

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2010-04-29** | Period of Report: **2010-03-28**  
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### FILER

#### Spansion Inc.

CIK: **1322705** | IRS No.: **300177542** | State of Incorporation: **DE** | Fiscal Year End: **1226**  
Type: **10-Q** | Act: **34** | File No.: **000-51666** | Film No.: **10778613**  
SIC: **3674** Semiconductors & related devices

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

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**Form 10-Q**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 28, 2010

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from            to

Commission File Number 000-51666

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**SPANSION INC.**

(DEBTOR-IN-POSSESSION)

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**915 DeGuigne Drive  
Sunnyvale, California**

(Address of principal executive offices)

**20-3898239**

(I.R.S. Employer  
Identification No.)

**94088**

(Zip Code)

**(408) 962-2500**

(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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

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

Indicate the number of shares outstanding of each of the registrant’s classes of common stock as of the close of business on April 26, 2010:

<u>Class</u>	<u>Number of Shares</u>
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<b>Class A Common Stock, \$0.001 par value</b>	
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	<b>162,517,951</b>
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**PART I. FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS**

**Spancion Inc.**  
**(Debtor-in-Possession)**  
**Condensed Consolidated Statements of Operations**  
**(in thousands, except per share amounts)**  
**(Unaudited)**

	<u>Three Months Ended</u>	
	<u>March 28,</u> <u>2010</u>	<u>March 29,</u> <u>2009</u>
Net sales	\$223,128	\$307,675
Net sales to related parties	54,209	91,953
Total net sales	277,337	399,628
Cost of sales (Note 9)	189,120	383,035
Research and development (Note 9)	22,953	44,746
Sales, general and administrative (Note 9)	47,608	104,029
Restructuring charges	13	23,942
Operating income (loss) before reorganization items	17,643	(156,124)
Interest and other income, net	286	480
Interest expense <sup>(1)</sup>	(19,336)	(24,466 )
Gain on deconsolidation of subsidiary	-	30,100
Loss before reorganization items and income taxes	(1,407 )	(150,010)

Reorganization items	<u>5,464</u>	<u>(362,457)</u>
Income (loss) before income taxes	4,057	(512,467)
Provision for income taxes	<u>405</u>	<u>168</u>
Net income (loss)	<u>\$3,652</u>	<u>\$(512,635)</u>
Net income (loss) per share		
Basic	<u>\$0.02</u>	<u>\$(3.18 )</u>
Diluted	<u>\$0.02</u>	<u>\$(3.18 )</u>
Shares used in per share calculation		
Basic	<u>162,403</u>	<u>161,283</u>
Diluted	<u>174,471</u>	<u>161,283</u>

(1) Contractual interest expense for the three months ended March 28, 2010 and March 29, 2009 was approximately \$30.0 million and \$27.7 million, respectively.

See accompanying notes

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**Spancion Inc.**  
**(Debtor-in-Possession)**  
**Condensed Consolidated Balance Sheets**  
**(in thousands)**  
**(Unaudited)**

	<u>March 28,</u> <u>2010</u>	<u>December 27,</u> <u>2009 <sup>(1)</sup></u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$321,156	\$324,903
Auction rate securities	75,155	100,335
Accounts receivable	125,885	129,174
Accounts receivable from related parties (Note 9)	361,983	366,602
Allowance for doubtful accounts	<u>(60,833 )</u>	<u>(56,408 )</u>
Accounts receivables, net	427,035	439,368
Inventories:		
Raw materials	17,328	14,202
Work-in-process	114,619	112,469
Finished goods	<u>13,584</u>	<u>15,052</u>
Total inventories	145,531	141,723

Deferred income taxes	12,197	13,332
Restricted cash	531,516	–
Prepaid expenses and other current assets	25,139	49,533
<b>Total current assets</b>	<b>1,537,729</b>	<b>1,069,194</b>
Property, plant and equipment, net	297,473	322,710
Other assets	40,784	46,073
<b>Total assets</b>	<b><u>\$1,875,986</u></b>	<b><u>\$1,437,977</u></b>
<b>Liabilities and Stockholders' Deficit</b>		
Current liabilities:		
Short term note	\$36,604	\$64,150
Senior secured term loan	450,000	–
Accounts payable	46,575	33,463
Accounts payable to related parties (Note 9)	198,069	221,211
Accrued compensation and benefits	24,882	21,630
Other accrued liabilities	102,895	112,759
Rights offering deposits	75,783	–
Deferred income	54,779	62,958



Total current liabilities	989,587	516,171
Deferred income taxes	12,270	13,405
Other long-term liabilities	9,523	9,825
Total long-term liabilities	21,793	23,230
Liabilities subject to compromise	1,717,352	1,756,269
Total liabilities	2,728,732	2,295,670
Stockholders' deficit	(852,746 )	(857,693 )
Total liabilities and stockholders' deficit	<u>\$1,875,986</u>	<u>\$1,437,977</u>

(1) Derived from audited financial statements at December 27, 2009.

See accompanying notes

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**Spancion Inc.**  
**(Debtor-in-Possession)**  
**Condensed Consolidated Statements of Cash Flows**  
**(in thousands)**  
**(Unaudited)**

	<u>Three Months Ended</u>	
	<u>March 28,</u> <u>2010</u>	<u>March 29,</u> <u>2009</u>
<b>Cash Flows from Operating Activities:</b>		
Net income (loss)	\$3,652	\$(512,635)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	27,780	59,660
Net provision for doubtful accounts	5,591	17,708
Net loss (gain) on sale and disposal of property, plant and equipment	1,112	(1,902 )
Asset impairment charges	629	-
Compensation recognized under employee stock plans	1,295	5,430
Gain from approved settlement of rejected capital leases and various licenses	(22,517 )	-
Gain on sale of Suzhou plant	(3,676 )	-
Amortization of financing cost and debt premium and discount	897	1,540
Gain on deconsolidation of subsidiary	-	(30,100 )
Changes in operating assets and liabilities, net of effects of deconsolidation of subsidiary:		

Decrease (increase) in accounts receivable	13,908	(54,018 )
(Increase) decrease in inventories	(3,808 )	142,499
Decrease (increase) in prepaid expenses and other current assets	6,041	(25,191 )
Decrease (increase) in other assets	1,192	(8,936 )
(Decrease) increase in accounts payable, accrued liabilities and accrued compensation and benefits	(22,430 )	382,942
(Decrease) increase in deferred income	<u>(8,179 )</u>	<u>3,226</u>
Net cash provided (used) by operating activities	<u>1,487</u>	<u>(19,777 )</u>
<b>Cash Flows from Investing Activities:</b>		
Proceeds from sale of property, plant and equipment	4,917	45
Purchases of property, plant and equipment	(8,493 )	(3,921 )
Proceeds from redemption of auction rate securities	27,325	–
Loan made to an investee	–	(5,263 )
Cash decrease due to deconsolidation of subsidiary	–	(52,092 )
Increase in restricted cash	(531,516)	–
Cash proceeds from sale of Suzhou plant	<u>18,687</u>	<u>–</u>
Net cash used by investing activities	<u>(489,080)</u>	<u>(61,231 )</u>

**Cash Flows from Financing Activities:**

Proceeds from borrowings, net of issuance costs	438,082	117,758
Payments on debt and capital lease obligations	(30,019 )	(54,715 )
Proceeds from rights offering	75,783	–
Net cash provided by financing activities	<u>483,846</u>	<u>63,043</u>
Effect of exchange rate changes on cash and cash equivalents	–	(3,095 )
Net decrease in cash and cash equivalents	(3,747 )	(21,060 )
Cash and cash equivalents at the beginning of period	<u>324,903</u>	<u>116,387</u>
Cash and cash equivalents at end of period	<u><u>\$321,156</u></u>	<u><u>\$95,327</u></u>

See accompanying notes

**Spancion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements**  
**(Unaudited)**

**1. Description of Business**

Spancion Inc. (the Company) is a semiconductor manufacturer headquartered in Sunnyvale, California, with research and development, manufacturing and assembly operations in the United States, the Middle East, Europe and Asia. The Company designs, develops, manufactures, markets, and sells Flash memory technology and solutions.

The Company's Flash memory devices are used primarily to store microprocessor instructions (code), or code and data in embedded applications, and are incorporated into a broad range of electronic products, including automotive electronics such as navigation systems and engine control, PC and peripheral computing equipment such as printers, consumer equipment such as set top boxes and home networking, communication equipment such as enterprise networking and cellular infrastructure, arcade gaming equipment, industrial control equipment and mobile phones.

**2. Creditor Protection Proceedings**

On February 10, 2009, Spancion Japan Limited, a wholly-owned subsidiary of Spancion LLC (Spancion Japan) filed a proceeding under the Corporate Reorganization Law of Japan to obtain protection from Spancion Japan's creditors (the Spancion Japan Proceeding). On March 3, 2009 the Tokyo District Court approved the filing of the Spancion Japan Proceeding and appointed the incumbent representative director of Spancion Japan as trustee.

On March 1, 2009 (the Petition Date), Spancion Inc., Spancion LLC, Spancion Technology LLC, Spancion International, Inc., and Cerium Laboratories LLC (the Debtors) each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the Chapter 11 Cases). The Chapter 11 Cases are being jointly administered under Case No: 09-10690 (KJC). The Chapter 11 Cases, together with the Spancion Japan Proceeding are referred to collectively as the Creditor Protection Proceedings.

The Debtors continue to operate their businesses as "debtors-in-possession" under jurisdiction of the U.S. Bankruptcy Court. Non-U.S. subsidiaries that are not included in the Creditor Protection Proceedings (Non-Debtor Affiliates) continue to operate without the supervision of the U.S. Bankruptcy Court.

***Plan of Reorganization***

On April 16, 2010, the U.S. Bankruptcy Court entered an order confirming the Company's Plan of Reorganization. The Plan of Reorganization may become effective as early as 14 days following entry of the U.S. Bankruptcy Court order. However, during this 14-day period, dissenting parties may seek to appeal the U.S. Bankruptcy Court order confirming the Plan of Reorganization and file motions to stay effectiveness of the order pending any appeals. There can be no assurance that the order confirming the Plan of Reorganization will not be appealed, or that the Plan of Reorganization will become effective or that it will be implemented successfully.

Under the Plan of Reorganization, the Debtors will be reorganized (Reorganized Debtors) through the consummation of several transactions in which new securities of the Reorganized Debtors will be issued and distributed to satisfy creditor claims and provide working capital to fund operations. These transactions include:

the distribution of cash raised through the rights offering and debt financing transactions;

**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

the cancellation of Spansion Inc.' s outstanding equity securities, including all shares of Common Stock and options to purchase shares of Common Stock;

the distribution of new Spansion Common Stock (New Common Stock) to holders of general unsecured claims; and

the retention of the assets and certain liabilities of the Debtors in the Reorganized Debtors.

Pursuant to the Plan of Reorganization, the holders of allowed claims were offered the right to purchase a total of 12,974,496 shares of the New Common Stock upon the Company' s emergence from the Chapter 11 Cases at a price of \$8.43 per share (Rights Offering). The number of shares available to each eligible claimant is based on each claimant' s proportionate allowed claim. In connection with the Rights Offering, the Company entered into a Backstop Rights Purchase Agreement with Silver Lake Sumeru Fund, L.P. (Silver Lake) whereby Silver Lake committed to purchase the balance of Rights Offering shares not otherwise subscribed for by the Rights Offering participants. As of March 28, 2010, approximately \$109.4 million have been committed to purchase the entire Rights Offering, of which \$75.8 million has been received and resides in a segregated Company bank account and the remaining balance resides in escrow accounts that will be released to the Company following emergence from the Chapter 11 Cases. The \$75.8 million received was recorded as restricted cash with the related deposit recorded as a current liability on the Company' s condensed consolidated balance sheet at March 28, 2010.

On February 9, 2010, the Company closed a \$450 million five-year Senior Secured Term Loan agreement (Term Loan) with a group of lenders. Funds from the Term Loan are held in escrow until the earlier of the Company' s emergence from the Chapter 11 Cases or the termination date which may be as soon as 60 days from the date of closing unless extended by the lenders. Proceeds from the Term Loan along with prepaid interest for the first 60 days are recorded as restricted cash in the Company' s condensed consolidated balance sheet at March 28, 2010. Upon emergence from the Chapter 11 Cases, the Term Loan will be secured by the assets of the Company including a first lien on property, plant and equipment and inventory, and a second priority lien on accounts receivables and cash. The Term Loan is subject to a number of financial and other covenants as discussed in Note 11 to the condensed consolidated financial statements.

The proceeds of the Term Loan, together with cash proceeds from the Rights Offering and other sources of cash available to the Company, will be used as follows: (i) payment to fully discharge approximately \$633 million of the claims of holders of the Senior Secured Floating Rate Notes, (ii) payment of Administrative Expense Claims and Priority Claims (each as defined in the Plan of Reorganization) and (iii) payment of fees and expenses related to the Term Loan.

The Company has entered into an agreement with Bank of America and other financial institutions for a post-bankruptcy senior revolving credit facility (Revolving Credit Facility) in an aggregate amount of up to \$65 million which will be used to fund bankruptcy related expenses and ongoing working capital. Available amounts for borrowing under the Revolving Credit Facility are limited to 85 percent of eligible accounts receivable. Funding is subject to a number of conditions, including a minimum liquidity level of \$100 million comprised of the sum of unrestricted cash and cash equivalents and the borrowing base minus the principal balance of all Revolving Credit Facility loans, and the Company' s emergence from the Chapter 11 Cases. The Revolving Credit Facility is subject to a number of covenants including fixed charge ratio coverage of 1.00 to 1.00.

**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

The Plan of Reorganization assumes that allowed claims will range from approximately \$1.6 billion to approximately \$2.1 billion after completion of the claims objection, reconciliation and resolution process. As of March 28, 2010, the Company has accrued expected allowed claims totaling approximately \$1.7 billion classified as liabilities subject to compromise in the accompanying condensed consolidated financial statements. In addition to the range specified above and the amount accrued, on March 12, 2010, Spansion Japan filed an amended general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$936 million as a result of the November 19, 2009 foundry agreement rejection order discussed below. If the expected amount of allowed claims increases over the amount currently accrued, the Company will record additional reorganization expense in the period of such determination. Because disputed claims have not yet been finally adjudicated, no assurances can be given that actual recoveries to creditors and interest holders will not be materially higher or lower than as set forth in the Plan of Reorganization.

***Business Relationship with Spansion Japan and Foundry Agreement***

Spansion Japan is managed by a trustee appointed by the Tokyo District Court and subject to the general supervision of the Tokyo District Court. As a result, beginning March 3, 2009, the financial results of Spansion Japan are no longer included in the Company's consolidated financial results.

Spansion Japan has continued to facilitate distribution of the Company's products in Japan, manufacture and supply sorted and unsorted silicon wafers for the Company, and provide sort services to the Company. The wafers purchased from Spansion Japan are a material component of the Company's cost of goods sold, and historically the wafer prices were governed by a foundry agreement. Management believes that the prices under the foundry agreement greatly exceeded the amounts that the U.S. Bankruptcy Court would have required the Company to pay for wafers purchased during the period from February 9, 2009 through October 27, 2009 (the date when the Company and Spansion Japan mutually agreed to pricing terms through executed purchase orders).

As a result of unsuccessful efforts by the Company to renegotiate the prices under the foundry agreement, the Company filed a motion with the U.S. Bankruptcy Court in October 2009 to reject the foundry agreement. An order rejecting the foundry agreement was issued by the U.S. Bankruptcy Court on November 19, 2009. As a result, there was no valid contract establishing pricing for the wafers the Company received from Spansion Japan from February 9, 2009 through October 27, 2009 (Disputed Period).

On January 8, 2010, the Company reached an agreement in principle (the Settlement) with Spansion Japan to: (i) acquire Spansion Japan's distribution business; (ii) obtain foundry services, including wafer and sort services, from Spansion Japan; and (iii) resolve the Company's dispute with Spansion Japan relating to pricing of wafers purchased during the Disputed Period. The Settlement remains subject to the completion of definitive agreements and the Company's emergence from the Chapter 11 Cases. On January 29, 2010, the U.S. Bankruptcy Court and on February 1, 2010, the Tokyo District Court approved the Settlement.

On February 2, 2010, the Company and Spansion Japan entered into a foundry agreement whereby the Company will purchase from Spansion Japan (i) a minimum of 10 billion yen (equivalent to \$108.0 million at March 28, 2010) worth of wafers over the six quarters beginning with the first quarter of 2010 and ending with the second quarter of 2011 and (ii) minimum sort services of \$7.7 million for the first quarter of 2010 and \$8.9 million for each quarter from the second quarter of 2010 to the second quarter of 2011; with both sort services and wafer production to be subject to normal and customary foundry performance conditions.

**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

The Company expects the remaining definitive agreements implementing the Settlement to be executed in the second quarter of 2010 and upon the Company's emergence from the Chapter 11 Cases. The definitive agreements are expected to provide for, among other things, the following material terms:

Payment to Spansion Japan of approximately \$45 million during fiscal 2010;

The purchase of Spansion Japan's distribution business located in Kawasaki, Japan for approximately \$12.5 million;

The claims of the Debtors against Spansion Japan arising prior to February 9, 2009 will be deemed allowed unsecured non-priority claims in the Spansion Japan's corporate reorganization proceeding, but the Debtors will not be entitled to receive any distribution on account of such claims;

Spansion Japan shall retain its rejection damage claims against the Debtors in respect of the rejection of the Foundry Agreement (described below), which damage claims can be offset by the difference between the Company's prepetition claim against Spansion Japan and its prepetition claim against the Company; and

All other claims of Spansion Japan and the Debtors against each other shall be expunged, released and satisfied.

On March 12, 2010, Spansion Japan filed an amended general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$936 million as a result of the November 19, 2009 foundry agreement rejection order. The Company believes that it has strong defenses to the amount of Spansion Japan's proof of claim and intends to vigorously contest this matter. Under the Company's Plan of Reorganization, if the U.S. Bankruptcy Court were to allow such claim, it would be as a general unsecured claim in Class 5B of the Company's Plan of Reorganization and Spansion Japan would be entitled, at most, to its pro-rata distribution of the New Common Stock.

### **3. Summary of Significant Accounting Policies**

#### ***Basis of Presentation and Going Concern***

The accompanying condensed consolidated financial statements of the Company have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The condensed consolidated financial statements and notes thereto are unaudited. In the opinion of the Company's management, these financial statements contain all adjustments (consisting of normal recurring adjustments) that are necessary for a fair presentation of the Company's operating results, financial position and cash flows. Operating results for the interim periods presented are not necessarily indicative of the results to be expected for any subsequent interim period or for the full fiscal year ending December 26, 2010.



**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

The Chapter 11 Cases raise substantial doubt as to whether the Company will be able to continue as a going concern until emergence from the Chapter 11 Cases. The accompanying condensed consolidated financial statements have been prepared using the same U.S. GAAP and the rules and regulations of the U.S. Securities and Exchange Commission (SEC) as applied by the Company prior to the Creditor Protection Proceedings. The accompanying condensed consolidated financial statements continue to be prepared using the going concern basis, which assumes that the Company will be able to realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. The Chapter 11 Cases have provided the Company with a period of time to stabilize its operations and financial condition and to develop the Plan of Reorganization. However, it is not possible to predict the outcome of these proceedings and, as such, the realization of assets and discharge of liabilities are each subject to significant uncertainty. Further, it is not possible to predict whether the actions taken in the Plan of Reorganization or any other reorganization plan will result in improvements to the Company's financial condition sufficient to allow it to continue as a going concern. If the going concern basis is not appropriate in future filings, adjustments will be necessary to the carrying amounts and/or classification of the Company's assets and liabilities in its consolidated financial statements included in those filings. Further, an amendment to the Plan of Reorganization prior to the Company's emergence from the Chapter 11 Cases could materially change the carrying amounts and classifications reported in the accompanying consolidated financial statements in future filings.

The accompanying condensed consolidated financial statements do not purport to reflect or provide for the outcome of the Creditor Protection Proceedings. In particular, such consolidated financial statements do not purport to show: (a) as to assets, their realizable value on a liquidation basis or their availability to satisfy liabilities; (b) as to pre-petition liabilities, the amounts that will ultimately be allowed for claims or contingencies, or the status and priority thereof; (c) as to stockholders accounts, the effect of any changes that may be made in the Company's capitalization; or (d) as to operations, the effect of any changes that may be made in the Company's business.

The accompanying condensed consolidated financial statements reflect the accounting, presentation, and disclosure requirements prescribed by FASB Accounting Standards Codification (ASC) Topic 852, *Reorganization* (ASC 852). Accordingly, liabilities and obligations whose treatment and satisfaction is dependent on the outcome of the Chapter 11 Cases have been segregated and classified as liabilities subject to compromise in the consolidated balance sheet. The ultimate amount of and settlement terms for the Company's pre-petition liabilities are dependent on the outcome of the Chapter 11 Cases and, accordingly, are not presently determinable. Professional fees associated with the Chapter 11 Cases and certain gains and losses resulting from reorganization of the Company's business have been reported separately as reorganization items. In addition, interest expense has been reported only to the extent that it will be paid during the Chapter 11 Cases or that it is probable that it will be an allowed priority, secured, or unsecured claim under the Chapter 11 Cases. Interest income earned during the Chapter 11 Cases is reported as a reorganization item.

Furthermore, effective as of March 3, 2009, the Company deconsolidated Spansion Japan because, despite its 100 percent equity ownership interest, the Company no longer controls Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding. Since March 3, 2009, the Company has accounted for its interest in Spansion Japan as a cost basis investment. Transactions between the Company and Spansion Japan after March 3, 2009, have been reflected as transactions with a third party.

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**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

With the exception of Spansion Japan as described above, the condensed consolidated financial statements include all the accounts of the Company and those of its wholly owned subsidiaries, and all intercompany accounts and transactions have been eliminated.

The condensed consolidated financial statements do not include certain financial statement footnotes and disclosures required under U.S. GAAP for audited financial statements. Therefore, the condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and footnotes thereto for the year ended December 27, 2009, included in the Company's Annual Report on Form 10-K, filed with the SEC on February 11, 2010.

***Use of Estimates***

The preparation of the Company's condensed consolidated financial statements and disclosures in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of commitments and contingencies and the reported amounts of revenues and expenses during the reporting periods. Estimates are used to account for the fair value of the retained non-controlling interest in Spansion Japan, the fair value of certain marketable securities, revenue, the allowance for doubtful accounts, inventory, including the value of inventory purchased from Spansion Japan, valuation of acquired intangible assets, impairment of long-lived assets, income taxes, stock-based compensation expenses, liabilities subject to compromise, the fair value of the debt and liability components of the Company's Exchangeable Senior Subordinated Debentures, and product warranties. Actual results may differ from those estimates, and such differences may be material to the Company's condensed consolidated financial statements.

***Financial Statements Reclassifications***

Certain prior period amounts in the condensed consolidated statements of operations have been reclassified to conform to the current period presentation. There is no material impact to the Company's results from operations due to these reclassifications.

**4. Reorganization Items**

Entities in reorganization are required to disclose separately items such as professional fees directly related to the process of reorganizing the Debtors under the Chapter 11 Cases, realized gains and losses, provisions for losses, and interest income resulting from the reorganization and restructuring of the business. The Debtors' reorganization items for the three months ended March 28, 2010 and March 29, 2009 consist of the following:

	<u>Three Months Ended</u> <u>March 28, 2010</u>	<u>Three Months Ended</u> <u>March 29, 2009</u>
	(in thousands)	
Professional and service fees directly related to reorganization <sup>(1)</sup>	\$ 17,152	\$ 7,151
Provision (adjustments) for expected allowed claims <sup>(2)</sup>	(22,517 )	355,333
Interest income	(99 )	(27 )

Total reorganization items

\$ (5,464 )      \$ 362,457

- 
- (1) Includes fees associated with the advisors and service providers to the Debtors.
  - (2) Represents the Company' s estimate of the expected allowed claims related primarily to rejection or repudiation of executory contracts, leases, and the effects of approved settlements.

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The U.S. Bankruptcy Court established September 4, 2009 as the bar date for filing proofs of claim against the Debtors' estates. Under certain limited circumstances, some creditors will be permitted to file claims after the applicable bar dates. Accordingly, it is possible that not all potential claims have been filed. The differences between amounts recorded by the Debtors and proofs of claim filed by the creditors are investigated and resolved through the claims reconciliation process. Because of the number of creditors and claims, the claims reconciliation process may take considerable time to complete and the Company expects it will continue to receive claims after its emergence from the Chapter 11 Cases.

Notwithstanding the foregoing, the Company has recognized certain charges related to allowed claims or expected allowed claims. The U.S. Bankruptcy Court will ultimately determine liability amounts that will be allowed for claims. As claims are resolved, or where better information becomes available and is evaluated, the Company will make adjustments to the liabilities recorded on its quarterly or annual financial statements as appropriate. Any such adjustments including appeals accepted by the U.S. Bankruptcy Court could be material to the Company's financial position or results of operations in any given period.

Cash paid for professional fees was approximately \$7.6 million and \$8.0 million for the three months ended March 28, 2010 and March 29, 2009, respectively.

#### **5. Liabilities Subject to Compromise**

Liabilities subject to compromise refers to both secured and unsecured obligations that will be accounted for under a plan of reorganization. Generally, actions to enforce or otherwise effect payment of pre-petition liabilities are stayed. The U.S. Bankruptcy Court has, however, approved payment of certain of the Debtors pre-petition obligations, including among other things employee wages, salaries and benefits and certain business-related payments such as claims of transport companies and certain contractors in satisfaction of liens or other interests. The Debtors have been paying and continue to pay undisputed post-petition claims in the ordinary course of business.

Pre-petition liabilities that are subject to compromise are reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. These liabilities represent the estimated amount expected to be allowed on known or potential claims to be resolved through the Chapter 11 Cases and remain subject to future adjustments arising from negotiated settlements, actions of the U.S. Bankruptcy Court, rejection of executory contracts and unexpired leases, the determination as to the value of collateral securing the claims, proofs of claim or other events. Liabilities subject to compromise also includes certain items that may be assumed under the Plan of Reorganization, and as such, may be subsequently reclassified to liabilities not subject to compromise. Ordinarily, secured debt is not considered to be a liability subject to compromise. However, the Company has included most of its secured debt as a liability subject to compromise as management believes that there remains uncertainty as to whether such debts are adequately secured.

The Debtors may reject pre-petition executory contracts and unexpired leases with respect to the Debtors' operations, with the approval of the U.S. Bankruptcy Court. Damages resulting from rejection of executory contracts and unexpired leases are generally treated as general unsecured claims and will be classified as liabilities subject to compromise. Differences between liability amounts estimated by the Debtors and claims filed by creditors will be investigated and, if necessary, the U.S. Bankruptcy Court will make a final determination of the allowable claim. On April 16, 2010, the U.S. Bankruptcy Court entered an order confirming the Company's Plan of Reorganization. The Plan of Reorganization may become effective as early as 14 days following entry of the U.S. Bankruptcy Court order. However, during this 14-day period, dissenting parties may seek to appeal the U.S. Bankruptcy Court order confirming the Plan of Reorganization and file motions to stay effectiveness of the order pending any appeals. There can be no assurance that the order confirming the Plan of Reorganization will not be appealed, or that the Plan of Reorganization will become effective or that it will be implemented successfully. Accordingly, the ultimate amount or treatment of such liabilities is not determinable at this time. Liabilities subject to compromise consist of the following:

March 28, 2010

December 27, 2009

	(in thousands)	(in thousands)
Accounts payable and accrued liabilities	\$ 608,297	\$ 639,897
Accounts payable to related parties	109,941	109,941
Accrued compensation and benefits	14,844	16,138
Long-term debt	968,266	968,266
Capital lease obligations	15,640	18,861
Other long-term liabilities	364	3,166
Total liabilities subject to compromise	<u>\$1,717,352</u>	<u>\$ 1,756,269</u>

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**Spansion Inc.**  
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**6. Stock-Based Compensation**

Under the Plan of Reorganization and upon the Company' s emergence from the Chapter 11 Cases, Spansion Inc.' s outstanding equity securities, including all shares of Common Stock and options to purchase shares of Common Stock, will be cancelled.

***Shares Available to Grant***

The numbers of shares of Class A Common Stock available for grant at March 28, 2010 under the Spansion Inc. 2007 Equity Incentive Plan (the 2007 Plan), the Spansion Inc. 2005 Equity Incentive Plan (the 2005 Plan) and the Saifun Semiconductors Ltd. 2003 Employee Share Option Plan (the Saifun 2003 Plan) are shown in the following table:

Number of shares available for grant:

Shares reserved for grant <sup>(1)</sup>	12,126,424
Shares available under the 2007 Plan (transferred from the 2005 Plan)	2,389,257
Stock options granted through March 28, 2010, net of cancelled stock options	(3,832,741 )
RSU awards granted through March 28, 2010, net of cancelled RSU awards	<u>(979,580 )</u>
Shares available for grant under the 2007 Plan and Saifun 2003 Plan	<u>9,703,360</u>

(1)

The 12,126,424 shares reserved for grant consisted of 6,675,000 shares approved for grant under the 2007 Plan, 920,523 shares transferred from the 2005 Plan and 4,530,901 shares transferred from the Saifun 2003 Plan.

***Valuation and Expense Information***

The following table sets forth the total recorded stock-based compensation expense for the 2005 Plan, 2007 Plan, Saifun 2003 Plan, Saifun Semiconductor Ltd. 2001 Share Option Plan and Saifun Semiconductor Ltd. 1997 Share Option Plan (collectively, the Spansion and Saifun Equity Plans) by financial statement caption, resulting from the Company' s stock options and restricted stock unit (RSU) awards for the three months ended March 28, 2010 and March 29, 2009:

<u>Three Months Ended</u>	
<u>March 28, 2010</u>	<u>March 29, 2009</u>
(in thousands)	

Cost of sales	\$ 273	\$ 1,383
Research and development	511	1,569
Sales, general and administrative	511	2,478
Stock-based compensation expense before income taxes	1,295	5,430
Income tax benefit <sup>(1)</sup>	-	-
Stock-based compensation expense after income taxes <sup>(1)</sup>	\$ 1,295	\$ 5,430

(1)

There is no income tax benefit related to stock option expenses because all of the Company's U.S. deferred tax assets, net of U.S. deferred tax liabilities, continue to be subject to a full valuation allowance.

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No stock options were granted in the three months ended March 28, 2010 and March 29, 2009, under the Spancion and Saifun Equity Plans.

As of March 28, 2010, the total unrecognized compensation cost related to unvested stock options and RSU awards under the Spancion and Saifun Equity Plans was approximately \$10.3 million after reduction for estimated forfeitures, and such stock options and RSU awards will generally vest ratably through the date of emergence from the Chapter 11 Cases. Upon effectiveness of and pursuant to the Plan of Reorganization, all outstanding options and RSU awards will be cancelled.

***Stock Option and Restricted Stock Unit Activity***

The following table summarizes stock option activity and related information under the Spancion and Saifun Equity Plans for the periods presented:

	<u>Number of Shares</u>	<u>Weighted- Average Exercise Price</u>	<u>Weighted- Average Remaining Contractual Life (in years)</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
Options:				
Outstanding as of December 27, 2009	6,497,320	\$ 5.42	4.77	\$ 137
Granted	-			
Cancelled	(901,417 )	\$ 8.32		
Exercised	(123,909 )	\$ -		
Outstanding as of March 28, 2010 <sup>(1)</sup>	<u>5,471,994</u>	\$ 5.19	4.42	\$ 85
Exercisable as of March 28, 2010 <sup>(2)</sup>	<u>3,725,413</u>	\$ 6.66	3.56	\$ 36

(1) The number of options outstanding as of March 28, 2010 includes 322,133 shares of options held by Spancion Japan employees.

(2) The number of options exercisable as of March 28, 2010 includes 294,541 shares of options held by Spancion Japan employees.



The aggregate intrinsic value in the preceding table represents the total pretax intrinsic value, based on the Company' s closing stock price of \$0.08 as of March 26, 2010, the last trading day prior to March 28, 2010, which would have been received by the stock option holders had all stock option holders exercised their in-the-money stock options as of that date.

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The following table summarizes RSU award activities and related information for the periods presented:

	<u>Number of Shares</u>	<u>Weighted-Average Grant-date Fair Value</u>
Restricted Stock Units:		
Unvested as of December 27, 2009	956,933	\$ 5.41
Granted	—	—
Cancelled	(250,142)	\$ 5.18
Vested	<u>(115,095)</u>	\$ 8.40
Unvested as of March 28, 2010 <sup>(1)</sup>	<u>591,696</u>	\$ 4.92

(1) The number of restricted stock units unvested as of March 28, 2010 includes 43,449 shares held by Spancion Japan employees.

## 7. Net Income (Loss) Per Share

The following table presents the calculation of basic and diluted net income (loss) per share:

	<u>Three Months Ended</u>	
	<u>March 28, 2010</u>	<u>March 29, 2009</u>
	<u>In thousands except for per-share amounts</u>	
Net income (loss)	<u>\$ 3,652</u>	<u>\$(512,635 )</u>
Weighted-average shares—basic	162,403	161,283
Effect of dilutive potential common shares	<u>12,068</u>	—
Weighted-average shares—diluted	174,471	161,283

Net income (loss) per share—basic	<u>\$ 0.02</u>	<u>\$(3.18 )</u>
Net income (loss) per share—diluted	<u>\$ 0.02</u>	<u>\$(3.18 )</u>

Employee stock options, unvested restricted stock units, and similar equity instruments granted by the Company are treated as potential common shares outstanding in computing diluted earnings per share. Diluted shares outstanding include the dilutive effect of in-the-money options and unvested restricted stock units which is calculated based on the average share price for each fiscal period using the treasury stock method, as well as the effect of the Company' s Exchangeable Senior Subordinated Debentures. Under the treasury stock method, the amount the employee must pay for exercising stock options, the amount of compensation cost for future service that the Company has not yet recognized, and the amount of tax benefits that would be recorded in additional paid-in capital when the award becomes deductible are assumed to be used to repurchase shares. The Company had 207,000 Exchangeable Senior Subordinated Debentures outstanding at March 28, 2010, with each debenture exchangeable into 56.7621 shares of the Company' s Class A Common Stock.

For the three months ended March 29, 2009, the Company excluded from its diluted per share computation approximately 22.8 million potential common shares issuable upon exercise of outstanding stock options, upon vesting of outstanding restricted stock units and upon exchange of Spansion LLC' s Exchangeable Senior Subordinated Debentures because they had an anti-dilutive effect due to net loss recorded in the period.

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**8. Comprehensive Income (Loss)**

The following are the components of comprehensive income (loss):

	<u>Three Months Ended</u>	
	<u>March 28, 2010</u>	<u>March 29, 2009</u>
	(in thousands)	
Net income (loss)	\$ 3,652	\$(512,635 )
Net change in pension plan, net of taxes	-	123
Net change in cumulative translation adjustment	-	(25,073 )
Net change in unrealized losses on marketable securities, net of \$0 taxes	-	(273 )
Total comprehensive income (loss)	<u>\$ 3,652</u>	<u>\$(537,858 )</u>

**9. Related Party Transactions**

***Spansion Japan***

As discussed in Note 3, in the section entitled, "Basis of Presentation and Going Concern," the Company does not include Spansion Japan in its consolidated financial statements after March 3, 2009, and, since that date, has accounted for its interest in Spansion Japan as a cost basis investment. Due to its 100 percent non-controlling ownership interest in Spansion Japan, the Company is treating Spansion Japan as a related party for financial reporting purposes.

On February 2, 2010, the Company entered into a foundry agreement with Spansion Japan whereby the Company will purchase from Spansion Japan (i) a minimum of 10 billion yen, or \$108.0 million as of March 28, 2010, worth of wafers over the six quarters beginning with the first quarter of 2010 and ending with the second quarter of 2011 and (ii) minimum sort services of \$7.7 million for the first quarter of 2010 and \$8.9 million for each quarter from the second quarter of 2010 to the second quarter of 2011; with both sort services and wafer production subject to normal and customary foundry performance conditions. This agreement replaced an earlier foundry agreement whereby Spansion Japan manufactured wafers for the Company based on a five-quarter rolling production forecast and in exchange, the Company reimbursed Spansion Japan for its manufacturing cost, plus a surcharge of 6 percent. The earlier foundry agreement was rejected by the U.S. Bankruptcy Court on November 19, 2009 pursuant to a motion by the Company.

The following tables present the significant related party transactions between the Company and Spansion Japan for the three months ended March 28, 2010 and the period from March 3, 2009 through March 29, 2009, respectively:

<u>Three Months Ended</u>	<u>March 3, 2009 to</u>
<u>March 28, 2010</u>	<u>March 29, 2009</u>

	(in thousands)	(in thousands)
Sales to Spansion Japan	\$ 54,209	\$ 41,745
Wafer purchases from Spansion Japan	\$ 54,728	\$ 36,983
Payment to Spansion Japan for R&D services	\$ 2,031	\$ 2,058

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The following table presents the account balances between the two companies as of March 28, 2010 and December 27, 2009, respectively:

	<u>March 28, 2010</u> (in thousands)	<u>December 27, 2009</u> (in thousands)
Trade accounts receivable from Spansion Japan	\$ 361,983	\$ 366,602
Trade accounts payable to Spansion Japan	\$ 308,010	\$ 331,151
Deferred income on shipments to Spansion Japan	\$ 8,936	\$ 12,029

***Fujitsu***

Fujitsu Limited (Fujitsu) is a holder of greater than 10 percent of the Company's voting securities as of March 28, 2010.

The Company did not have significant transactions and account balances directly with Fujitsu following the deconsolidation of Spansion Japan effective March 3, 2009. The following tables present the significant related party transactions between the Company and Fujitsu for the three months ended March 29, 2009.

	<u>Three Months Ended</u> <u>March 29, 2009</u> (in thousands)
Net sales to Fujitsu	\$ 50,208

Inventory and cost of sales:

Other purchases of goods and services from Fujitsu and rental expense to Fujitsu	11,617
Subcontract manufacturing and commercial die purchases from Fujitsu	569
Wafer purchases, processing and sort services from Fujitsu	6,096
Net gain recognized on sale of assets to Fujitsu on April 2, 2007	(3,075 )

Reimbursement on costs of employees seconded to Fujitsu	(2,633 )
Equipment rental income from Fujitsu	(186 )
Administrative services income from Fujitsu	(68 )
	<u>\$ 12,320</u>
Service fees to Fujitsu:	
Sales, general and administrative	<u>\$ 110</u>

#### 10. Warranties and Indemnities

The Company generally offers a one-year limited warranty for its Flash memory products. Changes in the Company's liability for product warranty during the three months ended March 28, 2010 and March 29, 2009 are as follows:

	<u>Three Months Ended</u> <u>March 28, 2010</u>	<u>Three Months Ended</u> <u>March 29, 2009</u>
	(in thousands)	
Balance, beginning of period	\$ 3,841	\$ 1,489
Provision for warranties issued	933	923
Settlements	(125 )	(172 )
Changes in liability for pre-existing warranties during the period	<u>(1,030 )</u>	<u>(762 )</u>
Balance, end of period	<u>\$ 3,619</u>	<u>\$ 1,478</u>

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In addition to product warranties, the Company, from time to time in its normal course of business, indemnifies other parties, with whom it enters into contractual relationships, including customers, directors, lessors and other parties, with respect to certain matters, including specified losses arising from a breach of representations or covenants, third-party infringement claims or other claims. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the limited history of indemnification claims and the unique facts and circumstances that are likely to be involved in each particular claim and indemnification provision.

