

MACOM TECHNOLOGY SOLUTIONS - TERMS AND CONDITIONS FOR U.S. FOUNDRY SERVICES

UNLESS YOU HAVE A SEPARATE, SIGNED GENERAL OR MASTER PURCHASE AGREEMENT WITH MACOM TECHNOLOGY SOLUTIONS AND ITS AFFILIATES (“SELLER”) WHICH IS CURRENTLY IN EFFECT AND EXPLICITLY APPLIES TO THE FOUNDRY SERVICES YOU ARE PROCURING FROM SELLER, THESE TERMS AND CONDITIONS FOR U.S. FOUNDRY SERVICES SET FORTH THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN THE PARTY TO WHOM SELLER’S WRITTEN QUOTATION (“QUOTATION”) IS ADDRESSED (“BUYER” OR “YOU”) AND SELLER FOR THE FOUNDRY SERVICES FOR WHICH YOU REQUEST A QUOTE AND/OR THAT YOU ACQUIRE, AND OVERRIDES AND SUPERSEDES ANY ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS DISCUSSED BY SELLER AND BUYER OR SET FORTH ON ANY BUYER PURCHASE ORDER OR OTHER RELATED DOCUMENTS. AS USED HEREIN, “FOUNDRY SERVICES” REFERS TO THE SERVICES DESCRIBED IN ANY MUTUALLY AGREED STATEMENT OF WORK (“SOW”) OR IF A SEPARATE SOW DOES NOT EXIST, IN THE QUOTATION, WHICH SERVICES MAY INCLUDE ONE OR MORE OF THE FOLLOWING: CAD OR DESIGN SUPPORT AND TRAINING, CIRCUIT DESIGN, MASK GENERATION, WAFER FABRICATION, WAFER FABRICATION, PCM TESTING OF WAFERS, ELECTRICAL AND VISUAL SCREENING, SINGULATION, DICING, AND/OR DELIVERY OF ADVANCED RF AND MICROWAVE DEVICES.

1. ACCEPTANCE OF ORDERS. Upon Seller’s acceptance of Buyer’s purchase order, an agreement will be formed consisting of Seller’s Quotation (which incorporates these Terms and Conditions), any SOW, Seller’s order acknowledgement (“Acknowledgement”), and any provisions in Buyer’s purchase order that are consistent with and not different from or in addition to the provisions in the Quotation, SOW and/or Acknowledgement (collectively, the “Agreement”). In the event of any inconsistency between the various documents that comprise the Agreement, the order of precedence will be these Terms and Conditions, the other provisions of the Quotation, the SOW, and finally any provisions included from Buyer’s purchase order. Buyer’s purchase orders must reference Seller’s Quotation and will be accepted by Seller as a matter of administrative convenience only, without constituting Seller’s agreement to any provisions in Buyer’s purchase order that are different from or in addition to the provisions in the Agreement.

Seller’s acceptance of all orders and all offers and sales by Seller are subject to and expressly conditioned upon Buyer’s assent to the provisions in the Agreement exactly as offered by Seller. Any provisions stated on Buyer’s purchase orders or any other documents provided by Buyer that are different from or in addition to those contained in the Agreement are hereby rejected by Seller and will be of no effect unless specifically agreed to in writing by Seller as amending or supplementing the Agreement. Seller’s commencement of performance or its provision of any deliverables will not be construed as acceptance of any of Buyer’s terms and conditions which are different from or in addition to those contained in the Agreement. If a contract is not earlier formed by mutual agreement in writing, acceptance by Buyer of the foundry services or deliverables furnished by Seller pursuant to the Agreement will be deemed Buyer’s assent to all of the terms and conditions of the Agreement.

2. PERFORMANCE AND ACCEPTANCE OF DELIVERABLES. Seller will use commercially reasonable efforts to perform on or before the dates specified in the Agreement or such later dates as may be agreed to by Buyer for delivery or other performance related to the foundry services. Seller will not be liable for any delays in its performance or its failure to perform resulting from occurrences beyond Seller’s reasonable control or attributed to Buyer’s fault or negligence. Such occurrences will include but not be limited to: acts of God, strike, lockout, riot, war, terrorism, civil unrest, fire, accident, delays caused by any subcontractor or supplier or by Buyer, technical difficulties, failure or breakdown of machinery or components necessary for fabrication of deliverables, inability to obtain or substantial rises in the price of labor or materials or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation, order or direction, whether valid or invalid, of any governmental authority or instrumentality thereof, in either its sovereign or contractual capacity. Seller will promptly notify Buyer if Seller has knowledge that any occurrence is delaying or threatens to delay the timely performance of the Agreement.

