determination can be made that the fabrication processes employed by Y is not covered by any such process patent.

23.4 In no event will either party be subject to any incidental, consequential or punitive damages, above and beyond any actual damages, on account of any breach of this Agreement, including, for example, injury in the form of lost profits, lost business opportunity, and the like.

SECTION 24 - CONFIDENTIALITY

24.1 X and Y have developed and will develop certain confidential information, (hereinafter "INFORMATION") including those described in Exhibit A. Both party's exchange of INFORMATION is for the sale purpose of performance under this Agreement.

24.2 Unless otherwise agreed upon by the parties as to the length of time for maintaining confidentiality as to a particular item of INFORMATION, for five (5) years from disclosure, Recipient shall maintain in confidence Discloser's INFORMATION, provided that it (a) is clearly marked with Discloser's name and "Confidential," "Proprietary" or the substantial equivalent and the date of disclosure; and (b) if orally disclosed, is summarized in writing or corporeal form and is clearly marked with Discloser's name and "Confidential," "Proprietary" or the substantial equivalent and the date of disclosure and delivered to Recipient within thirty (30) days thereafter. Upon delivery of INFORMATION so marked (or such summary in the case of oral disclosure), Discloser, at its option, may furnish to the receiving party an acknowledgment of receipt of such INFORMATION (or such summary) which contains the identity, media, and disclosure date of each separate tangible item of such INFORMATION (or such summary) and a place for Recipient's signature acknowledging such receipt. Recipient shall, within ten (10) working days of receipt of such acknowledgment, either sign the acknowledgment and return it to Discloser, or indicate in, writing that the acknowledgment cannot be so signed and returned due to the inaccuracy of the identification of each or any of such items of INFORMATION (or such summary). In the event that Discloser discloses INFORMATION which is agreed by the parties to be subject to a requirement of confidentiality for more than five (5) years, it shall be Discloser's responsibility to include in the above noted marking, the period of time different from five (5) years. The date of disclosure shall be deemed to be no earlier than the date of the execution of this agreement, or, the date of the creation of the corporeal form of the INFORMATION, if clearly shown on the face of such corporeal form or any physical or electronic image generated from such corporeal form of the INFORMATION. During the confidentiality period of INFORMATION disclosed by Discloser, Recipient agrees that Recipient may disclose such INFORMATION only to Recipient's employees having a need to know such INFORMATION for performance of this Agreement, that Recipient shall use the same degree of care to avoid disclosure of INFORMATION as it employs with respect to its own confidential/proprietary information, using at least a reasonable standard of care, and that Recipient shall notify its employees who receive such INFORMATION of the obligations hereunder.

24.3 Discloser shall prevent Recipient from being exposed to third party confidential information which is in Discloser's possession.

24.4 Recipient shall have no obligation as to Discloser's INFORMATION that (a) is known to Recipient at the time of disclosure; or (b) is independently developed by Recipient provided Recipient can show that such development was accomplished by or on behalf of Recipient without the use of or any reference to such INFORMATION; or (c) becomes known to Recipient from another source without confidentiality restriction on subsequent disclosure or use; or (d) is or becomes part of the public domain through no wrongful act of Recipient; or (e) is disclosed with the prior written approval of Discloser; or (f) is disclosed pursuant to any judicial or governmental request, requirement or order; provided that Recipient takes reasonable steps to give Discloser sufficient prior notice in order to contest such request, requirement or order; or (g) is furnished to a third party by Discloser without similar confidentiality restriction on the third party.

24.5 Title to all tangible forms of Discloser's INFORMATION and any copies thereof shall be and remain with Discloser. Recipient shall not copy or reproduce in whole or in part any such INFORMATION without written approval of Discloser, except as is necessary to fulfill the purposes of this Agreement. Upon written request or termination of this Agreement, all such tangible forms of such INFORMATION, with the exception of an archieve copy to be used solely for complying with Recipient's obligations hereunder, shall be promptly returned to Discloser or destroyed at Discloser's option.

24.6 Recipient shall not remove any proprietary, copyright, semiconductor chip protection, trade secret, or other legend ("Proprietary Rights Legend") from any form of Discloser's INFORMATION. Recipient, when reasonably possible and at Discloser's expense, will add to such INFORMATION any Proprietary Rights Legend (or modify same) which Discloser deems necessary to protect its intellectual property rights and requests in writing to be so added or modified.

