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As filed with the Securities and Exchange Commission on September 9, 2016.

Registration No. 333-

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

# FORM S-1
# REGISTRATION STATEMENT
***UNDER***
***THE SECURITIES ACT OF 1933***

# Everspin Technologies, Inc.

**(Exact name of Registrant as specified in its charter)**

| **Delaware** | **3674** | **26-2640654** |
|---|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(Primary Standard Industrial Classification Code Number)** | **(I.R.S. Employer Identification Number)** |

**1347 N. Alma School Road**
**Suite 220**
**Chandler, Arizona 85224**
**(480) 347-1111**
**(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)**

**Phillip LoPresti**
**Chief Executive Officer**
**Everspin Technologies, Inc.**
**1347 N. Alma School Road**
**Suite 220**
**Chandler, Arizona 85224**
**(480) 347-1111**
**(Name, address, including zip code, and telephone number, including area code, of agent for service)**

***Copies to:***

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 "smaller reporting company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ (Do not check if a smaller reporting company) | Smaller reporting company | ☐ |

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to be Registered | Proposed Maximum Aggregate Offering Price(1)(2) | Amount of Registration Fee(3) |
|---|---|---|
| Common Stock, $0.0001 par value per share | $45,000,000 | $4,532 |

(1) Includes offering price of any additional shares that the underwriters have the option to purchase to cover over-allotments, if any.
(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.
(3) Calculated pursuant to Rule 457(o) under the Securities Act of 1933, based on an estimate of the proposed maximum aggregate offering price.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities, and we are not soliciting offers to buy these securities, in any jurisdiction where the offer or sale is not permitted.**

**Subject to Completion, Dated September 9, 2016**

**PRELIMINARY PROSPECTUS**

# Shares


## Common Stock

This is the initial public offering of the common stock of Everspin Technologies, Inc. We are selling shares of common stock.

Prior to this offering, there has been no public market for our common stock. The initial public offering price is expected to be between $ and $ per share. We have applied for our common stock to be listed on The Nasdaq Global Market under the symbol "MRAM."

**We are an "emerging growth company" as defined under the federal securities laws. Investing in our common stock involves risks. See "Risk Factors" beginning on page 10.**

| | Price to Public | Underwriting Discounts and Commissions(1) | Proceeds to Everspin |
|---|---|---|---|
| Per share | $ | $ | $ |
| Total | $ | $ | $ |

(1) See the section titled "Underwriting" for a description of the compensation payable to the underwriters.

We have granted the underwriters the option to purchase up to an additional shares of common stock to cover over-allotments at the initial public offering price less the underwriting discount and commissions. The underwriters may exercise their option at any time within 30 days from the date of this prospectus.

Neither the Securities and Exchange Commission nor any state securities regulators has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2016.

**Stifel** **Needham & Company**

***Co-Managers***

**Canaccord Genuity** **Craig-Hallum Capital Group**

**, 2016**

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Neither we nor the underwriters have authorized anyone to provide you with information that is different from that contained in this prospectus or in any free writing prospectus we may authorize to be delivered or made available to you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We and the underwriters are offering to sell shares of common stock and are seeking offers to buy shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date on the front of this prospectus, regardless of the time of delivery of this prospectus or any sale of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

**Until , 2016 (25 days after the commencement of this offering), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.**

## TRADEMARKS

Everspin Technologies, Inc., "The MRAM Company," and our logo are our trademarks and are used in this prospectus. This prospectus also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, our trademarks and tradenames referred to in this prospectus appear without the ™ symbol, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the right of the applicable licensor to these trademarks and tradenames.

## INVESTORS OUTSIDE THE UNITED STATES

Neither we nor any of the underwriters have taken any action that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons who have come into possession of this prospectus in a jurisdiction outside the United States are required to inform themselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in this prospectus. This summary is not complete and may not contain all the information you should consider before investing in our common stock. You should read this entire prospectus carefully, especially the risks of investing in our common stock discussed under the heading "Risk Factors," and our financial statements and related notes included elsewhere in this prospectus, before making an investment decision. Except as otherwise indicated herein or as the context otherwise requires, references in this prospectus to "Everspin Technologies," "the company," "we," "us" and "our" refer to Everspin Technologies, Inc.*

### Overview

We are the leading provider of MRAM solutions. Our MRAM solutions offer the persistence of non-volatile memory, a type of memory that retains information even in the absence of power, with the speed and endurance of random access memory (RAM), and enable the protection of mission critical data particularly in the event of power interruption or failure. Our MRAM solutions allow our customers in the industrial, automotive and transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors. We are the only provider of commercially available MRAM solutions, and over the past eight years we have shipped over 60 million MRAM units.