Buyer agrees that any delay in delivery or failure to deliver or perform any part of the Agreement will not be considered a material default by Buyer or provide grounds for Buyer to terminate or refuse to comply with any provisions hereof and no liability of any kind will be effective against Seller for such delay or failure regardless of the cause. However, if the delay or failure extends beyond six (6) months from the originally scheduled date for performance, either party may, by written notice to the other, terminate the Agreement without further liability for the unperformed part of the Agreement.

All deliverables provided under the Agreement will be deemed accepted by Buyer as conforming to the Agreement, and Buyer will have no right to revoke any acceptance unless written notice of the claimed nonconformity is received by Seller within twenty (20) days of delivery thereof. Notwithstanding the foregoing, any use of a deliverable by Buyer, its agents, employees, contractors, customers or licensees, for any purpose, after delivery thereof, will constitute acceptance of that deliverable by Buyer, provided that, acceptance will not constitute a waiver of any of Buyer’s rights provided under Seller’s limited warranty in Section 3 below. For the avoidance of doubt, inspection and test of the deliverables does not constitute “use” as used in this Section.

3. LIMITED WARRANTY. Seller warrants that the foundry services will be performed by qualified personnel in a professional, workman-like manner conforming to generally accepted industry standards and practices for quality work, that it will use process control monitor (PCM) testing to insure process stability, and that the deliverables provided by Seller will be PCM “good” as that term is defined in the PCM table of parameters developed by Seller, a confidential copy of which is available upon request. The foregoing warranty is the sole and exclusive warranty provided by Seller to Buyer under the Agreement. Buyer acknowledges the developmental nature of the foundry services and understands that there can be no guarantee that any target specifications will be achieved or that commercially usable devices will result from this undertaking.

The deliverables to be provided under the Agreement are not goods or products of Seller and, except as expressly set forth in the preceding paragraph, are provided “AS IS,” without warranty of any kind. Seller provides no warranty, guarantee or other assurance of any kind regarding the manufacturability, yield, or performance of any design or deliverable to be provided under the Agreement.

Notwithstanding the foregoing, Seller will have no obligation based on any claimed breach or defect attributed to a modification of or damage to a deliverable by someone other than Buyer, MACOM TECHNOLOGY SOLUTIONS - TERMS AND CONDITIONS FOR U.S. FOUNDRY SERVICES

or the combination, operation, or use of a deliverable with products, equipment or materials not provided by Seller.

Seller will have no liability under the foregoing warranty unless Seller is given written notice of the claimed breach or defect and a description thereof within ninety (90) days after the foundry service is rendered or the defective deliverable is received. Seller’s entire liability and Buyer’s sole and exclusive remedy under this warranty will be limited to the provision of such remedial or replacement foundry services as Seller reasonably determines necessary to correct the breach or defect. Buyer’s remedies for any breach of warranty are limited to those provided in this Section to the exclusion of all other remedies, including, without limitation, incidental or consequential damages.

THE FOREGOING WARRANTY PROVISIONS ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AGAINST INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No warranty or agreement varying or extending the foregoing warranty and limitation of remedy provisions may be relied upon by Buyer unless it is in a separate written document signed by a Senior Vice President or above of Seller, which document, if any, will reference the Agreement and expressly indicate the parties intent to modify and/or extend the foregoing warranty and limitation of remedy provisions. No other representation or affirmation of Seller, whether by words or action, will be construed as a warranty. If any model or sample was shown to Buyer, such model or sample was used merely to illustrate the general type and quality of the deliverables and not to represent that the deliverables would necessarily conform to the model or sample.

4. DELIVERY.

4.1. The deliverables will be shipped from Seller’s designated point of shipment to any location designated by Buyer (subject to Section 16 below regarding export control). Unless Seller notifies Buyer otherwise, shipments will be delivered *Ex Works (Incoterms 2020)* Seller’s designated point of shipment.