### 11. Debt and Capital Lease Obligations

The Company's debt and capital lease obligations consist of:

	<u>March 28, 2010</u>	<u>December 27, 2009</u>
	(in thousands)	
Debt obligations:		
Senior Notes	\$233,440	\$ 233,440
Exchangeable Senior Subordinated Debentures	109,233	109,233
Senior Secured Floating Rate Notes	625,593	625,593
UBS Loan Secured by Auction Rate Securities	36,604	64,150
Senior Secured Term Loan	450,000	-
Obligations under capital leases	<u>15,640</u>	<u>18,861</u>
Total debt and capital lease obligations	1,470,510	1,051,277
Less: amount subject to compromise	<u>983,906</u>	<u>987,127</u>
Total debt and capital lease obligations not subject to compromise	<u>486,604</u>	<u>64,150</u>



Less: current portion

486,604

64,150

Long-term debt and capital lease obligations not subject to compromise

\$-

\$-

Under terms of the Senior Notes, Exchangeable Senior Subordinated Debentures and Senior Secured Floating Rate Notes, the Chapter 11 Cases constituted an event of default and all amounts outstanding under these facilities were accelerated and became immediately due and payable.

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*New Debt and Capital Lease Obligations and Activities for the three months ended March 28, 2010*

*Bank of Switzerland (UBS AG) Loan Secured by Auction Rate Securities (ARS)*

During the three months ended March 28, 2010, the Company made payments of \$27.5 million on the UBS AG loan out of proceeds from the redemption of ARS. As of March 28, 2010, the Company had outstanding borrowings of approximately \$36.6 million. This amount bears interest at approximately 1.3 % as of March 28, 2010.

*Senior Secured Term Loan*

On February 9, 2010, Spansion LLC, the wholly owned operating subsidiary of the Company, borrowed \$450.0 million under its five-year Senior Secured Term Loan (the Term Loan). Funds from the Term Loan are held in escrow until the earlier of the Company's emergence from the Chapter 11 Cases or the termination date which may be as soon as 60 days from the date of closing unless extended by the lenders. Proceeds from the Term Loan along with prepaid interest of \$5.7 million for the first 60 days are recorded as restricted cash in the Company's condensed consolidated balance sheet at March 28, 2010. In connection with the Term Loan, the Company incurred non-refundable financing points, fees to the arrangers and legal costs of approximately \$12.0 million of which approximately \$7.5 million is being amortized over the 60 day period ending on the date the lenders may first terminate the loan, and approximately \$4.5 million, which represents fees that may be credited towards future financings if the Term Loan is terminated, is being amortized over the period through September 30, 2010, when the credit towards future financings expires. In addition, the Company is committed to pay the lenders approximately \$10 million of financing fees upon the release of Term Loan funds from escrow and upon the Company's emergence from the Chapter 11 Cases.

Interest on the Term Loan accrues at a rate per annum, reset quarterly, equal to the prime lending rate or the Federal Funds rate plus 0.50%, whichever is higher but not less than 3.00%, plus 4.50%. Alternatively, interest on the Term Loan may accrue at a rate per annum equal to the LIBOR or 2.00%, whichever is higher, plus 5.50%, and reset from one to twelve months by mutual agreement between borrower and lender. Interest is payable quarterly in arrears upon the Company's emergence from the Chapter 11 Cases.

Upon emergence from the Chapter 11 Cases, the Term Loan will be secured by the assets of the Company including, among other items, a first priority lien on property, plant and equipment and inventory, and a second priority lien on account receivables and cash. Based on certain agreed upon thresholds, the Term Loan will require net cash proceeds from asset sales or other dispositions of property, extraordinary cash receipts, and other future cash flows to be used to prepay the outstanding balance of the loan. Voluntary prepayments of borrowings will be permitted in whole or in part, in minimum principal amounts to be agreed upon, at any time on or prior to February 9, 2011 at a price equal to 101% of the principal amount of such borrowings being prepaid plus all accrued and unpaid interest plus breakage costs, if any, and thereafter at any time without premium or penalty. Under the terms of the Term Loan and upon the Company's emergence from the Chapter 11 Cases, the Company will be subject to a number of financial covenants beginning June 27, 2010, including a minimum consolidated interest coverage ratio of 3.75 to 1.0, a maximum leverage ratio of 2.50 to 1.0 until September 25, 2011 and a maximum leverage ratio of 2.0 to 1.0 thereafter, and maximum permitted capital expenditures of \$75 million in 2010, \$100 million in 2011 and \$125 million in 2012, and each fiscal year thereafter. Any capital expenditure amount not expended in the fiscal year for which the Company is permitted may be carried over for expenditure in the succeeding fiscal year in an amount not to exceed \$25 million in any fiscal year.

The proceeds of the Term Loan, together with cash proceeds from the Rights Offering and other sources of cash available to us, will be used as follows: (i) payment to fully discharge approximately \$633 million of the claims of holders of the Senior Secured Floating Rate Notes, (ii) payment of Administrative Expense Claims and Priority Claims (each as defined in the Plan of Reorganization) and (iii) payment of fees and expenses related to the Term Loan. The Term Loan is classified as a current liability on the Company's condensed consolidated balance sheet at March 28, 2010, because as of that date the Company had not emerged from the Chapter 11 Cases and the loan was to terminate on

April 9, 2010, unless prior to that time the Company emerged from the Chapter 11 Cases or the loan was extended by the lenders. On April 9, 2010, the lenders extended the loan for an additional 30 days.

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*Impact of Chapter 11 Cases*

As discussed in Note 3, the accounting guidance for entities in Chapter 11 reorganization provides that interest expense should be reported only to the extent that it will be paid during the Chapter 11 Cases proceeding or that it is probable that it will be an allowed priority, secured or unsecured claim. On that basis, the Company ceased accruing interest as of the Petition Date (March 1, 2009) on its Senior Notes and Exchangeable Senior Subordinated Debentures. In addition, accretion of the discounted carrying value of the Exchangeable Senior Subordinated Debentures ceased on March 1, 2009. The Company continues to accrue interest on the Senior Secured Floating Rate Notes and the UBS loan secured by ARS. For the three months ended March 28, 2010, reported interest expense was \$19.3 million while the contractual interest obligation was \$30.0 million. Reported interest expense of \$19.3 million consists primarily of approximately \$5.3 million interest expense on the Senior Secured Floating Rate Notes, approximately \$4.6 million interest expense on the Term Loan, and amortization of approximately \$7.9 million of financing costs related to the Term Loan.

**12. Income Taxes**

The Company recorded income tax expenses of approximately \$0.4 million in the three months ended March 28, 2010, as compared to an income tax expense of approximately \$0.2 million in the three months ended March 29, 2009. The income tax expense recorded in the three months ended March 28, 2010 was primarily related to tax provisions in profitable foreign locations of \$0.4 million. The income tax expense recorded in the three months ended March 29, 2009 was primarily related to tax provisions in profitable foreign locations of \$0.2 million.

As of March 28, 2010, all of the Company's U.S. and foreign deferred tax assets, net of deferred tax liabilities, continue to be subject to a full valuation allowance. The realization of these assets is dependent on substantial future taxable income which at March 28, 2010, in management's estimate, is not more likely than not to be achieved.

**13. Fair Value**

As of March 28, 2010 and December 27, 2009, the fair value measurements of the Company's financial assets consisted of the following and which are categorized in the table below based upon the fair value hierarchy:

	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
	March 28, 2010				December 27, 2009			
(in thousands)								
Money market funds	\$ -	\$ -	\$ -	\$ -	\$ 20	\$ -	\$ -	\$ 20
Auction rate securities	-	-	75,155	75,155	-	-	100,335	100,335
Put option	-	-	4,645	4,645	-	-	6,790	6,790
Total financial assets	<u>\$ -</u>	<u>\$ -</u>	<u>\$79,800</u>	<u>\$79,800</u>	<u>\$ 20</u>	<u>\$ -</u>	<u>\$107,125</u>	<u>\$107,145</u>



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The table below presents reconciliations for the Company's Level 3 financial assets measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three months ended March 28, 2010 and March 29, 2009:

	<u>Three Months Ended</u> <u>March 28, 2010</u>		<u>Three Months Ended</u> <u>March 29, 2009</u>	
	<u>Auction rate</u> <u>securities</u>	<u>Put option</u>	<u>Auction rate</u> <u>securities</u>	<u>Put option</u>
	(in thousands)			
Balance, beginning of period	\$100,335	\$6,790	\$94,014	\$27,465
Transfer in	-	-	-	-
Redemptions at par	(27,325 )	-	-	-
Change in fair value	<u>2,145</u>	<u>(2,145 )</u>	<u>10,834</u>	<u>(11,151)</u>
Balance, end of period	<u>\$75,155</u>	<u>\$4,645</u>	<u>\$104,848</u>	<u>\$16,314</u>

The changes in the fair values of the ARS and put option are reflected as components of interest and other income (expense), net.

***Auction Rate Securities and Put Option***

At March 28, 2010, the Company held \$75.2 million of ARS valued at fair value (\$79.8 million at par) which are backed by student loans and substantially all of which are guaranteed by the U.S. government Federal Family Education Loan Program and which had credit ratings of AAA and Aaa. These ARS are classified within Level 3, given the failures in the auction markets subsequent to February 2008 and the lack of any correlation of these instruments to other observable market data. Therefore their valuation requires substantial judgment and estimation of factors that are not currently observable in the market due to the lack of trading in the securities.

In November 2008, the Company accepted an offer to participate in an ARS settlement from UBS, its broker, providing the Company the right, but not the obligation, to sell to UBS up to 100 percent of its ARS at par. The Company's right to sell the ARS to UBS commencing June 30, 2010 through July 2, 2012 represents a put option for a payment equal to the par value of the ARS.

At March 28, 2010, there was insufficient observable ARS market information available to determine the fair value of the Company's ARS investments. Therefore, the Company estimated the fair values of its ARS investments at March 28, 2010 using a discounted cash flow (DCF) methodology. Significant inputs used in the DCF models were the credit quality of the instruments, the percentage and the types of guarantees, the probability of the auction succeeding or the security being called prior to final maturity, and an illiquidity discount factor. The key assumptions used in the DCF analysis to determine the fair values as of March 28, 2010 were the discount factor to be applied and the period over which the cash flows would be expected to occur. The discount factor used was based on the three-month LIBOR (0.29 percent as of March 28, 2010) adjusted by 70 basis points (bps) to reflect the current market conditions for instruments with similar credit quality at the

date of the valuation. In addition, the discount factor was incrementally adjusted for a liquidity discount of 125 bps to reflect the lack of an active market. The Company applied this discount factor over the expected life of the estimated cash flows of its ARS with projected interest income of 1.33 percent per annum. The projected interest income is based on a trailing 12-month average 91-day U.S. Treasury Bill Rate at 0.13 percent as of March 28, 2010 plus 120 bps, which is the average annual yield of the Company' s ARS assuming auctions continue to fail.

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The Company used a DCF model to estimate the fair value of its put options as of March 28, 2010. The valuation model is based on the following key assumptions:

A discount rate based on the 12-month U.S. Treasury Bill Rate (0.15 percent as of March 28, 2010), adjusted by 45 bps to reflect the credit risk associated with the put option; and

An expected life of 3 months.

The fair value of the put option of \$4.6 million and \$6.8 million at March 28, 2010 and December 27, 2009, respectively, is reflected as a component of prepaid and other current assets and other assets at the respective dates. The put option will continue to be measured at fair value utilizing Level 3 inputs until the earlier of its maturity or exercise.

#### 14. Restructuring Charges

In the three months ended March 28, 2010, as part of its ongoing strategic effort to reduce costs and conserve cash, the Company eliminated regular and contract positions globally, through consolidations, attrition, and a reduction in regular, contract and temporary workers in manufacturing, engineering, management and administrative support functions.

Restructuring charges for the three months ended March 28, 2010 and March 29, 2009 were as follows:

	<u>Three Months Ended</u> <u>March 28, 2010</u>	<u>Three Months Ended</u> <u>March 29, 2009</u>
	(in thousands)	
Employee severance pay and benefits	\$ 960	\$ 21,213
Professional fees	201	2,626
Relocation of property, plant and equipment	78	103
Other	532	-
Cash settled restructuring charges	1,771	23,942
Depreciation and write-off fixed assets	4,204	-



Gain recognized on sale of Suzhou plant	(3,676 )	-
Gain from sale of fixed assets	(2,202 )	-
Other	(84 )	-
Total restructuring charges	<u>\$ 13</u>	<u>\$ 23,942</u>

The following table summarizes the restructuring accrual activity for the three months ended March 28, 2010:

	<b>Three Months Ended</b> <b>March 28, 2010</b> <b>(in thousands)</b>
Accrued restructuring balance, beginning of period	\$ 11,954
Additional accruals for cash settled restructuring charges	1,771
Adjustments	21
Cash payments	<u>(2,017 )</u>
Accrued restructuring balance, end of period	<u>\$ 11,729</u>

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**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

The accrued restructuring balance was included in accrued compensation and benefits in the Company's condensed consolidated balance sheets as of March 28, 2010 and December 27, 2009.

**15. Debtor's Condensed Combined Financial Statements**

***Basis of Presentation***

*Condensed Combined Debtor-in-Possession Financial Statements*

The financial statements contained within this note represent the condensed combined financial statements for the Debtors under Chapter 11 of the U.S. Bankruptcy Code only. The Company's other subsidiaries are treated as non-consolidated subsidiaries in these financial statements and as such their net income is included as "Equity income from non-Debtor subsidiaries" in the statement of operations and their net assets are included as "Investments in non-Debtor subsidiaries" in the balance sheet.

*Intercompany Transactions*

Intercompany transactions between Debtors have been eliminated in the financial statements contained in this note. Intercompany transactions between the Debtors and non-Debtor subsidiaries have not been eliminated in the Debtors' financial statements. Therefore, reorganization items, net included in the statement of operations, liabilities subject to compromise included in the balance sheet, and reorganization items and payments for reorganization items, net included in the statement of cash flows are different than those presented in the Company's condensed consolidated financial statements.

*Liabilities Subject to Compromise*

Liabilities subject to compromise in the Condensed Combined Debtor-in-Possession Balance Sheet are comprised of the following:

	<u>March 28, 2010</u>	<u>December 27, 2009</u>
	(in thousands)	
Accounts payable and accrued liabilities	\$608,297	\$ 639,897
Accounts payable to related parties	109,941	109,941
Accounts payable to non-debtor subsidiaries	123,913	123,913
Accrued compensation and benefits	14,844	16,137
Long-term debt	968,266	968,266
Capital lease obligations	15,640	18,861

Other long-term liabilities	<u>364</u>	<u>3,166</u>
Liabilities subject to compromise	<u>\$1,841,265</u>	<u>\$ 1,880,181</u>

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**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

**Spansion Inc.**  
**Condensed Combined Debtor-in-Possession Statement of Operations**  
**(Non-filed entities excluded from combined Debtors group)**  
**(in thousands)**

	<u>Three months ended</u> <u>March 28, 2010</u>	<u>March 1, 2009 to</u> <u>March 29, 2009</u>
Net sales	\$ 221,848	\$ 111,850
Net sales to related parties (Spansion Japan)	<u>54,209</u>	<u>41,745</u>
Total net sales	<u>276,057</u>	<u>153,595</u>
Cost of sales	195,408	159,171
Research and development	21,790	8,796
Sales, general and administrative	43,906	68,012
Restructuring charges	<u>1,654</u>	<u>12,362</u>
Operating income (loss) before reorganization items	<u>13,299</u>	<u>(94,746 )</u>
Interest and other income (expense), net	(142 )	451
Interest expense	(19,336 )	(7,374 )
Gain on deconsolidation of subsidiary	<u>-</u>	<u>30,100</u>
Loss before reorganization items, equity income and income taxes	<u>(6,179 )</u>	<u>(71,569 )</u>

Reorganization items	5,464	(360,006 )
Equity income from non-Debtor subsidiaries	<u>4,064</u>	<u>1,305</u>
Income (loss) before income taxes	<u>3,349</u>	<u>(430,270 )</u>
Benefit for income taxes	<u>(303 )</u>	<u>(504 )</u>
Net income (loss)	<u>\$ 3,652</u>	<u>\$ (429,766 )</u>

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**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

**Spansion Inc.**  
**Condensed Combined Debtor-in-Possession Balance Sheet**  
**(Non-filed entities excluded from combined Debtors group)**  
**(in thousands)**

	<u>March 28,</u> <u>2010</u>	<u>December 27,</u> <u>2009</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$320,082	\$324,341
Auction rate securities	75,155	100,335
Accounts receivable	115,944	119,110
Accounts receivable from related parties	361,983	366,602
Accounts receivable from non-Debtor subsidiaries	31,024	36,670
Allowance for doubtful accounts	<u>(59,333 )</u>	<u>(54,908 )</u>
Accounts receivable, net	449,618	467,474
Inventories	124,842	121,722
Deferred income taxes	12,197	13,332
Restricted cash	531,516	-

Prepaid expenses and other current assets	21,033	45,966
Total current assets	1,534,443	1,073,170
Property, plant and equipment, net	236,778	256,694
Loan to non-Debtor subsidiary and accrued interest thereon	50,191	50,164
Investment in non-Debtor subsidiaries	143,016	133,327
Other assets	30,072	35,118
Total assets	<u>\$1,994,500</u>	<u>\$1,548,473</u>

#### Liabilities and Stockholders' Deficit

Liabilities not subject to compromise		
Current liabilities:		
Short term note	\$36,604	\$64,149
Senior secured term loan	450,000	–
Accounts payable	38,948	34,285
Accounts payable to related parties	198,069	221,211
Accounts payable to non-Debtor subsidiaries	26,768	18,010
Accrued compensation and benefits	21,054	18,321
Other accrued liabilities	96,341	108,510

Rights offering deposits	75,783	–
Deferred income on shipments	<u>45,985</u>	<u>49,122</u>
Total current liabilities	989,552	513,608
Deferred income taxes	<u>12,270</u>	<u>13,405</u>
Other long-term liabilities	<u>4,355</u>	<u>4,682</u>
Total liabilities not subject to compromise	<u>1,006,177</u>	<u>531,695</u>
Liabilities subject to compromise	<u>1,841,265</u>	<u>1,880,182</u>
Total liabilities	2,847,442	2,411,877
Stockholders' deficit	<u>(852,942 )</u>	<u>(863,404 )</u>
Total liabilities and stockholders' deficit	<u>\$1,994,500</u>	<u>\$1,548,473</u>



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**Spansion Inc.**  
**(Debtor-in-Possession)**  
**Notes to Condensed Consolidated Financial Statements-(Continued)**  
**(Unaudited)**

**Spansion Inc.**  
**Condensed Combined Debtor-in-Possession Statement of Cash Flows**  
**(Non-filed entities excluded from combined Debtors group)**

	<u>Three Months ended</u> <u>March 28, 2010</u>	<u>March 1, 2009 to</u> <u>March 29, 2009</u>
Net cash provided by operating activities	\$ 743	\$ 32,526
Net cash used by investing activities	(488,848 )	(1,510 )
Net cash provided (used) by financing activities	<u>483,846</u>	<u>(2,136 )</u>
Net (decrease) increase in cash and cash equivalents	(4,259 )	28,880
Cash and cash equivalents at the beginning of period	<u>324,341</u>	<u>50,865</u>
Cash and cash equivalents at end of period	<u><u>\$ 320,082</u></u>	<u><u>\$ 79,745</u></u>

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Forward-Looking Statements

*This Quarterly Report on Form 10-Q, including this Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements. These statements relate to future events or our future financial performance. Forward-looking statements may include words such as "may," "will," "should," "expect," "plan," "intend," "anticipate," "believe," "estimate," "predict," "potential," "continue" or other wording indicating future results or expectations. Forward-looking statements are subject to risks and uncertainties, and actual events or results may differ materially. Factors that could cause our actual results to differ materially include, but are not limited to, those discussed under "Risk Factors" in this report as well as risks and uncertainties relating to our Creditor Protection Proceedings including with our ability to: stabilize the business to maximize the chances of preserving all or a portion of the enterprise; generate cash from operations and maintain adequate cash on hand; continue to maintain cash management arrangements; attract and retain customers or avoid reduction in, or delay or suspension of, customer orders as a result of the uncertainty caused by the Creditor Protection Proceedings; maintain market share, as competitors move to capitalize on customer concerns; retain or replace major suppliers on acceptable terms and avoid disruptions in our supply chain; maintain current relationships with reseller partners, joint venture partners and strategic alliance partners; retain and motivate key employees and attract new employees; actively and adequately communicate on and respond to events, media and rumors associated with the Creditor Protection Proceedings that could adversely affect our relationships with customers, suppliers, partners and employees; obtain court orders or approvals with respect to motions filed from time to time; prevent third parties from obtaining court orders or approvals that are contrary to our interests; resolve ongoing issues with creditors and other third parties whose interests may differ from ours; successfully implement the Plan of Reorganization; obtain sufficient exit financing to support the Plan of Reorganization and satisfy the conditions to such financing; and realize full or fair value for any assets or business that may be divested as part of a reorganization. We also face risks and uncertainties associated with: our emergence from the Chapter 11 Cases; limitations on actions against any Debtor during the Chapter 11 Cases; the values, if any, that will be prescribed pursuant to the Plan of Reorganization to outstanding Spanion securities; the uncertainty of the existence of a trading market in our shares of common stock; claims not discharged in the Chapter 11 Cases and their effect on our results of operations and profitability; substantial indebtedness and its impact on our financial health and operations; fluctuations in foreign currency exchange rates; the sufficiency of workforce and cost reduction initiatives and risks and uncertainties relating to our business including our ability to: narrow our strategic focus on the embedded portion of the of the Flash memory market in an effective and timely manner; improve our gross margins and continue to implement successfully our cost reduction efforts; control our operating expenses, particularly our sales, general and administrative costs; obtain additional financing in the future; obtain materials in support of our business at terms favorable to us; retain and expand our customer base in our focus markets, and retain and grow our share of business within our customer base; successfully introduce our next generation products to market in a timely manner; effectively and timely achieve volume production of our next generation products; increase market acceptance of our products based on our MirrorBit technology; penetrate further the Flash memory market with our high density products and expand the number of customers in emerging markets; successfully develop and transition to the latest technologies; develop our MirrorBit NAND, and MirrorBit Eclipse architectures, introduce new products based on these architectures, and achieve customer acceptance of these products; develop systems-level solutions that provide value to customers of our products; enter new markets not traditionally served by Flash memory; negotiate successfully patent and other intellectual property licenses and patent cross-licenses and acquire additional patents; and effectively manage, operate and compete in the current sustained economic downturn and extraordinarily volatile market conditions effected in part by cautious capital spending by our customers as they face their own economic challenges. We undertake no obligation to revise or update any forward-looking statements to reflect any event or circumstance that arises after the date of this report, or to conform such statements to actual results or changes in our expectations.*

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### ***Overview***

While the semiconductor industry has experienced improving conditions since the second quarter of 2009, our revenues have continued to decline through the first quarter of 2010. We believe there are two principal reasons. First, shortly after commencement of the Creditor Protection Proceedings we began exiting a large portion of the wireless market. Second, the uncertainty of the Creditor Protection Proceedings has caused us to lose market share with our embedded customers. Upon emergence from the Chapter 11 Cases, we believe both of these trends will improve. With respect to the wireless market, we believe that the portfolio adjustment period is now substantially complete, and wireless revenues are expected to stabilize at approximately our current first quarter levels. We also believe that the confirmation of the Plan of Reorganization and in connection with the Chapter 11 Cases will give us an opportunity to end and eventually reverse the trend of market share losses due to the uncertainty of the Chapter 11 Cases. Furthermore, we typically experience stronger demand in the second fiscal quarter than the first fiscal quarter.

Our revenues are likely to remain significantly below the levels we experienced before the Chapter 11 Cases due to our decision to exit large portions of the wireless market. We will, however, continue to benefit from the reduction in engineering and manufacturing expenses resulting from our actions in the Chapter 11 Cases. Once we emerge from the Chapter 11 Cases, our earnings should also benefit from the reduction of restructuring and reorganization expenses. Ultimately, we expect to achieve improved operating leverage and profitability as our revenues increase.

### ***Creditor Protection Proceedings***

On February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC (Spansion Japan), filed a proceeding under the Corporate Reorganization Law of Japan to obtain protection from Spansion Japan's creditors (Spansion Japan Proceeding). The Tokyo District Court approved the filing of the Spansion Japan Proceeding on March 3, 2009, and appointed the incumbent representative director of Spansion Japan as trustee.

On March 1, 2009 (the Petition Date), Spansion Inc., Spansion Technology LLC, Spansion LLC, Spansion International, Inc. and Cerium Laboratories LLC (the Debtors), each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U. S. Bankruptcy Court for the District of Delaware (the Chapter 11 Cases). The Chapter 11 Cases, together with the Spansion Japan Proceeding are referred to collectively as the Creditor Protection Proceedings.

We continue to operate our businesses as "debtors-in-possession" under jurisdiction of the U.S. Bankruptcy Court. Non-U.S subsidiaries that are not included in the Creditor Protection Proceedings continue to operate without the supervision of the U.S. Bankruptcy Court.

### ***Spansion Japan Deconsolidation***

Effective March 3, 2009, we are no longer deemed to have control over Spansion Japan for financial reporting purposes. Prior to March 3, 2009, the results of Spansion Japan were included in our condensed consolidated financial statements, and subsequent to March 3, 2009, the results of Spansion Japan are not included in our condensed consolidated financial statements. Accordingly, our operating results for the quarter ended March 28, 2010, are not fully comparable to the quarter ended March 29, 2009.

### ***Plan of Reorganization***

On April 16, 2010, the U. S. Bankruptcy Court entered an order confirming our Plan of Reorganization. The Plan of Reorganization may become effective as early as 14 days following entry of the U.S. Bankruptcy Court order. However, during this 14-day period, dissenting parties may seek to appeal the U.S. Bankruptcy Court order confirming the Plan of Reorganization and file motions to stay effectiveness of the order pending any appeals. We cannot provide any assurance that the order confirming the Plan of Reorganization will not be appealed, or that the Plan of Reorganization will become effective or that it will be implemented successfully.

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Under the Plan of Reorganization, the Debtors will be reorganized (Reorganized Debtors) through the consummation of several transactions in which new securities of the Reorganized Debtors will be issued to satisfy creditor claims and provide working capital to fund operations. These transactions include:

the distribution of cash raised through the rights offering and financing transactions;

the cancellation of Spansion Inc.'s outstanding equity securities, including all shares of Common Stock and options to purchase shares of Common Stock;

the distribution of New Common Stock to holders of general unsecured claims; and

the retention of the assets of the Debtors in the Reorganized Debtors.

Pursuant to the Plan of Reorganization, the holders of allowed claims were offered the right to purchase a total of 12,974,496 shares of our New Common Stock upon emergence from the Chapter 11 Cases at a price of \$8.43 per share (Rights Offering). The number of shares available to each eligible claimant is based on each claimant's proportionate allowed claim. In connection with the Rights Offering, we entered into a Backstop Rights Purchase Agreement with Silver Lake Sumeru Fund, L.P. (Silver Lake) whereby Silver Lake committed to purchase the balance of Rights Offering shares not otherwise subscribed for by the Rights Offering participants. As of March 28, 2010, approximately \$109.4 million have been committed to purchase the entire Rights Offering, of which \$75.8 million has been received and resides in a segregated Company bank account and the remaining balance resides in escrow accounts that will be released to the Company upon emergence from the Chapter 11 Cases. The \$75.8 million received was recorded as restricted cash with the related deposit recorded as a current liability on our condensed consolidated balance sheet at March 28, 2010.

On February 9, 2010, we closed a \$450 million five-year Senior Secured Term Loan agreement (Term Loan) with a group of lenders. Funds from the Term Loan are held in escrow until the earlier of our emergence from the Chapter 11 Cases or the termination date which may be as soon as 60 days from the date of closing unless extended by the lenders. Proceeds from the Term Loan along with prepaid interest for the first 60 days are recorded as restricted cash in our condensed consolidated balance sheet at March 28, 2010. Upon emergence from the Chapter 11 Cases, the Term Loan will be secured by our assets including a first lien on property, plant and equipment and inventory, and a second priority lien on accounts receivables and cash. The Term Loan is subject to a number of financial and other covenants as discussed in Note 11 to the condensed consolidated financial statements.

The proceeds of the Term Loan, together with cash proceeds from the Rights Offering and other sources of cash available to us, will be used as follows: (i) payment to fully discharge approximately \$633 million of the claims of holders of the Senior Secured Floating Rate Notes, (ii) payment of Administrative Expense Claims and Priority Claims (each as defined in the Plan of Reorganization) and (iii) payment of fees and expenses related to the Term Loan.

We have entered into an agreement with Bank of America and other financial institutions for a post-bankruptcy senior revolving credit facility (Revolving Credit Facility) in an aggregate amount of up to \$65 million to fund bankruptcy expenses and ongoing working capital. Available amounts for borrowing under the Revolving Credit Facility are limited to 85 percent of eligible accounts receivable. Funding is subject to a number of conditions, including a minimum liquidity level of \$100 million comprised of the sum of unrestricted cash and cash equivalents and the borrowing base minus the principal balance of all Revolving Credit Facility loans, and our emergence from the Chapter 11 Cases. The Revolving Credit Facility is subject to a number of covenants including fixed charge ratio coverage of 1.00 to 1.00.

The Plan of Reorganization assumes that allowed claims will range from approximately \$1.6 billion to approximately \$2.1 billion after completion of the claims objection, reconciliation and resolution process. As of March 28, 2010, we accrued expected allowed claims totaling approximately \$1.7 billion classified as liabilities subject to compromise in the accompanying condensed consolidated financial statements. In addition to the range specified above and the amount accrued, on March 12, 2010, Spansion Japan filed an amended general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$936 million as a result of the November 19, 2009 foundry agreement rejection order discussed below. If the expected amount of allowed claims increases over the amount currently accrued, we will record additional reorganization expense in the period of such determination. Because disputed claims have not yet been finally adjudicated, we cannot assure you that actual recoveries to creditors and interest holders will not be materially higher or lower than as set forth in the Plan of Reorganization.

***Business Relationship with Spansion Japan and Foundry Agreement***

Spansion Japan is managed by a trustee appointed by the Tokyo District Court and subject to the general supervision of the Tokyo District Court. As a result, beginning March 3, 2009, the financial results of Spansion Japan are no longer included in our consolidated financial results.

Spansion Japan has continued to facilitate distribution of our products in Japan, manufacture and supply sorted and unsorted silicon wafers for us, and provide sort services to us. The wafers purchased from Spansion Japan are a material component of our cost of goods sold, and historically the wafer prices were governed by a foundry agreement. We believe that the prices under the foundry agreement greatly exceeded the amounts that the U.S. Bankruptcy Court would have required us to pay for wafers purchased during the period from February 9, 2009 through October 27, 2009 (the date when we and Spansion Japan mutually agreed to pricing terms through executed purchase orders).

As a result of unsuccessful efforts by us to renegotiate the prices under the foundry agreement, we filed a motion with the U.S. Bankruptcy Court in October 2009 to reject the foundry agreement. An order rejecting the foundry agreement was issued by the U.S. Bankruptcy Court on November 19, 2009. As a result, there was no valid contract establishing pricing for the wafers we received from Spansion Japan from February 9, 2009 through October 27, 2009 (Disputed Period).

On January 8, 2010, we reached an agreement in principle (the Settlement) with Spansion Japan to: (i) acquire Spansion Japan's distribution business; (ii) obtain foundry services, including wafer and sort services, from Spansion Japan; and (iii) resolve our dispute with Spansion Japan relating to pricing of wafers purchased during the Disputed Period. The Settlement remains subject to the completion of definitive agreements and our emergence from the Chapter 11 Cases. On January 29, 2010, the U.S. Bankruptcy Court and on February 1, 2010, the Tokyo District Court approved the Settlement.

On February 2, 2010 we and Spansion Japan entered into a foundry agreement whereby we will purchase from Spansion Japan (i) a minimum of 10 billion yen (equivalent to \$108.0 million as of March 28, 2010) worth of wafers over the six quarters beginning with the first quarter of 2010 and ending with the second quarter of 2011 and (ii) minimum sort services of \$7.7 million for the first quarter of 2010 and \$8.9 million for each quarter from the second quarter of 2010 to the second quarter of 2011; with both sort services and wafer production to be subject to normal and customary foundry performance conditions.

We expect the remaining definitive agreements implementing the Settlement to be executed in the second quarter of 2010 and upon our emergence from the Chapter 11 Cases. The definitive agreements are expected to provide for, among other things, the following material terms:

Payment to Spansion Japan of approximately \$45 million during fiscal 2010;

The purchase of Spansion Japan's distribution business located in Kawasaki, Japan for approximately \$12.5 million;

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The claims of the Debtors against Spansion Japan arising prior to February 9, 2009 will be deemed allowed unsecured non-priority claims in the Spansion Japan's corporate reorganization proceeding, but the Debtors will not be entitled to receive any distribution on account of such claims;

Spansion Japan shall retain its rejection damage claims against the Debtors in respect of the rejection of the Foundry Agreement (described below), which damage claims can be offset by the difference between our prepetition claim against Spansion Japan and its prepetition claim against us; and

All other claims of Spansion Japan and the Debtors against each other shall be expunged, released and satisfied.

On March 12, 2010, Spansion Japan filed an amended general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$936 million as a result of the November 19, 2009 foundry agreement rejection order. We believe that we have strong defenses to the amount of Spansion Japan's proof of claim and intend to vigorously contest this matter. Under our Plan of Reorganization, if the U.S. Bankruptcy Court were to allow such claim it would be as a general unsecured claim in Class 5B of the Company's Plan of Reorganization and Spansion Japan would be entitled, at most, to its pro-rata distribution of New Common Stock.

### ***Basis of Presentation and Going Concern***

The accompanying condensed consolidated financial statements have been prepared using the same U.S. GAAP and the same rules and regulations of the SEC as applied by us prior to the filing of the Chapter 11 Cases. The condensed consolidated financial statements continue to be prepared using the going concern basis, which assumes that we will be able to realize our assets and discharge our liabilities in the normal course of business for the foreseeable future. The Chapter 11 Cases have provided us with a period of time to stabilize our current operations and financial condition and develop the Plan of Reorganization, which incorporates our current business strategy focused on the market for embedded applications and licensing of our intellectual property portfolio. This Plan of Reorganization does not contemplate liquidation of Spansion. Accordingly, we believe that these actions make the going concern basis of presentation appropriate. However, it is not possible to predict the outcome of Chapter 11 Cases; therefore, the realization of assets and discharge of liabilities are each subject to significant uncertainty. Further, it is not possible to predict whether the actions taken in the Plan of Reorganization or any other reorganization will result in improvements to our financial condition sufficient to allow us to continue as a going concern. Accordingly, substantial doubt exists as to whether we will be able to continue as a going concern. If the going concern basis is not appropriate in future filings, adjustments will be necessary to the carrying amounts and/or classification of assets and liabilities in our consolidated financial statements included in such filings. Further, an amendment to the Plan of Reorganization prior to our emergence from the Chapter 11 Cases could materially change the carrying amounts and classifications reported in the consolidated financial statements of future filings.

The accompanying condensed consolidated financial statements reflect the accounting, presentation and disclosure requirements for companies in reorganization under the U.S. Bankruptcy Code. Accordingly, liabilities and obligations whose treatment and satisfaction is dependent on the outcome of the Chapter 11 Cases have been segregated and classified as liabilities subject to compromise in the consolidated balance sheet. The ultimate amount of and settlement terms for our pre-petition liabilities are dependent on the outcome of Chapter 11 Cases and, accordingly, are not presently determinable. Professional fees associated with the Chapter 11 Cases and certain gains and losses resulting from reorganization of our business have been reported separately as reorganization items. In addition, interest expense has been reported only to the extent that it will be paid during the Chapter 11 Cases or that it is probable that it will be an allowed priority, secured, or unsecured claim under the Chapter 11 Cases. Interest income earned during the Chapter 11 Cases is reported as a reorganization item.

Furthermore, effective as of March 3, 2009, the Company deconsolidated Spansion Japan because, despite its 100 percent equity ownership interest, the Company no longer controls Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding.

Since March 3, 2009, the Company has accounted for its interest in Spansion Japan as a cost basis investment. Transactions between the Company and Spansion Japan after March 3, 2009, have been reflected as transactions with a third party.



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With the exception of Spansion Japan as described above, the condensed consolidated financial statements include all of our accounts and those of our wholly owned subsidiaries, and all intercompany accounts and transactions have been eliminated.

### ***Reporting Requirements***

As a result of Chapter 11 Cases, we are periodically required to file various documents with, and provide certain information to, the U.S. Bankruptcy Court, including statements of financial affairs, schedules of assets and liabilities, and monthly operating reports in forms prescribed by federal bankruptcy law, as well as certain financial information on an unconsolidated basis. Such materials were prepared according to requirements of federal bankruptcy law. While they accurately provide then-current information required under federal bankruptcy law, they are nonetheless unconsolidated, unaudited and prepared in a format different from that used in our consolidated financial statements filed under the securities laws and regulations. Accordingly, we believe that the substance and format do not allow meaningful comparison with our regular publicly-disclosed consolidated financial statements. Moreover, the materials filed with the U.S. Bankruptcy Court are not prepared for the purpose of providing a basis for an investment decision relating to our securities, or for comparison with other financial information filed with the SEC.

### ***Fresh Start Accounting***

Upon emergence from the Chapter 11 Cases, we will implement the Plan of Reorganization and, in accordance with U.S. GAAP, we will apply fresh start accounting, which will entail the revaluation of our assets and liabilities to their estimated fair values as of the date of emergence. As a result, we anticipate the balance sheet upon emergence to be significantly different from the balance sheet as of March 28, 2010. For example, fresh start accounting will include the accounting for the cancellation of existing debt and equity plans, implementation of new debt and new equity plans, elimination of the accumulated deficit, reduction of pre-petition liabilities, establishing a new cost basis for fixed assets including the elimination of accumulated depreciation, establishing valuation and recognition of intangible assets that are not currently reported and possible inventory revaluation adjustments. In addition, our operational results for the reporting period in which we emerge from the Chapter 11 Cases will be split into predecessor and successor accounting periods. We anticipate reporting a significant reorganization gain in the predecessor period as a result of the reduction of pre-petition liabilities. Changes in the fair values of other assets and liabilities due to fresh start accounting will also be reflected in the predecessor income statement. The successor period statements of operations will, therefore, reflect the operational results post-emergence from bankruptcy, including, for example, the effects of accounting for intangible assets identified in the application of fresh start accounting.