Our magnetoresistive random access memory (MRAM) technology, unlike traditional semiconductor memory technologies, stores data as a magnetic state rather than an electrical charge, and is offered as either a discrete or embedded solution. Our products read and write data at speeds on par with most dynamic RAM (DRAM) and static RAM (SRAM). Our products offer the non-volatility of flash memory but with significantly superior endurance. We offer our MRAM solutions with different densities and interfaces to address the various needs of our customers. Our lower-density MRAM products, which we define as having bit densities from 128kb to 16Mb, offer write-speeds on par with SRAM, with virtually unlimited endurance. Our higher density products, which we define as having bit densities at or greater than 64Mb, offer write-speeds on par with DRAM and have superior endurance compared to most other non-volatile memory technologies.

Our lower-density products are optimized for use in industrial, and automotive and transportation applications, while our higher-density products are optimized for use in enterprise storage applications. In the enterprise storage market, we collaborate with industry-leading memory controller companies to enable compatibility of their controllers with our MRAM products, facilitating the adoption of our solutions into our customers' existing end products. We have over 600 customers worldwide, including Honeywell, ifm, Nikkiso and Siemens in the industrial market, Airbus and Hyundai Mobis in the automotive and transportation market, and Broadcom, Dell, IBM and Lenovo in the enterprise storage market.

We leverage both internal and outsourced manufacturing capabilities to produce our MRAM products. We purchase industry-standard complementary metal-oxide semiconductor (CMOS) wafers from semiconductor foundries and complete the processing of our products by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We have entered into a manufacturing agreement with GLOBALFOUNDRIES for 300mm high-volume production of our higher-density products. We believe our strategic relationship with GLOBALFOUNDRIES accelerates the development of our MRAM solutions, provides us with leading-edge outsourced manufacturing capabilities, and enables us to operate a variable cost financial model. In addition, GLOBALFOUNDRIES has the ability to embed our technology in its products for sale to its customers, from which we would earn licensing or royalty revenue.

For the years ended December 31, 2014 and 2015, and six months ended June 30, 2016, we recorded revenue of $24.9 million, $26.5 million and $12.9 million, gross margin of 52.6%, 52.7% and 55.7%, and a net loss of $10.2 million, $18.2 million and $10.0 million, respectively. As of June 30, 2016, we had 86 employees, approximately half of whom are engaged in research and development.

Our headquarters are located in Chandler, Arizona. Our principal design center is in Austin, Texas, and we have additional sales operations in the Americas, Europe and Asia-Pacific regions.

**The Opportunity for MRAM**

Traditional memory technologies have either fast write-speeds or are non-volatile, but not both. MRAM combines both features into a single solution, making it an ideal memory to protect data in the event of power interruption or failure, and to store data that is frequently written and accessed. The following attributes make MRAM an increasingly important application specific memory solution for system architectures that require non-volatile memory with the speed and endurance of RAM:

***Non-volatile.*** MRAM can retain data in the event of power interruption or failure, which enables end-system designers to create products without costly power-loss protection systems, such as batteries and capacitors.

***Fast-write Speeds.*** MRAM offers write-speeds that are on par with the fastest available volatile memory technologies, including most DRAM and SRAM and is significantly faster than other non-volatile memories used today. For example, MRAM writes a block over 100,000 times faster than NAND flash, a type of non-volatile flash memory.

***Superior Write Cycle Endurance.*** MRAM offers virtually unlimited write-cycle endurance (nearly ten million times greater than NAND flash), enabling end-systems designers to offer products that are not limited by memory wear-out. A write cycle is the recording of data in the memory cell.

***Scalable to Greater Densities and Smaller Process Geometries.*** MRAM's write-speed and endurance are scalable with increasing bit densities and smaller geometries, which we believe will allow system designers to employ MRAM in applications that require more memory and smaller form factors.

***Proven to be Manufacturable at High Volumes.*** MRAM can be manufactured in high volumes and in advanced nodes and, is compatible with standard CMOS.

***Low Energy Requirement.*** MRAM utilizes energy efficiently over the duration of its write and read cycles. It has the ability to be completely powered down, consuming no energy while still retaining data, which can be accessed quickly once power is restored.

**Our Solutions**

We are the only commercial provider of MRAM solutions. We have a strong track record of innovation in MRAM technology, as demonstrated by our successive introduction of MRAM products that address an increasingly broad spectrum of applications. Our three generations of MRAM discrete solutions are set forth in the following table.

| Everspin Product | Everspin Technology | Incumbent Technology | Memory Densities | Primary Applications | Status |
|---|---|---|---|---|---|
| 1st Generation | Field Switched (FS) | SRAM | 128kb - 16Mb | Industrial / Automotive & Transportation | Shipping |
| | Embedded | eSRAM | 128kb - 16Mb | Industrial / Automotive & Transportation | Shipping |
| 2nd Generation | In-Plane Spin Torque (iST) | DRAM | 64Mb - 256Mb | Enterprise Storage | Shipping 64Mb; Sampling 256Mb |
| 3rd Generation | Perpendicular Spin Torque (pST) | DRAM | 64Mb - 1Gb+ | Enterprise Storage & Servers | Sampling 256Mb; 1Gb+ in Development |