4.2. All delivery dates or shipment dates are approximate and may be changed by Seller. In the event Buyer rejects or revokes acceptance of any deliverables for any reason, all risk of loss and/or damage to such deliverables will nonetheless remain with Buyer unless and until the same are returned at Buyer’s expense to such place as Seller may designate in writing. In addition, Seller reserves the right to allocate production and deliveries amongst its various customers under any circumstances.

5. PAYMENT.

5.1. Invoices will be issued in accordance with the Quotation upon the furnishing of deliverables or completion of other milestones, and payment will be due in full within thirty (30) days from the invoice date or by such other date specified in the Quotation. The amount of credit or terms of payment may be changed, or credit withdrawn, by Seller in its sole discretion at any time. No discounts are allowed. Payment shall not be withheld on account of any claim by Buyer against Seller. Seller reserves the right, among other remedies, either to cancel the Order or suspend deliveries if Buyer fails to pay for any invoice when payment becomes due. Any amounts paid at any time by Seller that are the responsibility of Buyer will be invoiced to Buyer and reimbursed to Seller. Seller reserves the right to adjust prices for any reason for foundry services not yet performed, including but not limited to increases in the cost of fuel raw materials or other production-related inputs. All prices and other terms are subject to correction for typographical or clerical errors. Seller reserves the right to require payment in advance or other reasonable assurances of payment if Seller, in its sole discretion, decides that Buyer is not credit-worthy.

5.2. Any tax, duty, custom, or other fee of any nature imposed upon this transaction by any federal, state or local government authority shall be paid by Buyer, in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, duty, custom or other fee, Buyer will reimburse Seller therefor.

5.3. Buyer agrees to pay Seller, on demand, interest at a rate of 1.5% per month or, if less, the maximum rate permitted by applicable law for any late payments, together with any and all related collections costs, court costs and attorneys’ fees incurred in the collection of such amounts.

5.4. Unless specifically otherwise agreed in writing by Buyer and Seller, all payments are to be made in United States Dollars (USD\$) and made by wire transfer in accordance with Seller’s instructions.

5.4.1. If Seller permits Buyer to pay by check and Buyer is located in the U.S., the check must be drawn on a U.S. bank. All banking charges, if any, are to be pre-paid by Buyer.

5.4.2. If Seller permits Buyer to pay by check and Buyer is located outside the U.S., the check must be drawn on a Standard & Poor’s triple A-rated bank headquartered in the country of Seller’s principal place of business. All banking charges, if any, are to be pre-paid by Buyer.

6. DEFAULT AND TERMINATION.

6.1. Either party may terminate the Agreement if the other party materially defaults in the performance of its obligations under the Agreement and fails to cure such default within sixty (60) days after written notice thereof from the non-defaulting party. Such termination and Buyer’s rights provided under Seller’s patent indemnity set forth in Section 10 below and Seller’s

limited warranty set forth in Section 3 above will be Buyer's sole and exclusive remedies in the event of a default by Seller.

6.2. Except as provided in Section 19 below, Buyer will be deemed in material default under the Agreement if Buyer fails to pay any amounts when due, cancels or attempts to cancel the Agreement prior to delivery, or refuses delivery or otherwise fails to perform any of its obligations under the Agreement or fails to pay Seller any sums due from Buyer under any other agreement or otherwise. In the event of a material default by Buyer, Seller may, upon written notice to Buyer, (1) suspend its performance and withhold deliverables, in whole or in part, (2) terminate the Agreement, and/or (3) declare all sums owing to Seller immediately due and payable. Exercise of any of the foregoing remedies by Seller will not preclude exercise of any of the others, and neither the existence nor exercise of such remedies will be construed as limiting, in any manner, any of the rights or remedies available to Seller under applicable laws.

7. GOVERNING LAWS; EXPORT CONTROLS AND DATA TRANSFER.

7.1. If Buyer is based in the U.S., this Agreement and the sale of the foundry services hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. A waiver by Seller of any of these terms and conditions shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed. No action shall be brought for any breach by Seller more than one (1) year after the occurrence of the cause of action therefor.

7.2. If Buyer is based outside of the U.S., this Agreement and the sale of the foundry services hereunder shall be governed by and construed in accordance with the laws of the country of Seller's principal place of business, excluding the conflicts of law provisions thereof and the United Nations Convention on Contracts for the International Sale of Goods. A waiver by Seller of any of these terms and conditions shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed. No action may be brought for any breach by Seller more than one (1) year after occurrence of the cause of action therefor.