### ***Critical Accounting Policies***

Our discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts in our consolidated financial statements. We evaluate our estimates on an on-going basis, including those related to our net sales, inventories, asset impairments, stock-based compensation expense, and income taxes. We base our estimates on experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The actual results may differ from these estimates or our estimates may be affected by different assumptions or conditions. As a result of the Chapter 11 Cases, the realization of assets and liquidation of liabilities are subject to uncertainty. We expect that our emergence from the Chapter 11 Cases will materially change the amounts and classifications reported in the condensed consolidated financial statements in future filings.

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Our critical accounting policies incorporate our more significant judgments and estimates used in the preparation of our condensed consolidated financial statements and are described in Part II, Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 27, 2009.

### **Results of Operations**

#### *Comparison of Net Sales, Gross Margin, Operating Expenses, Interest and Other Income, Net, Interest Expense and Income Tax Provision*

The following is a summary of operating results for the three months ended March 28, 2010 and March 29, 2009.

	Three Months Ended			
	March 28, 2010	March 29, 2009	Variance in Dollars	Variance in Percent
	(in thousands, except for percentages)			
Total net sales	\$277,337	\$399,628	\$(122,291)	-31 %
Cost of sales	189,120	383,035	(193,915)	-51 %
Gross margin	32 %	4 %		
Research and development	22,953	44,746	(21,793 )	-49 %
Sales, general and administrative	47,608	104,029	(56,421 )	-54 %
Restructuring charges	13	23,942	(23,929 )	-100 %
Operating income (loss)	17,643	(156,124)	173,767	-111 %
Gain on deconsolidation of subsidiary	–	30,100	(30,100 )	-100 %
Interest and other income, net	286	480	(194 )	-40 %
Interest expense	(19,336)	(24,466 )	5,130	-21 %
Reorganization items	5,464	(362,457)	367,921	-102 %
Income tax provision	(405 )	(168 )	(237 )	141 %

### *Total Net Sales*

Total net sales for the three months ended March 28, 2010 decreased by approximately 31 percent compared to total net sales for the three months ended March 29, 2009. The decrease in total net sales was primarily attributable to an approximately 24 percent decrease in unit shipments and an approximately nine percent decline in average selling prices (ASPs). The decrease in unit shipments was primarily due to our decision to exit large portions of the wireless market and, to a lesser extent, a reduction in market share resulting from our bankruptcy filing. The decrease in ASPs was primarily the result of a product mix shift and price declines in the overall semiconductor memory market.

### *Gross Margin*

Our gross margin increased 28 percentage points for the three months ended March 28, 2010, compared to the corresponding period in fiscal 2009. The increase in gross margin was primarily due to an increase in factory utilization following the temporary shutdown of operations in the first quarter of fiscal 2009, a reduction in facility overhead due to the deconsolidation of Spansion Japan, closure of the Penang final manufacturing operation and the sale of the Suzhou plant, and a product mix shift from wireless to embedded products which are higher margin products.

### *Research and Development*

Research and development (R&D) expenses for the three months ended March 28, 2010 decreased by 49 percent, as compared to the corresponding period in fiscal 2009. The decrease in R&D expense was primarily due to: (i) savings of approximately \$6.1 million in labor costs; (ii) a combined decrease of approximately \$10.5 million in building expense, repair and maintenance, outside services and other operational expenses; and (iii) a decrease of approximately \$5.3 million in depreciation expense resulting from a write-down of fixed assets. These cost reductions were due to the company's decisions to close the Sub-micron Development Center and exit large portions of the wireless market.

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### *Sales, General and Administrative*

Sales, general and administrative (SG&A) expense for the three months ended March 28, 2010 decreased by 54 percent, compared to the corresponding period in fiscal 2009. The decrease in SG&A expense was primarily due to: (i) decreases in provisions for litigation and other related matters of approximately \$35.7 million and for doubtful accounts of approximately \$12.1 million; (ii) savings of approximately \$5.4 million in labor costs; and (iii) the elimination of SG&A expenses attributable to Spansion Japan as a result of deconsolidation of Spansion Japan on March 3, 2009. We incurred approximately \$4.3 million of Spansion Japan SG&A expenses for the first two months of fiscal 2009 before deconsolidation whereas we incurred no such expenses in the first quarter of fiscal 2010.

These decreases were partially offset by an increase of approximately \$3.8 million in accrued bonuses, primarily related to our estimated performance-based 2010 bonus plan payouts.

### *Restructuring Charges*

Restructuring charges in the three months ended March 28, 2010 include approximately \$1.8 million of cash payment mainly for employee severance pay and benefits and professional fee, approximately \$4.2 million of depreciation and write-off of fixed assets, offset by approximately \$3.7 million of gain recognized on sale of Suzhou plant, and approximately \$2.2 million of gain from sale of fixed assets. Restructuring charges in the three months ended March 29, 2009 consist of approximately \$23.9 million cash charges associated with termination benefits as a result of workforce reduction implemented in the first quarter of fiscal 2009.

### *Gain on Deconsolidation of Subsidiary*

As disclosed above and in Note 3 to our Condensed Consolidated Financial Statements, effective March 3, 2009, we deconsolidated Spansion Japan and recognized a one-time gain of approximately \$30.1 million for the three months ended March 29, 2009, which represents the difference between the carrying value of our investment in Spansion Japan immediately before deconsolidation (100 percent of Spansion Japan's stockholder's deficit) and the estimated fair value of our retained non-controlling interest in Spansion Japan (zero). We did not have a similar gain during the corresponding period in fiscal 2010.

### *Interest and Other Income, Net*

Interest and other income, net, decreased by approximately \$0.2 million for the three months ended March 28, 2010, compared to the corresponding period in fiscal 2009 mainly due to a decrease in our average investment portfolio yield combined with a decrease of approximately \$25.2 million in our investment in the ARS.

### *Interest Expense*

We recognize interest expense during the Chapter 11 Cases only to the extent that it will be paid during the proceeding or that it is probable it will be an allowed priority, secured or unsecured claim. Interest expense decreased by approximately \$5.1 million for the three months ended March 28, 2010, compared to the corresponding period in fiscal 2009, primarily due to:

- (i) a decrease of approximately \$7.1 million in interest expense for Senior Notes and Exchangeable Senior Subordinated Debentures as interest expense on these obligations was accrued only through the Petition Date as a result of the Chapter 11 Cases;

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- (ii) a decrease of approximately \$3.6 million in interest expense for Floating Rate Notes due to decrease in interest rate from 5.33% in the first quarter of fiscal 2009 to 3.38% in the first quarter of fiscal 2010;
- (iii) a decrease of approximately \$3.4 million in interest expense due to capital lease rejections as a result of reorganization efforts and the cessation of amortization of debt discount and financing costs since the Petition Date in accordance with the accounting guidance for entities in reorganization; and
- (iv) a decrease of approximately \$2.2 million in interest expense as a result of the deconsolidation of Spansion Japan effective March 3, 2009.

The overall decrease was partially offset by increases due to the following:

- (i) amortization of financing costs of approximately \$7.9 million on the Term Loan and
- (ii) interest expense of approximately \$4.6 million on the Term Loan.

The average interest rate on our debt portfolio was 4.2 percent in the three months ended March 28, 2010, compared to 5.0 percent in the corresponding period in fiscal 2009.

### *Reorganization Items*

Reorganization items of approximately \$5.5 million for the three months ended March 28, 2010 primarily consist of a gain of approximately \$22.5 million resulting from approved settlement of rejected capital leases and various license agreements partially offset by professional and service fees of approximately \$17.2 million. Reorganization items of approximately \$362.5 million for the three months ended March 29, 2009 primarily consisted of a provision for expected allowed claims of approximately \$355.3 million, and professional fees of approximately \$7.2 million. The provision for expected allowed claims represents our estimate of the expected allowed claims related primarily to the rejection or repudiation of leases and other executory contracts and the effects of approved settlements during the three months ended March 28, 2010 and March 29, 2009.

As disclosed above, the U.S. Bankruptcy Court has confirmed our Plan of Reorganization, which establishes the liability amounts that will be allowed for claims. The Plan of Reorganization may become effective as early as 14 days following entry of the U.S. Bankruptcy Court order. However, during this 14-day period, dissenting parties may seek to appeal the U.S. Bankruptcy Court order confirming the Plan of Reorganization and file motions to stay effectiveness of the order pending any appeals. There are no assurances that the order confirming the Plan of Reorganization will not be appealed, or that the Plan of Reorganization will become effective. If the Plan of Reorganization is not consummated, our estimates of the expected allowed claims could change and, if needed, we will make adjustments to the liabilities recorded on our interim or annual financial statements as appropriate. Any such adjustments could be material to our financial position or results of operations in any given period. Subsequent to emergence from the Chapter 11 Cases, adjustments to our pre-petition liabilities will not impact our assets or liabilities.

### *Income Tax Provision*

The income tax expense of approximately \$0.4 million in the three months ended March 28, 2010 and \$0.2 million in the three months ended March 29, 2009 were primarily related to tax provisions in profitable foreign locations.

As of March 28, 2010, all of our U.S. and foreign deferred tax assets, net of deferred tax liabilities, continue to be subject to a full valuation allowance. The realization of these assets is dependent on substantial future taxable income which at March 28, 2010, in management's estimate, is not more likely than not to be achieved.

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### **Other Items**

As of March 28, 2010, the total unrecognized compensation cost related to unvested stock options and RSU awards was approximately \$10.3 million after reduction for estimated forfeitures, and such stock options and RSU awards currently vest ratably through the date we emerge from the Chapter 11 cases.

Gross deferred revenue and gross deferred cost of sales on shipments to distributors as of March 28, 2010 and December 27, 2009 are as follows:

	<u>March 28,</u> <u>2010</u>	<u>December 27,</u> <u>2009</u>
	(in thousands)	
Deferred revenue	\$74,871	\$ 90,465
Less: deferred costs of sales	<u>(28,886)</u>	<u>(36,308 )</u>
Deferred income on shipments <sup>(1)</sup>	<u>\$45,985</u>	<u>\$ 54,157</u>

(1)

The deferred income of \$54.8 million and \$63.0 million on the consolidated balance sheet as of March 28, 2010 and December 27, 2009, respectively, included \$8.8 million and \$8.8 million of deferred revenue related to licensing revenue that was excluded in the table above.

### **Contractual Obligations**

The following table summarizes our contractual obligations at March 28, 2010. The table is supplemented by the discussion following the table. Contractual obligations associated with long-term debt and interest payments are expected to change significantly as a result of the emergence from the Chapter 11 Cases.

	<u>Total</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015 and</u> <u>Beyond</u>
	(in thousands)						
Long-term debt, subject to compromise:							
Senior Secured Floating Rate Notes	\$625,000	\$625,000	\$-	\$-	\$-	\$-	\$ -
Senior Notes	250,000	250,000	-	-	-	-	-
Exchangeable Senior Subordinated Debentures	207,000	207,000	-	-	-	-	-

Short-term debt, not subject to compromise:

Senior Secured Term Loan	450,000	450,000	-	-	-	-	-
UBS loan secured by auction rate securities	36,604	36,604	-	-	-	-	-
Capital lease obligations, subject to compromise	15,640	8,927	6,713	-	-	-	-
Other long term liabilities <sup>(2)</sup>	9,661	3,125	4,120	2,416	-	-	-
Operating leases	5,545	3,262	2,078	205	-	-	-
Purchase commitments <sup>(1)</sup>	<u>173,977</u>	<u>111,142</u>	<u>60,186</u>	<u>2,649</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total contractual obligations <sup>(3)</sup>	<u>\$1,773,427</u>	<u>\$1,695,060</u>	<u>\$73,097</u>	<u>\$5,270</u>	<u>\$-</u>	<u>\$-</u>	<u>\$-</u>

(1) Purchase commitments include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. These agreements are related principally to inventory and other items. Purchase commitments exclude agreements that are cancelable without penalty.

(2) The other long term liabilities represent payment commitments under long term software license agreements with vendors.

(3) Total contractual obligations exclude interest payments of approximately \$4.7 million per quarter on the Senior Secured Floating Rate Notes that continues to be paid until emergence from the Chapter 11 Cases.

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### ***Liquidity and Capital Resources***

#### ***Cash Requirements***

As a result of the Creditor Protection Proceedings, cash in our various consolidated entities is generally available to fund operations in their respective jurisdictions, but generally is not available to be freely transferred to or among subsidiaries other than in the normal course of intercompany trade and pursuant to specific agreements approved by the U.S. Bankruptcy Court.

Since the Chapter 11 Cases filing on March 1, 2009, we have maintained our cash management system and minimized disruption to our operations, pursuant to various U.S. Bankruptcy Court approvals obtained in connection with the Chapter 11 Cases. Among other things, we received approval to continue paying employee wages and certain benefits in the ordinary course of business, pay certain trade vendor claims, pay certain contractors in satisfaction of liens or other interests, and continue honoring customer program obligations.

We commenced a number of restructuring activities to ultimately achieve positive cash flow by exiting unprofitable markets and realigning our business to support a refined target market of Flash memory applications. We also conducted reviews of our real estate and other property leases, equipment leases and agreements, supplier and customer contracts and general discretionary spending with the goal of achieving further cash savings through renegotiation or cancellation of certain contracts.

Our cash totaled \$321.2 million at March 28, 2010 as compared to \$324.9 million at December 27, 2009. The majority of our consolidated cash is held by Spansion LLC. Pursuant to our Plan of Reorganization, we have arranged financing in the form of the Term Loan, the Rights Offering and the Revolving Credit Facility to satisfy pre-petition creditor claims and provide for ongoing working capital. As of March 28, 2010, we had restricted cash from the Term Loan and the Rights Offering of approximately \$525.8 million. Our ability to use this restricted cash and access further funds through our Revolving Credit Facility are subject to the satisfaction of a number of conditions, including our emergence from the Chapter 11 Cases. The proceeds of the Term Loan, together with cash proceeds from the Rights Offering and other sources of cash available to us, will be used as follows: (i) payment to fully discharge approximately \$633 million of claims of holders of the Senior Secured Floating Rate Notes; (ii) payment of Administrative Expense Claims and Priority Claims (each as defined in the Plan of Reorganization); and (iii) payment of fees and expenses related to the Term Loan.

The matters described herein, to the extent that they relate to future events or expectations, may be significantly affected by our emergence of the Chapter 11 Cases and the implementation of the Plan of Reorganization. Those proceedings will involve, or may result in, various restrictions on our activities, limitations on financing, the need to obtain U.S. Bankruptcy Court approval for various matters and uncertainty as to relationships with vendors, suppliers, customers and others whom we may conduct or seek to conduct business. In addition, there is no assurance that (i) we will be able to maintain our current cash management system, (ii) we will generate sufficient cash to fund our operations during this process or (iii) that we will be able to access any alternative financing on acceptable terms or at all.

#### ***Sources and Uses of Cash***

Our cash consisted of demand deposits and totaled approximately \$321.2 million as of March 28, 2010.

#### ***Operating Activities***

Net cash provided by operations was approximately \$1.5 million during the three months ended March 28, 2010, primarily due to net income of approximately \$3.7 million and net non-cash items of approximately \$11.1 million, offset by the net decrease in operating assets and liabilities of approximately \$13.3 million. Net non-cash items primarily consisted of approximately \$27.8 million of depreciation and amortization, approximately \$5.6 million increase in allowance for doubtful accounts, approximately \$1.3 million of stock compensation costs, and approximately \$1.1 million of loss on sale and disposal of fixed assets, offset by non-cash gain of approximately \$22.5 million from write-off of rejected capital lease and various license agreements, and non-cash gain of \$3.7 million from sale of the Suzhou plant.



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### *Investing Activities*

Net cash used by investing activities was approximately \$489.1 million in the three months ended March 28, 2010, primarily due to an increase of approximately \$531.5 million in restricted cash from the Term Loan and prepaid interest thereon, and the Rights Offering, which we cannot use until we emerge from the Chapter 11 Cases. In addition, there was approximately \$8.5 million of capital expenditures used to purchase property, plant and equipment. The increase was partially offset by approximately \$27.3 million of proceeds from the redemption of ARS, approximately \$18.7 million of proceeds from sale of the Suzhou plant, and approximately \$4.9 million from sale of other property, plant and equipment.

### *Financing Activities*

Net cash provided by financing activities was approximately \$483.8 million in the three months ended March 28, 2010, primarily due to approximately \$438.0 million from the Term Loan net of issuance costs and approximately \$75.8 million from the Rights Offering, offset by payments of approximately \$30.0 million on debt and capital lease.

### *Off-Balance Sheet Arrangements*

During the normal course of business, we make certain indemnities and commitments under which we may be required to make payments in relation to certain transactions. These indemnities include non-infringement of patents and intellectual property, indemnities to our customers in connection with the delivery, design, manufacture and sale of our products, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, and indemnities to other parties to certain acquisition agreements. The duration of these indemnities and commitments varies, and in certain cases, is indefinite. We believe that substantially all of our indemnities and commitments provide for limitations on the maximum potential future payments we could be obligated to make. However, we are unable to estimate the maximum amount of liability related to our indemnities and commitments because such liabilities are contingent upon the occurrence of events which are not reasonably determinable. Management believes that any liability for these indemnities and commitments would not be material to our accompanying condensed consolidated financial statements.

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**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Reference is made to Part II, Item 7A, “Quantitative and Qualitative Disclosures about Market Risk” in our Annual Report on Form 10-K for the fiscal year ended December 27, 2009. We experienced no significant changes in market risk during the three months ended March 28, 2010.

**ITEM 4. CONTROLS AND PROCEDURES**

Based on our management’s evaluation (with the participation of our principal executive officer and principal financial officer), as of the end of the period covered by this report, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act)) are effective at the reasonable assurance level to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms.

***Changes in Internal Control over Financial Reporting***

There were no significant changes in our internal control over financial reporting during the three months ended March 28, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

For a complete description of the procedural history of each of the legal proceedings referred to below, please refer to our Annual Report on Form 10-K for the fiscal year ended December 27, 2009.

#### *Tessera ITC Action*

Oral arguments for the appeal in the Federal Circuit are scheduled to be heard May 7, 2010.

#### *Tessera District Court Case*

On October 7, 2005, Tessera, Inc. filed a complaint, Civil Action No. 05-04063, for patent infringement against Spansion LLC in the United States District Court for the Northern District of California under the patent laws of the United States of America, 35 U.S.C. section 1, *et seq.*, including 35 U.S.C. section 271. The complaint alleges that Spansion LLC's Ball Grid Array (BGA) and multichip packages infringe the following Tessera patents: United States Patent No. 5,679,977, United States Patent No. 5,852,326, United States Patent No. 6,433,419 and United States Patent No. 6,465,893. On December 16, 2005, Tessera filed a First Amended Complaint naming Spansion Inc. and Spansion Technology Inc., our wholly owned subsidiary, as defendants. On January 31, 2006, Tessera filed a Second Amended Complaint adding Advanced Semiconductor Engineering, Inc., Chipmos Technologies, Inc., Chipmos U.S.A., Inc., Silicon Precision Industries Co., Ltd., Siliconware USA, Inc., ST Microelectronics N.V., ST Microelectronics, Inc., Stats Chippac Ltd., Stats Chippac, Inc., and Stats 34 Chippac (BVI) Limited. The Second Amended Complaint alleges that Spansion LLC's BGA and multichip packages infringe the four Tessera patents identified above. The Second Amended Complaint further alleges that each of the newly named defendants is in breach of a Tessera license agreement and is infringing on a fifth Tessera patent, United States Patent No. 6,133,627. The Second Amended Complaint seeks unspecified damages and injunctive relief. On February 9, 2006, Spansion filed an answer to the Second Amended Complaint and asserted counterclaims against Tessera. On April 18, 2006, U.S. District Court Judge Claudia Wilken issued a Case Management Order that set a trial date of January 28, 2008. On March 13, 2007, Judge Wilken issued an order vacating the trial date. On April 12, 2007, Judge Wilken issued an order referring case management scheduling issues to a Special Master, and directing that the court will appoint an expert in the case to testify on the ultimate merits of the technical issues relating to infringement and patent validity. On April 26, 2007, Spansion, along with other defendants, filed a motion to stay the District Court action pending resolution of the proceeding before the International Trade Commission described below. On May 24, 2007, Judge Wilken issued an order staying the District Court action until final resolution of the ITC action.

We believe that we have meritorious defenses against Tessera's claims and we intend to defend the lawsuit vigorously.

There is also a related proceeding in the Bankruptcy Court regarding an estimation of damages, for the time period commencing on March 1, 2009, sought by Tessera related to the District Court case. There was a Claims Estimation proceeding hearing on this matter on January 29, 2010 before the Bankruptcy Court and on February 8, 2010, the Court estimated damages for the time period in question to be \$4,232,986.13.

There is also a related proceeding in the Bankruptcy Court regarding an estimation of damages, for the time period prior to March 1, 2009. No estimation has yet been determined in this proceeding. On April 23, 2010, the Bankruptcy Court issued an Order regarding certain discovery in connection with this proceeding.

#### *Fast Memory Erase LLC v. Spansion Inc., et al.*

The U.S. Patent and Trademark Office issued a second Office Action in the *ex parte* reexamination for the '608 patent on March 30, 2010. The Examiner made the second Office Action final. Several claims of the '608 patent, including the claims asserted against Spansion, were rejected as being anticipated by certain prior art, and certain other dependent claims were objected to as being dependent upon a rejected base claim, but the Examiner also indicated that the objected-to claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

On April 12, 2010, the U.S. District Court for the Northern District of Texas issued an Order requesting a joint status report by April 26, 2010 advising the court whether or not the stay should be lifted in light of the second Office Action issued by the PTO. On April 26, 2010 a joint status report pursuant to the Order was filed.

***Samsung ITC Investigation***

United States Patent Nos. 6,380,029 and 6,080,639 have been voluntarily dismissed from the proceeding.

***Samsung v. Spansion Japan Ltd.***

A technical hearing was held on December 18, 2009, and a subsequent hearing was held January 28, 2010.

***Samsung v. Spansion ITC Investigation***

On March 17, 2010, the Administrative Law Judge (ALJ) issued an Order setting a target date for completion of the Investigation on June 28, 2011. On March 23, 2010, the ALJ issued an Order scheduling a hearing in the Investigation from December 6-17, 2010. The stay of the Investigation will be lifted on April 30, 2010.

## ITEM 1A. RISK FACTORS

*You should carefully consider the risks described below and the other information in this Quarterly Report. If any of the following risks materialize, our business could be materially harmed, and our financial condition and results of operations could be materially and adversely affected.*

*Certain statements in this report contain words such as “could,” “expect,” “may,” “anticipate,” “will,” “believe,” “intend,” “estimate,” “plan,” “envision,” “seek” and other similar language and are considered forward-looking statements. These statements are based on our current expectations, estimates, forecasts and projections about the operating environment, economies and markets in which we operate. In addition, other written or oral statements that are considered forward-looking may be made by us or others on our behalf. These statements are subject to important risks, uncertainties and assumptions, that are difficult to predict and actual outcomes may be materially different. The Creditor Protection Proceedings will continue to have a direct impact on our business and exacerbate these risks and uncertainties. In particular, the risks described below could cause actual events to differ materially from those contemplated in forward-looking statements. Unless otherwise required by applicable securities laws, we do not have any intention or obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.*

*The risks described below are not the only ones facing us. Additional risks not currently known to us or that we currently believe are immaterial may also impair our business, results of operations, financial condition and liquidity.*

### ***Risks Related to the Creditor Protection Proceedings***

On February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC (Spansion Japan), filed a proceeding under the Corporate Reorganization Law (*Kaisha Kosei Ho*) of Japan to obtain protection from Spansion Japan’s creditors (the Spansion Japan Proceeding). The Tokyo District Court approved the filing of the Spansion Japan Proceeding on March 3, 2009 (the Commencement Date), and appointed the incumbent representative director of Spansion Japan as trustee. On March 1, 2009 (the Petition Date), Spansion Inc., Spansion LLC, Spansion Technology LLC, Spansion International, Inc. and Cerium Laboratories LLC each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the Chapter 11 Cases, together with the Spansion Japan Proceeding, the Creditor Protection Proceedings). The following risks relate to the Creditor Protection Proceedings.

***We will be materially adversely affected if the Plan of Reorganization does not become effective or is not implemented successfully.***

On April 16, 2010, the U.S. Bankruptcy Court entered an order confirming our Plan of Reorganization. The Plan of Reorganization may become effective as early as 14 days following entry of the U.S. Bankruptcy Court order. However, during this 14-day period, dissenting parties may seek to appeal the U.S. Bankruptcy Court order confirming the Plan of Reorganization and file motions to stay effectiveness of the order pending any appeals. We cannot assure that the order confirming the Plan of Reorganization will not be appealed, or that the Plan of Reorganization will become effective or that it will be implemented successfully. A failure to obtain the effectiveness of, or failure to successfully implement, the Plan of Reorganization could lead to the liquidation of all of our assets.

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*Our business, operations and financial position are subject to the risks and uncertainties associated with the Chapter 11 Cases.*

For the duration of the Chapter 11 Cases, our business, operations and financial position will be subject to the risks and uncertainties associated with such proceedings. These risks, without limitation and in addition to the risks otherwise noted in this Report, include:

***Strategic risks, including risks associated with our ability to:***

stabilize the business to maximize the chances of preserving all or a portion of the enterprise;

successfully focus on and pursue the embedded portion of the Flash memory market;

resolve ongoing issues with creditors and other third parties whose interests may differ from ours;

achieve effectiveness of the Plan of Reorganization; and

successfully implement the Plan of Reorganization.

***Financial risks, including risks associated with our ability to:***

generate cash from operations and maintain adequate available cash;

continue to maintain currently approved intercompany lending and transfer pricing arrangements and ongoing deployment of cash resources throughout our company and subsidiaries in connection with ordinary course intercompany trade obligations and requirements;

continue to maintain our cash management arrangements; and

maintain research and development investments.

***Operational risks, including risks associated with our ability to:***

continue to depend on Spansion Japan for wafer production and distribution of products in Japan due to actions taken by either (i) Spansion Japan (at the direction of the Spansion Japan trustee or pursuant to orders of the Tokyo District Court or otherwise) or (ii) Spansion Inc. or Spansion LLC (pursuant to the order of the U.S. Bankruptcy Court or otherwise);

transfer wafer production capacity in-house or to a third-party foundry, or to find alternative methods of distributing and selling our products, in the event that Spansion Japan is not successful in, or has difficulties in reorganizing;

retain and attract customers despite the uncertainty caused by the Creditor Protection Proceedings;

maintain market share generally and at specific customer accounts despite the uncertainty caused by the Creditor Protection Proceedings, including uncertainty surrounding future research and development expenditures, plans relating to the introduction of new products, price reductions and manufacturing;

respond to competitors' efforts to capitalize on customer concerns;

operate our business effectively in consultation with the U.S. Bankruptcy Court and our creditors;

actively and adequately communicate on and respond to events, media and rumors associated with the Creditor Protection Proceedings that could adversely affect our relationships with customers, suppliers, partners and employees;

retain and incentivize key employees and attract new employees;

retain, or if necessary, replace major suppliers on acceptable terms; and

avoid disruptions in our supply chain as a result of uncertainties related to the Creditor Protection Proceedings.

***Procedural risks, including risks associated with our ability to:***

obtain court orders or approvals with respect to motions we file from time to time, including motions seeking extensions of the applicable stays of actions and proceedings against us, or obtain timely approval of transactions outside the ordinary course of business, or other events that may require a timely reaction by us;

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resolve the claims made against us in such proceedings for amounts not exceeding our recorded liabilities subject to compromise; and

reject, repudiate or terminate contracts.

Because of these risks and uncertainties, we cannot predict the ultimate outcome of the restructuring process, or predict or quantify the potential impact on our business, financial condition or results of operations. The Chapter 11 Cases provide us with a period of time to attempt to stabilize our operations and financial condition and develop the Plan of Reorganization. It is not possible to predict the outcome of the Chapter 11 Cases and, as such, the realization of assets and discharge of liabilities are each subject to significant uncertainty. Accordingly, substantial doubt exists as to whether we will be able to continue as a going concern. Our independent registered public accounting firm has included a going-concern explanatory paragraph in its report on our consolidated financial statements for the year ended December 27, 2009.

Our continuation as a going concern is dependent upon, among other things, our ability to obtain effectiveness of, and implement, the Plan of Reorganization; generate cash from operations, maintain adequate cash on hand during the Creditor Protection Proceedings and thereafter; resolve ongoing issues with creditors and other third parties; and achieve profitability. Even assuming a successful emergence from the Chapter 11 Cases, we cannot assure you as to the overall long-term viability of our reorganized operations, including our ability to generate sufficient cash to support our operating needs, fulfill our transformation objectives and fund continued investment in technology and product development without incurring substantial indebtedness that will hinder our ability to compete, adapt to market changes and grow our business in the future. The application of fresh start accounting principles in accordance with U.S. GAAP upon eventual emergence from bankruptcy may result in valuations of long-lived and intangible assets that are less than the carrying value of those assets as currently reflected in the financial statements, which may further hinder our ability to raise financing at or subsequent to emergence from the Chapter 11 Cases.

In addition, a long period of operating under the Chapter 11 Cases may exacerbate the potential harm to our business and further restrict our ability to pursue certain business strategies or require us to take actions that we otherwise would not. These challenges are in addition to business, operational and competitive challenges that we would normally face absent the Creditor Protection Proceedings.

***If our settlement with Spansion Japan is not consummated or if our relationship with Spansion Japan is impaired or terminated as a result of the Creditor Protection Proceedings or other reasons, our business and financial condition could be materially and adversely affected.***

Spansion Japan facilitates distribution of our products in Japan, manufactures and supplies sorted and unsorted silicon wafers for us, and provides sort services to us. The wafers purchased from Spansion Japan are a material component of our “cost of goods sold,” and historically the wafer prices were governed by a pre-petition foundry agreement, which was rejected in the Chapter 11 Cases. Thus, there was a dispute between us and Spansion Japan over pricing for the wafers we received from Spansion Japan for the period beginning February 9, 2009 through October 27, 2009 (the Disputed Period). On January 8, 2010, we reached an agreement in principle (the Settlement) with Spansion Japan to (i) acquire Spansion Japan’s distribution business; (ii) obtain foundry services, including wafer and sort services, from Spansion Japan; and (iii) resolve our dispute with Spansion Japan relating to pricing of wafers purchased during the Disputed Period. On January 29, 2010, the U.S. Bankruptcy Court and on February 1, 2010, the Tokyo District Court approved the Settlement. The Settlement remains subject to completion of definitive agreements. We have executed two of the definitive agreements and expect the remaining definitive agreements to be executed during second quarter of 2010. If we are unable to consummate the Settlement with a complete set of definitive agreements, we will be forced to pursue alternate arrangements for the distribution and sale of our products in Japan and to procure wafers and sort services from an alternate source.



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On March 12, 2010, Spansion Japan filed an amended general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$936 million as a result of the November 19, 2009 foundry agreement rejection order. We believe we have strong defenses to the amount of Spansion Japan's proof of claim, and we intend to vigorously contest this matter. Under the Plan of Reorganization, if the U.S. Bankruptcy Court were to allow such claim it would be classified as a general unsecured claim in Class 5B of our Plan of Reorganization and Spansion Japan would be entitled, at most, to its pro-rata distribution of New Spansion Common Stock.

Although we have agreed to the Settlement with Spansion Japan, there is risk in continuing to do business with Spansion Japan due to the uncertainty of whether Spansion Japan will successfully reorganize. The current deadline for Spansion Japan to submit a plan of reorganization to the Tokyo District Court is April 26, 2010. We can provide no assurance that Spansion Japan's plan of reorganization will be approved, or that Spansion Japan will not be liquidated. As a result, we have plans to either replace with in-house capabilities the services that Spansion Japan provides or to utilize another third party for such services in order to mitigate the impact that would result if for any reason Spansion Japan reduced its supply of, or ceased supplying, the goods and services to us. Nevertheless, a sudden and unanticipated reduction or cessation of the supply of goods and services from Spansion Japan would likely be disruptive and have an adverse impact on our results of operations and that impact could be material.

***While the Chapter 11 Cases are pending, our financial results may be volatile and may not reflect historical trends.***

While the Chapter 11 Cases are pending, we expect our financial results to continue to be volatile as asset impairments, asset dispositions, restructuring activities, contract terminations and rejections and claims assessments may significantly impact our consolidated financial statements. As a result, our historical financial performance is likely not indicative of our financial performance following the filing of the Chapter 11 Cases. Further, we may sell or otherwise dispose of assets and liquidate or settle liabilities, with court approval, for amounts other than those reflected in our historical financial statements. Any such sale or disposition and the Plan of Reorganization could materially change the amounts and classifications reported in our historical consolidated financial statements, which do not give effect to any adjustments to the carrying value of assets or amounts of liabilities that might be necessary as a consequence of the Plan of Reorganization.

***Our ability to independently manage our business is restricted during the Chapter 11 Cases, and steps or actions in connection therewith may require the approval of the U.S. Bankruptcy Court, the U.S. Trustee and our creditors.***

Pursuant to the various U.S. Bankruptcy Court orders and the U.S. Bankruptcy Code, during the Chapter 11 Cases, some or all of the decisions with respect to our business may require consultation with, review by or ultimate approval of the U.S. Bankruptcy Court and the U.S. Trustee, our general unsecured creditors' committee and the Floating Rate Noteholders. The lack of independence and the related consulting and reporting requirements have significantly increased the amount of time required for us to take necessary actions and conclude and execute on decisions, and may make it impossible for us to take actions that we believe are appropriate and necessary. We cannot assure you that the U.S. Bankruptcy Court, the U.S. Trustee, the Creditors' Committee, other creditors or the Floating Rate Noteholders will support our positions on matters presented to the U.S. Bankruptcy Court in the future, or on the Plan of Reorganization. Disagreements between us and these various third parties could protract the Chapter 11 Cases, negatively impact our ability to operate and delay our emergence from the Chapter 11 Cases.

The Chapter 11 Cases have had a material adverse effect on our ability to continue operating as a globally integrated unit. Upon commencement of the Spansion Japan Proceeding, Spansion LLC, in its capacity as the sole stockholder of Spansion Japan, and Spansion Japan's board of directors lost operational control of, and management authority over, Spansion Japan. At that time, all such control and management was vested in the trustee appointed in the Spansion Japan Proceeding, under the supervision of the Tokyo District Court and a supervising attorney appointed by the Tokyo District Court.

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In addition, although we have historically deployed our cash throughout the enterprise, through a variety of intercompany borrowing and transfer pricing arrangements, cash in the various jurisdictions is generally available to fund operations in the particular jurisdictions, but generally is not freely transferable between jurisdictions or regions and we have to renegotiate some of our transfer pricing arrangements. The resulting contracts and financial arrangements may adversely affect our financial results and business. Furthermore, our inability to repatriate cash throughout the enterprise as needed could have a material adverse effect on our financial condition and results of operations.

***Continuing or increasing pressure on our business, cash and liquidity could materially and adversely affect our ability to fund and reorganize our business operations, react to and withstand the current economic downturn, as well as volatile and uncertain market and industry conditions, and implement the Plan of Reorganization. Additional sources of funds may not be available.***

Historically, we have deployed our cash throughout the enterprise, through a variety of intercompany borrowing and transfer pricing arrangements. As a result of the Creditor Protection Proceedings, cash in the various jurisdictions is generally available to fund operations in the particular jurisdictions, but generally is not freely transferable between jurisdictions or regions, other than as highlighted in “Liquidity and Capital Resources” in the Management’s Discussion and Analysis of Financial Condition and Results of Operations section of this Report. Thus, there is greater pressure and reliance on cash balances and generation capacity in specific regions and jurisdictions.

We cannot assure you that any further required court approvals for any future financing transactions will be obtained. Furthermore, we cannot assure you that we will be able to continue to maintain ongoing deployment of cash resources throughout our organization worldwide in connection with ordinary course intercompany trade obligations. If our subsidiaries are unable to pay dividends or provide us with loans or other forms of financing in sufficient amounts, or if we continue to have restrictions on the transfer of cash between us and our subsidiaries, including those imposed by courts, foreign governments and commercial limitations on transfers of cash, our cash position would likely be under considerable pressure and our liquidity and our ability to meet our obligations would be adversely affected.

Access to additional funds from liquidity-generating transactions or other sources of external financing may not be available to us and, if available, would be subject to market conditions and certain limitations including court approvals and other requisite approvals by other third parties. We cannot provide any assurance that our net cash requirements will be as we currently expect and will be sufficient for the successful implementation of the Plan of Reorganization.

***Transfers or issuances of our equity, or a debt restructuring, may impair or reduce our ability to utilize our net operating loss carryforwards and certain other tax attributes in the future.***

Pursuant to U.S. tax rules, a corporation is generally permitted to deduct from taxable income in any year net operating losses (NOLs) carried forward from prior years. We have NOL carryforwards in the United States of approximately \$1.2 billion as of December 27, 2009. Our ability to utilize these NOL carryforwards could be subject to a significant limitation if we were to undergo an “ownership change” for purposes of Section 382 of the Internal Revenue Code of 1986, as amended, during or as a result of the Chapter 11 Cases. During the Chapter 11 Cases, the U.S. Bankruptcy Court has entered an order that places certain restrictions on trading in our common stock. However, we can provide no assurances that these limitations will prevent an “ownership change” or that our ability to utilize our NOL carryforwards may not be significantly limited as a result of our restructuring.

A restructuring of our debt pursuant to the Chapter 11 Cases may give rise to cancellation of indebtedness or debt forgiveness (COD), which if it occurs would generally be non-taxable. If the COD is non-taxable, we will be required to reduce our NOL carryforwards and other attributes such as capital loss carryforwards and tax basis in assets, by an amount equal to the non-recognized COD. Therefore, it is possible that, as a result of the successful completion of the Plan of Reorganization, we will have a reduction of NOL carryforwards and/or other tax attributes in an amount that cannot be determined at this time and that could have a material adverse effect on our future financial results.

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***Trading in our securities on the Pink Sheets during the pendency of the Chapter 11 Cases is highly speculative and poses substantial risks.***

Our common stock was delisted from The NASDAQ Stock Market on May 7, 2009 and is currently traded on the Pink Sheets, which makes our common stock significantly less liquid. Trading prices of our securities are very volatile and may bear little or no relationship to the actual recovery, if any, by the holders under the Plan of Reorganization. In the Plan of Reorganization, our existing securities, in particular our common stock will be cancelled and holders will receive no payment or other consideration in return.