We offer embedded MRAM (eMRAM) to our customers for integration into their system-on-a-chip (SoC) solutions. We also enable GLOBALFOUNDRIES to offer eMRAM in the solutions they manufacture for their customers. We believe eMRAM offers significant advantages over existing embedded memory solutions, particularly in endurance, bandwidth, energy and area requirements, leakage and persistence. We also sell a high performance magnetic sensor, which is based on our Magnetic Tunnel Junction (MTJ) technology.

**Our Competitive Strengths**

We apply our strengths to enhance our position as the leading supplier of MRAM products. We consider our key strengths to include the following:

*Technology Leadership in MRAM.* We are recognized as the industry leader in MRAM technology. We have invested significant capital resources in research and development, which has enabled us to become the only commercial supplier of MRAM. We have successfully developed and launched successive generations of solutions, each of which is based on the continued advancement of our MTJ technology. We have a substantial intellectual property portfolio that consists of more than 300 patents and more than 150 patent applications.

*Strong Customer Base.* We have sold our products to over 600 customers worldwide. We collaborate closely with our customers on product development, which helps us to optimize the performance, capability and features of our MRAM products. We believe our multi-year relationships with our industry-leading customers and their familiarity with our proven MRAM technologies enable us to drive more rapid adoption of our solutions into their current and future products.

*Flexible Manufacturing and Integrated Value Chain.* We leverage both internal and outsourced capabilities to manufacture our MRAM products. We purchase industry-standard CMOS wafers from semiconductor foundries and complete the processing by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We also utilize leading foundries to support high-volume production of our MRAM products at advanced process nodes. We believe our flexible approach to manufacturing allows us to streamline research and development, rapidly prototype new products, and bring new products to market quickly and cost-effectively with limited capital expenditure requirements.

*Strategic Relationship with GLOBALFOUNDRIES.* We have a manufacturing agreement with GLOBALFOUNDRIES related to 300mm production, and we also have a joint development agreement to support research and development of MRAM. We believe this relationship allows us to leverage GLOBALFOUNDRIES' manufacturing expertise and technology portfolio to support our continued development of MRAM technology, and enables GLOBALFOUNDRIES to offer embedded MRAM technology in the products it manufactures for its customers.

*Proven Track Record.* We have produced successive generations of MRAM products and have continued to invest in research and development to develop new products. We have successfully established a manufacturing ecosystem, including internal and outsourced fabrication coupled with leading packaging, assembly and test providers, to maintain high quality and availability of our products. We believe our strategic relationship with GLOBALFOUNDRIES validates our leadership position in current and next-generation MRAM technology.

**Our Strategy**

Our growth strategy focuses on increasing the adoption of our MRAM technologies, which we believe will enable a change in the architecture of storage and computing systems. We believe MRAM will continue to be adopted because it is replacing alternative solutions in a market that already exists. Our strategy comprises the following elements:

*Grow our Technology Leadership.* Our leadership in designing, developing and manufacturing MRAM solutions provides a strong foundation for delivering new products. We plan to grow our technology leadership position by offering higher density memory solutions, including 1Gb and above, to our customers through the continued advancement of our technology.

*Expand our Presence with Existing Customers.* We intend to continue to collaborate with our industry-leading customers to accelerate the adoption of our MRAM solutions into their systems. We believe our established and collaborative relationships with industry-leading providers of solid state drives (SSDs), redundant array of independent disks (RAIDs), and memory controllers will allow us to further penetrate enterprise storage applications with our MRAM solutions. We believe that our customers' experience with our first generation of products will help increase adoption of our current and future high density MRAM products and will allow MRAM to become a higher percentage of our customers' memory usage.

*Expand our Customer Base.* We believe there are significant opportunities to expand our customer base within the industrial, automotive and transportation, and enterprise storage markets. Our success has facilitated a growing knowledge and acceptance of MRAM technology that we intend to leverage to acquire new customers. Additionally, as we release higher density products, we expect to broaden the applications for our MRAM solutions in the enterprise storage market, and address complementary end markets such as server and mobile computing.

*Grow our Embedded MRAM Business.* We expect to leverage our expertise in embedded MRAM technology to grow our licensing business, which generates a royalty-based revenue stream. Currently, we collaborate with GLOBALFOUNDRIES to provide our embedded MRAM technology to its customers.

**Risk Factors**

Our business is subject to numerous risks, including those described in the section titled "Risk Factors" immediately following this prospectus summary. Some of the more significant risks are:

- Our history of losses and that we may not be able to achieve or sustain profitability in the future.
- We require additional capital to continue to operate our business, which may not be available to us on favorable terms or at all.