7.3. Buyer understands that the foundry services are subject to the laws and regulations of all applicable jurisdictions, which may include, but are not limited to, the United States Export Administration Regulations (15 CFR Parts 730-774) ("EAR") administered by the Department of Commerce, Bureau of Industry and Security ("BIS"), the International Traffic in Arms Regulations (22 CFR Parts 120-130) ("ITAR") administered by the Department of State, Directorate of Defense Trade Controls ("DDTC"), and the various sanctions regimes administered by the Department of Treasury, Office of Foreign Assets Control ("OFAC"). As such, Buyer recognizes/warrants the following:

7.3.1. The foundry services or information related to the foundry services that Buyer may receive from Seller, may constitute "technology" or "technical data," as those terms are defined under the EAR and ITAR, respectively. Buyer represents that it understands the controls relevant to "technology" and "technical data" and that it will handle such technology or technical data in compliance with the EAR and ITAR's respective requirements.

7.3.2. Buyer is prohibited from selling, exporting, reexporting, or transferring foundry services technology, or technical data (or other items subject to U.S. export controls, as relevant) without a license, to an individual, an entity, or a country for which a license would be required under the EAR, ITAR, or any other U.S. law. Specifically, Buyer is prohibited from selling, exporting, reexporting, or transferring foundry services technology or technical data to any person or entity designated as a prohibited/restricted party by an agency of the U.S. government, unless Buyer is authorized to do so under a license issued by the respective agency. Such prohibited/restricted persons or entities include those listed on (i) the BIS Entity List, (ii) the BIS Denied Persons List, (iii) the BIS Military End User List, (iv) the Department of Treasury, Office of Foreign Assets Control (OFAC) Specially Designated Nationals List ("SDN List"), or (v) any other restrictive trade list promulgated under U.S. law that prohibits the person or entity from receiving products, technology, or technical data.

7.3.3. Buyer is prohibited from selling, exporting, reexporting, or transferring foundry services technology or technical data to embargoed countries prohibited by the U.S. Government under the comprehensive sanctions programs administered by OFAC or by export controls relevant to embargoed countries administered by BIS.

7.3.4. Buyer warrants that it will not provide foundry services technology or technical data for a "military end use" or to a "military end user" in Burma (Myanmar), Cambodia, China, Russia, or Venezuela, and that it will comply with controls on military end uses/users described in 15 C.F.R. § 744.21.

7.3.5. Buyer warrants that it will not use the foundry services technology or technical data for a "military intelligence end use" or to a "military intelligence end user" in Burma (Myanmar), Cambodia, China, Russia, Venezuela, or a country listed in Country Groups E:1 or E:2 (see Supp. No. 1 to Part 740 of the EAR), and that it will comply with controls on military intelligence end uses/users described in 15 C.F.R. § 744.22.

7.3.6. Buyer warrants that it will not use any technology or technical data it may receive from Seller in conjunction with end use activities prohibited under the EAR or ITAR without authorization from the U.S. Government. Such activities include, but are not necessarily limited to, the research, design, development, manufacture, testing, use, or stockpiling of nuclear, biological, or chemical weapons, missiles, rockets, or unarmored aerial vehicles. See 15 C.F.R. Part 744 for a list of end-use/user controls under the EAR that may apply to Seller's products or technology.

7.3.7. Products or technical data marked as "ITAR" are subject to the jurisdiction of the ITAR. Authorization from DDTC is required to export, re-export, or transfer to a foreign person (whether in the U.S. or abroad) such products, technology or technical data.

7.3.8. Products or technology marked with an Export Control Classification Number ("ECCN") (e.g., "ECCN 3A001") are classified under the ECCN with which they are marked. Depending on the ECCN, such products or technology may require a license from the U.S. Department of Commerce to export or re-export to certain countries. It is Buyer's responsibility to ascertain Buyer's export compliance obligations when exporting products or technology and to comply with all applicable laws and regulations.