***If we are unable to attract and retain qualified personnel at reasonable costs, we may not be able to achieve our business objectives, and our ability to successfully emerge from the Chapter 11 Cases may be harmed.***

We are dependent on the experience and industry knowledge of our senior management and other key employees to execute our current business plans and lead us, particularly during the Chapter 11 Cases and throughout the implementation of the Plan of Reorganization. Competition for certain key positions and specialized technical and sales personnel in the high-technology industry remains strong. Our deteriorating financial performance during the Creditor Protection Proceedings, along with the Chapter 11 Cases and workforce reductions create uncertainty that has led to an increase in unwanted attrition, and additional challenges in attracting and retaining new qualified personnel. We have lost many key employees with long tenures and broad knowledge about our technology and historical operations and we are at risk of losing or being unable to hire talent critical to a successful reorganization and ongoing operation of our business. Our ability to retain and attract critical talent is restricted in part by the Chapter 11 Cases that, among other things, limit our ability to implement a retention program or take other measures to attract new hires to the Company or motivate employees to remain with us. Our future success depends in part on our continued ability to hire, assimilate in a timely manner and retain qualified personnel, particularly in key senior management positions. If we are not able to attract, recruit or retain qualified employees (including as a result of headcount and salary reductions), we may not have the personnel necessary to implement the Plan of Reorganization, and our business, results of operations and financial condition could be materially adversely impacted.

### ***Risks Related to our Financial Condition***

***If we cannot generate sufficient operating cash flows and obtain external financing, we may be materially adversely affected.***

Our capital expenditures, together with ongoing operating expenses, have been a substantial drain on our cash flows and have decreased our cash balances. Since fiscal 2008, we have increased cost cutting activities, including: salary reductions; cutting capital spending; reducing and freezing headcount; cutting research and development projects; and reducing administrative expenses. Some cost cutting activities may require initial cost outlays before the cost reductions are realized. We cannot assure you that we will be able to achieve anticipated expense reductions. If our expense reduction efforts are unsuccessful, our operating results and business may be materially adversely affected.

Additional funds from liquidity-generating transactions or other sources of external financing may not be available to us. Such financing would be subject to certain limitations, including court approvals and other requisite approvals by other third parties. Our inability to obtain needed financing or to generate sufficient cash from operations may require us to abandon projects or curtail capital expenditures, or may have an adverse effect on our restructuring process. If we cannot generate sufficient operating cash flows or obtain external financing, we would be materially adversely affected.

***Financial market conditions may impede access to or increase the cost of financing operations and investments.***

The changes in U.S. and global financial and equity markets, including market disruptions and tightening of the credit markets, compounded by us being subject to the Chapter 11 Cases, may make it more difficult for us to obtain financing for our operations or investments or increase the cost of obtaining financing, which would materially adversely affect us.

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We are party to several debt instruments for which, as a result of the Chapter 11 Cases, an event of default has occurred. In connection with our Plan of Reorganization, we have entered into new debt arrangements, each of which may subject us to restrictive covenants which limit our ability to operate our business.

Our debt arrangements will require us to make regular interest payments, which could adversely affect our results of operations.

We cannot assure you that in the future we will be able to satisfy or comply with the provisions, covenants, financial tests and ratios of our debt instruments, which can be affected by events beyond our control. If we fail to satisfy or comply with such provisions, covenants, financial tests and ratios, or if we disagree with our lenders about whether or not we are in compliance, we cannot assure you that we will be able to obtain waivers for any future failures to comply with our financial covenants or any other terms of the debt instruments. We also may not be able to obtain amendments which will prevent a failure to comply in the future. A breach of any of the provisions, covenants, financial tests or ratios under our debt instruments could result in a default under the applicable agreement, which in turn could trigger cross-defaults under other debt instruments, any of which would materially adversely affect us.

### ***Our investments in auction rate securities are subject to risks which may cause losses and affect the liquidity of these investments.***

As of March 28, 2010, our auction rate securities (ARS) totaled approximately \$75.2 million and consisted solely of AAA/Aaa rated securities with auction reset features whose underlying assets are student loans and are substantially backed by the U.S. government Federal Family Education Loan Program. During 2008, we experienced failed auctions of our ARS and we cannot assure you that any future auctions would be successful. In November 2008, we accepted an offer to participate in an auction rate securities settlement from UBS Bank USA (UBS), providing us the right, but not the obligation, to sell to UBS up to all of our ARS at par, commencing June 30, 2010 through July 2, 2012. This right represents a put option for a payment equal to the par value of the ARS.

The put option is subject to a number of risks. Given the substantial dislocation in the financial markets and among financial services companies, we cannot assure you that UBS will ultimately have the ability to repurchase our ARS at par, or at any other price during the put period described above. We will be required to periodically assess the economic ability of UBS to meet that obligation in assessing the fair value of the rights. Moreover, if we choose to not exercise or UBS is unable to honor the put option, our ability to liquidate our investments in the near term may be limited, and our ability to fully recover the carrying value of our investments may be limited or non-existent. If issuers of these securities are unable to successfully close future auctions or their credit ratings deteriorate, we may in the future be required to record further impairment charges on these investments. It could take until the final maturity of the underlying notes (up to 39 years) to realize our investments' recorded value. We can provide no assurance as to when these investments will again become liquid or as to whether we may ultimately have to recognize additional impairment charges in our results of operations with respect to these investments. Delays in liquidating these securities in the future could have a material adverse effect on us.

### ***Risks Related to Our Business***

***We are in the process of transforming our business and implementing a new business strategy. If we are unsuccessful in doing so, we may be materially adversely affected.***

Shortly after the Chapter 11 Cases commenced, we began exiting a large portion of the wireless market. While this reduced our revenue, it allowed us to dramatically reduce our engineering expenses without impairing our ability to compete. Our exit from a large portion of the wireless market, related reductions in research and development spending and capital expenditures, combined with other cost reductions including disposal of manufacturing facilities, has enabled us to begin generating significant cash flow.

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We continue to have leading market share and remain dedicated to, and focused on, the embedded portion of the Flash memory market. We intend to continue to selectively engage in portions of the wireless market where we can do so advantageously. We believe that though the embedded market is mature and will grow more slowly than some other sectors of the semiconductor industry, we can compete successfully with our continued focus on providing best in class customer service, quality and reliability, and solutions engineering. We also believe that we can mitigate the historical and anticipated trend of rapid selling price reductions by serving applications with growing unit demand, migrating customers to higher density and more feature-rich devices, capturing market share, and expanding our product offerings.

As part of our new business strategy, we have made, and will continue to make, judgments as to whether we should further reduce, relocate or otherwise change our workforce. Costs incurred in connection with workforce reduction efforts may be higher than estimated. In addition, our workforce reduction efforts may impair our ability to achieve our current or future business objectives. Any further workforce efforts including reductions may not occur on the expected timetable and may result in the recording of additional charges.

Any decision by management to further limit investment in, or exit or dispose of parts of our business may result in the recording of additional charges. As part of our review of our restructured business, we look at the recoverability of tangible and intangible assets. Future market conditions may indicate these assets are not recoverable based on changes in forecasts of future business performance and the estimated useful life of these assets, and this may trigger further write-downs of these assets which may have a material adverse effect on our business, results of operations and financial condition.

Upon emergence from the Chapter 11 Cases, we may periodically consider strategic transactions. We may evaluate acquisitions, divestitures, joint ventures, alliances or co-production programs as opportunities arise and we may be engaged in varying levels of negotiations with third parties at any time. We may not be able to effect transactions and if we enter into transactions, we also may not realize the benefits we anticipate. Moreover, the integration of companies that have previously been operated separately involves a number of risks. Consummating any acquisitions, divestitures, joint ventures, alliances or co-production programs could result in the incurrence of additional transaction-related expenses, as well as unforeseen contingent liabilities, which could materially adversely affect us.

***The demand for our products depends in large part on continued growth in the industries into which they are sold. A decline in the markets served by any of these industries, or a decline in demand for Flash memory products in these industries, would have a material adverse effect on our results of operations.***

If demand for mobile phones, other consumer products or industrial products utilizing Flash memory declines, our business could be materially adversely affected. Also, if the functionality of successive generations of such products does not require increasing Flash memory density or if such products no longer require Flash memory due to alternative technologies or otherwise, our operating results would be materially adversely affected.

***Our business has been characterized by an average selling price that declines over time, which can negatively affect our results of operations.***

Generally, we endeavor to maintain or increase our average selling price while lowering our average costs by improving our product mix, and selling more units. Historically, the selling prices of our products have decreased during the products' lives, and we expect this trend to continue. When our selling prices decline, our net sales and gross margins also decline unless we are able to compensate by selling more units thereby reducing our manufacturing costs per product or introducing and selling new, higher margin products with higher densities and/or advanced features. If the average selling price for our products continues to decline, our operating results could be materially adversely affected.

During downturns, periods of extremely intense competition, or the presence of oversupply in the industry, the selling prices for our products have declined at a high rate over relatively short time periods as compared to historical rates of decline. We are unable to predict selling prices for any future periods and may experience unanticipated, sharp declines in selling prices for our products. When such pricing declines occur, we may not be able to mitigate the effects by selling more or higher margin units, or by reducing our manufacturing costs. In such circumstances, our operating results could be materially adversely affected.

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***The Flash memory market is highly cyclical and has experienced severe downturns that have materially adversely affected, and may in the future materially adversely affect, our business.***

The Flash memory market is highly cyclical and in the past has experienced severe downturns, generally as a result of wide fluctuations in supply and demand, constant and rapid technological change, continuous new product introductions and price erosion. Our financial performance has been, and may in the future be, adversely affected by these downturns. We have incurred substantial losses in past downturns, and as a result of the most recent downturn, due principally to:

substantial declines in selling prices, particularly due to competitive pressures and an imbalance in product supply and demand;  
and

a decline in demand for end-user products that incorporate our products.

Our historical financial information does not necessarily indicate what our results of operations, financial condition or cash flows will be in the future. If our net sales decline in the future, or if these or other similar conditions continue or occur again in the future, we would likely be materially adversely affected.

***Our forecasts of customer demand for our products may be inaccurate, which could result in excess or shortages in inventory, which could cause us to record write-downs or fail to meet customer demand. Inaccurate forecasting could materially and adversely affect our business and financial results.***

Although our manufacturing cycle times are relatively lengthy, in excess of ten weeks, we nevertheless compete in a market where suppliers' ability to respond quickly to new incoming orders is a competitive differentiator. Thus, we must forecast customer demand and produce requisite amounts of our products in order to fill current and future orders even though demand is volatile and difficult to predict. To forecast demand and value inventory, management considers, among other factors, the inventory on hand, historical customer demand data, backlog data, competitiveness of product offerings, market conditions and product life cycles. If we are unable to accurately assess these factors and anticipate future demand or market conditions, inventory write-downs may be required and would be reflected in cost of sales in the period the write-down is made. This would have a negative impact on our gross margin in that period. Inaccurate forecasting could also result in excess or obsolete inventory that would reduce our profit margins or shortages in inventory that would cause us to fail to meet customer demand. If, as a result of inaccurate forecasting, we are unable to produce the types and quantities of products required by our customers in the timeframes and on the delivery schedules required by our customers, we may lose customers or, in certain circumstances, be liable for losses incurred by our customers, which would materially adversely affect our business and financial results.

***A significant market shift to NAND architecture would materially adversely affect us.***

Flash memory products are generally based on either NOR or NAND architecture. To date, our Flash memory products have been based on NOR architecture which are typically produced at a higher cost-per-bit than NAND-based products. We are developing our MirrorBit NAND architectures primarily to address embedded applications currently served by NAND-based products or potentially served by NAND-based products in the future, but we cannot be certain that our MirrorBit NAND-based products will satisfactorily address those market needs.

Since 2004, industry sales of NAND-based Flash memory products increased as a percentage of total Flash memory sales compared to sales of NOR-based Flash memory products, resulting in NAND vendors in aggregate gaining a greater share of the overall Flash memory market and NOR vendors in aggregate losing overall market share. We expect the Flash memory market trend of decreasing market share for NOR-based Flash memory products relative to NAND-based Flash memory products to continue in the foreseeable future.

Customers manufacturing products for embedded applications may increasingly choose floating gate NAND-based Flash memory products over MirrorBit NOR- or NAND-based Flash memory products for their applications. If this occurs and customers continue to prefer floating gate NAND-based products over those of MirrorBit NOR- or NAND-based products for their applications, we may be materially and

adversely affected. Moreover, some of our competitors are able to manufacture floating gate NAND-based Flash memory products on 300-millimeter wafers produced in much larger capacity fabrication facilities (fabs) than we currently have access to. In addition, some of our competitors may choose to utilize more advanced manufacturing process technologies than we may have available to offer products competitive to ours at a lower cost or with higher densities.

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In addition, even if products based on NAND architecture are unsuccessful in displacing products based on NOR architecture, the average selling price for our products may be adversely affected by a significant decline in the price for NAND-based products. Such a decline may result in downward price pressure in the overall Flash memory market affecting the price we can obtain for our NOR-based products, which would adversely affect us. We believe such downward pricing pressure was a factor in the significant declines in the selling prices of our products in 2007 and 2008. If the prices for NAND products similarly decline in the future, we may be materially adversely affected.

***We cannot be certain that our substantial investments in research and development will lead to timely improvements in technology or that we will have sufficient resources to invest in the level of research and development that is required to remain competitive.***

In order to compete, we are required to make substantial investments in research and development for design, process technologies and production techniques in an effort to design and manufacture advanced Flash memory products. For example, in fiscal 2009, 2008 and 2007, our research and development expenses were approximately \$136.4 million, \$431.8 million and \$436.8 million, respectively, or approximately 10, 19 and 17 percent, respectively, of our net sales.

Currently, we are developing new non-volatile memory process technologies. We cannot assure you that we will have sufficient resources to maintain the level of investment in research and development that is required for us to remain competitive, which could materially adversely affect us. Further, we cannot assure you that our investments in research and development will result in increased sales or competitive advantage, which could materially adversely affect our operating results.

***If we fail to successfully develop, introduce and commercialize new products and technologies, we may be materially adversely affected.***

Our success depends to a significant extent on the development, qualification, production, introduction and acceptance of new product designs and improvements that provide value to Flash memory customers. Our ability to develop and qualify new products and related technologies to meet evolving industry requirements at prices acceptable to our customers and on a timely basis affects our competitiveness in our target markets. If we are delayed in developing or qualifying new products or technologies, we could be materially adversely affected.

***Competitors may introduce new memory or other technologies that may make our Flash memory products uncompetitive or obsolete.***

Our competitors are working on a number of new technologies, including FRAM, MRAM, polymer, charge trapping and phase-change based memory technologies. One of our competitors began shipping products based on phase-change based memory technology in 2008. If such products are successfully developed and commercialized as a viable alternative to MirrorBit or floating gate Flash memory, these other products could pose a competitive threat to existing Flash memory companies, including us. In addition, some of Saifun's licensees and customers are our competitors or work with our competitors and have licensed Flash memory intellectual property associated with charge trapping technology from Saifun. Use of this charge trapping intellectual property or use of independently developed charge trapping Flash memory technology by our competitors, if successfully developed and commercialized, may allow these competitors to develop Flash memory technology that may compete with our proprietary MirrorBit technology. If we are unable to compete with these new technologies, we may be materially adversely affected.



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***If we fail to successfully develop new applications and markets for our products our future operating results would be materially adversely affected.***

We are developing new applications and opportunities for our products beyond our traditional customer base and in some cases plan to deploy our Flash memory solutions beyond current Flash memory markets. We expect these new applications to grow future net sales, future margin or a combination of both. However, some of these opportunities require that we are successful in creating, marketing, gaining customer acceptance of and deploying these new system architectures into a customer base where we do not have a historic business relationship and where our solution is required to replace established and proven solutions. In some cases our solutions rely on third parties to contribute a significant and necessary component of the solution without which the solution is nonviable. If we are unsuccessful in our attempts to bring new products to market, experience significant delays in generating sales, fail to establish the value of this solution or face competition from third parties or incumbent suppliers that result in lower margins than expected, then our future operating results would be materially adversely affected.

***Our reliance on third-party manufacturers entails risks that could materially adversely affect us.***

We have in the past and plan in the future to obtain foundry, subcontractor and other arrangements with third parties to meet demand. Foundry services suppliers from which we have obtained, and in the future may obtain, foundry services, include Spansion Japan, Fujitsu Microelectronics Limited and Semiconductor Manufacturing International Corporation. We also use independent contractors to perform some of the assembly, testing and packaging of our products. Some third-party manufacturers are often under no obligation to provide us with any specified minimum quantity of product. We depend on these manufacturers to allocate to us a portion of their manufacturing capacity sufficient to meet our needs, and, in the case of Spansion Japan, all of their manufacturing capacity has historically been allocated to us. We also depend on these manufacturers to produce products of acceptable quality and at acceptable manufacturing yields and to deliver those products to us on a timely basis at acceptable prices. In addition, we rely on these manufacturers to invest capital into their facilities and process technologies to meet our needs for new products using advanced process technologies. Given the Creditor Protection Proceedings and the current volatility and disruption in the capital and credit markets worldwide, we cannot assure you that they will make the investments in their facilities previously contemplated. We cannot assure you that these manufacturers will be able to meet our near-term or long-term manufacturing requirements and may not be able to attain qualification from our customers. In addition, any significant change in the payment terms we have with our key suppliers could adversely affect us.

These manufacturers also make products for other companies, including certain of our competitors, and/or for themselves and could choose to prioritize capacity for themselves or other customers beyond any minimum guaranteed amounts, reduce deliveries to us or, in the absence of price guarantees, increase the prices they charge us on short notice, such that we may not be able to pass cost increases on to our customers. The likelihood of this occurring may be greater as a result of the Creditor Protection Proceedings. We may be unable to secure an alternative supply for specific products in a short timeframe or at all at an acceptable cost to satisfy our production requirements. In addition, we may be required to incur additional development, manufacturing and other costs to establish alternative sources of supply. Other risks associated with our increased dependence on third-party manufacturers include: their ability to adapt to our proprietary technology, reduced control over delivery schedules, quality assurance, manufacturing yields and cost, lack of capacity in periods of excess demand, misappropriation of our intellectual property, reduced ability to manage inventory and parts and risks associated with operating in foreign countries. If we are unable to secure sufficient or reliable suppliers of wafers or obtain the necessary assembling, testing and packaging services, our ability to meet customer demand for our products may be adversely affected, which could have a material adverse effect on us.

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### ***We rely on Fujitsu Microelectronics Limited to distribute our products in Japan.***

We currently rely on Fujitsu Microelectronics Limited (FML) through its subsidiary Fujitsu Electronics Inc. to distribute our products to customers in Japan, which is an important geographic market for us. Under our distribution agreement with FML, FML has agreed to use its best efforts to promote the sale of our products in Japan and to other customers served by FML. In the event that we reasonably determine that FML's sales performance in Japan and to those customers served by FML is not satisfactory based on specified criteria, then we have the right to require FML to propose and implement an agreed-upon corrective action plan. If we reasonably believe that the corrective action plan is inadequate, we can take steps to remedy deficiencies ourselves through means that include appointing another distributor as a supplementary distributor to sell products in Japan and to customers served by FML. Pursuing these actions would be costly and disruptive to the sales of our products in Japan. If FML's sales performance in Japan is unsatisfactory or if we are unable to successfully maintain our distribution agreement and relationship with FML and we cannot timely find a suitable supplementary distributor, we could be materially adversely affected.

Under the terms of our distribution agreement with FML, either party may terminate the distribution agreement, either in whole or in part, for convenience upon 60 days written notice to the other party. If FML unexpectedly terminates its distribution agreement with us, or otherwise ceases its support of our customers in Japan, we would be required to rely on a relationship with another distributor or establish our own local sales organization and support functions. We cannot be certain that we will be successful in selling our products to customers currently served by FML or new customers. If customers currently served by FML, or potential new customers, refuse to purchase our products directly from us or from another distributor, our sales in Japan may decline, and we could be materially adversely affected.

### ***Industry overcapacity could require us to take actions which could have a material adverse effect on us.***

Semiconductor companies with their own manufacturing facilities and specialist semiconductor foundries, which are subcontractors that manufacture semiconductors designed by others, have added significant capacity in recent years. In 2008, the significant excess capacity led to oversupply and a downturn in the memory industry. The contraction of the worldwide economy, especially in the fourth quarter of 2008 and continuing into 2009, further compounded industry over capacity. Fluctuations in the growth rate of industry capacity relative to the growth rate in demand for Flash memory products can contribute to cyclicality in the Flash memory market, which may in the future negatively impact our selling prices and materially adversely affect us.

It is difficult to predict future growth or decline in the markets we serve, making it very difficult to estimate requirements for production capacity. If our target markets do not grow as we anticipate, we may under-utilize our manufacturing capacity or we may be contractually obligated to purchase minimum quantities of certain products from our subcontractors. This may result in write-downs or write-offs of inventories and losses on products the demand for which is lower than we anticipate. In addition, during periods of industry overcapacity, customers do not generally order products as far in advance of the scheduled shipment date as they do during periods when our industry is operating closer to capacity, which can exacerbate the difficulty in forecasting capacity requirements.

Many of our costs are fixed. Additionally, pursuant to some of our subcontractor and foundry arrangements with third parties we may incur and pay penalties, according to which we have agreed to pay for a certain amount of product even if we do not accept delivery of all of such amount. Accordingly, during periods in which we under-utilize our manufacturing capacity as a result of reduced demand for some of our products, our costs cannot be reduced in proportion to the reduced net sales for such periods. When this occurs, our operating results are materially adversely affected.

### ***Our customers' ability to change booked orders may lead to excess inventory.***

Because our manufacturing processes require long lead times, we use indicators such as booking rates in conjunction with other business metrics, to schedule production in our fabrication facilities. Consequently, when customers change orders booked with us, our planned manufacturing capacity may be greater or less than actual demand, resulting in less than optimal inventory levels. When this occurs, we adjust our production levels but such adjustments may not prevent our production of excess inventory in environments when bookings are strong. As a result, our business may be materially adversely affected.

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### ***Intense competition in the Flash memory market could materially adversely affect us.***

Our principal NOR Flash memory competitors are Numonyx B.V., Macronix International Co., Ltd. and Samsung Electronics Co., Ltd. Additional significant NOR Flash memory competitors include Silicon Storage Technology, Inc. and Toshiba Corporation.

We increasingly compete with NAND Flash memory manufacturers where NAND Flash memory has the ability to replace NOR Flash memory in customer applications. Our principal NAND Flash memory competitors include Samsung Electronics Co., Ltd., Numonyx B.V. and Micron Technology, Inc. In the future our principal NAND Flash memory competitors may include Hynix Semiconductor Inc., Toshiba Corporation, Intel Corporation, IM Flash Technology LLC, the joint venture between Intel and Micron Technology, Inc. and SanDisk Corporation.

The Flash memory market is characterized by intense competition. The basis of competition is cost, selling price, performance, quality, customer relationships and ability to provide value-added solutions. In particular, in the past, our competitors have aggressively priced their products, which resulted in decreased selling prices for our products and adversely impacted our results of operations. Some of our competitors, including Samsung and Toshiba, are more diversified than we are and may be able to sustain lower operating margins in their Flash memory business based on the profitability of their other, non-Flash memory businesses. In addition, capital investments by competitors have resulted in substantial industry manufacturing capacity, which may further contribute to a competitive pricing environment. Some of our competitors are able to manufacture floating gate NAND-based Flash memory products on 300-millimeter wafers produced in much larger capacity fabs than we may have access to or may choose to utilize more advanced manufacturing process technologies than we will have to offer products competitive to ours at a lower cost or higher density. Moreover, products based on our MirrorBit ORNAND-, MirrorBit Quad- and MirrorBit NAND-based architectures may not have the price, performance, quality and other features necessary to compete successfully for these applications.

We expect competition in the market for Flash memory devices to intensify as existing manufacturers introduce new products, new manufacturers enter the market, industry-wide production capacity increases and competitors aggressively price their Flash memory products to increase market share. The competition we face may also intensify, particularly in light of the Creditor Protection Proceedings, if our competitors, who may have greater financial resources than us, increase their focus on the Flash memory products, or segments of the Flash memory markets, that generate a significant portion of our net sales.

Competitive pressures may also increase if NOR memory vendors merge, if NAND memory vendors acquire NOR businesses or other NAND businesses, or if our competitors otherwise consolidate their operations. For example, on February 3, 2010, Silicon Storage Technology, Inc. and Microchip Technology Incorporated announced that Microchip had agreed to acquire SST; and on February 9, 2010, Micron Technology, Inc. and Numonyx Holdings B.V. announced that Micron had agreed to acquire Numonyx. Furthermore, we face increasing competition from NAND Flash memory vendors targeting the embedded portion of the Flash memory market.

To compete successfully, we must decrease our manufacturing costs and develop, introduce and sell products at competitive prices that meet the increasing demand for greater Flash memory content in mobile phones, consumer electronics, automotive and other applications. If we are unable to compete effectively, we could be materially adversely affected.

***Unless we maintain manufacturing efficiency, we may not become profitable and our future profitability could be materially adversely affected.***

The Flash memory industry is characterized by rapid technological changes. For example, new manufacturing process technologies using smaller feature sizes and offering better performance characteristics are generally introduced every one to two years. The introduction of new manufacturing process technologies allows us to increase the functionality of our products while at the same time optimizing performance parameters, and increasing storage capacity. In addition, the reduction of feature sizes enables us to produce smaller chips offering the same functionality and thereby considerably reduces the cost per bit. In order to remain competitive, it is essential that we secure the capabilities to develop and qualify new manufacturing process technologies. For example, our leading Flash memory products must be manufactured at 65-nanometer and more advanced process technologies. If we are delayed in transitioning to these technologies and other future technologies, we could be materially adversely affected. As a result of the Creditor Protection Proceedings, we may be forced to shut down or abandon current plans for our manufacturing facilities which could materially adversely affect us.



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Manufacturing our products involves highly complex processes that require advanced equipment. Our manufacturing efficiency is an important factor in our profitability, and we cannot be sure that we will be able to maintain or increase our manufacturing efficiency to the same extent as our competitors. For example, we continuously modify our manufacturing processes in an effort to improve yields and product performance and decrease costs. We are continuing to transition to 65-nanometer process technology for the manufacture of some of our products. During periods when we are implementing new process technologies, manufacturing facilities may not be fully productive. We may fail to achieve acceptable yields or may experience product delivery delays as a result of, among other things, capacity constraints, delays in the development of new process technologies, changes in our process technologies, upgrades or expansion of existing facilities, impurities or other difficulties in the manufacturing process. Any of these occurrences could adversely impact our relationships with customers, cause harm to our reputation in the marketplace, cause customers to move future business to our competitors or cause us to make financial concessions to our customers.

Improving our manufacturing efficiency in future periods is dependent on our ability to:

develop advanced process technologies and advanced products that utilize those technologies;

successfully transition to advanced process technologies;

continue to reduce test times;

ramp product and process technology improvements rapidly and effectively to commercial volumes;

achieve acceptable levels of manufacturing wafer output and yields, which may decrease as we implement more advanced technologies; and

maintain our quality controls and rely upon the quality and process controls of our suppliers.

***If we cannot adequately protect our technology or other intellectual property in the United States and abroad, through patents, copyrights, trade secrets, trademarks and other measures, we may lose a competitive advantage and incur significant expenses.***

We rely on a combination of protections provided by contracts, including confidentiality and non-disclosure agreements, copyrights, patents, trademarks and common law rights, such as trade secrets, to protect our intellectual property. However, we cannot assure you that we will be able to adequately protect our technology or other intellectual property from third-party infringement or from misappropriation in the United States and abroad. Any patent owned or licensed by us or issued to us could be challenged, invalidated or circumvented or rights granted under these patents or licenses may not provide a competitive advantage to us. Furthermore, patent applications that we file may not result in issuance of a patent or, if a patent is issued, the patent may not be issued in a form that is advantageous to us. Despite our efforts to protect our intellectual property rights, others may independently develop similar products, duplicate our products or design around our patents and other intellectual property rights. In addition, it is difficult to monitor compliance with, and enforce, our intellectual property on a worldwide basis in a cost-effective manner. Foreign laws may provide less intellectual property protection than afforded in the United States. Our efforts to protect our intellectual property in the United States and abroad, through lawsuits such as those that have been filed between us and Samsung Electronics Co., Ltd., may be time-consuming and costly. If we cannot adequately protect our technology or other intellectual property rights in the United States and abroad, we may be materially adversely affected.



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***We may not be able to successfully to negotiate agreements or arrangements with third parties for rights to key intellectual property, which creates a greatly increased risk of patent or other intellectual property infringement claims against us.***

We may attempt to negotiate our own agreements and arrangements with third parties for intellectual property and technology that are important to our business. We may also attempt to acquire new patents as our success in negotiating patent cross-license agreements with other industry participants will depend in large part upon the strength of our patent portfolio relative to that of the third party with which we are negotiating. If we are unable to negotiate agreements or arrangements for intellectual property, or to obtain patents, necessary for the success of our business, we may be materially adversely affected.

***We are party to intellectual property litigation and may become party to other intellectual property claims or litigation that could cause us to incur substantial costs or pay substantial damages or prohibit us from selling our products.***

From time to time, we may be notified, or third parties may bring actions against us based on allegations, that we are infringing the intellectual property rights of others. If any such claims are asserted against us, we may seek to obtain a license under the third party's intellectual property rights. We cannot assure you that we will be able to obtain all of the necessary licenses on satisfactory terms, if at all. In the event that we cannot obtain a license, these parties may file lawsuits against us seeking damages (potentially including treble damages) or an injunction against the sale of our products that incorporate allegedly infringed intellectual property or against the operation of our business as presently conducted, which could result in our having to stop the sale of some of our products, increase the costs of selling some of our products, or cause damage to our reputation. The award of damages, including material royalty payments, or the entry of an injunction against the manufacture and sale of some or all of our products, would have a material adverse effect on us. We could decide, in the alternative, to redesign our products or to resort to litigation to challenge or defend such claims, either of which could be expensive and time-consuming and may have a material adverse effect on us. See Part II, Item 1 "Legal Proceedings."

We provide indemnities relating to non-infringement of patents and other intellectual property indemnities to certain of our customers in connection with the delivery, design, manufacture and sale of our products. If we are required to indemnify companies with whom we do business and we incur substantial costs, our business, results of operations and financial condition could be materially adversely affected.

***If essential equipment or adequate supplies of satisfactory materials are not available to manufacture our products, we could be materially adversely affected.***

Our manufacturing operations depend upon obtaining deliveries of equipment and adequate supplies of materials on a timely basis. We purchase equipment and materials from a number of suppliers. From time to time, suppliers may extend lead times, limit supply to us or increase prices due to capacity constraints or other factors. Because the equipment that we purchase is complex, it is difficult for us to substitute one supplier for another or one piece of equipment for another. Some raw materials we use in the manufacture of our products are available from a limited number of suppliers or only from a limited number of suppliers in a particular region. In addition, we purchase raw materials such as gold which prices on the world markets have fluctuated significantly during recent periods. Our manufacturing operations also depend upon the quality and usability of the materials we use in our products, including raw materials and wafers we receive from our suppliers. If the materials we receive from our suppliers do not meet our manufacturing requirements or product specifications, are not obtained in a timely manner or if there are significant increases in costs of materials, we may be materially adversely affected.

We also rely on purchasing commercial memory die such as DRAM from third-party suppliers to incorporate these die into multi-chip package products. The availability of these third-party purchased commercial die is subject to market availability, and the process technology roadmaps and manufacturing capacities of our vendors. In addition, some of our suppliers may also be our competitors. Interruption of supply from a competitor that is a supplier or otherwise or increased demand in the industry could cause shortages and price increases in various essential materials. If we are unable to procure these materials, or if the materials we receive from our suppliers do not meet our production requirements or product specifications, we may have to reduce our manufacturing operations or our manufacturing yields may be adversely affected. Such a reduction and yield issues have in the past and could in the future have a material adverse effect on us.

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### ***Costs related to defective products could have a material adverse effect on us.***

One or more of our products may be found to be defective after the product has been shipped to customers in volume. The cost of product replacements or product returns may be substantial, and our reputation with our customers would be damaged. In addition, we could incur substantial costs to implement modifications to fix defects. Any of these problems could materially adversely affect us.

### ***Unfavorable currency exchange rate fluctuations could adversely affect us.***

As a result of our foreign operations, we have sales, expenses, assets and liabilities that are denominated in Japanese yen and other foreign currencies. For example:

some of our costs are denominated in Japanese yen, Thai baht and Malaysian ringgit;

sales of our products to, and purchases from, Spansion Japan are denominated in both U.S. dollars and Japanese yen; and

some fixed asset purchases are denominated in Japanese yen and European Union euros.

Consequently, movements in exchange rates could cause our net sales and expenses to fluctuate, affecting our profitability and cash flows. We are currently unable to and in the future may not be able to enter into hedging contracts on acceptable terms, if at all.

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

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

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

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



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

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

expropriation;

changes in political or economic conditions;

changes in tax laws, trade protection measures and import or export licensing requirements;

difficulties in protecting our intellectual property;

difficulties in achieving headcount reductions;

changes in foreign currency exchange rates;

restrictions on transfers of funds and other assets of our subsidiaries between jurisdictions;

changes in freight and interest rates;

disruption in air transportation between the United States and our overseas facilities; and

loss or modification of exemptions for taxes and tariffs.

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

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

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

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

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We have not been named a responsible party at any Superfund or other contaminated site. If we were ever so named, costs associated with the cleanup of the site could be material. Additionally, contamination that has not yet been identified could exist at one or more of our facilities, and identification of such contamination could have a material adverse effect on us.

Our business is subject to complex and dynamic environmental regulatory schemes. While we have budgeted for reasonably foreseeable environmental expenditures, we cannot assure you that environmental laws will not change or become more stringent in the future. Future environmental regulations could require us to procure expensive pollution abatement or remediation equipment; to modify product designs; or to incur other expenses associated with compliance with such regulations. For example, the European Union and China recently began imposing stricter requirements regarding reduced lead content in semiconductor packaging. Therefore, we cannot assure you that our costs of complying with current and future environmental and health and safety laws, or liabilities arising from past or future releases of, or exposure to, hazardous substances, will not have a material adverse effect on our business.

***Our business, worldwide operations and the operations of our suppliers could be subject to natural disasters and other business disruptions, which could harm our future net sales and financial condition and increase our costs and expenses.***

Our worldwide operations and business could be subject to natural disasters and other business disruptions, such as a world health crisis, fire, earthquake, tsunami, volcano eruption, flood, hurricane, power loss, power shortage, telecommunications failure or similar events, which could harm our future net sales and financial condition and increase our costs and expenses. Our corporate headquarters are located near major earthquake fault lines in California and, Spansion Japan's wafer fabrication facilities and Fujitsu's manufacturing facilities are located near major earthquake fault lines in Japan. Also, our assembly and test facilities located in Malaysia and Thailand and our subcontractors' assembly and test facilities in China and other countries in Asia may be affected by tsunamis. In the event of a major earthquake or tsunami, we could experience loss of life of our employees, destruction of facilities or other business interruptions. If such business disruptions result in cancellations of customer orders or contribute to a general decrease in economic activity or demand for our products, or directly impact our marketing, manufacturing, financial, and logistics functions, our results of operations and financial condition could be materially adversely affected.

Furthermore, the operations of our suppliers could be subject to natural disasters and other business disruptions, which could cause shortages and price increases in various essential materials, which are required to manufacture our products or commercial memory die such as DRAMs for incorporation into our MCP products. If we are unable to procure an adequate supply of materials that are required for us to manufacture our products, or if the operations of our other suppliers of such materials are affected by an event that causes a significant business disruption, then we may have to reduce our manufacturing operations. Such a reduction could in the future have a material adverse effect on us.

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### ***AMD and Fujitsu may continue to use all of our intellectual property and the intellectual property they have transferred to us.***

In connection with our reorganization as Spansion LLC in June 2003, AMD and Fujitsu transferred approximately 400 patents and patent applications to us. In addition, AMD and Fujitsu contributed additional patents to us at the time of our initial public offering. However, both AMD and Fujitsu have retained the rights to use any patents contributed to us for an unlimited period of time. In addition, under their respective patent cross-license agreements with us, AMD and Fujitsu have also obtained licenses to our present and future patents with effective filing dates prior to the later of June 30, 2013, or such date on which they have transferred all of their shares in us, although the scope of patents under license can be impacted by a change in control of the parties or their semiconductor groups. These licenses continue until the last to expire of the patents under license expires and provide AMD and Fujitsu with licenses to all of our present and future patents in existence through such cross-license termination date. Furthermore, we entered into an Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement with AMD and Fujitsu in connection with our reorganization as Spansion Inc. in December 2005. Pursuant to that agreement, subject to our confidentiality obligations to third parties, and only for so long as AMD's and Fujitsu's ownership interests in us remain above specific minimum levels, we are obligated to identify any of our technology to each of AMD and Fujitsu, and to provide copies of and training with respect to that technology to them. In addition, pursuant to this agreement we have granted a non-exclusive, perpetual, irrevocable fully paid and royalty-free license of our rights, other than patent and trademark rights, in that technology to each of AMD and Fujitsu. Under our non-competition agreement, both AMD and Fujitsu have agreed that they will not directly or indirectly engage in a business, and have agreed to divest any acquired business, that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing certain Flash memory, which is the business in which we primarily compete. With respect to each of AMD and Fujitsu, this non-competition restriction will last until the earlier of (i) two years from the date such stockholder's ownership in us falls to or below five percent, or (ii) the dissolution of our company. Upon emergence from bankruptcy under the Plan of Reorganization, we expect each of AMD's and Fujitsu's ownership to fall below the five percent threshold. After that time, should they ever decide to re-enter the Flash memory business, AMD or Fujitsu could use our present and future patents and technologies licensed by us to AMD and Fujitsu under the cross licenses and our Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement to compete against us. If either AMD or Fujitsu were to compete with us, we could be materially adversely affected.

### ***Provisions in our corporate governance documents as well as Delaware law may delay or prevent an acquisition of us that stakeholders may consider favorable.***

Our certificate of incorporation and bylaws and Delaware law contain provisions that could make it more difficult for a third party to acquire us without the consent of our board of directors. These provisions include restrictions on the ability of our stockholders to remove directors, a classified board of directors and limitations on action by our stockholders by written consent. In addition, our board of directors has the right to issue preferred stock without stockholder approval, which could be used to make an acquisition of us more difficult. Although we believe these provisions protect our stockholders from coercive or otherwise unfair takeover tactics and thereby provide for an opportunity to receive a higher bid by requiring potential acquirers to negotiate with our board of directors, these provisions apply even if the offer may be considered beneficial by some stakeholders.