24.7 The confidentiality obligations under this Section 24 shall survive termination of this Agreement.

24.8 No rights or obligations other than expressly recited herein are to be implied solely from the transfer and/or receipt of INFORMATION. Nothing except that expressly stated herein shall affect either party's present or prospective rights under any country's patent, copyright or mask works rights laws, or be construed as granting any license under any present or future patent or copyright rights or mask works rights, or application therefor, or preclude marketing any product unless such marketing constitutes unauthorized use and/or disclosure of INFORMATION.

24.9 Consistent with other provisions herein, each party assures that it will not knowingly, without obtaining prior authorization from the U.S. Dept. of Commerce, Office of Export Administration, transmit directly or indirectly the technical data received pursuant hereto or the immediate product (including processes and services) produced directly by use of such technical data to _____, or any Country Group Q, S, W, Y, or Z country specified in Supplement No. 1 to Part 370 U.S. Dept. of Commerce Export Administration Regulations or any country designated in Japanese laws.

24.10 For the purposes of this Section 24, Y and Z shall be obligated under this Section, but only that portion of Y which is within Y's Sector, comprising the Semiconductor subsidiaries of Y whose functional management is under the direction of Y's Sector, and which provides design or fabrication services necessary for Y's performance under this Agreement, and therefore has a need to know any particular INFORMATION, shall be entitled to be a Recipient of such INFORMATION. All other companies or other legal entities within Y shall be considered a third party under this Section 24, and as such Y and Z shall be obligated not to disclose INFORMATION to any such other company or legal entity, and all such other companies or legal entities shall be obligated not to receive or use any INFORMATION for any reason or purpose.

SECTION 25 - FORCE MAJEURE

25.1 Neither party to this Agreement shall be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by fire, drought, earthquake, floods, war, embargo, strike, riot, or other causes beyond the reasonable control of either party, or the intervention of any government authority, provided that the party suffering such delay immediately notifies the other party of the delay and diligently works to resolve such delay.

SECTION 26 - PARTIAL INVALIDITY

26.1 If any provision of this Agreement is held to be ineffective, unenforceable or illegal for any reason, such decision shall not affect the validity or enforceability of any or all of the remaining portions hereof, provided that the economic equity of the parties under this Agreement is not substantially affected thereby and provided further that the parties shall negotiate in good faith with respect to alternative or modified provisions which will accomplish the objectives of this Agreement consistent with applicable law.

SECTION 27 - NOTICES

27.1 Any notice which may be or is required to be given under this Agreement shall be written or telegraphic, and any written notices shall be sent by telephonic facsimile machine (i.e. FAX) or by registered mail or certified mail, postage prepaid, return receipt requested. Any telephonic facsimile machine notice must be followed within five (5) working days by an original of the facsimile, and any telegraphic notice must be followed within five (5) working days by written notice. All such notices shall be deemed to have been given when such notice is received. Any notice given hereunder shall be in writing and addressed as follows:

If to X:

To:

With copy to:

If to Y:

To:

With copy to:

Either party hereto may change its address by a notice given to the other party in the manner set forth above.

SECTION 28 - NON-WAIVER

28.1 No waiver by either party, expressed or implied, of any breach of any term, condition or obligation of this Agreement by the other party shall be construed as a waiver of any subsequent breach of that term, condition or obligation or of any other term, condition or obligation of this Agreement of the same or different nature.

SECTION 29 - NON-ASSIGNABILITY

29.1 Neither this Agreement nor any right/obligation hereunder is assignable or otherwise transferable by either party without the prior written consent of the other party.

SECTION 30 - SECTION HEADINGS

30.1 Section headings are for convenience purposes only and shall not affect the interpretation of this Agreement.

SECTION 31 - GOVERNING LAW

31.1 This Agreement, any Development orders and Purchase orders issued hereunder, and the rights and obligations of the parties hereto shall be governed by and interpreted in accordance with the laws of the State of _____, USA.

SECTION 32 - ENTIRE AGREEMENT

32.1 The terms and conditions contained herein constitute the entire agreement between the parties and shall supersede all previous communications, either oral or written, between the parties with respect to the subject matter hereof. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement. No amendment, modification, alternation, addition or change in the terms hereof, or addition of new Exhibits, shall be binding on either party unless reduced to writing and duly executed by authorized representatives of all the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of this day _____ of _____,19__.

X

_____
Signature

_____
Printed Name

_____
Title

_____
Date

Y

_____
Signature

_____
Printed Name

_____
Title

_____
Date

Z

_____
Signature

_____
Printed Name

_____
Title

_____
Date