7.3.9. The EAR prohibit the unlicensed shipment to entities designated under Footnote 1 of the BIS Entity List (primarily Huawei Technologies Co., Ltd. ("Huawei") or any of its affiliates listed on the BIS Entity List) of certain foreign-made items that are the "direct product" of certain U.S. software/technology or that are the "direct product" of equipment that itself is a "direct product" of certain U.S. software/technology. See 15 C.F.R. § 734.9(e). Accordingly, Seller is shipping these products on the condition and understanding that (i) they will not be used to produce any item that will be incorporated into, or used in the production or development of, any product produced, purchased, or ordered by Huawei, a Huawei affiliate, or any other entity identified under Footnote 1 of the BIS Entity List; and (ii) Huawei, a Huawei affiliate, or any other entity identified under Footnote 1 of the BIS Entity List is not a party to this transaction, including acting as a "purchaser," "intermediate consignee," "ultimate consignee," or "end-user." If Seller's understanding is incorrect, please inform Seller immediately to ensure compliance with Seller's terms and conditions for quotation and sale.

7.3.10. Buyer warrants that it will not sell, export, reexport, or transfer products, technology or technical data it may receive from Seller, in any other manner not specified in these terms and conditions that would be contrary to the EAR, ITAR, or any other U.S. law.

7.4. To the extent that Seller processes any personal data, such processing will be in accordance with Seller's Privacy Policy, which may be viewed at www.macom.com/privacy-policy.

7.5. Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any Products supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No. 833/2014. Buyer shall further ensure that any third parties further down the commercial chain, including, but not limited to resellers, abide by these restrictions.

7.5.1. Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers to ensure compliance with this Section 7.5.

7.5.2. Any violation of this Section 7.5 shall constitute a material breach of this Agreement and entitle Seller to seek remedies including (a) cancellation of this Agreement; and (b) a penalty of up to the entire value of the orders under the Agreement.

7.5.3. Buyer shall immediately inform Seller of any known or suspected non-compliance with this Section 7.5. Buyer shall promptly make available to Seller information concerning compliance with the obligations set forth herein following Seller's request of such information.

8. FORCE MAJEURE. In the event of strikes, epidemics, natural disasters, war, civil unrest, acts of terrorism, other events outside the control of Seller, as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"), Seller shall be released from performing its contractual duties under this Order to the extent that such Force Majeure is partially or wholly preventing Seller from performing its contractual duties. In such an event, Seller shall inform Buyer about the nature of the Force Majeure incident and the expected duration of the incident. In no event shall Seller be responsible or liable for any claim in connection with the non-performance or late performance of his contractual duties for the duration of a Force Majeure event.

9. TAXES AND IMPORT DUTIES.

9.1. If Buyer is based in the U.S., Buyer agrees to furnish Seller with an exempt purchase or resale certificate or, in the absence of same, assume all liabilities for all Federal, state and local taxes and duties, other than taxes based upon Seller's net income.

9.2. Except as expressly agreed to in writing by Seller, any and all customs, duties, taxes or other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any deliverable, documentation or information furnished or sold shall be for the account of and paid for by Buyer.

10. PATENT INDEMNIFICATION.

10.1. Seller shall defend at Seller's expense every lawsuit based on a claim that the deliverables infringe a United States patent issued as of the date of the shipment of the deliverables brought against Buyer within one (1) year after the date of the order to which the suit pertains, and shall indemnify and hold harmless Buyer against all resulting judgments or settlements of such suit, so long as timely notice of such suit or claim and sole control of the defense, and settlement of the same, is given to Seller. Buyer shall furnish to Seller all information and assistance in connection with such suit or claim which may be reasonably requested by Seller.

10.2. If such deliverable is held to constitute an infringement and the use of the deliverable is enjoined, Seller shall, at its option, either procure for Buyer the right to continue using the deliverable or replace same with a non-infringing deliverable, or modify the deliverable so that it becomes non-infringing, or grant Buyer a credit for the purchase price of such deliverable.

10.3. Notwithstanding any of the foregoing, Seller shall not be liable to Buyer hereunder for any patent infringement or for any claim thereof based upon: (i) use of the deliverable in combination with any materials not provided by Seller where such infringement or claim thereof would not have occurred but for such combination; or (ii) Seller's compliance with Buyer's designs, specifications, or instructions; or (iii) modification of deliverables other than at Seller's direction; or (iv) use of an allegedly infringing version of the deliverable, if the alleged infringement could be avoided by use of a different design made available to Buyer; (v) the willful acts of Buyer; (vi) Seller's compliance with any industry or proprietary standard; and (vii) any settlement or compromise incurred or made by Buyer without Seller's prior written consent. The foregoing states Seller's entire liability and Buyer's sole and exclusive remedy for patent infringement and is in lieu of all other express and implied warranties.