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### ITEM 6. EXHIBITS

<u>Exhibit Number</u>	<u>Description of Exhibits</u>
10.1(a)*	Third Amended and Restated Foundry Agreement by and between Spansion LLC and Spansion Japan Limited, effective as of February 2, 2010.
10.1(b)	Amendment dated April 5, 2010 to the Third Amended and Restated Foundry Agreement by and between Spansion LLC and Spansion Japan Limited.
10.2	Bailment Agreement by and between Spansion LLC and Spansion Japan Limited, entered into February 2, 2010.
10.3*	Sort Services Agreement executed April 9, 2010, between Spansion LLC and ChipMOS TECHNOLOGIES INC.
31.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

\* Confidential treatment has been requested with respect to portions of this exhibit. The redacted information has been filed separately with the SEC.

\*\* Exhibits 32.1 and 32.2 are being furnished and shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section, nor shall such exhibits be deemed to be incorporated by reference in any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as otherwise specifically stated in such filing.



[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

### THIRD AMENDED & RESTATED FOUNDRY AGREEMENT

**THIS THIRD AMENDED & RESTATED FOUNDRY AGREEMENT** (the “Agreement”) is made effective as of February 2, 2010 (the “Effective Date”), by and between **Spansion LLC**, having its principal place of business at 915 DeGuigne Drive, Sunnyvale, California 94088-3453, U.S.A. (“Spansion”), and **Spansion Japan Limited**, having its registered place of business at 2, Takaku-Kogyodanchi, Aizuwakamatsu-shi, Fukushima 965-0060, Japan (“Spansion Japan”).

#### RECITALS

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

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

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

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

**WHEREAS**, the parties amended and restated the First Restated Agreement to reflect agreed to arrangements between the parties beginning March 30, 2007 (the “Second Restated Agreement”);

**WHEREAS**, on February 10, 2009, Spansion Japan filed a proceeding under the Corporate Reorganization Law (Kaisha Kosei Ho) of Japan with the Tokyo District Court to obtain protection from Spansion Japan’s creditors (the “Spansion Japan Proceeding”) and successively the Spansion Japan Proceeding was formally commenced on March 3, 2009, when the Tokyo District Court entered the commencement order and appointed the incumbent representative director of Spansion Japan as trustee;

**WHEREAS**, on March 1, 2009, Spansion filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Chapter 11 Case”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

**WHEREAS**, on October 9, 2009, Spansion filed a motion to reject the Second Restated Agreement in the Chapter 11 Case, and on November 19, 2009, the Bankruptcy Court entered an order authorizing the rejection of the Second Restated Agreement as of October 9, 2009; and

**WHEREAS**, the parties have determined to amend and restate the Second Restated Agreement in connection with and as required by the Settlement Agreement (the “Settlement Agreement”) dated as of January 8, 2010, between Spansion and Spansion Japan.

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

## **1. GENERAL PROVISIONS AND DEFINITIONS**

This Agreement replaces, restates and supersedes the Second Restated Agreement in its entirety.

1.1. “**Aizu**” shall mean Spansion Japan’s manufacturing facilities located in Aizu-Wakamatsu, Japan, and currently referred to by the parties as JV3 and SP1.

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

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

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

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

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

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



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

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

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

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

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

1.12. “**Scrap**” shall mean any Wafer and/or Die, in any stage of completion, without regard to its ability to function, that is not in conformance with the requirements of this Agreement for Wafers to be sold to Spansion.

1.13. “**Settlement Approval Date**” shall mean the date on which the Settlement Agreement is approved by both the Tokyo District Court and the Bankruptcy Court.

1.14. “**Spansion Competitor**” shall have the meaning set forth in Schedule 1.14.

1.15. “**Spansion Technology**” shall mean, collectively, the design, manufacturing information and process know-how, technology, specifications and documentation provided by Spansion to Spansion Japan from time to time to enable Spansion Japan’s performance of its obligations to Spansion hereunder.

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

## **2. PROCESS IMPLEMENTATION**

2.1. Spansion Japan will bear all the capital investment required by it (other than probe cards and reticles for newly introduced products) to produce Flash memory products under this Agreement, including the investment for future Flash memory capacity, through the life of this Agreement. The installed capacity shall be sufficient to produce the required Wafer outs per week to satisfy the relevant QBP as described in Section 4.2, including Engineering Wafers.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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2.2. Spansion Japan will produce Flash memory products for Spansion utilizing a Qualified Process to reach the production capacity.

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

Wafer process Specification (Process Flow, PCM Specification)

Mask for Die

WLR/WLB program, if needed

WET test Program / WET test specification

Sort test Program / Sort test specification for the Die/Sort Related Program

Correlation wafer for WET/SORT

Packing specification for Wafers

Purchase Specifications for materials

ECN Procedure

Lot Disposition Procedure

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

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

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

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2.7. If the parties agree to introduce new Wafers and/or Die, Spansion and Spansion Japan shall agree on the specifications described in Section 2.3 above for such new Wafers and/or Die. Spansion and Spansion Japan shall further agree on the Qualification Plan for such new Wafers and/or Die.

### 3. WAFER PRODUCTION

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

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

3.3. Unless otherwise specifically provided herein, Spansion Japan shall, at its own responsibility and cost, purchase or procure raw or indirect materials or labor including any masks for wear out or breakage (which may be purchased through Spansion without any margin for Spansion, at Spansion Japan's expense) required by it to manufacture Wafers under this Agreement.

3.4. During the term hereof, Spansion shall provide Spansion Japan with technical support and assistance with respect to the Spansion Technology required by Spansion Japan to manufacture Wafers for Spansion as Spansion Japan may reasonably request from time to time.

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

3.6. Spansion Japan shall adhere to all current specifications relating to the manufacture and disposition of product. This includes, but is not limited to, statistically defined product specific yield and bin trip limits currently in affect for all products. These limits should be re-evaluated on a quarterly basis (as defined in the specifications) and should be used to define the lower yield limits for shipment (mutually agreed upon by both parties). All specifications related to the current "LTC" and "LDR" systems must also be maintained. Spansion Japan shall maintain the existing quality system and all specifications relevant to maintain their ISO/TS16949 certification.

3.7. Spansion Japan shall return Scrap which cannot be reclaimed to Spansion at Spansion's request, or otherwise destroy and properly dispose of all Scrap in order to prevent any unauthorized sale of any Wafers. Spansion Japan shall maintain customary Scrap procedures, subject to the reasonable approval of Spansion, which shall include polishing the Wafer to render unreadable, then selling or recycling, and shall record all products scrapped including lot history, reason for scrap and Spansion's approval for scrap. Spansion shall have the rights to audit the scrap procedures and to witness scrap of Spansion's material with reasonable notice.

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#### 4. ORDERING PROCEDURE

4.1. For every Spansion fiscal quarter (a “Quarter”), Spansion Japan shall provide to Spansion in writing by the 14th day of the previous Quarter the information listed below which is required by Spansion to make its production plan for the next two (2) Quarters, in the format and by the date designated by Spansion.

Weekly Wafer starts capacity

Weekly Wafer outs capacity

Weekly Wafer sort capacity by test platform

Cycle time for Wafer fabrication and Wafer sorting

Line yield

Sort Line yield

Sort test (Die) yield

Weekly operation rate

Risk input start schedule for new Die

With respect to planned new products, for every Quarter, Spansion shall provide to Spansion Japan in writing by the beginning of the previous Quarter the information listed below in “Spansion Product Data Warehouse” (SPDW).

Risk input start schedule for new Die

Sort test time commitment

In addition, for strategic planning purposes, for each Quarter, (i) Spansion Japan shall provide to Spansion in writing by the 14th day of the previous Quarter, Spansion Japan’s anticipated starts capacity, outs capacity, and sorts capacity for the next four (4) Quarters and (ii) Spansion shall provide to Spansion Japan in writing by the 14th day of the previous Quarter, Spansion’s wafer demand capacity through the earlier of (i) each of the next four (4) Quarters, and (ii) the anticipated date of termination of this Agreement.

4.2. Spansion shall make, by no later than sixty (60) days before the start of each Quarter, a production plan for Spansion Japan for such Quarter and the Quarter immediately following such Quarter, based on the information provided by Spansion Japan and the demand forecast from Spansion’s customers. This production plan, described in this Section 4, is the Quarterly Beginning Plan (“QBP”). Within five

(5) business days after Spansion Japan' s receipt of a QBP, Spansion Japan shall either accept or reject the portion of the QBP for the first Quarter covered by such QBP. Each QBP shall also specify (i) the monthly delivery dates for the Wafers specified in such QBP, and (ii) the Target Yield, as defined in the attached Exhibit B, with respect to such Wafers.

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4.3. Once Spansion has completed the production plan as described in Section 4.2, Spansion will submit the plan in writing to Spansion Japan. The QBP shall become the official production plan for Spansion and Spansion Japan for the immediately following Quarter, and Spansion Japan shall allocate the production capacity sufficient to fulfill the QBP for such Quarter. QBPs shall be firm and binding on Spansion for the overall number of Wafers specified therein. Notwithstanding the foregoing, Spansion may request, on a weekly basis, reasonable changes to a QBP already accepted by Spansion Japan pursuant to Section 4.2. Spansion Japan shall not unreasonably withhold its consent to such requests, provided that (i) Spansion may not request any alterations in the overall number of Wafers to be produced; and (ii) Spansion may not request any changes in product mix if production of the relevant Wafers has either already commenced or is scheduled to commence within three (3) business days after the applicable QBP update request.

In connection with any change to a QBP involving a request to hold certain lots or products, Spansion Japan shall in no event be obligated to hold such lots or products beyond the end of the second (2nd) fiscal month following the month of its receipt of the request to change the QBP. For the avoidance of doubt, in the event that Spansion requests such a change to a QBP on January 20th, Spansion Japan would not have any obligation to hold such lots or products beyond the end of the fiscal month of March. Within fifteen (15) days of the expiration of such holding period, Spansion shall pay to Spansion Japan for any Wafers it held for such period a pro rata portion of the Wafer price based on the number of steps through which such Wafers had been processed at the time such Wafers were placed on hold. At Spansion's option, Spansion may reduce the Minimum Commitment by the pro rata amount paid by Spansion for such held Wafers.

Notwithstanding anything else contained in this Section 4.3, Spansion commits to purchase Wafers for each Quarter as shown in the attached Exhibit D (the "Minimum Commitment"). In addition, Spansion may order in any given QBP additional Wafers in an amount not to exceed twenty (20) percent of the applicable Minimum Commitment and Spansion Japan shall allocate the production capacity sufficient to fulfill such additional orders. Spansion Japan may determine in its sole discretion whether to accept any orders in excess of such twenty (20) percent amount. Any orders for Wafers in excess of the Minimum Commitment for any Quarter shall not be counted towards the total Minimum Commitment amount.

4.4. Spansion will purchase Wafers from Spansion Japan pursuant to a written purchase order in the form attached as Exhibit G (each, a "Purchase Order"). Purchase Orders shall be sent to Spansion Japan by confirmed facsimile, electronic transmission, or other mutually-agreed means at least sixty (60) days in advance of the applicable Quarter except that the initial purchase order shall be sent as promptly as practicable following the Settlement Approval Date (or such other date as may be agreed between the parties). For the avoidance of doubt, except as otherwise provided in Section 4.3, Spansion shall purchase all production Wafers that are ordered by Spansion pursuant to a valid Purchase Order. All JV3 Wafers purchased by Spansion pursuant to Purchase Orders sent by Spansion to Spansion Japan from January 9, 2010 through the Effective Date shall count towards the total Minimum Commitment amount and all Wafer sort services purchased pursuant to Purchase Orders sent by Spansion to Spansion Japan from January 9, 2010 through the Effective Date shall count towards the floor revenue amounts described in Section 6.1 below.

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## 5. PRICING

Prices will be calculated as set forth in Exhibits B, D, and F attached hereto. For the avoidance of doubt, the prices set forth in Exhibits B, D, and F attached hereto shall apply to all Wafers accepted by Spansion after the Effective Date irrespective of whether such Wafers were ordered prior to or after the Effective Date.

## 6. WAFER SORT SERVICES

6.1. Spansion shall purchase Wafer sort services from Spansion Japan based on the hourly rates specified on the attached Exhibit B. Notwithstanding the foregoing, Spansion agrees to purchase or pay for sufficient Wafer sort services to achieve an agreed floor revenue to Spansion Japan of not less than [\*] per Quarter in the aggregate for Aizu through the date of the termination of this Agreement (excluding sort service fees paid for use of the T5335 KTD High Temp Test); provided, however, that such agreed floor revenue shall be prorated to [\*] for the first fiscal Quarter of 2010 in order to take into account the number of days that elapse between the commencement of the first fiscal Quarter of 2010 and the Effective Date. In the event that Spansion Japan sells SP1 sort services or JV3 sort services, as the case may be, the foregoing floor revenue shall be deemed to have been comprised of [\*] per Quarter in the aggregate for JV3 and [\*] per Quarter in the aggregate for SP1, and Spansion shall no longer have any obligation to purchase or pay for sufficient Wafer sort services to achieve such floor revenue for SP1 (in the event of a sale of SP1 sort services) or JV3 (in the case of a sale of JV3 sort services). Consistent with the Bailment Agreement dated as of even date between Spansion and Spansion Japan, Spansion shall have the right to use and distribute probe cards freely among sort locations so long as it meets the floor revenue requirement described above. Spansion Japan shall be entitled to use the Spansion probe cards solely for testing purposes in connection with the Wafer sort services under this Agreement. Upon termination of the Wafer sort services, promptly upon request, Spansion Japan will return (at Spansion's expense) any of Spansion's probe cards still in its possession to Spansion. Upon termination of the Wafer sort services, promptly upon request, Spansion will return (at Spansion Japan's expense) any of Spansion Japan's probe cards still in its possession to Spansion Japan. For avoidance of doubt, under no circumstances shall Spansion Japan not be entitled to the floor revenue commitments described above because Spansion Japan was unable to perform or unable to timely perform Wafer sort services because probe cards needed by Spansion Japan to perform the Wafer sort services outlined above were not in its possession through no fault of Spansion Japan.

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Spansion shall provide Spansion Japan with its required loading of the sort testers on a weekly basis defining the required load by product by tester. Spansion and Spansion Japan shall meet and confer weekly to discuss and agree upon such loading of the sort testers. Following such meeting, Spansion Japan shall load the sort testers in conformity with the agreed upon required loading. Spansion Japan shall download every Wafer map to the existing system or a comparable system and shall provide Spansion with reasonable access to such system in order to access such Wafer maps and other test data. Reconciliation shall be made on a weekly basis. Spansion Japan shall also provide Spansion on an as-needed basis, with the capability to log onto the Aizu testers.

6.2. At all times during the term of this Agreement, probe cards owned by Spansion Japan will remain the sole property of Spansion Japan, and upon termination of the Wafer sort services or the sale of JV3 or SP1, as applicable, upon request, Spansion will return any of Spansion Japan's probe cards still in its possession to Spansion Japan. At all times during the term of this Agreement, probe cards owned by Spansion will remain the sole property of Spansion, including all Intellectual Property Rights therein.

## **7. PAYMENT FOR WAFERS AND WAFER SORT SERVICES**

7.1. Spansion Japan will invoice Spansion on a Wafer out basis for all products fabricated on behalf of Spansion hereunder at the Wafer evaluation stage. Title and all risk of loss or damage to such products shall transfer from Spansion Japan to Spansion immediately after such Wafers have passed Wafer evaluation stage. The terms of the delivery and responsibilities for costs and insurance (but not the terms of transfer of title and risk of loss or damage, which is provided in the preceding sentence) relating to all products covered by this Agreement and all FSET and FAB25 Wafers sorted in Aizu shall be as follows, unless otherwise agreed by the parties: (i) FCA (Incoterms 2000) Narita Airport using a freight forwarder designated by Spansion, (ii) Spansion Japan shall pay for freight and insurance up to Narita Airport and Spansion shall be responsible for all freight and insurance beyond that point and (iii) all products will be deemed irrevocably accepted upon delivery. With regard to products subject to sort services, Spansion Japan shall serve as bailee of such products (with Spansion maintaining title and risk of loss or damage), with an obligation to exercise commercially reasonable care to safeguard such products from the point at which they pass the Wafer evaluation stage (for those products fabricated on behalf of Spansion hereunder) or the point at which they are delivered unloaded to SP1 or JV3, as applicable (for those products provided by Spansion or a third party for sorting) until the point of their delivery to Spansion in accordance with this Section 7.1.

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7.2. Payment from Spansion to Spansion Japan shall be made in Japanese Yen through wire transfer, or other means agreed upon by the parties. Spansion agrees to pay Spansion Japan for Wafer purchases within five (5) Japanese business banking days after the 15th day of the second month following the month of the completion of the fabrication of the Wafers. Upon any discrepancy between the invoiced quantity and the actual quantity that Spansion accepts, Spansion shall inform Spansion Japan of the discrepancy in a timely manner, and Spansion and Spansion Japan shall adjust such amount immediately after receipt of such notice.

Spansion agrees to pay Spansion Japan for Wafer sort services within five (5) Japanese business banking days after the 15th day of the second month following the month Spansion Japan performed such Wafer sort services. Wafer sort services shall be invoiced by Spansion Japan on a monthly basis.

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

7.4. On a weekly basis, Spansion Japan shall deliver to Spansion a report of (a) Wafer shipments listing product, lot identification, ship date, source fab, Wafer quantity and Die quantity and (b) sort hours used by product, tester type, QBP test time, actual test time and actual Die yield.

## **8. LIMITED WARRANTY; WARRANTY DISCLAIMER**

8.1. Spansion Japan warrants that Wafers and/or Die delivered hereunder shall meet the applicable specifications which are agreed upon by Spansion and shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of shipment from Spansion Japan. If, during such twelve (12) month period, Spansion notifies Spansion Japan of any defect in Wafers and/or Die subject to the foregoing warranty, Spansion Japan shall either replace such defective Wafers and/or Die or credit their purchase price to Spansion, at Spansion' s option. In addition, if, during the eighteen (18) month period following Spansion' s receipt of Wafers and/or Die hereunder, Spansion notifies Spansion Japan of any defect in Wafers and/or Die, Spansion Japan will reasonably assist Spansion in connection with Spansion' s compliance with and fulfillment of its warranty policies. Spansion Japan further warrants that its performance of services and use of Spansion Japan technology, methods and processes in connection with its performance of its obligations hereunder do not violate any third party Intellectual Property Rights.

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

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

## **9. RECORDS; AUDIT; PARTIES' ACTIVITIES**

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

9.2. Spansion may, with Spansion Japan's prior consent, which shall not be unreasonably withheld, and with at least fifteen (15) days' prior notice to Spansion Japan, send its employees (who may be accompanied by designated customers) to visit Spansion Japan's production facilities to inspect fabrication of products and conduct other activities contemplated by this Agreement. Such visits shall be conducted during Spansion Japan's normal working hours. While visiting in Spansion Japan's facilities, Spansion shall at all times fully comply with Spansion Japan's plant rules and regulations as well as all reasonable instructions that may be issued by Spansion Japan's employees or personnel accompanying such employees or customers. Spansion shall indemnify and hold harmless Spansion Japan and its employees from and against any and all direct losses or damages without limitation to any of Spansion Japan's property or loss of personal health or life, caused by Spansion's employees or customers during any such visit. Spansion may assign Spansion employees to work at each facility manufacturing or sorting Wafers to be purchased by Spansion pursuant to this Agreement on an as needed or other mutually agreed basis. Spansion Japan will grant these employees reasonable access to secured office space, conference rooms, food and break facilities, employee parking facilities and appropriate sections of the factory and support facilities including clean room where such Wafers are manufactured, sorted or placed, in each case on an as-needed basis. Spansion Japan will allow such employees to be full and active participants on problem solving teams with respect to the manufacturing or sorting of Wafers to be purchased by Spansion pursuant to this Agreement. Such Spansion employees shall abide by the policies and regulations of Spansion Japan, and Spansion shall, at Spansion Japan's reasonable request, replace any employee who fails to do so.

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9.3. Spansion Japan agrees to participate in regular quality system reviews for all Wafers to be produced or sorted on behalf Spansion pursuant to this Agreement.

9.4. The parties will plan and schedule business reviews at least quarterly for products produced hereunder. The review will focus on current and forecasted business activities, feedback on performance and factory metrics, key improvement programs and activities focused on enabling the relationship between the parties and will review the status of open issues and action items. Such reviews are considered to be a key activity for the parties.

## 10. CONFIDENTIAL INFORMATION

10.1. Both parties will maintain in confidence all Confidential Information disclosed by the other party (the “Disclosing Party”). A receiving party hereunder (the “Receiving Party”) will not use, disclose or grant use of such Confidential Information except as expressly authorized by this Agreement. To the extent that disclosure to a third party is authorized by this Agreement, a Receiving Party will obtain prior agreement from such third party to whom disclosure is to be made to hold in confidence and not make use of such information for any purpose other than those permitted by this Agreement. A Receiving Party will use at least the same standard of care as it uses to protect its own information of comparable importance to ensure that its employees, agents and/or consultants do not disclose or make any unauthorized use of such Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of such Confidential Information. The obligations set forth in this Section 10 shall survive for five (5) years after any termination or expiration of this Agreement. To the extent that either party’s Confidential Information embodies or discloses confidential information of third parties, the obligations with respect to such information shall be perpetual and nothing herein shall be construed as superseding the terms and conditions of any confidentiality obligations agreed to by either party and any third party or requiring either party to conform any third-party agreement to the terms and conditions of this Agreement.

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

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## 11. INTELLECTUAL PROPERTY RIGHTS

11.1. Subject to the terms and conditions of this Agreement, Spansion grants Spansion Japan a non-exclusive, non-transferable(except to an assignee of Spansion Japan to the extent permitted under Section 15.3), royalty-free (except as provided in the Intellectual Property License Agreement between the parties dated the date hereof (the “**Intellectual Property License Agreement**”), license, without the right to sublicense (except to subcontractors of Spansion Japan’ s manufacturing of the Wafers engaged as permitted under Section 3.5, provided that such sublicense shall be strictly limited to the terms required for the performance of such subcontracted services), to use the Spansion Technology and Qualified Process during the term of this Agreement solely for purposes of making and testing Die and Wafers for sale to Spansion as required under this Agreement.

11.2. Spansion Japan acknowledges that any and all Intellectual Property Rights in or relating to the Spansion Technology, Wafers, Die, Qualified Process and the results of any Wafer sort services (collectively, “Spansion IP”) are and shall remain the property of Spansion or Spansion’ s suppliers, and nothing in this Agreement shall be deemed a transfer of any ownership rights in the Spansion IP to Spansion Japan. Except as expressly provided in the Intellectual Property License Agreement, Spansion owns and shall own all Intellectual Property Rights in or relating to any Derivatives of or arising from the Spansion IP. Except to the extent necessary to defend against third party actions against Spansion Japan arising from Spansion Japan’ s use of the Spansion IP in accordance with this Agreement and with Spansion’ s written consent (such consent not to be unreasonably withheld), Spansion Japan agrees that it will not reverse engineer any Spansion IP it receives and will not distribute, sell, transfer or disclose any Spansion IP to any third party. All other rights are reserved by Spansion. For purposes of this Agreement, “Derivatives” means derivatives of the Spansion IP, which term shall include: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for work protected by registered mask right, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (iii) for patentable or patented material, any improvement (except as otherwise provided in the Intellectual Property License Agreement); and (iv) for material protected by trade secret, any new material derived from or employing such existing trade secret.

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11.3. Spansion shall indemnify and hold harmless Spansion Japan from and against any and all losses, liabilities or damages (including reasonable fees and expense of legal counsel) (collectively, "Losses") arising from Spansion Japan's use of the Spansion IP in accordance with this Agreement in connection with Spansion Japan's performance of its obligations hereunder.

11.4. Spansion Japan shall promptly provide to Spansion written notice of its request for indemnification hereunder. The parties agree to discuss in good faith how to best handle the issues that have arisen or which may arise in the intellectual property infringement cases commenced by Samsung against Spansion Japan in the United States and Japan.

## **12. TERM AND TERMINATION**

12.1. This Agreement shall continue in full force and effect until the earlier to occur of (i) termination by mutual written agreement of the parties, (ii) the date upon which Spansion has satisfied the Minimum Commitment to purchase Wafers, the date on which Spansion Japan sells JV3 to a Spansion Competitor, and (iv) the termination of this Agreement pursuant to Section 14.

12.2. Notwithstanding any termination of this Agreement, the provisions of Sections 6., 7, 8, 9 (for a period of five (5) years commencing on such termination), 10, 11.2, 12.2, 12.3, 13 and 15 shall survive any termination of this Agreement, provided that, in the case of Section 6, (i) the obligation of Spansion Japan to provide sort services at SP1 in Aizu shall automatically terminate upon a sale of the sorting services at SP1 (provided that Spansion receives sixty (60) days prior written notice of such termination) and (ii) Spansion's commitment to purchase Wafers and/or Wafer sort services from JV3 in Aizu shall automatically terminate in the case of a sale of JV3 to a Spansion Competitor (but shall continue in the event JV3 is not sold to a Spansion Competitor). For clarity, upon any termination of this Agreement, the licenses granted by Spansion to Spansion Japan herein shall terminate and (except as provided in the Intellectual Property License Agreement) Spansion Japan shall immediately cease to use all Spansion IP, Derivatives and Spansion Confidential Information.

12.3. Spansion agrees that Spansion Japan shall have a good faith right of first offer for 170nm, 130nm and 110nm Wafer demand in excess of Fab 25 capacity for a term of at least two and one-half (2.5) years beginning in the third (3rd) Quarter of 2011. In addition, following termination of this Agreement, Spansion and Spansion Japan will discuss in good faith additional arrangements for the shipment of Wafers by Spansion Japan to Spansion in light of market demand.

## **13. LIQUIDATED DAMAGES; LIMITATION OF LIABILITY**

13.1. In the event that Spansion Japan fails in a material way (excluding failures due to manufacturing or other problems not within the control of Spansion Japan) either to deliver Wafers or perform Wafer sort services on a timely basis or which do not meet acceptable minimum quality specifications, and it is determined, pursuant to the dispute resolution procedures set forth in Section 14 below or otherwise, that such failure was within Spansion Japan's control, then for any such failure, (a) Spansion shall be entitled to refuse delivery and not to pay for untimely, undelivered or unacceptable quality Wafers or Wafer sort services and the Minimum Commitment with respect to the amount of any untimely, undelivered or unacceptable quality Wafers and/or Wafer sort services shall be deemed extended by one Quarter for each such failure regarding such Wafers and/or Wafer sort services and (b) Spansion Japan shall pay to Spansion (x) in the case of untimely, undelivered or unacceptable quality Wafers, [\*] which is untimely, undelivered or of unacceptable quality and (y) in the case of untimely, unperformed or unacceptable quality Wafer sort services, fifty (50) percent of the applicable sort cost per hour based on capacity not timely provided. With respect to any payments required by Spansion Japan under the prior sentence, Spansion shall be entitled to offset such amounts against any payments due to Spansion Japan under this Agreement.

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With respect to any payments required by Spansion Japan under the prior sentence, (i) Spansion shall be entitled to offset such amounts against any payments due to Spansion Japan under the Settlement Agreement, and (ii) such payments shall be Spansion's sole and exclusive remedy for any claim arising under this Section 13, other than for fraud and other causes of action that are not waivable under applicable law, and provided that this provision shall not prevent Spansion from seeking injunctive relief or other equitable remedies.

13.2. EXCEPT WITH RESPECT TO A BREACH BY EITHER PARTY OF SECTION 10 OR 11, IN NO EVENT WILL EITHER PARTY BE LIABLE, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, HOWEVER ARISING, FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER THIS AGREEMENT. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **14. EVENTS OF DEFAULT**

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

- (i) Such party fails to pay within ten (10) days after its due date, any amounts due under this Agreement;
- (ii) Such party ceases to do business as a going concern;
- (iii) A receiver is appointed for all or any part of the property of such party or such party makes any assignment for the benefit of its creditors;

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

- 
- (iv) In the case of Spansion, Spansion shall be in default in the event that the Chapter 11 Case is converted to chapter 7;
  - (v) In the case of Spansion Japan, Spansion Japan shall be in default in the event that it liquidates, dissolves, or otherwise winds up its operations; and
  - (vi) Such party breaches any of its material obligations under this Agreement (other than those covered in Section 14(i)-14(iv) above).

Upon the occurrence of an Event of Default specified in clauses (i) through above, the party not in default shall have the right upon written notice to the party in default, to immediately terminate this Agreement.

Upon the occurrence of an Event of Default specified in clause (vi) above, the party not in default shall provide written notice to the party in default (a "Default Notice") of such Event of Default. Within five (5) days of the delivery of the Default Notice, representatives of the parties shall meet and confer to negotiate in good faith to cure such Event of Default or reach such other agreement acceptable to both parties. In the event that such meetings do not cure the Event of Default within fifteen (15) days of the Default Notice, senior officers of each party shall meet and confer to negotiate in good faith to cure such Event of Default or reach such other agreement acceptable to both parties. In the event that such meetings do not cure the Event of Default or no acceptable agreement is reached within thirty (30) days of the Default Notice, the parties shall submit any remaining disputes to an independent, third-party mediator acceptable to both parties. In the event that no agreement is reached by the parties as a result of such mediation within thirty (30) days of the commencement of such mediation, the party not in default shall have the right, upon written notice to the party in default, to immediately terminate this Agreement.

## 15. GENERAL

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

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

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



15.3. This Agreement shall not be assigned by Spansion Japan whether voluntarily or involuntarily or by operation of law, in whole or in part, to any third party without the prior written consent of Spansion, provided that Spansion Japan may assign its rights and obligations under this Agreement to any purchaser or transferee of JV3 at Aizu so long as such purchaser or transferee is not a Spansion Competitor. In the event of a permitted assignment under this Section 15.3, the assigning party will have no further obligations arising after the date of the assignment with respect to this Agreement, provided that the assignee agrees in writing to assume and be bound by the terms, conditions and obligations of such party hereunder. Any purported assignment not in compliance with this Section 15.3 shall be null and void from the beginning.

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

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

if to Spansion:

Attn: Legal Department  
915 DeGuigne Drive  
Sunnyvale, California 94088-3453, U.S.A.

if to Spansion Japan:

Attn: Trustee  
2 Takaku-Kogyodanchi  
Aizuwakamatsu-shi, Fukushima, 965-0060, Japan

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

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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

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

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

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

15.10. Spansion and Spansion Japan shall use their best efforts to resolve by mutual agreement any disputes, controversies, or differences which may arise from, under, out of, or in connection with this Agreement.

15.11. This Agreement shall become effective as of the Effective Date, subject to (i) approval by the Tokyo District Court in connection with the Spansion Japan Proceeding, and (ii) approval of the Bankruptcy Court having jurisdiction over the Chapter 11 Case.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

15.12. This Agreement supersedes any arrangements, understandings, promises or agreements as to the subject matter of this Agreement made or existing between the parties prior to the latest date on which this Agreement is executed by either party. This Agreement constitutes the entire understanding between the parties as to the subject matter of this Agreement. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties. It is acknowledged that the terms of this Agreement have been negotiated between the parties and that each party was represented by separate counsel. Notwithstanding the foregoing, nothing contained in this Agreement shall constitute a waiver, release of, or amendment or other modification to, any other agreement between the parties relating to a subject other than the subject matter of this Agreement.

15.13. Nothing contained in this Agreement shall be deemed to prohibit Spansion Japan from selling Aizu, provided that Spansion Japan provide Spansion with at least sixty (60) days written notice of such sale.

15.14. Except as otherwise expressly provided herein, in no event shall the terms of this Agreement be deemed to apply to any products produced, whether wholly or partially processed, by Spansion Japan prior to January 9, 2010.

15.15. Exhibits.

Exhibit A: [Intentionally Omitted]

Exhibit B: Quarterly Pricing

Exhibit C: [Intentionally Omitted]

Exhibit D: Q110 through Q211 Minimum Commitment

Exhibit E: [Intentionally Omitted]

Exhibit F: R&D Wafers

Exhibit G: Purchase Order

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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

**SPANSION JAPAN LIMITED**

**SPANSION LLC**

/s/ Masao Taguchi

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Authorized Signature**

Masao Taguchi

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Name**

Trustee

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Title**

February 2, 2010

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

[Signature Page to Foundry Agreement]

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

**SPANSION JAPAN LIMITED**

**SPANSION LLC**

\_\_\_\_\_  
**Authorized Signature**

/s/ Randy W. Furr  
\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Name**

Randy W. Furr  
\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Title**

EVP & CFO  
\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

2 Feb 2010  
\_\_\_\_\_  
**Date**

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

[Signature Page to Foundry Agreement]

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**Exhibit A:**

[Intentionally Omitted]

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

## Exhibit B: Quarterly Pricing

### 1. Per Wafer Price (for finished unsorted Wafers from JV3 during an applicable Quarter)

Q110 through Q211:

[\*]

### 2. Sort Service Fee Calculation

[\*]

[\*]

[\*]

[\*]

### 3. Minimum Tester Availability

The number of testers and minimum availability shall be as follows for the following testers:

<u>Tester</u>	<u>JV3</u>	<u>SP1</u>	<u>Total # of Testers</u>	<u>Minimum Availability</u>
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]	[*]

### 4. Yield Adjustment

#### Definitions

- 1) “Minimum Yield” means, with respect to a particular sorted Wafer, the minimum acceptable Yield for such sorted Wafer as set forth below.
- 2) “Target Yield” means, with respect to a particular sorted Wafer, the Target Yield for such sorted Wafer as set forth in the applicable QBP.
- 3) “Yield” means the percentage represented by net Die per Wafer divided by gross Die per Wafer.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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Summary

The parties agree on the Target Yield as specified in the applicable QBP and the below Minimum Yield for the Wafers. Compliance with the Target Yield standards is a performance obligation of Spansion Japan under this Agreement. Without limiting the foregoing, Spansion shall have the right to reject any individual Wafer or its entire lot which do not meet the Minimum Yield.

Spansion Japan shall neither ship nor bill Spansion for any Wafer that, to Spansion Japan's knowledge, fails to meet the Minimum Yield applicable thereto unless specifically instructed in writing by Spansion to do so. Spansion Japan shall notify Spansion at the earliest possible time of any Wafer that is below the Minimum Yield or otherwise fails to meet the applicable quality standards. Spansion Japan must notify Spansion in advance of shipment of any Wafers that do not comply with the requirements of this Exhibit or Agreement.

If Spansion Japan scraps Wafers ordered by Spansion pursuant to the Q110 through Q211 Minimum Commitment or a subsequent QBP due to Spansion's change to a particular mask set or at Spansion's direction, Spansion shall pay to Spansion Japan a pro rata portion of the Wafer price based on the number of steps through which such Wafers had been processed at the time such Wafers were scrapped. For clarification purposes, such pro rata payment shall apply only to Wafers that Spansion committed to purchase pursuant to the Q110 through Q211 Minimum Commitment or a subsequent QBP.

Target Yield

As specified in the applicable QBP.

Minimum Yield

[\*]

[\*]

Contingency Cases

If the actual quarter average Yield for a particular device falls below the Target Yield as defined in a particular QBP by [\*] within any given Quarter, the price per Wafer shall be adjusted pro rata as follows: Spansion shall pay Spansion Japan the actual Yield divided by the Target Yield times the base Wafer price.

If the actual quarter average Yield for a particular device falls above the Target Yield as defined in a particular QBP by [\*] within any given Quarter, the price per Wafer shall be adjusted pro rata as follows: Spansion shall pay Spansion Japan the actual Yield divided by the Target Yield times the base Wafer price.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



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**Exhibit C:**

[Intentionally Omitted]

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

**Exhibit D: Q110 through Q211 Minimum Commitment**

Spansion agrees to purchase from Spansion Japan as the Q110 through Q211 Minimum Commitment the following volume of JV3 unsorted Wafers of the following technologies: 110 nm, 130 nm, and 170 nm, at the pricing agreed on by the parties in Exhibit B:

Q110	Q210	Q310	Q410	Q111	Q211
[*]	[*]	[*]	[*]	[*]	[*]

Spansion agrees to pay Spansion Japan for Wafer sort services as agreed by the parties in Exhibit B.

If Spansion Japan scraps Wafers ordered by Spansion pursuant to the Q110 through Q211 Minimum Commitment or a subsequent QBP due to Spansion' s change to a particular mask set or at Spansion' s direction, Spansion shall pay to Spansion Japan a pro rata portion of the Wafer price based on the number of steps through which such Wafers had been processed at the time such Wafers were scrapped. For clarification purposes, such pro rata payment shall apply only to Wafers that Spansion committed to purchase pursuant to the Q110 through Q211 Minimum Commitment or a subsequent QBP. At Spansion' s option, Spansion may reduce the Q110 through Q211 Minimum Commitment by the pro rata amount paid by Spansion for such scrapped Wafers.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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**Exhibit E:**

[Intentionally Omitted]

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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## Exhibit F: R&D Wafers

Spansion may purchase Wafers for products not yet qualified for commercial production (“R&D Wafers”) from Spansion Japan, and Spansion Japan agrees to provide such R&D Wafers at the following price: the Wafer pricing agreed on by the parties in Exhibit B plus ten (10) percent.

Spansion may also purchase partially processed R&D Wafers from Spansion Japan, and Spansion Japan agrees to provide such partially processed R&D Wafers at the following price: a pro rata portion of the Wafer pricing agreed on by the parties in Exhibit B plus ten (10) percent.

If Spansion Japan scraps R&D Wafers ordered by Spansion pursuant to a valid Spansion purchase order after the Effective Date due to Spansion’s change in a particular mask set or at Spansion’s instruction, Spansion shall pay to Spansion Japan a pro rata portion of the R&D Wafer price based on the number of steps pursuant to which such R&D Wafers had been processed at the time such R&D Wafers were scrapped. For clarification purposes, such pro rata payment shall apply only to R&D Wafers that Spansion committed to purchase pursuant to a valid Spansion purchase order.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



- DO NO EXCEED VALUE OF PO WITHOUT WRITTEN CHANGE ORDER FROM SPANSION GLOBAL SUPPLY MANAGEMENT. INVOICES WITHOUT Spansion LLC PO & LINE ITEM NUMBERS WILL BE RETURNED.

XX

TEXT FOR EXAMPLE PO FOR EXHIBIT TO FOUNDRY AGREEMENT

\*\*\*\*\*

NOTE: The payment terms set out in paragraph 5 below replace and

VENDOR, PLEASE NOTE...