- If we lose the lease of our 200mm facility in Chandler, Arizona, we will need to move our manufacturing capability to another facility.
- We may be unable to accurately forecast customer demand and match production levels to customer orders.
- We rely on third parties to manufacture, package, assemble and test our products.
- The market for our products is characterized by declines in average selling prices, which could negatively affect our revenue and margins.
- We rely on our relationships with original equipment manufacturers (OEMs) and original design manufacturers (ODMs) to enhance our product offerings and market position, and our failure to continue to develop or maintain such relationships in the future would harm our ability to remain competitive.
- We face competition and expect competition to increase in the future. If we fail to compete effectively, our revenue growth and results of operations will be materially adversely affected.
- We have a material weakness in our internal control over financial reporting.

**Corporate Information**

We were incorporated in Delaware in May 2008. In June 2008, Freescale Semiconductor, Inc. (now a wholly-owned subsidiary of NXP Semiconductors N.V.), spun-out its MRAM business as Everspin. Our offices are located at 1347 N. Alma School Road, Suite 220, Chandler, Arizona 85224. Our telephone number is (480) 347-1111. Our corporate website is at *www.Everspin.com*. The information contained on or that can be accessed through our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus or in deciding to purchase our common stock.

**Implications of Being an Emerging Growth Company**

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act, or the JOBS Act, enacted in April 2012, and therefore we intend to take advantage of certain exemptions from various public company reporting requirements, including not being required to have our internal control over financial reporting attested to by our independent registered public accounting firm pursuant to Section 404(b) of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and any golden parachute payments not previously approved. We may take advantage of these and other exemptions for up to five years or until we are no longer an “emerging growth company,” whichever is earlier.

**The Offering**

| | |
|---|---|
| Issuer | Everspin Technologies, Inc. |
| Common stock offered by us | shares (or shares if the underwriters exercise in full their option to purchase additional shares to cover over-allotments) |
| Common stock to be outstanding immediately after this offering | shares (or shares if the underwriters exercise in full their option to purchase additional shares to cover over-allotments) |
| Underwriters' option to purchase additional shares | shares |
| Use of proceeds | We intend to use substantially all of the net proceeds from this offering for working capital and other general corporate purposes, including an estimated payment of $8.5 million due to GLOBALFOUNDRIES in December 2016. We may also use a portion of the net proceeds we receive from this offering to repay borrowings under our credit facility, or for investments in or acquisitions of complementary businesses, products, services, technologies or other assets. See "Use of Proceeds" on page 35 for a more complete description of the intended use of proceeds from this offering. |
| Risk factors | See "Risk Factors" beginning on page 10 and other information included in this prospectus for a discussion of factors that you should consider carefully before deciding to invest in our common stock. |
| Proposed Nasdaq Global Market Symbol | "MRAM" |

The number of shares of common stock to be outstanding after this offering is based on shares of common stock outstanding as of June 30, 2016, assuming conversion of all outstanding preferred stock into an aggregate of 64,641,611 shares of common stock, and the conversion of $8.5 million principal amount of convertible promissory notes, plus interest assuming a conversion date of September , 2016, and initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) immediately prior to the closing of this offering, and excludes the following:

- 22,425,749 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of June 30, 2016, with a weighted-average exercise price of $0.17 per share;
- 720,000 shares of our common stock issuable upon exercise of outstanding warrants as of June 30, 2016, with a weighted-average exercise price of $1.00 per share;

- 12,044,742 shares of common stock reserved for future grants under our 2008 Equity Incentive Plan as of June 30, 2016, which shares reserved for future issuance and not subject to outstanding stock options will cease to be available for issuance at the time our 2016 Equity Incentive Plan becomes effective in connection with this offering;
- 13,000,000 shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering; and
- 2,500,000 shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering.

Unless otherwise indicated, all information in this prospectus assumes:

- the conversion of 64,641,611 shares of our convertible preferred stock outstanding as of June 30, 2016, into an aggregate of 64,641,611 shares of our common stock immediately prior to the closing of this offering;
- the conversion of $8.5 million principal amount of convertible promissory notes plus interest assuming a conversion date of September , 2016, and initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) immediately prior to the closing of this offering;
- the conversion of all convertible preferred stock warrants outstanding as of June 30, 2016, into warrants to purchase up to an aggregate 720,000 shares of our common stock immediately prior to the closing of this offering;
- no exercise of outstanding stock options or warrants subsequent to June 30, 2016;
- the filing of our amended and restated certificate of incorporation and the effectiveness of our amended and restated bylaws immediately prior to the closing of this offering; and
- no exercise of the underwriters' option to purchase additional shares to cover over-allotments.