10.4. Buyer will defend and hold Seller harmless against any expense, loss, costs or damages resulting from any claimed infringement of patents, trademarks or other intellectual property rights arising out of compliance by Seller with Buyer's designs, specifications or instructions.

11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS.

11.1. The provision of foundry services and the furnishing of deliverables pursuant to the Agreement do not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Seller, whether relating to the deliverables provided or to any foundry service or other matter. All rights under any such patent, copyright,

trademark or other proprietary rights are expressly reserved by Seller. Furthermore, Buyer agrees not to infringe, directly or indirectly, any patents of Seller or its subsidiaries with any combination or system incorporating a deliverable provided pursuant to the Agreement.

11.2. The exchange of confidential information by the parties will be governed by and subject to the terms and conditions of a separate mutual non-disclosure agreement (“NDA”) and a Process Design Kit Agreement (“PDK Agreement”). Notwithstanding any contrary provision in the NDA, the term of any NDA applicable to the exchange of confidential information under the Agreement at the start of performance by Seller shall be extended until completion of Seller’s performance under the Agreement. To the extent provided in the SOW (if a separate SOW does not exist, then as provided in the Quotation), Seller will generate any mask set needed to fabricate devices to be included in the deliverables (the “Mask Set”). Conditional upon payment by Buyer of all amounts due to Seller under the Agreement, Buyer will have the following rights relating to the Mask Set: (i) Seller will not use the Mask Set or copies thereof to produce deliverables for any third party without Buyer’s prior written consent; (ii) at Buyer’s request, Seller will provide foundry services using the Mask Set (if not yet destroyed as provided below) to fabricate additional deliverables for Buyer upon terms acceptable to both parties; and (iii) Seller will

provide Buyer with certain circuit lay-out files (the “Lay-Out Files”) that correspond to the mask levels that define the physical realization of the circuit and the interface with the active device. The Lay-Out Files will not include internal details of the active device layout or other proprietary information of Seller developed outside of the Agreement.

11.3. The parties agree and understand that the Mask Set embodies confidential and proprietary information of Seller relating to transistor and circuit design and topology that was developed outside the Agreement. Accordingly, Seller will retain title and ownership to the Mask Set and all copies of the Mask Set will remain within Seller’s possession and control. Buyer is not entitled to review, inspect, or receive a copy of the Mask Set except to the extent shown in the Lay-Out Files.

11.4. Any device design supplied by Buyer will be the proprietary information and property of Buyer, and except as required for the performance of the Agreement, Seller may not use, execute, reproduce, display, perform, distribute, or prepare derivative works based upon such design without Buyer’s prior written approval. If the foundry services include device design services provided by Seller, then upon payment by Buyer of all amounts due to Seller under the Agreement, Buyer will be considered the owner of any device design first developed and delivered by Seller during the performance of the foundry services under the Agreement and, except as required for the performance of the Agreement, Seller may not use, execute, reproduce, display, perform, distribute, or prepare derivative works based upon such design without Buyer’s prior written approval. Except as provided in the foregoing sentence, all inventions, mask works, and works of authorship, and all designs, drawings and data made or developed by Seller in the course of performing the foundry services or previously made or developed by Seller (including but not limited to the MMIC process/es used in fabricating any deliverables) or lawfully acquired by Seller independent of the Agreement, and all rights therein under any patent, copyright or other law protecting intellectual property, will be and remain Seller’s property. Notwithstanding the foregoing, the Quotation is a non-exclusive offer by Seller to provide foundry services to Buyer and nothing herein prohibits Seller from performing foundry services for third parties, including developing device designs for a third party that are similar or identical to device designs developed by Seller for Buyer provided that Seller does not violate its confidentiality obligations to Buyer or Buyer’s ownership rights in its designs.

11.5. In the course of performing the foundry services, Seller may process more wafers and/or complete more devices using the Mask Set than are necessary to fulfill Buyer’s purchase order. Subject to the restriction on sale to third parties provided above, Seller will own all extra wafers and devices, which will be available for purchase by Buyer upon terms acceptable to both parties. Unless otherwise agreed in writing by the parties, Seller will retain the Mask Set and any extra wafers or devices for at least three (3) years after fulfillment of the Quotation and may destroy the Mask Set and any extra wafers or devices after such period without prior notice to Buyer.