1. Please sign and return attached acknowledgement immediately.
2. Provided this order is not subject to the Evaluated Receipts Settlement payment process, vendor must send all invoices directly to the Spansion Accounts Payable department at the address referenced above.
3. This order can be accepted only upon the terms and conditions specified on the face hereof and attached hereto, including the attached Terms and Conditions of Purchase and any specifications, drawings or other documents as are incorporated herein by reference and attached hereto. If no Terms and Conditions are attached, contact the Buyer named above immediately for a copy.
4. Any additional or different terms in any document provided by vendor, even if such document is incorporated by reference, are deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Any reference to any proposal, quotation or other communication by vendor, unless specifically indicated to the contrary herein, shall be deemed to be limited to the description of the goods and services.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



Spansion LLC  
 915 DeGuigne Drive  
 P.O. Box 3453

Phone: 1-408-962-2500  
 Fax: 408-982-6254  
 Internet: www.spansion.com

**Purchase Order**

Bill To:

Spansion LLC - US Sunnyvale  
 5204 East Ben White Blvd.  
 Mail Stop 13Png  
 Austin TX 78741

Vendor Address
Spansion Japan Limited - Takaku
JAPAN
Fax:

Information	
PO Number	5100226752 Rev No: 00
Date	2010/01/14
Vendor No.	210062
Currency	JPY
Payment Terms	N/5 Days from 15th of 2nd Month
Buyer/Extension	Joanne Aiello / 26669
Confirmed with	
Incoterms	FCA Narita Airport
CA Permit No.	SRGH100-241785
TX Permit No.	1-65-1180482-1

Ship To:

Spansion LLC - US Sunnyvale  
 943 DeGuigne Dr.  
 SUNNYVALE CA 94085  
 USA

Item	Material/Description	Dely Date	Qty UM	Net Price	Net Amount
	<p><i>Superseded the payment terms which appear on Page 1 of the Purchase order.</i></p> <p><i>Also, Item # 3 under "Vendor please note" on Page 1 of this PO is replaced and superseded by the following:</i></p> <p><i>"This order can be accepted only upon the terms and conditions specified on the face hereof as set forth in the amended foundry agreement and included in any specifications, drawings or other documents as are incorporated herein by reference and attached hereto. In the event of any conflict between the terms of any such documents, the terms of the amended foundry agreement shall prevail."</i></p> <p>*****</p> <p><i>1. This purchase order covers shipments of wafers made and sort services provided during the period starting [ ] and ending [ ].</i></p> <p><i>2. Japan will ship wafers to LLC's locations in accordance with the weekly schedules below and attached. The schedule may be adjusted in accordance with the amended foundry agreement.</i></p> <p><i>3. This PO Is issued pursuant to the amended foundry agreement. JV3 wafers shipped and sort services provided pursuant to this PO will, on the terms and to the extent provided in the amended foundry agreement, count</i></p>				

<p><i>toward the minimum purchase commitments as provided in the amended foundry agreement.</i></p> <p><i>4. Spansion Japan will invoice Spansion for wafers on a "wafer out" basis for all wafers purchased by Spansion under this purchase order.</i></p> <p><i>Spansion Japan will invoice Spansion on a monthly basis for sort service fees.</i></p>				
--	--	--	--	--

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



**Exhibit G: Purchase Order**



Spansion LLC  
 915 DeGuigne Drive  
 P.O. Box 3453

Phone: 1-408-962-2500  
 Fax: 408-982-6254  
 Internet: www.spansion.com

**Purchase Order**

**Bill To:**

Spansion LLC - US Sunnyvale  
 5204 East Ben White Blvd.  
 Mail Stop 13Png  
 Austin TX 78741

Vendor Address

Spansion Japan Limited - Takaku

JAPAN

Fax:

Information

PO Number 5100226752 Rev No: 00  
 Date 2010/01/14  
 Vendor No. 210062  
 Currency JPY  
 Payment Terms N/5 Days from 15th of 2nd Month  
 Buyer/Extension Joanne Aiello / 26669

Confirmed with

Incoterms FCA Narita Airport  
 CA Permit No. SRGH100-241785  
 TX Permit No. 1-65-1180482-1

**Ship To:**

Spansion LLC - US Sunnyvale  
 943 DeGuigne Dr.  
 SUNNYVALE CA 94085  
 USA

Item	Material/Description	Dely Date	Qty UM	Net Price	Net Amount
	<p>5. Payment from LLC to Spansion Japan shall be made in Japanese Yen Through wire transfer, or other means agreed upon by the parties. Payment will be due five (5) Japanese business banking days after the 15<sup>th</sup> of the second month following the month of the completion of fabrication of the wafers or the performance of the sort services, as applicable.</p> <p>6. Spansion Japan shall deliver all wafers covered by this PO to Spansion on a FCA (Incoterms 2000) Narita Airport basis, unless otherwise agreed by the parties. Spansion Japan shall pay for freight and insurance up to Narita Airport and Spansion shall be responsible for all freight and insurance beyond that point. This is not intended to vary the terms of delivery under the amended foundry agreement, which shall govern in the event of a conflict.</p> <p>7. Wafer Prices (unsorted)                      - Price for JV3 die is based on unsorted wafer price of [*].                      - Price for Sp1 die is based on unsorted wafer price of [*].                      - Price for FSET die is based on unsorted wafer price of [*].</p> <p>8. Sort Service Fee</p>				



**Exhibit G: Purchase Order**



Spansion LLC  
 915 DeGuigne Drive  
 P.O. Box 3453

Phone: 1-408-962-2500  
 Fax: 408-982-6254  
 Internet: www.spansion.com

**Purchase Order**

**Bill To:**

Spansion LLC - US Sunnyvale  
 5204 East Ben White Blvd.  
 Mail Stop 13Png  
 Austin TX 78741

<b>Information</b>			
PO Number	5100226752	Rev No:	00
Date	2010/01/14		
Vendor No.	210062		
Currency	JPY		
Payment Terms	N/5 Days from 15th of 2nd Month		
Buyer/Extension	Joanne Aiello / 26669		
<b>Confirmed with</b>			
Incoterms	FCA Narita Airport		
CA Permit No.	SRGH100-241785		
TX Permit No.	1-65-1180482-1		

<p>Vendor Address</p>  <p>Spansion Japan Limited - Takaku</p>  <p>JAPAN</p>  <p>Fax:</p>
--

**Ship To:**

Spansion LLC - US Sunnyvale  
 943 DeGuigne Dr.  
 SUNNYVALE CA 94085  
 USA

Item	Material/Description	Dely Date	Qty UM	Net Price	Net Amount
	Total Price				1 *****

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
SPANSION LLC

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
Vendor Acknowledgement

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

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### Schedule 1.14: Spansion Competitor

Spansion Competitor means (i) any of the following NOR or NAND Flash memory manufacturer that competes or may compete with Spansion in the NOR/NAND standalone product area: [\*], and (ii) any integrated device manufacturers of any non-volatile memory products.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



April 5, 2010

Spansion Japan Limited  
2, Takaku-Kogyodanchi  
Aizuwakamatsu-shi  
Fukushima 965-0060  
Japan

Ladies and Gentlemen:

We refer to that certain Foundry Agreement (together with the schedules and exhibits attached thereto, the "Foundry Agreement") dated February 2, 2010, by and between Spansion LLC, having its principal place of business at 915 DeGuinne, Sunnyvale, California, USA ("Spansion LLC") and Spansion Japan Limited, having its registered place of business at 2, Takaku-Kogyodanchi, Aizuwakamatsu-shi, Fukushima 965-0060, Japan ("Spansion Japan"). Capitalized terms used and not defined herein have the meanings assigned to them in the Foundry Agreement.

Spansion LLC and Spansion Japan hereby agree that, any provisions in the Foundry Agreement to the contrary notwithstanding, wafers provided by Spansion Japan to Spansion LLC during the period from January 9, 2010 through April 25, 2010, whether pursuant to the Foundry Agreement or the purchase order covering the period from January 9, 2010 through January 29, 2010, shall be invoiced upon delivery FCA Narita Airport and title with respect to such wafers will not transfer to Spansion LLC until such delivery has occurred. However, risk of loss and damage to such wafers shall pass to Spansion LLC on a fab-out basis in accordance with the Foundry Agreement.

Spansion LLC and Spansion Japan further agree that sort services during this period will be invoiced on a "per wafer" basis upon delivery of the sorted wafers FCA Narita Airport. Spansion Japan and Spansion LLC will "true-up" the total sort service fee so invoiced so that the net sort service fee for this period shall be the same as if calculated in accordance with the Foundry Agreement (which in no event shall be less than the minimum specified in the Foundry Agreement).

Except to the extent specifically varied hereby, the terms of the Foundry Agreement shall continue in full force and effect. For wafers and sort services provided pursuant to the Foundry Agreement from and after April 26, 2010, the delivery terms of the Foundry Agreement shall apply.

**Spansion Inc.**

915 DeGuigne Drive  
Sunnyvale, California 94085

T 408.962.2500  
F 408.962.2502

[www.spansion.com](http://www.spansion.com)

---

Please confirm your agreement and acceptance of the foregoing by executing this letter in the space provided below.

Sincerely,

Randy W. Furr

Authorized Signatory

Title: EVP & CFO

Agreed and Accepted by:

SPANSION JAPAN LIMITED

Masuo Taguchi

Authorized Signatory

Title: Trustee

- 2 -

## Bailment Agreement

This Bailment Agreement (the “*Agreement*”) is made and entered into this 2nd day of February 2010 (the “*Effective Date*”) by and between Spansion Japan Ltd., a Japanese corporation (“*Spansion Japan*”) and Spansion LLC, a Delaware limited liability company (“*Spansion LLC*”).

In the past Spansion Japan and Spansion LLC have found it mutually beneficial to lend each other probe cards in order to better utilize their testers and reduce the need to use external sort services. Spansion Japan and Spansion LLC desire to continue this practice in the future.

Spansion Japan has entered into a corporate reorganization proceeding in Japan and Spansion LLC has filed bankruptcy in the United States under Chapter 11 of the U.S. Bankruptcy Code.

Spansion Japan and Spansion LLC wish to document the arrangement under which Spansion LLC has lent the probe cards listed on Exhibit A to Spansion Japan for testing purposes and plans to lend the additional probe cards listed on Exhibit B to Spansion Japan, also for testing purposes. Further, Spansion Japan has lent the probe cards listed on Exhibit C to Spansion LLC for testing purposes and plans to lend the additional probe cards listed on Exhibit D to Spansion LLC, for testing purposes (the probe cards listed on Exhibits A, B, C and D are collectively referred to herein as the “**Probe Cards**”). All Probe Cards will be subject to the terms of this Agreement. Spansion Japan and Spansion LLC will return the Probe Cards lent hereunder to each other upon the completion of the testing of the Spansion products or for other grounds provided herein. This arrangement is in the ordinary course of business for each party.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1. Spansion LLC and Spansion Japan have shipped and delivered to each other the Probe Cards listed on Exhibit A and Exhibit C, respectively, and Spansion Japan and Spansion LLC each acknowledge receipt of such Probe Cards. Spansion LLC and Spansion Japan agree to ship the Probe Cards listed on Exhibit B and Exhibit D, respectively, to the other party hereto. As the need arises to ship additional Probe Cards in the future, Exhibit B and Exhibit D will be updated upon written notice to the other party by the party in need of such additional Probe Cards, and the agreement of the other party to ship such additional Probe Cards.
2. The party that has received and/or will receive the relevant Probe Cards from the other party (the “*Recipient*”) may use such Probe Cards solely for the purpose of testing Spansion products, and in the case of Spansion Japan, only pursuant to the terms of existing services agreements between the parties.



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Without limiting the foregoing, the Recipient may not transfer or sell such Probe Cards, or any interest therein, to any third party.

3. Title to, ownership of, and risk of loss of, the Probe Cards shall remain with the party that has lent and/or will lend the Probe Cards to the other party (the "**Lender**") at all times. A label shall be placed on each Probe Card indicating that ownership thereof is held by the Lender. The Recipient agrees not to place any other marking or label on any of the Probe Cards nor take any other action indicating ownership thereof by the Recipient or otherwise inconsistent with this Bailment Agreement. Lender is hereby authorized to file financing statements or other similar documents or notices in any filing office or other location that Lender deems necessary or desirable or to send such notices to any lender of the Recipient as Lender deems necessary or desirable, including, in either case, for purposes confirming its status as owner and bailor, for purposes of giving actual public or constructive notice of the existence of the bailment created under this Agreement or for any other purposes, including, without limitation, as may be prescribed under the Uniform Commercial Code in effect from time to time in any jurisdictions that Lender deems applicable for such filing or notification purposes.
4. The Recipient shall use reasonable care to protect and prevent damage to the Probe Cards in its possession.
5. The Lender shall be responsible for all shipping, freight and insurance charges as well as all export and import taxes, value-added taxes and adjustments, customs, duties and similar taxes and liabilities related to the shipment of the Probe Cards to the Recipient and the return thereof to the Lender.
6. At such time as the Recipient no longer has any use for any of the Probe Cards for the purpose set forth herein or upon the request of the Lender, the Recipient will return such Probe Cards to the Lender within 10 business days of such request.
7. This Agreement shall not be assigned by either party whether voluntarily or involuntarily or by operation of law, in whole or in part, to any third party without the prior written consent of the other party, provided that either party may assign all of its rights and obligations under this Agreement to a successor in interest to or transferee of substantially all of such party's assets. In the event of a permitted assignment under this Section 7, the assigning party will have no further obligations arising after the date of the assignment with respect to this Agreement, provided that the assignee agrees in writing to assume and be bound by the terms, conditions and obligations of such party hereunder. Any purported assignment not in compliance with this Section 7 shall be null and void from the beginning.

8. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party' s rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such party' s rights to take subsequent action.
9. All notices required or permitted to be given hereunder shall be in writing by first class certified or registered airmail, postage prepaid, if confirmed or acknowledged, to the addresses specified below or to such other address as may be specified in writing by the addressed party to the other party in accordance with this Section 7:

if to Spansion LLC:

Attn: Legal Department  
915 DeGuigne Drive  
Sunnyvale, California 94088-3453, U.S.A.

if to Spansion Japan:

Attn: Trustee  
2 Takaku-Kogyodanchi  
Aizuwakamatsu-shi, Fukushima, 965-0060, Japan

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

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

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11. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms “this Agreement,” “hereof,” “hereunder,” and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words “include” and “including,” and variations thereof, will be deemed to be followed by the words “without limitation”. The official text of this Agreement shall be in the English language, and any interpretation or construction of this Agreement shall be based solely on the English language text.
  12. The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California.
  13. Spansion LLC and Spansion Japan shall use their best efforts to resolve by mutual agreement any disputes, controversies, or differences which may arise from, under, out of, or in connection with this Agreement.
  14. This Agreement supersedes any arrangements, understandings, promises or agreements as to the subject matter of this Agreement made or existing between the parties prior to the latest date on which this Agreement is executed by either party. This Agreement constitutes the entire understanding between the parties as to the subject matter of this Agreement. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties. It is acknowledged that the terms of this Agreement have been negotiated between the parties and that each party was represented by separate counsel. Notwithstanding the foregoing, nothing contained in this Agreement shall constitute a waiver, release of, or amendment or other modification to, any other agreement between the parties relating to a subject other than the subject matter of this Agreement.

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have executed this Agreement to be effective as of the Effective Date.

SPANSION JAPAN LTD.

SPANSION LLC

Signature: /s/ Masao Taguchi

Signature: \_\_\_\_\_

Printed Name: Masao Taguchi

Printed Name: \_\_\_\_\_

Title: Trustee

Title: \_\_\_\_\_

Date: February 2, 2010

Date: \_\_\_\_\_

[Signature Page to Bailment Agreement]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have executed this Agreement to be effective as of the Effective Date.

SPANSION JAPAN LTD.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SPANSION LLC

Signature: /s/ Randy W. Furr \_\_\_\_\_

Printed Name: Randy W. Furr \_\_\_\_\_

Title: EVP & CFO \_\_\_\_\_

Date: 2 Feb 2010 \_\_\_\_\_

[Signature Page to Bailment Agreement]

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EXHIBIT A

List of Probe Cards Already Delivered by Spansion LLC to Spansion Japan

**List of Probe Cards loaned from LLC to Spansion Japan after bankruptcy filing**

Item	Serial #	Asset #	Device	Equip
1	FUV9876001		98760	V5400
2	FUV9876002		98760	V5400
3	FUV9876003		98760	V5400
6	FUV9876008	115975-0	98760	V5400
10	FUV9876023	117182-0	98760	V5400
12	FUV9876035	117402-0	98760	V5400
17	BMX9821401		98214	AeHR
18	BMX98U2001		98U20	AeHR

**List of Probe Cards loaned from LLC to Spansion Japan before bankruptcy filing<sup>1</sup>**

ID	Serial #	Asset #	Device	Equip
	BXM9825302		98253	AeHR
19161	BXM9825301	118521-0	98253	AeHR
19171	BXM9825304	118757-0	98253	AeHR
22361	BXM9825305	118758-0	98253	AeHR
22366	BXM9825306	118774-0	98253	AeHR
22371	BXM9825307		98253	AeHR
18851	BXM9852405	118420-0	98524	AeHR
18861	BXM9852406	118421-0	98524	AeHR
18866	BXM9852407	118422-0	98524	AeHR
18876	BXM9852408	118423-0	98524	AeHR
18886	BXM9852409	118424-0	98524	AeHR
18896	BXM9852410	118425-0	98524	AeHR
21511	BXM9871803		98718	AeHR
22196	BXM9871804	118835-0	98718	AeHR
22436	BXM9876403	118624-0	98764	AeHR
22441	BXM9876404	118625-0	98764	AeHR
22616	BXM9876405	118622-0	98764	AeHR
22621	BXM9876406	118623-0	98764	AeHR

1

Source: excel file received from Furuichi-san on 11/4/2009

ID	Serial #	Asset #	Device	Equip
19141	BXM98Y0603	118520-0	98Y06	AeHR
19151	BXM98Y0604	118619-0	98Y06	AeHR
22416	BXM98Y0605	118620-0	98Y06	AeHR
22426	BXM98Y0606	118625-0	98Y06	AeHR
7151	FUD9825701	118061-0	98257	v5400
7156	FUD9825702	118062-0	98257	v5400
7161	FUD9825703	118063-0	98257	v5400
7166	FUD9825704	118064-0	98257	v5400
7171	FUD9825705	118065-0	98257	v5400
7176	FUD9825706	118066-0	98257	v5400
7181	FUD9825707	118067-0	98257	v5400
7186	FUD9825708	118068-0	98257	v5400
7191	FUD9825709	118069-0	98257	v5400
7196	FUD9825710	118070-0	98257	v5400
7201	FUD9825711	118071-0	98257	v5400
7206	FUD9825712	118072-0	98257	v5400
459	FUF9852401	115579-0	98524	v5400
462	FUF9852404	115582-0	98524	v5400
4956	FUF9852406	117387-0	98524	v5400
4963	FUF9852411	117392-0	98524	v5400
15491	FUG9852407	118139-0	98524	v5400
15496	FUG9852408	118140-0	98524	v5400
15501	FUG9852409	118210-0	98524	v5400
15506	FUG9852410	118211-0	98524	v5400
15511	FUG9852411	118212-0	98524	v5400
15516	FUG9852412	118213-0	98524	v5400
22716	FUG9871901	5008242-0	98719	v5400
21891	FUG9875002	5008224-0	98750	v5400
21966	FUG9875003	5008226-0	98750	v5400
2444	FUG9876603	116477-0	98766	v5400
2542	FUG9876604	116609-0	98766	v5400
15521	FUG9876607	118443-0	98766	v5400
15526	FUG9876608	118444-0	98766	v5400
15531	FUG9876609	118445-0	98766	v5400
15536	FUG9876610	118446-0	98766	v5400
15541	FUG9876611	118447-0	98766	v5400
8786	FUG98Y0501	5008267-0	98Y05	v5400
8791	FUG98Y0502	5008268-0	98Y05	v5400
19226	FUG98Y0604	118418-0	98Y06	v5400
19231	FUG98Y0605	118417-0	98Y06	v5400
19236	FUG98Y0606	118385-0	98Y06	v5400
22461	FUG98Y0611	118518-0	98Y06	v5400
	BXM98Y1101		98Y11	AeHR
465	FUG98Y1101	115968-0	98Y11	v5400
2445	FUG98Y1103	118759-0	98Y11	v5400



ID	Serial #	Asset #	Device	Equip
15546	FUG98Y1107	118283-0	98Y11	v5400
7026	FUH9872602	118531-0	98726	v5400
7031	FUH9872603	118532-0	98726	v5400
8731	FUH9876701	5008258-0	98767	v5400
8736	FUH9876702	5008259-0	98767	v5400
8741	FUH9876703	5008260-0	98767	v5400
8746	FUH9876704	5008261-0	98767	v5400
8751	FUH9876705	5008262-0	98767	v5400
8756	FUH9876706	5008263-0	98767	v5400
8721	FUL9825201	5008270-0	98252	v5400
8726	FUL9825202	5008269-0	98252	v5400
9601	FUL9825203	5008271-0	98252	v5400
19956	FUL9825304	118626-0	98253	v5400
20361	FUL9825305	118515-0	98253	v5400
22626	FUL9825306	118514-0	98253	v5400
22636	FUL9825307	118516-0	98253	v5400
22481	FUP9853301	5008244-0	98533	v5400
22491	FUP9853302	5008245-0	98533	v5400
9321	FUP9857501	118529-0	98575	v5400
9326	FUP9857502	118528-0	98575	v5400
13451	FUP9857604	118448-0	98576	v5400
20451	FUP9867702	5008253-0	98677	v5400
8821	FUP9871801	118079-0	98718	v5400
8826	FUP9871802	118073-0	98718	v5400
9006	FUP9871803	118074-0	98718	v5400
9011	FUP9871804	118075-0	98718	v5400
9016	FUP9871805	118076-0	98718	v5400
9021	FUP9871806	118077-0	98718	v5400
9651	FUP9871807	118078-0	98718	v5400
9661	FUP9871809	118449-0	98718	v5400
19181	FUP9871811	118524-0	98718	v5400
19191	FUP9871812	118523-0	98718	v5400
19281	FUP9875502		98755	v5400
8861	FUP98U1901	5008274-0	98U19	v5400
8866	FUP98U1902	5008272-0	98U19	v5400
11876	FUP98U1903	5008273-0	98U19	v5400
13296	FUP98U2003	118450-0	98U20	v5400
13301	FUP98U2004	118451-0	98U20	v5400
13426	FUP98Y1701	5008264-0	98Y17	v5400
13431	FUP98Y1702	5008265-0	98Y17	v5400
13436	FUP98Y1703	5008266-0	98Y17	v5400
540	FUV9876009	115976-0	98760	v5400
4712	FUV9876010	116983-0	98760	v5400
4713	FUV9876011	116984-0	98760	v5400
4708	FUV9876013	116986-0	98760	v5400

ID	Serial #	Asset #	Device	Equip
4710	FUV9876015	116988-0	98760	v5400
4716	FUV9876017	116990-0	98760	v5400
4867	FUV9876020	117179-0	98760	v5400
4868	FUV9876021	117180-0	98760	v5400
4870	FUV9876024	117183-0	98760	v5400
4871	FUV9876025	117184-0	98760	v5400
4872	FUV9876026	117185-0	98760	v5400
4942	FUV9876030	117397-0	98760	v5400
5037	FUV9876032	117399-0	98760	v5400
4945	FUV9876033	117400-0	98760	v5400
4946	FUV9876034	117401-0	98760	v5400
5249	FUV9876037	117487-0	98760	v5400
5250	FUV9876038	117488-0	98760	v5400
5260	FUV9876043	117493-0	98760	v5400
5264	FUV9876045	117495-0	98760	v5400
5266	FUV9876046	117496-0	98760	v5400
5274	FUV9876050	117500-0	98760	v5400
5282	FUV9876054	117504-0	98760	v5400
6061	FUV9876402	117689-0	98764	v5400
8806	FUV9876403	117690-0	98764	v5400
24501	FUV9876407	118517-0	98764	v5400
21326	FUV9888407	118386-0	98884	v5400
21331	FUV9888408	118387-0	98884	v5400
13746	FUV98U1104	116441-0	98U11	v5400
13751	FUV98U1105	116442-0	98U11	v5400
13756	FUV98U1106	116455-0	98U11	v5400
13721	FUV98U1108	116457-0	98U11	v5400
13706	FUV98U1109	116458-0	98U11	v5400
13711	FUV98U1110	116459-0	98U11	v5400
13716	FUV98U1111	116460-0	98U11	v5400
7041	FUV98Y0202	5008223-0	98Y02	v5400
7036	FUV98Y0203	5008225-0	98Y02	v5400
4775	FUV98Y0602	117171-0	98Y06	v5400
4776	FUV98Y0603	117172-0	98Y06	v5400
4778	FUV98Y0604	117173-0	98Y06	v5400
4779	FUV98Y0605	117251-0	98Y06	v5400
18246	FUZ9821401	118834-0	98214	v5400
18251	FUZ9821402	118833-0	98214	v5400
18256	FUZ9821403	118832-0	98214	v5400
18261	FUZ9873101	5008278-0	98731	v5400
18266	FUZ9873102	5008277-0	98731	v5400
18271	FUZ9873103	5008278-0	98731	v5400
5016	KUC98U2001		98U20	v5400
5217	KUC98U2003		98U20	v5400
5218	KUC98U2004		98U20	v5400

<b>ID</b>	<b>Serial #</b>	<b>Asset #</b>	<b>Device</b>	<b>Equip</b>
5018	KUC98U2006		98U20	v5400
4837	PUC98U2002		98U20	v5400
4831	PUC98U2003		98U20	v5400
16496	TUV9844511	118214-0	98445	v5400
16501	TUV9844513	118215-0	98445	v5400
1751	WST98M4821	115076-0	98M48	v3308
1828	WST98M5460	117007-0	98M54	v3308
1829	WST98M5461	117008-0	98M54	v3308
1830	WST98M5462	117009-0	98M54	v3308
1831	WST98M5463	117010-0	98M54	v3308
1832	WST98M5464	117011-0	98M54	v3308
1833	WST98M5465	117012-0	98M54	v3308
1834	WST98M5466	117013-0	98M54	v3308
4332	WST98M5468	116644-0	98M54	v3308
4330	WST98M5469	116645-0	98M54	v3308
4358	WST98M5470	116646-0	98M54	v3308
4354	WST98M5471	116647-0	98M54	v3308
4352	WST98M5472	116648-0	98M54	v3308
4356	WST98M5473	116649-0	98M54	v3308
4360	WST98M5474	116650-0	98M54	v3308
4836	WST98P0511		98P05	v3308
4934	WST98P0512	117404-0	98P05	v3308
1868	WST98R1607	115064-0	98R16	v3308
1869	WST98R1608	115065-0	98R16	v3308
1871	WST98R1610	115067-0	98R16	v3308
1873	WST98R1612	115069-0	98R16	v3308
1874	WST98R1613	115070-0	98R16	v3308
1875	WST98R1614	115071-0	98R16	v3308
1913	WST98R2405	115524-0	98R24	v3308
1914	WST98R2406	115525-0	98R24	v3308
1915	WST98R2407	115526-0	98R24	v3308
1916	WST98R2408	115527-0	98R24	v3308
1917	WST98R2409	115528-0	98R24	v3308
1918	WST98R2410	115656-0	98R24	v3308
1919	WST98R2411	115657-0	98R24	v3308
1920	WST98R2412	115658-0	98R24	v3308
1921	WST98R2413	115659-0	98R24	v3308
1922	WST98R2414	115660-0	98R24	v3308
1964	WST98U0321	115048-0	98U03	v3308
1971	WST98U0328	115055-0	98U03	v3308
<b>Vendor</b>	<b>Serial #</b>	<b>Card #</b>	<b>Device</b>	<b>Equip</b>
K&S	730-53	453	98729	V3308
K&S	730-55	455	98729	V3308

Vendor	Serial #	Card #	Device	Equip
K&S	730-56	456	98729	V3308
K&S	730-57	457	98729	V3308
K&S	730-59	459	98729	V3308
K&S		460	98729	V3308
K&S	730-62	462	98729	V3308
FFI	93003	1103	98730	V3308
WW	W53006	206	98730	V3308
WW	W53007	207	98730	V3308
WW	W53008	208	98730	V3308
WW	W53009	209	98730	V3308
WW	W53010	210	98730	V3308
WW	W53011	211	98730	V3308
WW	W53012	212	98730	V3308
WW	W53014	214	98730	V3308
WW	W53016	216	98730	V3308
WW	WST98M4801	201	98M48	V3308
WW	WST98M4802	202	98M48	V3308
WW	WST98M4803	203	98M48	V3308
WW	WST98M4804	204	98M48	V3308
WW	WST98M4807	207	98M48	V3308
WW	WST98M4811	211	98M48	V3308
WW	WST98M4815	215	98M48	V3308
WW	WST98M4816	216	98M48	V3308
WW	WST98M4818	218	98M48	V3308
WW	WST98M4819	219	98M48	V3308
WW	WST98M4820	220	98M48	V3308
WW	WST98M4822	222	98M48	V3308
WW	WST98M4823	223	98M48	V3308
WW	WST98M4824	224	98M48	V3308
WW	WST98M4825	225	98M48	V3308
WW	WST98M4826	226	98M48	V3308
WW	WST98M4827	227	98M48	V3308
WW	WST98M4828	228	98M48	V3308
K&S	KST98M5301	401	98M53	V3308
K&S	KST98M5332	432	98M53	V3308
K&S	KST98M5333	433	98M53	V3308
K&S	KST98M5334	434	98M53	V3308
K&S	KST98M5336	436	98M53	V3308
K&S	KST98M5338	438	98M53	V3308
K&S	KST98M5340	440	98M53	V3308
K&S	KST98M5349	449	98M53	V3308
K&S	KST98M5353	453	98M53	V3308
K&S	KST98M5357	457	98M53	V3308
K&S	KST98M5358	458	98M53	V3308
K&S	KST98M5359	459	98M53	V3308

Vendor	Serial #	Card #	Device	Equip
K&S	KST98M5368	703	98M53	V3308
K&S	KST98M5372	707	98M53	V3308
K&S	KST98M5376	711	98M53	V3308
K&S	KST98M5425	425	98M54	V3308
K&S	KST98M5445	445	98M54	V3308
K&S	KST98M5449	449	98M54	V3308
K&S	KST98M5453	453	98M54	V3308
K&S	KST98M5456	456	98M54	V3308
K&S	KST98M5457	457	98M54	V3308
K&S	KST98M5460	460	98M54	V3308
K&S	KST98M5463	463	98M54	V3308
WW	WST98M5402	202	98M54	V3308
WW	WST98M5403	203	98M54	V3308
WW	WST98M5404	204	98M54	V3308
WW	WST98M5407	207	98M54	V3308
WW	WST98M5410	210	98M54	V3308
WW	WST98M5411	211	98M54	V3308
WW	WST98M5412	212	98M54	V3308
WW	WST98M5415	215	98M54	V3308
WW	WST98M5416	216	98M54	V3308
WW	WST98M5417	217	98M54	V3308
WW	WST98M5418	218	98M54	V3308
WW	WST98M5419	219	98M54	V3308
WW	WST98M5422	222	98M54	V3308
WW	WST98M5424	224	98M54	V3308
WW	WST98M5425	225	98M54	V3308
WW	WST98M5427	227	98M54	V3308
WW	WST98M5428	228	98M54	V3308
WW	WST98M5429	229	98M54	V3308
WW	WST98M5431	231	98M54	V3308
WW	WST98M5433	233	98M54	V3308
WW	WST98M5440	240	98M54	V3308
WW	WST98M5442	242	98M54	V3308
WW	WST98M5443	243	98M54	V3308
WW	WST98M5445	245	98M54	V3308
WW	WST98M5449	249	98M54	V3308
WW	WST98M5450	250	98M54	V3308
WW	WST98M5451	251	98M54	V3308
WW	WST98M5452	252	98M54	V3308
WW	WST98M5453	253	98M54	V3308
WW	WST98M5454	254	98M54	V3308
WW	WST98M5457	257	98M54	V3308
WW	WST98M5459	259	98M54	V3308
K&S	714-02	402	98R16	V3308
K&S	KST98R1608	408	98R16	V3308

Vendor	Serial #	Card #	Device	Equip
K&S	KST98R1616	416	98R16	V3308
K&S	714-18	418	98R16	V3308
K&S	714-23	423	98R16	V3308
K&S	714-24	424	98R16	V3308
K&S	714-27	427	98R16	V3308
K&S	714-38	438	98R16	V3308
K&S	714-45	445	98R16	V3308
K&S	KST98R1646	446	98R16	V3308
K&S	714-55	455	98R16	V3308
K&S	714-56	456	98R16	V3308
K&S	714-63	463	98R16	V3308
K&S	KST98R1673	758	98R16	V3308
WW	614-62	362	98R16	V3308
WW	614-64	364	98R16	V3308
WW	WST98R2401	201	98R24	V3308
WW	WST98R2402	202	98R24	V3308
FFI	ML0949A-006	1106	98R25	V3308
FFI	ML0949A-022	1122	98R25	V3308
FFI	ML0949A-026	1126	98R25	V3308
FFI	ML0949A-027	1127	98R25	V3308
K&S	711-09	409	98R25	V3308
K&S	KST98R2510	410	98R25	V3308
K&S	KST98R2511	411	98R25	V3308
K&S	KST98R2512	412	98R25	V3308
K&S	711-13	413	98R25	V3308
K&S	KST98R2514	414	98R25	V3308
K&S	KST98R2515	415	98R25	V3308
K&S	711-18	418	98R25	V3308
K&S	KST98R2520	420	98R25	V3308
K&S	711-21	421	98R25	V3308
K&S	KST98R2522	422	98R25	V3308
K&S	711-24	424	98R25	V3308
K&S	KST98R2528	428	98R25	V3308
K&S	711-29	429	98R25	V3308
K&S	711-30	430	98R25	V3308
K&S	KST98R2531	431	98R25	V3308
K&S	711-32	432	98R25	V3308
K&S	711-33	433	98R25	V3308
K&S	711-34	434	98R25	V3308
K&S	KST98R2536	436	98R25	V3308
K&S	711-37	437	98R25	V3308
K&S	KST98R2538	438	98R25	V3308
K&S	KST98R2539	439	98R25	V3308
K&S	711-40	440	98R25	V3308
K&S	711-41	441	98R25	V3308

<b>Vendor</b>	<b>Serial #</b>	<b>Card #</b>	<b>Device</b>	<b>Equip</b>
K&S	711-42	442	98R25	V3308
K&S	KST98R2543	443	98R25	V3308
K&S	KST98R2521	445	98R25	V3308
K&S	KST98R2547	447	98R25	V3308
K&S	711-48	448	98R25	V3308
K&S	KST98R2549	449	98R25	V3308
K&S	711-50	450	98R25	V3308
K&S	711-52	452	98R25	V3308
K&S	KST98R2553	453	98R25	V3308
K&S	711-55	455	98R25	V3308
K&S	KST98R2510(711-56)	456	98R25	V3308
K&S	KST98R2509	457	98R25	V3308
K&S	KST98R2559	459	98R25	V3308
K&S	KST98R2506	460	98R25	V3308
K&S	KST98R2561	461	98R25	V3308
K&S	711-63	463	98R25	V3308
K&S	KST98R2564	464	98R25	V3308
K&S	KST98R2565	465	98R25	V3308
WW	WST98R2502	202	98R25	V3308
WW	WST98R2505	205	98R25	V3308
WW	WST98R2506	206	98R25	V3308
WW	WST98R2507	207	98R25	V3308
WW	WST98R2510	210	98R25	V3308
WW	WST98R2512	212	98R25	V3308
WW	WST98R2513	213	98R25	V3308
WW	WST98R2514	214	98R25	V3308
WW	WST98R2515	215	98R25	V3308
K&S	KST98U0361	461	98U03	V3308
WW	WST98U0317	217	98U03	V3308
WW	WST98U0318	218	98U03	V3308
WW	WST98U0323	223	98U03	V3308
WW	WST98U0324	224	98U03	V3308
WW	WST98U0325	225	98U03	V3308
WW	WST98U0327	227	98U03	V3308
K&S	KST98U0402	402	98U04	V3308

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EXHIBIT B

List of Probe Cards To Be Delivered by Spansion LLC to Spansion Japan



**List of Probe Cards To Be Loaned by Spansion LLC to Spansion Japan**

<b>Serial #</b>	<b>Asset #</b>	<b>Device</b>	<b>Equip</b>
FUV98U0903	117174-0	98U09	V5400
FUV98U0905	117176-0	98U09	V5400
FUV98U0907	118272-0	98U09	V5400
FUV98U0909	118274-0	98U09	V5400
FUV98U0911	118276-0	98U09	V5400
FUV98U0912	118277-0	98U09	V5400
FUV98U0914	118279-0	98U09	V5400
FUV98U0915	118280-0	98U09	V5400
FUV98U0918	118838-0	98U09	V5400

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EXHIBIT C

List of Probe Cards Already Delivered by Spansion Japan to Spansion LLC

List of Probe Cards Loaned by Spansion Japan to Spansion LLC after bankruptcy filing<sup>2</sup>

Item	Device	Equip.	Card #	Asset #	Serial #
1	98454	V3308	101	K00003129	5100103070-1-1/2
2	98454	V3308	103	K00003358	5100138385-1-1/5
3	98454	V3308	104	K00003359	5100138385-1-2/5
4	98454	V3308	105	K00003360	5100138385-1-3/5
5	98454	V3308	463	K00003341	5100138382-0010-1/5
6	98454	V3308	465	K00003118	5100103074-0010-1/2
7	98F10	V3308	410	K00003742	5100248905-1-3/3
8	98F10	V3308	462	K00003218	5100125624-0010-2/5
9	98F10	V3308	411	K00004011	5100289479-1-1/2
10	98F10	V3308	461	K00003219	5100125624-0010-3/5
11	98F10	V3308	409	K00003741	5100248905-1-2/3
12	98F10	V3308	464	K00003050	5100091098-0010-2/2
13	98H19	V3308	456	K00003094	5100103075-0010-3/4
14	98H19	V3308	459	K00003091	5100101438-0010-5/5
15	98H19	V3308	457	K00003093	5100103075-0010-2/4
16	98H19	V3308	458	K00003092	5100103075-0010-1/4
17	98H19	V3308	461	K00003090	5100101438-0010-4/5
18	98H19	V3308	464	K00002998	5100082023-0010-2/2
19	98K33	V3308	408	K00003571	5100227083-1-1/10
20	98K33	V3308	415	K00003576	5100227083-1-6/10
21	98K33	V3308	101	K00002792	5100074633-1-1/2
22	98K33	V3308	102	K00002793	5100074633-1-2/2
23	98K33	V3308	103	K00002980	5100087978-1-1/5
24	98K33	V3308	104	K00002981	5100087987-1-2/5
25	98K33	V3308	105	K00002982	5100087978-1-3/5
26	98K33	V3308	111	K00003010	5100091091-1-4/8
27	98K33	V3308	112	K00003011	5100091091-1-5/8
28	98K33	V3308	115	K00003014	5100091091-1-8/8
29	98K33	V3308	459	K00003100	5100101439-0010-5/5
30	98K33	V3308	463	K00003096	5100101439-0010-1/5
31	98K33	V3308	106	K00002983	5100087978-1-4/5
32	98K33	V3308	107	K00002984	5100087978-1-5/5
33	98K33	V3308	108	K00002994	5100091091-1-1/8
34	98K33	V3308	110	K00003009	5100091091-1-3/8
35	98K33	V3308	113	K00003012	5100091091-1-6/8
36	98K33	V3308	461	K00003098	5100101439-0010-3/5