## Summary Financial Data

The following tables summarize our historical financial and other financial data. We have derived the summary statements of operations data for the years ended December 31, 2014 and 2015 from our audited financial statements included elsewhere in this prospectus. We derived the summary statements of operations data for the six months ended June 30, 2015 and 2016, and the summary balance sheet data as of June 30, 2016, from our unaudited interim financial statements included elsewhere in this prospectus. The unaudited interim financial statements have been prepared on the same basis as our audited financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, necessary to present fairly our financial position and results of operations. Our historical results are not necessarily indicative of the results that may be expected in the future. The following summary financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this prospectus.

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands, except share and per share amount) | | (Unaudited) | |
| **Statements of Operations Data:** | | | | |
| Product sales | $ 23,071 | $ 25,875 | $ 12,437 | $ 12,723 |
| Licensing and royalty revenue | 1,825 | 671 | 217 | 143 |
| Total revenue | 24,896 | 26,546 | 12,654 | 12,866 |
| Cost of sales | 11,806 | 12,568 | 5,231 | 5,704 |
| Gross profit | 13,090 | 13,978 | 7,423 | 7,162 |
| Operating expenses: | | | | |
| Research and development(1) | 12,664 | 21,126 | 9,642 | 11,231 |
| General and administrative(1) | 7,085 | 6,565 | 3,574 | 3,295 |
| Sales and marketing(1) | 3,259 | 3,823 | 1,454 | 1,688 |
| Total operating expenses | 23,008 | 31,514 | 14,670 | 16,214 |
| Loss from operations | (9,918) | (17,536) | (7,247) | (9,052) |
| Interest expense | (263) | (653) | (183) | (1,184) |
| Other income (expense), net | (2) | 6 | 9 | 280 |
| Net loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| Net loss per common share, basic and diluted(2) | $ (0.15) | $ (0.27) | $ (0.11) | $ (0.15) |
| Shares used to compute net loss per common share, basic and diluted(2) | 66,159,420 | 66,357,720 | 66,357,197 | 66,440,718 |
| Pro forma net loss per share, basic and diluted (unaudited)(2) | | $ (0.14) | | |
| Shares used to compute pro forma net loss per share, basic and diluted (unaudited)(2) | | 130,999,331 | | |
| **Other Financial Data:** | | | | |
| Adjusted EBITDA(3) | $ (7,497) | $ (14,013) | $ (5,842) | $ (6,739) |

(1) Includes stock-based compensation as follows:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | | |
| | | | (unaudited) | |
| Research and development | $ 304 | $ 169 | $ 74 | $ 89 |
| General and administrative | 392 | 190 | 85 | 100 |
| Sales and marketing | 103 | 57 | 27 | 22 |
| Total stock-based compensation expense | $ 799 | $ 416 | $ 186 | $ 211 |

(2) See Notes 2 and 12 to our financial statements included elsewhere in this prospectus for an explanation of the calculations of our basic and diluted net loss per common share, pro forma net loss per share, and the weighted-average number of shares used in the computation of the per share amounts.

(3) We define Adjusted EBITDA as net income or loss adjusted for depreciation and amortization, stock-based compensation expense, compensation expense related to the vesting of common stock held by GLOBALFOUNDRIES resulting from our joint development agreement and interest expense. See "Selected Financial Data" for a reconciliation of Adjusted EBITDA to net loss, the most directly comparable GAAP financial measure, the explanation of why we track Adjusted EBITDA, why Adjusted EBITDA may be a useful measure for investors, and the limitations of this measure as an analytical tool.

The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering that will be determined at pricing.

| | As of June 30, 2016 | | |
|---|---|---|---|
| | Actual | Pro Forma(1) | Pro Forma As Adjusted(2)(3) |
| | (In thousands) | | |
| **Balance Sheet Data:** | | | |
| Cash and cash equivalents | $ 2,642 | $ | $ |
| Working capital (deficit) | (11,506) | | |
| Total assets | 13,696 | | |
| Derivative liability | 388 | | |
| Convertible promissory notes payable — related party | 4,861 | | |
| Long-term debt, current and non-current | 9,046 | | |
| Redeemable convertible preferred stock warrant liability | 416 | | |
| Redeemable convertible preferred stock | 64,642 | | |
| Total stockholders' (deficit) equity | (78,704) | | |

(1) Reflects (i) the conversion of the outstanding shares of our redeemable convertible preferred stock as of June 30, 2016, into 64,641,611 shares of our common stock, (ii) the conversion of warrants to purchase 720,000 shares of redeemable convertible preferred stock into warrants to purchase 720,000 shares of common stock immediately prior to closing of this offering and the related reclassification of our redeemable convertible preferred stock warrant liability to total stockholders' equity (deficit), (iii) the conversion of $8.5 million principal amount of convertible promissory notes, plus interest assuming a conversion date of September , 2016, and an initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) immediately prior to the closing of this offering.