11.6. In the absence of a specific NDA set forth above, all non-public information provided by Seller or its affiliates to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” shall be (i) deemed Seller’s “Confidential Information”; (ii) used solely for performing Buyer’s obligations under this Order; and (iii) maintained by Buyer in strict confidence and shall not be disclosed or copied unless authorized in advance by Seller in writing. All Confidential Information is provided “AS-IS,” without any representations or warranties of any kind. Upon the earlier of cancellation/completion of the Order to which this Agreement relates or Seller’s request, Buyer shall promptly return all Confidential Information of Seller and/or its affiliates in Buyer’s possession. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

12. TEST DATA. Unless specifically noted hereon, qualification tests and any test data are not included in the selling price. Qualification tests may be performed by Seller and test data supplied at the specific request and expense of Buyer.

13. FAIR LABOR STANDARDS ACT OF 1938. Seller represents that with respect to the production of the articles and/or the performance of the services stated herein, it has fully complied with all of the applicable provisions of the Fair Labor Standards Act of 1938 (“FLSA”), as amended, including sections 6, 7, and 12, regulations under FLSA section 14, and all other applicable Administrative regulations.

14. DISPUTES. If Buyer is based outside of the U.S., then Buyer and Seller shall attempt in good faith to resolve any dispute or disagreement (“Dispute”) arising under an Order promptly by negotiation between executive management of each party who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Order. If any Dispute is not settled to the mutual satisfaction of Buyer and Seller, then it shall be settled at the option of either Party by any court of competent jurisdiction in accordance with the applicable laws of the country in which Seller’s principal place of business is located.

15. EXECUTIVE ORDER 11246. In connection with performance of work hereunder, Seller agrees to comply with all provisions, including specifically paragraphs (1) through (7), Sec. 202

of Executive Order No. 11246 of September 24, 1965, as amended, and rules, regulations and order pertaining thereto.

16. EXCLUSION OF CERTAIN DAMAGES; LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, (I) SELLER’S AGGREGATE CUMULATIVE TOTAL LIABILITY TO BUYER HEREUNDER, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATIONS HEREIN, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE PAYMENTS MADE TO SELLER FOR THOSE FOUNDRY SERVICES PURCHASED UNDER THE ORDER WHICH GAVE RISE TO THE CLAIM, AND (II) IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF BUSINESS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER)

ARISING OUT OF OR IN CONNECTION WITH THE ORDER OR THE DELIVERABLES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. ASSIGNMENT. This Agreement shall not be assigned by either party without the written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the above, Seller may assign this Agreement and any Order, without consent, in whole or in part, to (a) any affiliate or subsidiary or (b) a third party in the event of merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of Seller’s assets to such third party.

18. NO THIRD PARTY BENEFICIARIES. This Agreement is intended for the benefit of Buyer and Seller and their respective permitted assigns and is not for the benefit of, nor may any provision hereof, including any claims for damages, be enforced by, any other person.

19. GOVERNMENT CONTRACTS.

19.1. If Buyer is located in the U.S. and the foundry services being acquired hereunder are for ultimate sale to the U.S. Government, unless otherwise stated, the foundry services being purchased are “commercial items” (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation (“FAR”). Accordingly, Seller accepts only those flow down requirements expressly set forth in FAR 52.244-6(c)(1), and only to the extent (a) Buyer’s contract with its buyer includes such clauses, (b) the flow-down of such clauses, or portions thereof, to Seller is required by law for “commercial items” as defined in FAR 2.101 and FAR 52.202-1, and (c) necessary to accomplish the purpose of such FAR and Defense Federal Acquisition Regulation (“DFAR”) clauses (collectively, “U.S. Regulations”).

19.2. Except as otherwise noted, where the terms “Contracting Officer” and “Contractor” appear in the text of any U.S. Regulation, such terms shall mean the “Buyer” and “Seller” respectively. References in such clauses to the “Government” shall remain as stated. All references in such clauses to “Contract” shall mean the terms of this Agreement. Under no circumstances, however, will Buyer have access to confidential or proprietary information of Seller.