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Source: excel workbook from Furuichi-san on 11/4/09

37	98M57	V3308	412	K00003688	5100237105-3-2/2
38	98M57	V3308	414	K00003687	5100237105-3-1/2
39	98M57	V3308	102	K00002968	5100091095-1-2/2
40	98M57	V3308	103	K00003585	5100227080-3-1/4
41	98M57	V3308	104	K00003586	5100227080-3-2/4
42	98M57	V3308	105	K00003587	5100227080-3-3/4
43	98M57	V3308	106	K00003588	5100227080-3-4/4
44	98M57	V3308	107	K00003630	5100228453-1-1/4
45	98M57	V3308	109	K00003632	5100228753-1-3/4
46	98M57	V3308	112	K00004032	5100299137-1-2/2
47	98M57	V3308	403	K00003626	5100228754-1-1/4
48	98M57	V3308	404	K00003627	5100228754-1-2/4
49	98M57	V3308	405	K00003628	5100228754-1-3/4
50	98M57	V3308	406	K00003629	5100228754-1-4/4
51	98M57	V3308	407	K00003683	5100237105-1-3/6
52	98M57	V3308	409	K00003682	5100237105-1-2/6
53	98M57	V3308	411	K00003684	5100237105-1-4/6
54	98M57	V3308	413	K00003686	5100237105-1-6/6
55	98M57	V3308	464	K00002986	5100091099-0010-2/2
56	98M57	V3308	410	K00003685	51000237105-1-5/6
57	98R40	V3308	402	K00003658	5100234142-5-2/2
58	98R40	V3308	414	K00003995	5100284129-3-5/6
59	98R40	V3308	420	K00004015	5100290222-1-3/4
60	98U07	V3308	106	K00002952	5100087977-1-4/4
61	98U07	V3308	107	K00002990	5100091090-1-1/5
62	98U07	V3308	110	K00002996	5100091090-1-4/5
63	98U07	V3308	465	K00002838	5100077435-0010-1/2

**List of Probe Cards Loaned by Spansion Japan to Spansion LLC before bankruptcy filing<sup>3</sup>**

Item	Device	Equip.	Card #	Asset #	Serial #
1	98445	V3308	404	K00003930_00	5100278549-3-4/6
2	98445	V3308	302	K00003040	5100096149-1-2/2
3	98445	V3308	303	K00003212	5100125622-1-1/10
4	98445	V3308	105	K00003207	5100125622-1-3/10
5	98445	V3308	308	K00003210	5100125622-1-6/10
6	98445	V3308	309	K00003211	5100125622-1-7/10
7	98445	V3308	310	K00003214	5100125622-1-8/10
8	98445	V3308	114	K00003935_00	5100278550-3-2/6
9	98445	V3308	115	K00003936_00	5100278550-3-3/6
10	98445	V3308	117	K00003938_00	5100278550-3-5/6
11	98445	V3308	118	K00003939_00	5100278550-3-6/6

<sup>3</sup>

Source: excel workbook from Furuichi-san on 11/4/2009

Item	Device	Equip.	Card #	Asset #	Serial #
12	98445	V3308	119	K00003963_00	5100282189-1-1/2
13	98445	V3308	120	K00003964_00	5100282189-1-2/2
14	98454	V3308	459	K00003356	5100138382-0010-4/5
15	98454	V3308	460	K00003343	5100138382-0010-3/5
16	98454	V3308	461	K00003357	5100138382-0010-5/5
17	98454	V3308	464	K00003119	5100103074-0010-2/2
18	98883	V3308	456	K00003178	5100118501-0010-7/7
19	98883	V3308	457	K00003191	5100118501-0010-6/7
20	98883	V3308	458	K00003177	5100118501-0010-5/7
21	98883	V3308	459	K00003176	5100118501-0010-4/7
22	98883	V3308	460	K00003190	5100118501-0010-3/7
23	98883	V3308	461	K00003175	5100118501-0010-2/7
24	98883	V3308	462	K00003222	5100118501-0010-1/7
25	98883	V3308	463	K00002953	5100087980-0010-1/1
27	98445	V3308	1101	K00003241	ML1343A-001
28	98445	V3308	1102	K00003242	ML1343A-002
29	98447	V3308	462	K00002548	267644-1-1/2
30	98447	V3308	1101	K00002833	ML1131A-001
31	98447	V3308	1102	K00002842	ML1131A-002
32	98447	V3308	1103	K00002881	ML1131A-003
33	98447	V3308	1105	K00002883	ML1131A-005
34	98447	V3308	1107	K00002885	ML1131A-007
35	98447	V3308	1108	K00002886	ML1131A-008
36	98447	V3308	1109	K00002887	ML1131A-009
37	98447	V3308	1110	K00002893	ML1131A-010
38	98447	V3308	1703	K00002923	APP0400049
39	98447	V3308	1704	K00002941	APP0400050
41	98447	V3308	1708	K00002934	APP0400069
42	98447	V3308	1711	K00002944	APP0400072
43	98447	V3308	1712	K00002945	APP0400073
44	98447	V3308	450	K00003239	5100129208-0010-4/10
45	98447	V3308	458	K00003246	5100129208-0010-2/10
46	98447	V3308	449	K00003255	5100129208-0010-10/10
48	98M57	V3308	102	K00002968	5100091095-1-2/2
49	98M68	V3308	301	K00003745	5100248899-3-1/2
50	98M68	V3308	103	K00003965_00	5100284127-1-1/15
51	98M68	V3308	104	K00003966_00	5100284127-1-2/15
52	98M68	V3308	105	K00003967_00	5100284127-1-3/15
53	98M68	V3308	106	K00003968_00	5100284127-1-4/15
54	98M68	V3308	107	K00003969_00	5100284127-1-5/15
55	98M68	V3308	108	K00003970_00	5100284127-1-6/15
56	98M68	V3308	109	K00003971_00	5100284127-1-7/15
57	98M68	V3308	110	K00003972_00	5100284127-1-8/15
58	98M68	V3308	111	K00003973_00	5100284127-1-9/15
59	98M68	V3308	112	K00003974_00	5100284127-1-10/15
60	98M68	V3308	113	K00003975_00	5100284127-1-11/15
61	98M68	V3308	114	K00003976_00	5100284127-1-12/15

Item	Device	Equip.	Card #	Asset #	Serial #
62	98M68	V3308	115	K00003984_00	5100284127-1-13/15
63	98M68	V3308	116	K00003985_00	5100284127-1-14/15
64	98M68	V3308	117	K00003986_00	5100284127-1-15/15
65	98M68	V3308	118	K00004003_00	5100284127-5-1/2
66	98M68	V3308	119	K00004006_00	5100284127-5-2/2
67	98M68	V3308	120	K00004017_00	5100290221-1-1/4
68	98M68	V3308	121	K00004018_00	5100290221-1-2/4
69	98M68	V3308	122	K00004019_00	5100290221-1-3/4
70	98M68	V3308	123	K00004020_00	5100290221-1-4/4
71	98M68	V3308	403	K00003905	5100273393-1-1/2
72	98R40	V3308	403	K00003911	5100273393-3-1/2
73	98R40	V3308	404	K00003913	5100273393-3-2/2
74	98R40	V3308	405	K00003923_00	5100276627-1-1/2
75	98R40	V3308	406	K00003924_00	5100276627-1-2/2
76	98R40	V3308	407	K00003948_00	5100278549-1-5/5
77	98R40	V3308	408	K00003941_00	5100278549-1-1/5
78	98R40	V3308	410	K00003946_00	5100278549-1-3/5
79	98R40	V3308	416	K00003993_00	5100284129-3-3/6
80	98R40	V3308	417	K00003994_00	5100284129-3-4/6
81	98R40	V3308	102	K00003655	5100234143-3-2/2
82	98R40	V3308	104	K00003837	5100267972-3-2/4
83	98R40	V3308	106	K00003830	5100267972-3-4/4
84	98R40	V3308	107	K00003851	5100272542-1-1/4
85	98R40	V3308	108	K00003856	5100272542-1-2/4
86	98R40	V3308	109	K00003857	5100272542-1-3/4
87	98R40	V3308	110	K00003858	5100272542-1-4/4
88	98R40	V3308	112	K00003915	5100277139-1-2/4
89	98R40	V3308	113	K00003916	5100277139-1-3/4
90	98R40	V3308	114	K00003917	5100277139-1-4/4
91	98R40	V3308	115	K00003931_00	5100278550-1-1/5
92	98R40	V3308	116	K00003932_00	5100278550-1-2/5
93	98R40	V3308	117	K00003933_00	5100278550-1-3/5
94	98R40	V3308	118	K00003926_00	5100278550-1-4/5
95	98R40	V3308	119	K00003927_00	5100278550-1-5/5
96	98R40	V3308	121	K00003989_00	5100284127-3-2/6
97	98R40	V3308	122	K00004000_00	5100284127-3-3/6
98	98R40	V3308	123	K00003990_00	5100284127-3-4/6
99	98R40	V3308	124	K00004001_00	5100284127-3-5/6
100	98U04	V3308	463	K00002534	266454-1-2/2
101	98U04	V3308	101	K00002525	266453-1-1/2
102	98U04	V3308	1104	K00002810	ML0919A-004
103	98U07	V3308	113	K00003046	5100098347-1-2/4
104	98U07	V3308	464	K00002839	5100077435-0010-2/2
105	98U07	V3308	463	K00002969	5100087829-0010-1/2
106	98U07	V3308	462	K00002970	5100087829-0010-2/2
107	98U08	V3308	1101	K00003344	ML1411A-001
108	98U08	V3308	1102	K00003322	ML1411A-002

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<u>Item</u>	<u>Device</u>	<u>Equip.</u>	<u>Card #</u>	<u>Asset #</u>	<u>Serial #</u>
109	98U08	V3308	1103	K00003323	ML1411A-003
110	98U08	V3308	1104	K00003324	ML1411A-004
111	98U08	V3308	1105	K00003325	ML1411A-005
112	98U08	V3308	1107	K00003327	ML1411A-007
113	98U08	V3308	1108	K00003328	ML1411A-008
114	98U08	V3308	1109	K00003329	ML1411A-009
115	98U08	V3308	1110	K00003330	ML1411A-010
116	98U08	V3308	1111	K00003331	ML1411A-011
117	98U08	V3308	1112	K00003332	ML1411A-012
118	98U08	V3308	1113	K00003345	ML1411A-013
119	98U08	V3308	1114	K00003333	ML1411A-014
120	98U08	V3308	1115	K00003334	ML1411A-015
121	98U08	V3308	1116	K00003335	ML1411A-016
122	98U08	V3308	1117	K00003336	ML1411A-017
123	98U08	V3308	1118	K00003337	ML1411A-018
124	98U08	V3308	1119	K00003338	ML1411A-019

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EXHIBIT D

List of Probe Cards To Be Delivered by Spansion Japan to Spansion LLC



**List of Probe Cards To Be Loaned by Spansion Japan to Spansion LLC**

<b>Device</b>	<b># of cards</b>	<b>Platform</b>
98K38	4	v3308
98H21	1	V3308
98M68	10	V3308
98R40	2	V3308

[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.



## SORT SERVICES AGREEMENT

**Parties:**

	<u>SpanSion</u>	<u>Supplier</u>
<i>Full Legal Name:</i>	<b>SpanSion LLC</b>	<b>ChipMOS TECHNOLOGIES INC.</b>
<i>Business Entity Type:</i>	Limited Liability Company	Corporation
<i>Organized In:</i>	State of Delaware	Republic of China
<i>Principal Business Address:</i>	915 DeGuigne Drive Sunnyvale, CA 94088	No. 1 R&D Rd. 1, Hsinchu Science Park Hsinchu, Taiwan, R.O.C.
<i>Address for Notices:</i>	915 DeGuigne Drive Sunnyvale, CA 94088 Attn: Law Department, MS 251 Facsimile: (408) 616-3762	No. 1 R&D Rd. 1, Hsinchu Science Park Hsinchu, Taiwan, R.O.C. Attn: S. J. Cheng Facsimile: 886-3-5668980

WHEREAS, on March 1, 2009, SpanSion filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Chapter 11 Case");

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

### 1. Definitions

(a) "Affiliate" means, with respect to a party hereto, a business entity that directly or indirectly controls, is controlled by or is under common control with that party.

(b) "Capacity" means the amount of trained personnel and plant and equipment capacity that is available for the wafer sort and delivery of Products.

(c) "Consigned Material and Tooling" means any tooling or material that SpanSion supplies to Supplier (but not purchased by Supplier) to be used in connection with the Services.

(d) "Deviation" means a written document that approves (i) a temporary modification to a Product, or (ii) a temporary modification of a process utilized by Supplier in the performance of Services.

(e) "Effective Date" means the earlier of (i) the date of the entry of an order by the U.S. Bankruptcy Court for the District of Delaware approving SpanSion's execution of this Agreement and such order shall not have been stayed pending appeal, or (ii) the date a plan of reorganization has been confirmed by the U.S. Bankruptcy Court for the District of Delaware and become effective.

(f) "Order" means a purchase order placed by SpanSion in compliance with the applicable Statement of Work for Services to be furnished by Supplier to SpanSion during a specified time period, specifying the quantity, price, part number, revision details and other relevant information with respect to such Services.

(g) "Product" means any SpanSion semiconductor device sorted by Supplier per the requirements set forth in the applicable Statement of Work.

(h) "Services" means the wafer sort services specified in the applicable Statement of Work.

(i) "Specifications" means the specifications for the relevant Services specified in a Statement of Work and all drawings, documentation, data, information, software and know-how provided by Spansion to Supplier.

## 2. Scope Of Services

(a) *Statements of Work*. Pursuant to one or more mutually agreed Statements of Work, Spansion may purchase and Supplier shall provide Spansion with Services in accordance with the terms of this Agreement. Each Statement of Work executed by the parties is incorporated into this Agreement by reference and is subject to the terms and conditions of this Agreement, and in the event of any discrepancy between the terms and conditions of the applicable Statement of Work and this Agreement, those of the Statement of Work shall prevail. Services not mutually agreed upon and included in a Statement of Work shall not be subject to the terms and conditions of this Agreement, even if such Services have been actually provided by Supplier. Without limiting the foregoing, this Agreement, together with the terms and conditions of the applicable Statement of Work, takes precedence over any additional or different terms and conditions in any other documents exchanged by the parties.

(b) *Orders*. Subject to subsection (c) below, periodically, Spansion may submit one or more Orders to Supplier, pursuant to the applicable Statement of Work. Supplier will confirm in writing acceptance or rejection within three (3) business days of its receipt of an Order. Supplier's failure to timely reject an Order shall be deemed acceptance of that Order. Supplier must issue a quotation for any Services requested by Spansion pursuant to this Agreement within the time period specified in the applicable Statement of Work, and to accept any Order submitted by Spansion that is consistent with such quotation, provided that the quantities are within the agreed capacity limits and forecasted requirements specified in the applicable Statement of Work. Orders may be issued by mail or facsimile, or by electronic means if the parties have agreed in writing to conduct such business electronically.

(c) *Capacity Requirements; Forecasts*. Supplier will at all times maintain sufficient Capacity as defined and provided in the applicable Statement of Work to support Spansion's forecasted requirements stated in the applicable Statement of Work, including buffer capacity mutually agreed by the parties. Supplier's failure to maintain such Capacity will be a material breach of this Agreement. Except for any binding forecasts agreed to under a Statement of Work, forecasts provided by Spansion are intended to be good faith estimates only. Such forecasts are intended to be used by Supplier solely as a business planning tool, and do not constitute an Order by Spansion or a commitment by Spansion to purchase any quantity of Services from Supplier. Decisions regarding whether to purchase Services from Supplier shall be at Spansion's sole discretion. Any reliance by Supplier on such forecasts shall be at Supplier's sole risk.

(d) *Tools & Equipment*. Unless otherwise agreed to in writing by the parties, Supplier shall provide the equipment, tools, technology, and labor necessary to provide the Services and to deliver the Product in accordance with the terms and conditions of this Agreement and the applicable Statement of Work. Spansion will provide Supplier with Specifications and/or technology or equipment if agreed by the parties in the applicable Statement of Work.

(e) *Changes*. Subject to subsection (f) below, Spansion may cancel, change, or reschedule any or all of the Services as set forth in the applicable Statement of Work or Order. Subject to subsection (f) below, Spansion may cancel any Order or postpone any performance without Supplier's consent. Supplier shall use its best efforts to accommodate Spansion's requests for other Order changes, including but not limited to increases in quantities or acceleration of delivery dates if so set forth in the applicable Statement of Work or an Order. Failure to confirm acceptance or rejection within three (3) business days of receipt of such changes these shall be deemed acceptance of such changes.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

(f) *Cancellation or Rescheduling*. Subject to the provisions stated under the applicable Statement of Work, in the event of a cancellation or rescheduling of any Order or Statement of Work, in whole or in part, Supplier shall immediately stop all related work and cause its suppliers and subcontractors to stop work. Spansion's liability with respect to any cancellation or rescheduling is limited to:

(i) all work-in-process that exists at the time Supplier is notified of such cancellation or rescheduling,

(ii) actual, non-recoverable costs incurred by Supplier prior to cancellation or rescheduling pursuant to an Order or a Statement of Work, provided that Supplier substantiates the amount of such costs through documentation that is reasonably satisfactory to Spansion.

Supplier shall use all reasonable efforts to limit Spansion's liability in this regard. Spansion will have no other liability or responsibility arising out of any cancellation or rescheduling of Services except as stated above.

(g) *Shipping Terms; Title & Risk of Loss*. Except as otherwise agreed by the parties in writing, terms of shipment for the sorted Products shall be: Ex Works (EXW) - Supplier's sort and test plant, as defined in Incoterms 2000. Title to Products shall remain with Spansion through the period when the Products are in Supplier's possession or storage. Risk of loss of sorted Products shall pass to Spansion upon delivery to Spansion's designated carrier.

### 3. Pricing & Payments

(a) *Pricing*. Prices for Services shall be as set forth in the applicable Statement of Work.

(b) *Payment Terms*. Payment under this Agreement shall be made simultaneously upon the delivery of Products or when Supplier has completed the Services requested by Spansion. Supplier will invoice Services in accordance with the unit of measure set forth in the applicable Statement of Work. Payments will be mailed to Supplier at the address indicated in the applicable Order or wire transferred to the bank account designated by the Supplier. Payments will be made in U.S. dollars absent a written agreement to the contrary in the applicable Statement of Work. Payment of invoices does not constitute final acceptance of the Product. Supplier and Spansion agree that the payment terms contemplated by this Agreement are temporary in nature and that upon Spansion's emergence from the Chapter 11 Case payment terms shall revert to thirty (30) days after Spansion receives an itemized invoice from Supplier.

(c) *Cost Reduction & Value Engineering*. Supplier and Spansion agree that a mutual goal of their commercial relationship is to minimize total cost associated with performing Services and producing Products. Both parties agree to use reasonable efforts to provide alternative technical solutions that reduce costs through design and process improvements. All such Product improvements must be approved by Spansion.

(d) *Competitive Pricing*. Supplier warrants that the prices charged by it to Spansion for the Services hereunder do not exceed [\*].

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#### 4. Time Of Performance

(a) *Delays.* Time is of the essence under this Agreement. Subject to Spansion's payment in accordance with Section 3 (b), Supplier will commence Services hereunder at the time specified in the applicable Order and/or Statement of Work and will finish such Services by the date specified therein. By executing this Agreement and accepting the Order and/or Statement of Work, Supplier agrees that the time limit specified in the Order and/or Statement of Work for the tasks described therein are reasonable. Supplier shall use its best efforts to minimize any delay that may prevent its timely compliance with one or more requirements of this Agreement. Whenever the timely achievement of Supplier's responsibilities pursuant to this Agreement has been or will be adversely affected by any delay, Supplier shall promptly notify Spansion stating the anticipated length of the delay, the cause of the delay, the measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures. At Spansion's option, Supplier's failure to provide such notice shall constitute a material breach of this Agreement. If Supplier's failure to timely deliver sorted Products or perform Services causes Spansion to be unable to timely deliver goods to Spansion customers, Supplier will indemnify Spansion for any such damages, costs, penalties, or other amounts that Spansion pays to its customers as a result of such delay, subject to Sections 15 and 18.

(b) *Force Majeure.* Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by an act of God or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party (each a "Force Majeure Event"). Delays by vendors in manufacture or delivery of materials not caused by a Force Majeure Event, or shortages of labor or materials resulting from general market conditions (including price increases), shall not constitute a Force Majeure Event. A party who is delayed or fails to perform as a result of a Force Majeure Event ("Affected Party") shall use its best efforts (including without limitation rescheduling labor and resources) to mitigate and minimize any resulting delay in the performance of the suspended obligation. The Affected Party shall provide written notice to the other party within twenty-four (24) hours of learning of a Force Majeure Event stating the nature and cause of the event and shall provide written notice within one (1) business day of the anticipated length of the delay, the measures proposed or taken by the Affected Party to minimize the delay, and the timetable for implementation of such measures. If Supplier is the Affected Party and a Force Majeure Event occurs, Spansion may, at any time after receiving Supplier's notice of the anticipated length of the delay, the measures proposed or taken by Supplier to minimize the delay, and the timetable for implementation of such measures (i) conduct business elsewhere with respect to the affected Products, and deduct such business from any committed quantities; and/or (ii) extend the term of this Agreement up to the length of time of the delay.

#### 5. Periodic Supplier Reviews

The parties agree to meet periodically to review Supplier's performance with regards to mutually agreed upon metrics.

#### 6. Consigned Material and Tooling

(a) *Material and Tooling Warehousing.* Supplier will provide warehousing services at Supplier's manufacturing plant or other storage facility mutually agreed by the parties for the Consigned Material and Tooling consisting of receiving, storage, order picking, shipment preparation and execution, pick and pack processing, cycle counting, and performance tracking and inspection of the Consigned Material and Tooling as set out in this section. Supplier shall further provide Spansion, its employees and agents, accessibility to the Consigned Material and Tooling on Supplier's premises during normal business hours and permit the retrieval and removal of any Consigned Material and Tooling, subject to Supplier's reasonable confidentiality, safety and security requirements. Upon termination of this Agreement or at any time upon Spansion's request, Supplier shall promptly return in good condition any Consigned Material and Tooling back to Spansion at Spansion's expense.

(b) *Shipping Terms.* Terms of shipment for Consigned Material and Tooling to Supplier shall be: [\*] - Supplier's sort and test plant, as defined in Incoterms 2000.

(c) *Title & Risk of Loss.* Title and right of possession to all Consigned Material and Tooling shall all times remain with Spansion. Liability for loss of or damage to Consigned Material and Tooling will pass to Supplier once the Consigned Material and Tooling are delivered to Supplier. In the event of any loss or irreparable damage to Consigned Material and Tooling while in the control of Supplier attributable to Supplier, Supplier shall (i) replace such Consigned Material and Tooling, or (ii) compensate Spansion within sixty (60) days of the loss or damage for the replacement cost of the Consigned Material and Tooling. Supplier will use reasonable efforts to recover potentially usable Consigned Material and Tooling from assemblies that have been rejected from the production flow or returned from the field. All damaged, scrap or rejected Consigned Material and Tooling or Product must be returned to Spansion, with appropriate documentation in a timely manner.

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(d) *Security Requirements.* To protect the Products and Consigned Material and Tooling, Supplier will comply with all Spansion security requirements, guidelines and procedures set forth in Appendix 1 attached hereto and incorporated by reference herein, and will take all other measures reasonable prudent to prevent the theft of or damage to Products and Consigned Material and Tooling while in Supplier' s control. Supplier must maintain reasonable documentation of all Consigned Material and Tooling used and in inventory and provide copies to Spansion Security in the event a discrepancy is identified.

(e) *Inventory Tracking.* Supplier shall track and account for all Spansion Consigned Material and Tooling and Products at all times. Upon request, Supplier shall send to Spansion an inventory reconciliation report of Consigned Material and Tooling and Product that includes the following information by Spansion part number and any other information mutually agreed by the parties:

(i) the number of Consigned Material and Tooling received during the applicable period,

(ii) the ending inventory for work-in-process on the production line including the Consigned Material and Tooling inventory issued to the production line and the Product inventory in rework,

(iii) the ending inventory in the Supplier' s staging area,

(iv) the total number of sorted Products delivered,

(v) the ending inventory of rejects being held by Supplier, and

(vi) the total number of rejected Consigned Material and Tooling and/or Products shipped to Spansion.

## **7. Engineering Change Requests And Change Orders**

(a) *Engineering Change Request.* Supplier will not make any changes to Product or any process specifically defined in the Specifications without Spansion' s written authorization. That written authorization will only be accepted in the form of an approved Engineering Change Request (ECR) or Deviation signed by an authorized representative of Spansion. The ECR or Deviation may include, but is not limited to, changes in the Product' s design, components, or manufacturing processes specifically defined in the Specifications. Either Spansion or Supplier may initiate an ECR or a Deviation.

(b) *Response to ECR.* Supplier shall review and respond to all Spansion ECRs in writing within two (2) business days with the feasibility, cost, schedule, and availability impact of the proposed change. Spansion will respond to a Supplier ECR in writing and will not unreasonably withhold or delay its approval. Supplier will use all reasonable efforts to comply with such agreed upon Supplier or Spansion ECRs. If Supplier and Spansion cannot agree to implement the ECR, Spansion may, at its sole discretion, cancel outstanding Orders with respect to the affected Products, in whole or in part, in accordance with section 2 (e) and (f) above. Both Spansion and Supplier shall handle Deviations and emergency ECR in a time-critical manner.

(c) *Associated Costs.* All costs of implementing agreed ECRs initiated by Spansion will be the responsibility of Spansion only if such costs are approved by Spansion in advance of the change. All costs of implementing ECRs initiated by Supplier solely to improve its manufacturing processes will be the responsibility of Supplier.

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## 8. Quality Assurance

Supplier shall comply with all quality requirements and maintain all quality systems, policies and procedures set forth in the applicable Statement of Work.

## 9. Rejected Product

Supplier will notify Spansion of problems associated with Consigned Material and Tooling on a regular basis and will return defective Consigned Material and Tooling as directed by Spansion. For problems mutually determined to be due to a problem with a Consigned Material and Tooling or the Specifications, Spansion will compensate Supplier on a mutually agreed schedule to reimburse Supplier for its actual costs for material and labor. For problems mutually determined to be due to a problem with workmanship, Spansion will not compensate Supplier for any material, labor, or related expenses. If the parties are unable to mutually agree as to the cause of the problem, then the parties may engage a mutually agreed independent third party expert to determine the cause of the problem, and the fees and expenses associated with engaging such expert shall be borne by the party whose assertion of the cause of the problem was incorrect.

## 10. Hazards

In the event that either Supplier or Spansion becomes aware of any information which reasonably supports a conclusion that a defect may exist in any Product which could cause harm to any person or property damage (“Hazard”), the party becoming aware of this information shall immediately notify the other of the Hazard. Supplier and Spansion shall promptly exchange all relevant data and information, and, as promptly as possible, meet to review and discuss the data, information, tests and conclusions relating to the alleged Hazard. At this meeting the parties shall discuss the basis for any remedial or corrective action, including without limitation the origin or cause of the alleged Hazard.

## 11. Standards for Performance

(a) *General Performance Requirements.* Except as specifically agreed to the contrary in the applicable Order or Statement of Work or in writing by the parties, Supplier shall furnish all labor, materials, tools, equipment, and supervision necessary to perform the Services in accordance with the terms and conditions of this Agreement and the applicable Statement of Work. Supplier shall provide proper training and education to all persons performing Services, and shall ensure that such persons have sufficient experience and expertise to perform the Services in an efficient and effective manner. Upon Spansion’s request, Supplier shall provide to Spansion satisfactory evidence of such training, education, experience, and expertise. Spansion’s acceptance of Supplier’s workmanship, materials, or Product which do not conform to the applicable specifications shall not relieve Supplier of the warranty obligations herein.

(b) *General Warranties.* Supplier warrants that:

(i) Supplier has the power and authority to enter into this Agreement,

(ii) Supplier has Capacity in accordance with Section 2(c), above, to perform the Services and to deliver sorted Products as specified in each applicable Statement of Work and Order; and

(iii) each of Supplier’s employees, subcontractors or agents involved in the Services provided to Spansion under this Agreement have signed an agreement with Supplier agreeing to abide by confidentiality requirements with respect to Spansion’s Confidential Information that are at least as protective of such information as the confidentiality obligations set forth in this Agreement.

(c) *Services Warranties.* For [\*] from the delivery of Products, *Supplier* covenants and warrants that Supplier will perform all Services in accordance with the standards and practices of care, skill, and diligence customarily observed by similar firms under similar circumstances at the time the Services are rendered. Supplier warrants that all Services shall comply with all Specifications and/or other requirements set forth in the applicable Statement of Work and/or accepted Order, and any deliverables resulting from such Services shall be free of defects in workmanship. Supplier shall utilize and comply with the relevant portions of any regulatory standards specifically referred to in the accepted Order or Statement of Work or otherwise applicable to the Services.

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(d) *Remedies.* Spansion shall notify Supplier promptly in writing of any defect or nonconformity of the Services or sorted Product resulting from defects in Supplier's workmanship or Supplier's failure to conform to the Specifications set forth in the applicable Statement of Work as set forth in Section 11(c), above. Supplier shall, at Supplier's expense and at Supplier's option, promptly repair or accept the return of and credit Spansion for, such defective or nonconforming Product. Product returned to Supplier for warranty claims shall be repaired or replaced to the engineering level that the Product was originally sorted and/or tested to unless the parties agree otherwise. The foregoing remedies are in addition to all other remedies at law, in equity, or under this Agreement, and shall not be deemed to be exclusive. Spansion will obtain a return material authorization number from Supplier before returning the defective Product to Supplier's designated facility (which return shall be at Spansion's expense). Supplier will pay for delivery of repaired or replaced Products where found by Supplier to be defective under Section 11(c) above. Furthermore, if Supplier's failure to deliver sorted Products to Spansion that conform with the warranty set forth in Section 11(c), above, results in a breach of warranty claim against Spansion, Supplier will indemnify Spansion for any damages, costs, penalties, or other amounts that Spansion will pay to its customers as the result of such breach of warranty, subject to Sections 15 and 18.

(e) *Exclusions.* Supplier's warranty for sorted Product does not extend to:

(i) Product that has been subject to abuse, misuse, unauthorized or faulty repairs, alteration or tampering by Spansion or Spansion's customer, or that has been operated in a manner in violation of operational installation, maintenance or instruction, as mutually determined by the parties in good faith, or

(ii) any defect caused by an error or omission or other fault in specifications, data, software, materials, information or know-how provided by Spansion in writing, or

(iii) any defect not caused solely by Supplier's or its suppliers or subcontractor's services.

(f) *Inspection.* At reasonable times and under reasonable conditions and subject to Supplier's normal confidentiality and security requirements, Spansion shall have the right to inspect Supplier's performance of Services during office hours. At the conclusion of the performance of any Services, Spansion shall have the right to make any final inspection or tests that Spansion shall deem advisable.

## **12. Data Network and Transfer Of Information**

If required in the applicable Statement of Work, Supplier shall maintain a communications network for transferring information between Supplier and Spansion. Specific requirements for any such network and for what specific data is to be transferred will be set forth in the applicable Statement of Work.

## **13. Confidentiality**

(a) *Supplier's Obligations.* All communications and information obtained by Supplier from Spansion relating to this Agreement are confidential ("Spansion Confidential Information"). Except as required by law or otherwise provided in this section, without the prior written consent of an authorized representative of Spansion, Supplier shall neither divulge to, nor discuss with, any third party other than its Affiliates such Spansion Confidential Information. Prior to any disclosure of Confidential Information, whether as required by law or otherwise, Supplier shall inform Spansion in writing of the nature and reasons for such disclosure. Supplier shall not use any communication or information obtained from Spansion for any purpose other than the performance of this Agreement, without Spansion's written prior consent. Upon the termination or expiration of this Agreement, Supplier shall destroy or return to Spansion all written materials constituting or incorporating any Spansion Confidential Information. Upon Spansion's specific approval, Supplier may retain copies of such materials, subject to the requirements of this Subsection (a). Spansion shall use all reasonable efforts to mark all communications and information as "Confidential."

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

(b) *Spansion's Obligations*. All communications and information obtained by Spansion from Supplier relating to this Agreement are confidential ("Supplier Confidential Information"). Except as required by law or otherwise provided in this section, without the prior written consent of an authorized representative of Supplier, Spansion shall neither divulge to, nor discuss with, any third party other than its Affiliates such Supplier Confidential Information. Prior to any disclosure of Supplier Confidential Information, whether as required by law or otherwise, Spansion shall inform Supplier in writing of the nature and reasons for such disclosure. Spansion shall not use any communication or information obtained from Supplier for any purpose other than the performance of this Agreement, without Supplier's written prior consent. Upon the termination or expiration of this Agreement, Spansion shall destroy or return to Supplier all written materials constituting or incorporating any Supplier Confidential Information. Upon Supplier's specific approval, Spansion may retain copies of such materials, subject to the requirements of this Subsection (b). Supplier shall use all reasonable efforts to mark all communications and information as "Confidential."

(c) *Exclusions*. The parties' obligation of confidentiality hereunder shall not apply to any information disclosed hereunder if the recipient party establishes that (i) the information was publicly known at the time of its receipt by the recipient party or has become publicly known other than by a breach of this Agreement or other action by the recipient party; (ii) the information was already known to the recipient party or independently developed by the recipient party, without obligation to keep it confidential, at the time of its receipt from the disclosing party; (iii) the information was received by the recipient party in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential, (iv) the information is compelled to be disclosed by judicial or administrative order, process or regulation (including in connection with obtaining the necessary approvals of this Agreement by government authorities or by other requirements of applicable laws); (v) the information is to be disclosed to each party's financial advisors, certified public accountants, investment bankers, underwriters, legal counsels or any other professionals and those of its counterparts for the purpose of fund raising; or (vi) the information is to be disclosed in compliance with the applicable laws (including U.S. securities regulations) or stock exchange regulations if the disclosing party determines in good faith, upon advice of counsel, that it is necessary to do so after giving prior notice to the other party and using its reasonable efforts (given any time constraints) to contact the other party and to discuss such disclosure with such other party.

(d) *Approved Disclosures*. Supplier may disclose to any subcontractor or Spansion-approved third party any information otherwise subject to Subsection (a) above that is reasonably required for the performance of the subcontractor's or third party's work. Prior to any such disclosure, Supplier shall obtain the subcontractor's or third party's written agreement to the requirements of Subsection (a) above and shall provide a copy of such agreement to Spansion.

(e) *Advertising*. Each party agrees that it shall not publish or cause to be disseminated through any press release, public statement, or marketing or selling effort any information that relates to the other party or this Agreement without the prior written approval of the other party.

#### **14. Intellectual Property Rights**

(a) *Supplier Intellectual Property Rights*. The parties agree that Intellectual Property Rights of all writings, software, drawings, designs, copyrightable material, mask works, inventions, improvements, developments, and discoveries owned by Supplier prior to or during the term of this Agreement, and disclosed, used, made, implemented, performed or reduced to practice independently by Supplier during the course of this Agreement that relate in any manner to the Services to be performed or Products in accordance with the applicable Statement of Work ("Supplier Intellectual Property Rights") shall remain the sole and exclusive property and proprietary information of Supplier.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

(b) *Spansion Intellectual Property Rights*. The parties agree that Intellectual Property Rights of all writings, software, drawings, designs, copyrightable material, mask works, inventions, improvements, developments, and discoveries owned by Spansion prior to or during the term of this Agreement, and disclosed, used, made, implemented, performed or reduced to practice independently by Spansion during the course of this Agreement that relate in any manner to the Services to be performed or Products in accordance with the applicable Statement of Work (“Spansion Intellectual Property Rights”) shall remain the sole and exclusive property and proprietary information of Spansion.

(c) *Assistance by Supplier*. Supplier agrees to assist Spansion, at Spansion’s expense, in every proper way to enable Spansion to obtain, perfect, defend, and enforce its rights in and to all such Spansion Intellectual Property Right in any and all countries, including the disclosure to Spansion of all pertinent information and data with respect thereto, and the execution of all applications, specifications, oaths, assignments, and all other instruments that Spansion shall deem necessary in order to apply for and obtain copyright protection, mask work registration, and/or letters patent, and in order to assign and convey to Spansion, its successors, assigns, and nominees, sole and exclusive rights, title, and interest in and to such copyrights, mask works, inventions, patent applications, or patents.

(d) *Assistance by Spansion*. Spansion agrees to assist Supplier, at Supplier’s expense, in every proper way to enable Supplier to obtain, perfect, defend, and enforce its rights in and to all such Supplier Intellectual Property Rights in any and all countries, including the disclosure to Supplier of all pertinent information and data with respect thereto, and the execution of all applications, specifications, oaths, assignments, and all other instruments that Supplier shall deem necessary in order to apply for and obtain copyright protection, mask work registration, and/or letters patent, and in order to assign and convey to Supplier, its successors, assigns, and nominees, sole and exclusive rights, title, and interest in and to such copyrights, mask works, inventions, patent applications, or patents.

(e) *Survival of Section 14(c)*. Supplier’s obligation to execute (or cause to be executed) at Spansion’s expense, instruments or papers such as those described in Subsection 14(c) above, shall continue after the termination or expiration of this Agreement with respect to any and all copyrights, mask works, and/or inventions to be assigned to Spansion under the applicable Statement of Work. If testimony or information relative to any of said matters or related to any interference or litigation is required by Spansion either during the term of this Agreement or following its termination or expiration which is available to Supplier but not available to Spansion, Supplier agrees to give all information and testimony and do all things requested of it that Supplier may lawfully do, provided that, if such matters shall be required of Supplier, Supplier will receive reasonable compensation for the time so consumed and reimbursements.