(2) Reflects the pro forma adjustments described in footnote (1) and the sale and issuance of shares of our common stock by us in this offering, at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) our cash and cash equivalents, working capital, total assets and total stockholders' (deficit) equity by approximately $ million, assuming that the number of shares of our common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us. Each increase (decrease) of 100,000 shares in the number of shares offered by us would increase (decrease) the amount of our cash and cash equivalents, working capital, total assets and total stockholders' equity (deficit) by approximately $ million, assuming an initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions payable by us.

## RISK FACTORS

*An investment in our common stock involves a high degree of risk. You should carefully consider the following risk factors together with all of the other information contained in this prospectus, including our financial statements and the related notes, before deciding whether to invest in shares of our common stock. Each of these risks could harm our business, operating results, financial condition or growth prospects. As a result, the trading price of our common stock could decline and you may lose all or part of your investment.*

### Risk Factors Related to Our Business and Our Industry

***We have a history of losses which may continue in the future, and we cannot be certain that we will achieve or sustain profitability.***

We have incurred net losses since our inception. We incurred net losses of $10.2 million, $18.2 million, and $10.0 million for the years ended December 31, 2014 and 2015, and the six months ended June 30, 2016, respectively. As of June 30, 2016, we had an accumulated deficit of $89.7 million. We expect to incur significant expenses related to the continued development and expansion of our business, including in connection with our efforts to develop and improve upon our products and technology, maintain and enhance our research and development and sales and marketing activities and hire additional personnel. Our ability to generate sufficient revenue and to transition to profitability and generate consistent positive cash flows is uncertain. In addition, as a public company, we will incur significant additional legal, accounting and other expenses that we did not incur as a private company. We do not know whether our revenue will grow rapidly enough to absorb these costs, and our limited operating history makes it difficult to assess the extent of these expenses, or their impact on our results of operations.

Further, our revenue may not increase or may decline for a number of possible reasons, many of which are outside our control, including a decline in demand for our products, increased competition, business conditions that adversely affect the semiconductor memory industry, including reduced demand for products in the end markets that we serve, or our failure to capitalize on growth opportunities. If we fail to generate sufficient revenue to support our operations, we may not be able to achieve or sustain profitability.

***Our limited operating history makes it difficult to evaluate our current business and future prospects.***

We have been in existence as a stand-alone company since 2008, when Freescale Semiconductor, Inc. (now a wholly-owned subsidiary of NXP Semiconductors N.V.), spun-out its MRAM business as Everspin. We have been shipping magnetoresistive random access memory (MRAM) products since our incorporation in 2008, and we have experienced a high rate of growth for our products. However, we may not be able to sustain the growth rate for sales of these products and our revenue could decline. We have also been developing our next-generation of Spin-Torque MRAM (ST-MRAM) products. Adoption of these products is important to the future growth of our business, but revenue associated with these products has not been material to date.

Our limited operating history and limited experience selling products, combined with the rapidly evolving and competitive nature of our market, makes it difficult to evaluate our current business and future prospects. In addition, we have limited insight into emerging trends that may adversely affect our business, financial condition, results of operations and prospects. We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including unpredictable and volatile revenue and increased expenses as we continue to grow our business. The viability and demand for our products may be affected by many factors outside of our control, such as the factors affecting the growth of the industrial, automotive and transportation, and enterprise storage industries and changes in macroeconomic conditions. If we do not manage these risks and overcome these difficulties successfully, our business will suffer.

***We may be unable to match production with customer demand for a variety of reasons including our inability to accurately forecast customer demand or the capacity constraints of our suppliers, which could adversely affect our operating results.***

We make planning and spending decisions, including determining production levels, production schedules, component procurement commitments, personnel needs and other resource requirements, based on our estimates of product demand and customer requirements. Our products are typically purchased pursuant to individual purchase orders. While our customers may provide us with their demand forecasts, they are not contractually committed to buy any quantity of products beyond purchase orders. Furthermore, many of our customers may increase, decrease, cancel or delay purchase orders already in place without significant penalty. The short-term nature of commitments by our customers and the possibility of unexpected changes in demand for their products reduce our ability to accurately estimate future customer requirements. On occasion, customers may require rapid increases in production, which can strain our resources, necessitate more onerous procurement commitments and reduce our gross margin. If we overestimate customer demand, we may purchase products that we may not be able to sell, which could result in decreases in our prices or write-downs of unsold inventory. Conversely, if we underestimate customer demand or if sufficient manufacturing capacity is unavailable, we could lose sales opportunities and could lose market share or damage our customer relationships. The rapid pace of innovation in our industry could also render significant portions of our inventory obsolete. Excess or obsolete inventory levels could result in unexpected expenses or write-downs of inventory values that could adversely affect our business, operating results and financial condition.