19.3. Buyer may request changes within the general scope of the foundry services to the extent required by Buyer’s contract with the government. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Agreement, the parties will agree in writing to an equitable adjustment in the price and/or delivery schedule, and the Agreement will be modified accordingly. If the adjustment includes the cost of property made obsolete or excess by the change, Buyer will have the right to prescribe the manner of disposition of the property. No change will become effective unless and until approved in writing by Seller, including Seller’s agreement to additional charges, if any, resulting from such change. Seller may not unreasonably withhold its approval of changes required by Buyer’s contract with its customer.

19.4. If the government cancels the portion of the work relating to the deliverables to be provided under the Agreement, the Agreement may be terminated by Buyer giving written notice to Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller will:

- 19.4.1. Stop work under the Agreement on the effective date of the notice of termination; and
- 19.4.2. Submit a termination claim within sixty (60) days after the effective date of the termination notice incorporating all claims of Seller. The amount that Seller will be entitled to upon termination of the Agreement will be determined as follows:
 - (i) Payment of an amount equal to the Agreement price multiplied by a percentage reflecting the percentage of the work performed prior to the effective date of termination;
 - (ii) A fair and reasonable allowance for any reasonable cancellation charges due to material commitments made by Seller with Seller’s suppliers or subcontractors;
 - (iii) A fair and reasonable allowance for any inventory held by Seller for delivery to or use in fabrication of deliverables for delivery to Buyer under the Agreement, which cannot readily be used for any other customer, in which case Seller will transfer title and possession of said inventory to Buyer in accordance with Buyer’s instructions; and
 - (iv) Any other amounts that are mutually acceptable to Buyer and Seller as being fair and reasonable.

Notwithstanding the foregoing, the parties may mutually agree to a partial termination of the Agreement provided such agreement: (1) equitably revises the price for work remaining to be performed by Seller thereafter; (2) equitably revises all such other rights, risks, obligations and/or responsibilities as may be affected by such partial termination; and (3) is evidenced by a formal modification to the Agreement signed by both parties.

19.5 The following FAR and DFARS clauses, to the extent required by Buyer’s contract with the government and to the extent applicable according to their terms, as in effect on the effective date of the Agreement are incorporated into this Agreement, with the term “Contractor” as used therein deemed to refer to Seller:

- 19.5.1 The clauses required to be included in the Agreement pursuant to part (c)(1) of FAR 52.244-6 Subcontracts for Commercial Items, to the extent applicable.
- 19.5.2 The clauses required to be included in the Agreement pursuant to DFARS

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts), to the extent applicable.

If funding for Buyer's payments under the Agreement is provided under the American Reinvestment and Recovery Act of 2009 ("ARRA"), Seller will provide the information required under FAR 52-204-11(d)(10)(i), (ix), and (x) upon request by Buyer, and the following additional clause will be incorporated into the Agreement:

52.203-15 Whistleblower Protections under ARRA

19.6 Unless otherwise agreed to in writing by a duly authorized representative of Seller, no audit right, or financial, cost or pricing data, or other proprietary data will be provided to Buyer or any other person. Seller retains proprietary rights in all technical data and computer software provided under the purchase order to the fullest extent permitted under the U.S. Regulations as it relates to the sale of commercial items. To the extent legally required, Seller will grant only limited rights or restricted rights to the U.S. Government in the form of a commercial license, limited license or other restricted rights as determined by Seller. Further, Buyer agrees to retain any proprietary legends that Seller includes on the products to be furnished under this Agreement.

19.7 This Agreement conveys no rights contained in any U.S. Regulations (including rights of audit of Seller's cost or pricing data) to any person (including Buyer) other than rights that the U.S. Government may have as a matter of law.

19.8 Except as set forth above, no other U.S. Government regulations shall apply to the foundry services unless agreed to in writing by authorized representatives of the parties.

19.9 IF THE DELIVERABLES RECEIVED FROM SELLER ARE TO BE USED BY BUYER IN THE PERFORMANCE OF A U.S. GOVERNMENT CONTRACT OR SUBCONTRACT, OR IF FUNDING FOR BUYER'S PAYMENTS UNDER THE AGREEMENT IS PROVIDED UNDER ARRA, BUYER WILL PROMINENTLY NOTE

SUCH FACTS IN ITS PURCHASE ORDER.

20. SURVIVAL. The provisions of Sections 7, 11 and any other clause of this Agreement that by its nature should survive the cancellation, expiration or the completion of all activities contemplated by the Order to which this Agreement relates, shall survive.

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