(f) *Survival of Section 14(d)*. Spansion’s obligation to execute (or cause to be executed), at Supplier’s expense, instruments or papers such as those described in Subsection 14(d) above, shall continue after the termination or expiration of this Agreement with respect to any and all copyrights, mask works, and/or inventions to be assigned to Supplier under the applicable Statement of Work. If testimony or information relative to any of said matters or related to any interference or litigation is required by Supplier either during the term of this Agreement or following its termination or expiration which is available to Spansion but not available to Supplier, Spansion agrees to give all information and testimony and do all things requested of it that Spansion may lawfully do, provided that, if such matters shall be required of Spansion, Spansion will receive reasonable compensation for the time so consumed and reimbursements.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

(g) *Non-Disclosure*. In the event Spansion should not seek to obtain copyright protection, mask work registration, or patent protection for any of said Intellectual Property Rights, but should desire to keep the same secret, Supplier agrees to assist Spansion in this regard and will not disclose any information as to the same except with the written consent of Spansion. In the event Supplier should not seek to obtain copyright protection, mask work registration, or patent protection for any of said Intellectual Property Rights, but should desire to keep the same secret, Spansion agrees to assist Supplier in this regard and will not disclose any information as to the same except with the written consent of Supplier.

(h) *Use of Third Party Intellectual Property*. Supplier agrees to notify and request approval from Spansion in writing prior to the inclusion of any third party intellectual property, including software and documentation, into any Services. Spansion may decline such approval in Spansion's reasonable discretion. Supplier warrants that Supplier has the right to include such third party or pre-existing Supplier intellectual property in the Services, and that Spansion shall have the right to use any Services based on such third party intellectual property in any Services to the same extent as Spansion may use such Services pursuant to this Agreement. Spansion agrees to notify and request approval from Supplier in writing prior to the inclusion of any third party intellectual property, including software and documentation, into any Services. Supplier may decline to use such third party intellectual property upon receipt of any notice by the third party that such intellectual property infringes upon the intellectual property of such notifying third party.

(i) *Jointly Developed Intellectual Property Rights*. The parties agree:

(1) that the Intellectual Property Rights of all writings, software, drawings, designs, copyrightable material, mask works, inventions, improvements, developments, and discoveries jointly developed by the parties during the course of this Agreement that relate in any manner to the Services to be performed in accordance with the applicable Statements of Work ("Services Intellectual Property Rights") shall be solely owned by Supplier. Supplier grants Spansion a non-exclusive, royalty-free, perpetual license (including the right to sub-license) to the Services Intellectual Property Rights. Spansion shall have the full and unrestricted rights during the term of this Agreement to design, [\*], develop, [\*], make, [\*], manufacture, license, use, lease, sell, offer to sell, import, export or otherwise dispose of any Spansion product or device incorporating any portion of such Services Intellectual Property Rights and to license, use, reproduce, modify and make derivative works of any copyrightable materials included in the Services Intellectual Property Rights, without any further obligation and consideration due or payable to Supplier. Upon expiration or termination of this Agreement, Spansion shall have the full and unrestricted rights to design, [\*], develop, [\*], make, [\*], manufacture, license, use, lease, sell, offer to sell, import, export or otherwise dispose of any Spansion product or device incorporating any portion of such Services Intellectual Property Rights and to license, use, reproduce, modify and make derivative works of any copyrightable materials included in the Services Intellectual Property Rights, without any further obligation and consideration due or payable to Supplier;

(2) that the Intellectual Property Rights of all writings, software, drawings, designs, copyrightable material, mask works, inventions, improvements, developments, and discoveries jointly developed by the parties during the course of this Agreement that relate in any manner to the Products ("Products Intellectual Property Rights") shall be owned by Spansion;

(3) If the consent or approval of a co-owner is required by the IPR-related laws or regulations of any country or jurisdiction for exercise of any part of the rights or ownership interests described in Section 14(i)(1) and (2), above, such consent or approval is hereby given by the other party for the exercise; and

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(4) The parties shall cooperate, with each party bearing its own expenses, and each party agrees to assist the other party, at the other party's expense, in every proper way to enable each party to obtain, perfect, defend, and enforce its rights in and to the Services Intellectual Property Rights and Products Intellectual Property Rights, as applicable, in any and all countries, including the disclosure by each party to the other party of all pertinent information and data with respect thereto, and the execution of all applications, specifications, oaths, assignments, and all other instruments by each party that the other party shall deem necessary in order to apply for and obtain copyright protection, mask work registration, and/or letters patent, and in order to assign and convey to each party, its successors, assigns, and nominees, rights, title, and interest in and to such copyrights, mask works, inventions, patent applications, or patents.

## 15. Indemnification

(a) *Supplier Indemnification Obligations.* SUBJECT TO SECTION 18 (LIMITATION OF LIABILITY), INCLUDING THE EXCEPTIONS THERETO, at Spansion's request, Supplier will defend any and all claims or allegations against Spansion, its subsidiaries, affiliates, officers, directors, employees, subcontractors, consultants, agents, successors, assigns, and customers ("Spansion Personnel") that: (i) the Services, or any portion thereof, on their own or in combination with other goods and services, infringe any third-party's patent, copyright, trademark, trade secret, mask work right or other intellectual property right; or (ii) the Services (in Supplier's possession) caused injury, death, or damages; or (iii) arise or are alleged to have arisen as a result of any negligent and/or intentional act or omission of Supplier or Supplier's subcontractors (of any tier), consultants, agents, officers, directors, or employees, or breach by Supplier of any term of the Agreement. Supplier will indemnify and hold Spansion and Spansion Personnel harmless from and against any costs, damages and fees attributable to any such claims or allegations. Spansion shall: (a) notify Supplier promptly in writing of any such claims or allegations; (b) permit Supplier to answer and defend the claim using competent counsel acceptable to Spansion in its reasonable discretion; and (c) provide information and assistance reasonably necessary to enable Supplier to defend the claim (at Supplier's expense). Supplier's indemnification obligation includes, without limitation, payment of all attorney and other professional fees, costs of appeal, and other costs incurred in defending any such claims, as well as all amounts Spansion pays its customer as a result of Supplier's Services. Spansion will not settle any such claim or allegation without Supplier's prior permission, provided that such permission is not unreasonably withheld. Supplier may not enter into any settlement that imposes any obligation on Spansion or Spansion Personnel without Spansion's prior written consent. Subject to Section 13(c) ("Confidentiality"), Supplier will not publicize or permit any third party to publicize any settlement of such claim or allegation without Spansion's written permission. If Supplier does not agree that the claim or suit is fully covered by this indemnity provision, then the parties agree to negotiate in good faith an equitable arrangement regarding the control of defense of the claim or suit and any settlement thereof consistent with Supplier's obligations hereunder.

(b) *Duty to Correct.* If a third party claims that the technologies used in the Services performed by Supplier, other than those provided by Spansion ("Technologies") infringe an intellectual property right, and if Supplier believes such Technologies infringe, or if the use of any Technologies is enjoined, Supplier will, in addition to its obligations under Section 16(a) above, promptly notify Spansion in writing and, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Spansion from such third party rights with respect to the Services consistent with the rights granted to Spansion by Supplier under this Agreement; (ii) modify the Technologies or Services, as the case may be, so they are non-infringing and in compliance with this Agreement and all applicable requirements and specifications; (iii) replace the Technologies or Services, as the case may be, with non-infringing versions that comply with the requirements of this Agreement and all applicable requirements and specifications. If none of the foregoing proposed resolutions are feasible, Supplier will, at Spansion's request, accept the cancellation of infringing Services and refund any amounts paid.

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(c) *SPANSION Intellectual Property Indemnification Obligations*. SUBJECT TO SECTION 18 (LIMITATION OF LIABILITY) INCLUDING THE EXCEPTIONS THERETO, SPANSION AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SUPPLIER AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS (OF ANY TIER), CONSULTANTS, AND AGENTS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES ARISING OUT OF: (i) ANY CLAIMS THAT THE TECHNOLOGIES OWNED BY SPANSION OR LICENSED TO SPANSION NOT RELATED TO THOSE OF SUPPLIER OR ITS SUPPLIERS OR LICENSOR OR THE LIKE AND USED FOR PERFORMANCE OF THE SERVICES HEREUNDER INFRINGE A COPYRIGHT, PATENT, OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY; (ii) SPANSION' S USE OF THE SERVICES INTELLECTUAL PROPERTY RIGHTS LICENSED BY SUPPLIER TO SPANSION PURSUANT TO SECTION 14 (i)(1), ABOVE, IN COMBINATION WITH ANY UNAUTHORIZED PRODUCT IF THE CLAIM WOULD NOT HAVE ARISEN BUT FOR SUCH UNAUTHORIZED COMBINED USE; (iii) ANY THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS ARISING FROM COMPLIANCE BY SUPPLIER WITH SPECIFICATIONS OR INSTRUCTIONS SUPPLIED BY SPANSION, PROVIDED THAT SUCH CLAIM WOULD NOT HAVE ARISEN BUT FOR SUCH COMPLIANCE. THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL ARISE, PROVIDED THAT (a) SUPPLIER NOTIFIES SPANSION IN WRITING WITHIN THIRTY (30) DAYS OF THE CLAIM; (b) SPANSION HAS SOLE CONTROL OF THE DEFENSE AND ALL RELATED SETTLEMENT NEGOTIATIONS, BUT SUPPLIER SHALL BE ALLOWED TO APPROVE ANY FINAL SETTLEMENT, PROVIDED THAT SUPPLIER' S APPROVAL SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED; AND (c) SUPPLIER PROVIDES SPANSION WITH THE ASSISTANCE, INFORMATION, AND AUTHORITY NECESSARY TO PERFORM SPANSION' S OBLIGATIONS UNDER THIS SECTION. SUBJECT TO SECTION 18 (LIMITATION OF LIABILITY), SPANSION SHALL REIMBURSE SUPPLIER' S REASONABLE OUT-OF-POCKET EXPENSES INCURRED IN PROVIDING SUCH ASSISTANCE AND/OR INFORMATION. SUBJECT TO SECTION 18 (LIMITATION OF LIABILITY), SUCH INDEMNIFICATION OBLIGATION SHALL INCLUDE BUT NOT BE LIMITED TO THE PAYMENT OF ALL REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES OF CONSULTANTS AND EXPERT WITNESSES, COSTS OF APPEAL, AND OTHER COSTS INCURRED IN DEFENDING ANY SUCH CLAIMS.

## 16. Insurance

Supplier represents that it has procured, and at all times during the term of this Agreement shall maintain, the following minimum levels of insurance covering activities and obligations undertaken by Supplier Services pursuant to this Agreement:

Type of Coverage	Minimum Coverage Limits
Worker' s Compensation	Statutory limits (if required by law)
Employer' s Liability	\$1,000,000
Comprehensive General Liability (including without limitation Premises-Operations, Completed Operations, Contractual, Broad Form Property Damage, Personal Injury)	Bodily Injury: \$1,000,000 per occurrence; \$1,000,000 aggregate Property Damage: \$1,000,000 per occurrence; \$1,000,000 aggregate
Comprehensive Automobile Liability (for all owned, non-owned, and hired vehicles)	Bodily Injury: \$1,000,000 each person; \$1,000,000 each accident Property Damage: \$1,000,000 each accident

All such insurance shall provide coverage on the basis of occurrences during the policy period, and not on the basis of claims made during the policy period. Supplier shall procure additional amounts or categories of insurance coverage, if required by law. Such insurance shall be the primary policy covering such occurrences, and no insurance coverage maintained by Spansion shall apply to such occurrences unless and until such Supplier' s policies are exhausted. Supplier is responsible for ensuring that such insurance satisfies all requirements of this section, including the applicable limits and scope of coverage. Prior to commencing Services, Supplier shall provide executed certificates of insurance to Spansion evidencing and certifying compliance with the insurance requirements described above. Supplier shall notify Spansion in writing at least thirty (30) days prior to any cancellation, material modification, lapse, or termination of any such insurance policy.

Supplier shall use its commercially reasonable efforts to have its subcontractors comply with the requirements of this section. Supplier shall advise Spansion at the time it requests approval for use of a subcontractor if such subcontractor does not meet these insurance

requirements. Supplier shall further ensure that any subcontractors which are engaged to perform Services for Supplier under this Agreement maintain proper insurance coverage commensurate with their obligations and liabilities.

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## 17. Term and Termination

(a) The term of this Agreement shall begin on the Effective Date and shall last for two (2) years unless sooner terminated by Spansion or Supplier as provided herein or extended by the agreement of both parties.

(b) *Termination for Cause.* If either party commits a material breach of any provision of this Agreement or of any Statement of Work or any Order, the other party may terminate this Agreement and/or the applicable Statement of Work or any Order in whole or in part, provided that the breaching party fails to cure the breach within thirty (30) days of receiving written notice of the non-breaching party's intent to terminate. Further, should either party (i) be adjudged or become insolvent; (ii) have any proceedings instituted by or against it in bankruptcy, under insolvency laws, or for the party's reorganization, receivership, dissolution, or liquidation; (iii) make an assignment for the benefit of creditors or any general arrangement with creditors; or (iv) discontinue business or adopt a resolution calling for same, the other party may terminate this Agreement for cause upon twenty-four (24) hours written notice. If Spansion terminates this Agreement or a Purchase Order for cause, Spansion may procure substantially similar services from an alternate supplier, and Supplier shall be liable to Spansion for any and all additional costs or expenses reasonably incurred by Spansion in procuring such substitute services, subject to Section 18. Notwithstanding the above, Spansion shall have the right to seek any other remedy that may be available at law or in equity.

(c) *Termination for Convenience.* Spansion may not terminate this Agreement or Statement of Work for convenience.

(d) *Supplier's Obligations upon Termination.* Upon termination or expiration of this Agreement and/or any Statement of Work or Purchase Order, Supplier will, in addition to any other obligations of Supplier on termination or expiration, (i) cease all performance of the terminated Services and furnish to Spansion all completed deliverables and work in progress; (ii) return to Spansion or destroy all copies of any confidential or proprietary information of Spansion related to the terminated Services, and cease all use of these materials; and (iii) within thirty (30) days, provide a full accounting itemizing all Services performed prior to termination for which Supplier has not yet received payment.

(e) *Spansion's Obligations upon Termination.* Upon termination or expiration of this Agreement and/or any Statement of Work or Purchase Order, Spansion will, in addition to any other obligations of Spansion on termination or expiration, (i) return to Supplier or destroy all copies of any confidential or proprietary information of Supplier related to the terminated Services, and cease all use of these materials; and (ii) within thirty (30) days, make the payment for all Services performed prior to termination for which Spansion has not yet paid.

(f) *Partial Termination.* The termination of one or more Scopes of Work and/or Purchase Orders, or any part or portion thereof, shall not terminate or otherwise affect in any way the validity of any other Statement of Work or Purchase Order in effect at such time.

## 18. Limitation of Liability

EXCEPT AS PROVIDED BELOW, IN NO EVENT SHALL [\*] BE LIABLE TO [\*] FOR [\*] OR FOR [\*]. [\*] LIABILITY TO [\*] ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM [\*] OR NEGLIGENT CONDUCT SHALL IN NO EVENT EXCEED [\*]. PROVIDED, HOWEVER, THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL IN NO WAY LIMIT [\*] LIABILITY FOR BODILY INJURY OR DEATH OR FOR DAMAGES OR LOSSES OF ANY KIND RESULTING FROM ITS: (I) BREACH OF ITS OBLIGATIONS UNDER SECTION 13 ("CONFIDENTIALITY"), ABOVE, (II) BREACH OF ITS INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION OBLIGATIONS UNDER SECTION 15 ("INDEMNIFICATION"), ABOVE, OR (III) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

IN NO EVENT SHALL [\*] BE LIABLE FOR [\*] OR FOR [\*]. [\*] LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM [\*] SHALL IN NO CASE EXCEED [\*]. PROVIDED, HOWEVER, THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION SHALL IN NO WAY LIMIT [\*] LIABILITY FOR DAMAGES OR LOSSES OF ANY KIND RESULTING FROM ITS: (I) BREACH OF ITS OBLIGATIONS UNDER SECTION 13 (“CONFIDENTIALITY”), ABOVE, (II) BREACH OF ITS INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION OBLIGATIONS UNDER SECTION 15 (“INDEMNIFICATION”), ABOVE OR (III) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 19. Miscellaneous Provisions

(a) *Compliance with Law.* In the performance of this Agreement, Supplier shall at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, orders, and other requirements, including without limitation such governmental requirements applicable to environmental protection, health, safety, wages, hours, equal employment opportunity, nondiscrimination, working conditions, import or export control, customs, and transportation to which Supplier is subject. Supplier will further comply with Spansion’s current Supplier Code of Conduct; provided, however, that Supplier is not obligated to comply with the subsequently modified Spansion Supplier Code of Conduct unless Supplier expressly agrees to comply with it in writing.

(b) *Delegation, Subcontracting, and Assignments.* Neither party shall assign its rights, delegate its duties, or subcontract any work performed under the terms of this Agreement and the applicable Statement of Work without prior written authorization from the other party. Supplier will require its delegates or subcontractors to agree, in writing, to the terms and conditions of this Agreement. Notwithstanding any delegation or subcontract, Supplier shall remain obligated to Spansion in the performance of Services and will remain bound by the terms and conditions of this Agreement.

(c) *Taxes and Benefits.* Supplier shall bear and pay all federal, state, and local taxes based upon or measured by its net income, and all franchise taxes based upon its corporate existence or its general corporate right to transact business. Spansion shall reimburse Supplier, or pay directly to the appropriate tax authority, or timely issue a valid tax exemption certificate, for sales or use taxes legally imposed upon the transactions arising out of this Agreement.

(d) *Labor Disputes and Work Stoppages.* No dispute between labor organizations and Supplier shall be permitted to occur or be manifested on any Spansion site, and Supplier agrees to employ personnel and other agents for the Services who will work at all times in harmony with Spansion’s personnel and other agents. Supplier agrees not to participate in or encourage any cessation of the Services that may occur as a result of any such labor dispute; however, Supplier may participate in lawful negotiations.

(e) *Records Available.* Supplier shall keep full and detailed invoicing and payment records, specifications, and yield data and sort results relating to the Services. All such records shall be available to Spansion or to Spansion’s authorized representative upon request of Spansion, within a reasonable period of time after such a request, at a reasonable location, and during normal business hours for a period of five (5) years after the completion of the Services.

(f) *Use of Spansion Resources.* If given authorization to utilize Spansion resources (e.g., computers, telephones, etc.), Supplier agrees to use such resources strictly for performing the Services hereunder. Any other or unauthorized use shall be deemed breach of the Agreement.

(g) *Gratuities.* Supplier warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent, or representative of Spansion any cash or non-cash gratuity or payment with a view toward securing any business from Spansion or influencing such person with respect to the conditions of or performance under any contracts with or order from Spansion, including without limitation this Agreement. Any breach of this warranty shall be a material breach of each and every contract between Spansion and Supplier.

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(h) *Solicitation of Employment.* Each party agrees not to recruit, divert, or solicit the employment of the other party's employee during Supplier's performance of Services under this Agreement and for a period of ninety (90) days following the termination or expiration of this Agreement.

(i) *Notices.* All notices relating to this Agreement shall be in writing and shall be deemed given (i) in the case of mail, on the date five (5) days after it is deposited in the mail, postage prepaid, either registered or certified, with return receipt requested (or its equivalent); (ii) in the case of personal delivery to an authorized representative or officer of the party, or in the case of express courier service or overnight delivery service of national standing, on the date of delivery or attempted delivery (if receipt is refused); or (iii) in the case of facsimile, twenty (24) hours after it has been sent provided that a duplicate copy of such notice is also promptly sent pursuant to (i) or (ii) above. Notices shall be sent to the Address for Notices set forth above, but each party may change its address by written notice in accordance with this section.

(j) *Independent Contractor.* In the performance of this Agreement, Supplier is acting as an independent contractor, and neither Supplier nor its employees are the servants, agents, or employees of Spansion. Except as expressly provided in this Agreement, Spansion shall have no direction, supervision, or control over Supplier or its employees. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party without the other party's written consent.

(k) *Governing Law.* This Agreement shall be governed by, subject to, and construed in accordance with the internal laws of the State of California, excluding the conflict of law rules thereof. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods.

(l) *Prevailing Party.* In any arbitration or judicial proceeding involving Spansion and Supplier arising out of or relating to this Agreement or to Services performed under this Agreement, the prevailing party shall be entitled to recover all reasonable expenses associated with such proceeding, including reasonable attorneys' fees and expenses.

(m) *Severability.* Each term of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any of the terms of this Agreement becomes or is declared illegal by any court or tribunal of competent jurisdiction, or becomes otherwise unenforceable, such term shall be deemed deleted from this Agreement unless it can be modified to reflect the parties' intention, and all the remaining terms of this Agreement shall remain in full force and effect.

(n) *Survivability.* The obligation of the parties contained in Section 13 (Confidentiality), 14 (Intellectual Property Rights), 17(d) (Supplier's Obligations upon Termination), 17(e) Spansion's Obligations upon Termination), 18 (Limitation of Liability), and 19(i) (Notices) shall survive any termination of this Agreement and any applicable Statement of Work, unless otherwise agreed by the parties in such Statement of Work. Any rights and obligations incurred prior to the termination shall survive any termination of this Agreement.

(o) *Nonwaiver of Rights.* The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party that is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

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(p) *Modification.* This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement.

(q) *Entire Agreement.* This Agreement, all exhibits, attachments, appendices, and documents incorporated or referenced herein, including exhibits, attachments, appendices, and documents that are subsequently updated by Spansion, and the terms and conditions in each Purchase Order and Statement of Work, constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

**Spansion LLC**

/s/ Randy Furr

*Authorized Signature*

Randy Furr

*Print Name*

Chief Financial Officer

*Title*

*Date*

**ChipMOS TECHNOLOGIES INC.**

/s/ S.J. Cheng

*Authorized Signature*

S.J. Cheng

*Print Name*

Chairman and CEO

*Title*

Feb 05 '10

*Date*

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

**Appendix 1**  
To  
Sort Services Agreement

**Security Policies**

**1. General**

A. Supplier shall make available for inspection by SPANSION-designated Distribution and Security Managers written security procedures and evidence of implementation of such procedures based on these Security Policies, within one (1) month after execution of the Agreement.

B. Supplier agrees to assign a senior security representative to monitor, standardize and implement its security procedures at each Supplier facility utilized to perform the Services.

C. Supplier shall insure that all Supplier employees and subcontractors who have access to SPANSION Product have satisfactorily passed a background investigation prior to employment. Documentation of the investigation procedure shall be promptly provided to SPANSION upon request.

**2. Handling Guidelines**

A. The Supplier is required to provide a secure storage area for SPANSION Product. The secure area shall be designed to deter and prevent unauthorized access. Entry to the secured area is to be limited to personnel directly involved in service provision, shipping and receiving of SPANSION Product. For the purpose of this Agreement, examples of secure storage may include sealed or locked containers, locked cages, locked hard wall areas, and cargo stored in racks at sufficient height to prevent access by unauthorized persons. Any loose cargo stored over six (6) hours must be stored in a locked cage or locked hard wall area.

B. Loading of SPANSION Product shipments must be done in the presence of the authorized driver; no pre-loading of Product shipments on vehicles for later collection is permitted.

C. Any incoming freight owned by SPANSION showing evidence of being opened, or otherwise tampered with must be reported to SPANSION immediately and a written report produced within twenty-four (24) hours following the discovery.

**3. Supplier Premise Security**

A. The Supplier shall provide and maintain, at all times, adequate security systems to allow continuous security monitoring and protection of SPANSION Product against fire and intrusion. This shall include a building fire detection system, an intruder detection system, and a closed circuit television system with video recording capability. Any exceptions to this requirement must be approved by SPANSION.

B. The Supplier shall ensure that access to its buildings is controlled to prevent unauthorized casual and intentional intrusion. Details of measures shall be included in Supplier' s security procedures.

**4. Audits**

A. Supplier shall meet with SPANSION Corporate Security or its appointed representatives at least once a year to discuss Supplier' s compliance with these Security Policies. Absent mutual agreement to the contrary, routine business meetings shall not satisfy this requirement.

B. Subject to reasonable prior written notice and compliance with Supplier' s normal security and confidentiality requirements, SPANSION reserves the right to audit any of Supplier' s premises used to perform the Services and shall report audit results and proposed corrections within fifteen (15) days of the completed audit. Copies of audit procedures shall be included in the Supplier' s security procedures.

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## 5. General Security Responsibilities

A. Supplier senior security representative shall perform loss/theft investigations with respect to SPANSION Products. Results of such investigations shall be reported to SPANSION within twenty-four (24) hours of completion of the investigation into any such incident. Law enforcement must be notified immediately once Supplier is aware of any discrepancies or losses if the investigation determines that loss/theft is due to criminal activity and the value of the loss or stolen SPANSION Products is more than \$500. The Supplier shall assist and shall cooperate with SPANSION in locating any lost Product.

B. Supplier shall perform a self-audit twice each year of all facilities in which SPANSION Product is moved or stored by Supplier and report results to SPANSION in writing.

C. Supplier shall establish standard security operating procedures, (“Standard Operating Procedures”) for SPANSION shipments if Supplier is responsible for transportation of SPANSION Products within thirty (30) days of execution of the Agreement and update it twice a year thereafter. Supplier shall provide a copy of its Standard Operating Procedures to SPANSION after each update. Supplier shall perform additional updates as needed.

D. Subject to reasonable prior written notice and compliance with Supplier’ s normal security and confidentiality requirements, SPANSION Corporate Security shall have reasonable access to Supplier security audits and loss/theft investigations related to SPANSION Products. SPANSION Corporate Security shall, in its discretion, participate with Supplier security on security investigations and resolution of issues on loss/theft investigations related to SPANSION Products.

E. Subject to any confidentiality obligations that Supplier may have to other parties, Supplier shall, from time to time and at the reasonable request of SPANSION, provide SPANSION a full report on all losses and theft at specified facilities for stipulated periods of time (e.g. 6, 12, 24 months). Supplier’ s report shall include losses for both SPANSION and non-SPANSION product.

F. Any exceptions to these Security Policies shall require SPANSION’ s prior written agreement.

G. Quarterly security reviews shall be conducted at each facility utilized to perform the Services. Results are to be reported at quarterly meetings and any irregularities and corrective action plans explained.

H. Copies of all security reports shall be provided to SPANSION Austin Investigations Manager and to the appropriate SPANSION distribution manager.

**ANY AMENDMENTS OR WAIVERS TO THESE SECURITY POLICIES MUST BE APPROVED IN WRITING BY SPANSION CORPORATE SECURITY.**

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## STATEMENT OF WORK

### Parties:

	<u>Spansion</u>	<u>Supplier</u>
<i>Full Legal Name:</i>	<b>Spansion LLC</b>	<b>ChipMOS TECHNOLOGIES INC.</b>
<i>Business Entity Type:</i>	Limited Liability Company	Corporation
<i>Organized In:</i>	State of Delaware	Republic of China
<i>Principal Business Address:</i>	915 DeGuigne Drive Sunnyvale, CA 94088	No. 1 R&D Rd. 1, Hsinchu Science Park Hsinchu, Taiwan, R.O.C
<i>Address for Notices:</i>	915 DeGuigne Drive Sunnyvale, CA 94088 Attn: GSM, MS 12 Facsimile: (408) 982-1946	No. 1 R&D Rd. 1, Hsinchu Science Park Hsinchu, Taiwan, R.O.C. Attn: S. J. Cheng Facsimile: 886-3-5668980
	<i>With copy of legal notices only to same address:</i> Attn: Law Department, MS 251 Facsimile: (408) 616-3762	

**Project Name:** **V5400 Wafer Sort Services**

**Project Start Date:** the earlier of (i) the date of the entry of an order by the U.S. Bankruptcy Court for the District of Delaware approving Spansion's execution of this SOW, as defined below, and such order shall not have been stayed pending appeal, or (ii) the date a plan of reorganization has been confirmed by the U.S. Bankruptcy Court for the District of Delaware and become effective

**Project Completion Date:** the second anniversary after the Project Start Date

**Applicable Agreement Title ("Agreement"):** **Sort and Test Services Agreement**

Spansion and Supplier agree as follows:

### **1. Relationship to Agreement**

This Statement of Work ("SOW") is subject to the terms and conditions of the Agreement identified above, which is incorporated herein by reference. The Agreement is intended to describe the general rights, obligations, and liabilities of the parties and establishes general standards applicable to the Services. All terms and conditions in the Agreement shall apply to this SOW absent the express agreement of the parties to the contrary in this SOW. Terms used in this SOW shall have the same meaning as in the Agreement. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this SOW, the terms and conditions of this SOW shall govern.

### **2. Effective Date and Term**

The term of this SOW shall begin on the Project Start Date and shall end on the Project Completion Date referenced above, unless sooner terminated in accordance with the provisions of the Agreement or extended by the agreement of both parties. If no Project Completion Date is specified, then this SOW shall remain in effect until the performance of Services pursuant to this SOW is completed to the satisfaction of Spansion, unless sooner terminated by Spansion or Supplier in accordance with the provisions of the Agreement.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

### 3. Scope of Services

Services to be performed by Supplier will include all work, tasks and deliverables described in Section 4 (*Supplier's Obligations*) below. Any additional services will be agreed to in writing by the parties in the form of an amendment to this SOW. Supplier shall provide all tools, equipment, materials, and staff support that may be necessary to perform the Services and to create the deliverables.

### 4. Supplier's Obligations

Supplier will accomplish the following tasks and provide the following deliverables. Spansion's acceptance will be based on the following criteria:

(a) Supplier shall perform sort Services utilizing V5400 test cells.

(b) Subject to Section 11 of the Agreement, all Services shall be performed in accordance with Spansion's wafer sort testing program specification attached hereto as Exhibit A, and which may be updated by Spansion periodically. Failure to successfully provide Services in accordance with the wafer sort testing program specification shall constitute a material breach of the Agreement and this SOW.

(c) Supplier shall maintain a data network connection accessible via the Internet that are accessible by Spansion twenty-four (24) hours per day, seven days per week.

(d) Supplier shall at all times maintain sixty (60) sets of V5400 test cells capacity ("Reserved Capacity") to support Spansion's Forecasts (as defined below) of wafer sort testing requirements. Supplier's failure to maintain such Reserved Capacity will be a material breach of this SOW and the Agreement. Spansion's requirement of wafer sort testing requirements in excess of sixty (60) sets of V5400 test cells ("Additional Capacity") shall be subject to the agreement of Supplier and Supplier reserves the rights to accept or reject any Additional Capacity requirements in its sole discretion. Forecasts, as defined below, other than Binding Forecast, as defined below, provided by Spansion are intended to be good faith estimates only. Such Forecasts, other than Binding Forecasts, are intended to be used by Supplier solely as a business planning tool, and do not constitute an Order by Spansion or a commitment by Spansion to purchase any quantity of Services from Supplier. Decisions regarding whether to purchase Services from Supplier, other than such Services specified in a Binding Forecast, shall be at Spansion's sole discretion. Any reliance by Supplier on such Forecasts other than Binding Forecast shall be at Supplier's sole risk.

(e) If a reduction in costs is a direct result of any idea submitted by Spansion, adjustment will be made to the price to reflect fifty percent (50%) of such cost reductions. This cost savings sharing model does not apply to market driven component price reductions that occur as a result of normal industry activity, and all such component price reductions shall be fully passed through to Spansion immediately.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**



(f) Supplier shall perform Services pursuant to the delivery dates agreed upon between Supplier and Spansion in a weekly operational scheduling meeting between the parties. Time is of the essence under this Agreement. Subject to Spansion's payment in accordance with Section 3 (b) of the Agreement, Supplier will commence Services hereunder at the time specified in the applicable Order and will finish such Services by the date specified therein. By accepting the Order, Supplier agrees that the time limit specified in the Order for the tasks described therein are reasonable. Supplier shall use its best efforts to minimize any delay that may prevent its timely compliance with one or more requirements of this SOW. Whenever the timely achievement of Supplier's responsibilities pursuant to this SOW has been or will be adversely affected by any delay, Supplier shall promptly notify Spansion stating the anticipated length of the delay, the cause of the delay, the measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures. At Spansion's option, Supplier's failure to provide such notice shall constitute a material breach of this Agreement. If Supplier's failure to timely deliver sorted Products or perform Services causes Spansion to be unable to timely deliver goods to Spansion customers, Supplier will indemnify Spansion for any such damages, costs, penalties, or other amounts that Spansion pays to its customers as a result of such delay, subject to Sections 15 and 18 of the Agreement.

## 5. Spansion's Obligations

In support of Supplier's performance of the Services, Spansion will perform only those tasks and/or provide those resources, items, and/or data specifically identified below:

(a) Spansion shall provide specifications for applicable devices tested by Supplier.

(b) Spansion shall provide probe cards and wafer sort testing specifications for Products tested by Supplier.

(c) On or before the fourth week of each fiscal month, Spansion shall provide Supplier with a rolling forecast of wafer sort testing requirements for a period of subsequent three (3) months ("Forecast"). Both parties agree that seventy-five percent (75%) of the hours required by Supplier to perform the Services as specified in the Forecast for the subsequent one (1) month shall be binding upon Spansion and Supplier, if so accepted by Supplier ("Binding Forecast") and Spansion shall place Orders in compliance with the Binding Forecast accordingly. Spansion may at any time, in its sole discretion, specify and/or change the Products for which Supplier will perform the Services, provided, however, the hours required by Supplier to perform the Services will be specified in the Binding Forecast. Spansion's failure to place Orders in compliance with the Binding Forecast shall be a material breach of this SOW. Forecasts other than Binding Forecast provided by Spansion are intended to be good faith estimates only. Such Forecasts are intended to be used by Supplier solely as a business planning tool, and do not constitute an Order by Spansion or a commitment by Spansion to purchase Services from Supplier. Decisions regarding whether to purchase Services from Supplier shall be at Spansion's sole discretion. Any reliance by Supplier on such Forecasts other than Binding Forecasts shall be at Supplier's sole risk.

(d) Except as provided in Section 5(c), above, in no event shall Spansion change, cancel or reschedule any Order issued pursuant to a Binding Forecast without Supplier's written consent. Spansion's instruction contradictory to this Section shall not bind Supplier. Except for the foregoing, in the event of a cancellation or rescheduling of any Order, in whole or in part, Spansion shall compensate Supplier in accordance with Section 2(f) of the Agreement.

Supplier may utilize such resources, items, and/or data solely for the performance of Services pursuant to this SOW. No other rights of possession or use are granted by Spansion. Supplier will promptly destroy or return to Spansion all items and data provided by Spansion upon completion of the applicable task or deliverable, or sooner if instructed by Spansion.

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

**6. Compensation**

(a) *Pricing.* Spansion and Supplier agree that the hourly rates for the Services described in this SOW, including for both Reserved Capacity and Additional Capacity, shall be [\*] dollars (USD\$[\*]) per hour. Supplier’s failure to object to an Order within three (3) business days of Supplier’s receipt of the Order or Supplier’s commencement of performance of the Services without such objection shall constitute Supplier’s agreement that the compensation described therein is accurate and sufficient, provided such compensation is consistent with the foregoing agreed pricing. Subject to Section 3(b) of the Agreement, Supplier shall invoice Spansion only after the applicable Services have been performed and/or after the applicable charges or costs are incurred. Payments shall be mailed electronically or to Supplier at the address set forth in the Notices section of this SOW, unless Supplier designates in writing a different mailing address for receipt of payment.

(b) *No Other Amounts.* Any and all sales or use taxes for the Services provided will be the responsibility of Spansion. Except as provided in the applicable Order, Supplier will not be entitled to any other form of compensation or reimbursement related to the performance of the Services or for the creation of the deliverables. Unless otherwise specified in the applicable Order, all costs or expenses associated with the tools, equipment, materials, or support staff necessary to perform the Services or create the deliverables shall be borne by Supplier. No increase in fees or rates may become effective without the prior written consent of an authorized representative of Spansion and the issuance of a revised Order.

**7. Exclusivity**

Except for (i) sort services to be provided to Spansion utilizing V5400 test cells listed in Exhibit B, and (ii) Spansion’s and its Affiliates’ operation of any Spansion-owned, controlled, leased, or possessed test cells at a Spansion location, Spansion shall utilize Supplier as Spansion’s sole source subcontractor of Spansion’s and its Affiliates’ V5400 wafer sort requirements during the term of this SOW. Notwithstanding anything contained in this SOW to the contrary, both parties agree to negotiate, in good faith, the Reserved Capacity commitment and the price for Reserved Capacity and Additional Capacity within three (3) months after the Project Start Date of this SOW.

Spansion LLC

ChipMOS TECHNOLOGIES Inc.

/s/ Randy Furr

/s/ S.J. Cheng

**Authorized Signature**

**Authorized Signature**

Randy Furr

S. J. Cheng

**Print Name**

**Print Name**

Chief Financial Officer

Chairman and CEO

**Title**

**Title**

**Date**

**Date**

[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

**Exhibit A**

**Wafer Sort Program Specification**

**As outlined in Spansion Specification number F03-070.31 Rev R dated 8/24/09**

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

**Exhibit B**  
**Current V5400 Test Cells in Japan**

<u>Item</u>	<u>Serial #</u>
1	CN44310101
2	CN44310165
3	CN44310166
4	CN44310194
5	CN44310195
6	CN44310196
7	CN44310244
8	CN44310248
9	CN44310252
10	CN44310277
11	CN44310278
12	CN44310279
13	CN44310280
14	CN44310281
15	CN44310282

16	CN44310283
17	CN44310285
18	CN44310286
19	CN44310287
20	CN44310288
21	CN44310289
22	CN44310307
23	CN44310308
24	CN44310309
25	US44310101
26	US44310102
27	US44310103
28	US44310105
29	US44310106
30	US44310107
<b><u>Item</u></b>	<b><u>Serial #</u></b>
32	US44310109

33	US44310110
34	US44310111
35	US44310112
36	US44310113
37	US44310114
38	US44310116
39	US44310117
40	US44310120
41	US44310122
42	US44310126
43	US44310127
44	US44310129
45	US44310149
46	US44310150
47	US44310151
48	US44310152
49	US44310153

50	US44310154
51	US44310155
52	US44310156
53	US44310224
54	US44310274
55	US44310275
56	US44310157
57	US44310160

**[\*] Certain information in this document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.**

**Certification of Chief Executive Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, John H. Kispert, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Spansion Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as described in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter (the Company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Date: April 28, 2010

/s/ John H. Kispert

John H. Kispert

President and Chief Executive Officer



**Certification of Chief Financial Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Randy W. Furr, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Spansion Inc. (the "Company");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as described in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the Company's internal control over financial reporting that occurred during the Company's most recent fiscal quarter (the Company's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Date: April 28, 2010

/s/ Randy W. Furr

Randy W. Furr

Executive Vice President and Chief Financial Officer

**Certification of Chief Executive Officer Pursuant to 18 U.S.C. § 1350 As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Spansion Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarter ended March 28, 2010 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 28, 2010

/s/ John H. Kispert

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John H. Kispert

President and Chief Executive Officer

**Certification of Chief Financial Officer Pursuant to 18 U.S.C. § 1350 As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. § 1350, adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Spansion Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

- (i) the Quarterly Report on Form 10-Q of the Company for the quarter ended March 28, 2010 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 28, 2010

/s/ Randy W. Furr

Randy W. Furr

Executive Vice President and Chief Financial Officer