***We manufacture some of our MRAM products at our 200mm facility we lease in Chandler, Arizona, and if we are unable to renew this lease we will need to find another facility and move our manufacturing capability, which would be time consuming, costly, and hamper our ability to provide our MRAM products to customers in the time frames they require.***

Under a single agreement we lease two facilities for our 200mm manufacturing and research and development functions from NXP. NXP has exercised its option to terminate the lease effective April 14, 2017. We are currently in negotiations with NXP to renew the manufacturing facility portion of the lease, and NXP has indicated its desire to continue to lease to us this facility. However, if we are not able to extend the manufacturing portion of the lease before April 2017, or if we lose this lease earlier than expected for any reason or are not able to find alternative facilities in a timely manner, our ability to produce and deliver a large portion of our MRAM products will be severely harmed. Even if we are able to find alternative facilities, the time and cost of transferring our manufacturing to a new facility could substantially harm our business. We are also seeking office and laboratory space at a different location, and if we are unable to find this space on reasonable terms, our business and operations may be harmed.

***We rely on third parties to manufacture, package, assemble and test our products, which exposes us to a number of risks, including reduced control over manufacturing and delivery timing and potential exposure to price fluctuations, which could result in a loss of revenue or reduced profitability.***

Although we operate an integrated magnetic fabrication line located in Chandler, Arizona, we purchase wafers from third parties and outsource the manufacturing, packaging, assembly and testing of our products to third-party foundries and assembly and testing service providers. We use a single foundry, GLOBALFOUNDRIES Singapore Pte. Ltd., for production of higher density products on advanced technology nodes. Our primary product package and test operations are located in China, Taiwan and other Asian countries. We also use standard CMOS wafers from third-party foundries, which we process at our Chandler, Arizona, facility.

Relying on third-party manufacturing, assembly, packaging and testing presents a number of risks, including but not limited to:

- capacity and materials shortages during periods of high demand;
- reduced control over delivery schedules, inventories and quality;

- the unavailability of, or potential delays in obtaining access to, key process technologies;
- the inability to achieve required production or test capacity and acceptable yields on a timely basis;
- misappropriation of our intellectual property;
- the third party's ability to perform its obligations due to bankruptcy or other financial constraints;
- limited warranties on wafers or products supplied to us; and
- potential increases in prices.

We currently do not have long-term supply contracts with our third-party contract manufacturers for our MRAM products, including NXP, United Microelectronics Corporation, Taiwan Semiconductor Manufacturing Company, Limited (TSMC), United Test and Assembly Center (UTAC), Advanced Semiconductor Engineering (ASE), and Amkor, and we typically negotiate pricing on a per-purchase order basis and in some cases on an annual basis. Therefore, they are not obligated to perform services or supply components to us for any specific period, in any specific quantities, or at any specific price, except as may be provided in a particular purchase order. During periods of high demand and tight inventories, our third-party foundries and packaging, assembly and testing contractors may allocate capacity to the production of other companies' products while reducing deliveries to us, or significantly raise their prices. In particular, they may allocate capacity to other customers that are larger and better financed than us or that have long-term agreements, decreasing the capacity available to us. Shortages of capacity available to us may be caused by the actions of their other, large customers that may be difficult to predict, such as major product launches.

Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. However, our manufacturing arrangement is also subject to both a minimum and maximum order quantity that while we believe currently addresses our projected foundry capacity needs, may not address our maximum foundry capacity requirements in the future. We may also be obligated to pay for unused capacity if our demand decreases in the future, or if our estimates prove inaccurate. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. This could cause us to have to find another foundry to manufacture those wafers or redesign our core technology and would mean that we may not have products to sell until such time. Any time spent engaging a new manufacturer or redesigning our core technology could be costly and time consuming and may allow potential competitors to take opportunities in the market place. Moreover, if we are unable to find another foundry to manufacture our products or if we have to redesign our core technology, this could cause material harm to our business and operating results.

If we need other foundries or packaging, assembly and testing contractors, or if we are unable to obtain timely and adequate deliveries from our providers, we might not be able to cost-effectively and quickly retain other vendors to satisfy our requirements. Because the lead-time needed to establish a relationship with a new third-party supplier could be several quarters, there is no readily available alternative source of supply for any specific component. In addition, the time and expense to qualify a new foundry could result in additional expense, diversion of resources or lost sales, any of which would negatively impact our financial results.

If any of our current or future foundries or packaging, assembly and testing subcontractors significantly increases the costs of wafers or other materials or services, interrupts or reduces our supply, including for reasons outside of their control, or if any of our relationships with our suppliers is terminated, our operating results could be adversely affected. Such occurrences could also damage our customer relationships, result in lost revenue, cause a loss in market share or damage our reputation.

***Our joint development agreement and strategic relationships involve numerous risks.***

We have entered into strategic relationships to manufacture products and develop new manufacturing process technologies and products. These relationships include our joint development agreement with GLOBALFOUNDRIES to develop advanced MTJ technology and ST-MRAM. These relationships are subject to various risks that could adversely affect the value of our investments and our results of operations. These risks include the following:

- our interests could diverge from those of our foundries, or we may not be able to agree with them on ongoing development, manufacturing and operational activities, or on the amount, timing, or nature of further investments in our joint development;
- we may experience difficulties in transferring technology to a foundry;
- we may experience difficulties and delays in getting to and/or ramping production at foundries;
- our control over the operations of foundries is limited;
- due to financial constraints, our joint development collaborators may be unable to meet their commitments to us and may pose credit risks for our transactions with them;
- due to differing business models or long-term business goals, our collaborators may decide not to join us in funding capital investment, which may result in higher levels of cash expenditures by us;
- our cash flows may be inadequate to fund increased capital requirements;
- we may experience difficulties or delays in collecting amounts due to us from our collaborators;
- the terms of our arrangements may turn out to be unfavorable; and
- changes in tax, legal, or regulatory requirements may necessitate changes in our agreements.

Further, GLOBALFOUNDRIES may terminate the joint development agreement with us if we materially breach a term of the agreement and fail to remedy the breach after receiving notice from GLOBALFOUNDRIES, if we fail to pay any undisputed sum which has been outstanding for 60 or more days from the date of invoice, or if we fail to pay project costs by December 16, 2016, which were approximately $5.6 million as of June 30, 2016, and are estimated to be approximately $8.5 million in December 2016. If GLOBALFOUNDRIES terminates the joint development agreement, our ability to continue to develop our MRAM technology will be significantly impaired.

If our strategic relationships are unsuccessful, our business, results of operations, or financial condition may be materially adversely affected.

***The market for semiconductor memory products is characterized by declines in average selling prices, which we expect to continue, and which could negatively affect our revenue and margins.***

Our customers expect the average selling price of our products to decrease year-over-year and we expect this trend to continue. 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 and adversely affected. Our stand-alone and embedded MRAM products have experienced declining average selling prices over their life cycle. The rate of decline may be affected by a number of factors, including relative supply and demand, the level of competition, production costs and technological changes. As a result of the decreasing average selling prices of our products following their launch, our ability to increase or maintain our margins depends on our ability to introduce new or enhanced products with higher average selling prices and to reduce our per-unit cost of sales and our operating costs. We may not be able to reduce our costs as rapidly as companies that operate their own manufacturing, assembly and testing facilities, and our costs may even increase because we rely in part on third parties to manufacture, assemble and test our products, which could also reduce our gross margins. In addition, our new or enhanced products may not

be as successful or enjoy as high margins as we expect. If we are unable to offset any reductions in average selling prices by introducing new products with higher average selling prices or reducing our costs, our revenue and margins will be negatively affected and may decrease.

The semiconductor memory market is highly cyclical and has experienced severe downturns in the past, generally as a result of wide fluctuations in supply and demand, constant and rapid technological change, continuous new product introductions and price erosion. During downturns, periods of intense competition, or the presence of oversupply in the industry, the selling prices for our products may decline 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.

***Unfavorable economic and market conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows.***

We have significant customer sales both in the U.S. and internationally. We also rely on domestic and international suppliers, manufacturing partners and distributors. We are therefore susceptible to adverse U.S. and international economic and market conditions. If any of our manufacturing partners, customers, distributors or suppliers experience serious financial difficulties or cease operations, our business will be adversely affected. In addition, the adverse impact of an unfavorable economy may adversely impact customer spending, which may adversely impact demand for our products.

***We must continuously develop new and enhanced products, and if we are unable to successfully market our new and enhanced products for which we incur significant expenses to develop, our results of operations and financial condition will be materially adversely affected.***

To compete effectively in our markets, we must continually design, develop and introduce new and improved products with improved features in a cost-effective manner in response to changing technologies and market demand. This requires us to devote substantial financial and other resources to research and development. We are developing next-generation products, which we expect to be one of the drivers of our revenue growth in the future. However, we may not succeed in developing and marketing these new and enhanced products. We also face the risk that customers may not value or be willing to bear the cost of incorporating our new and enhanced products into their products, particularly if they believe their customers are satisfied with current solutions. Regardless of the improved features or superior performance of our new and enhanced products, customers may be unwilling to adopt our solutions due to design or pricing constraints, or because they do not want to rely on a single or limited supply source. Because of the extensive time and resources that we invest in developing new and enhanced products, if we are unable to sell customers new generations of our products, our revenue could decline and our business, financial condition, results of operations and cash flows would be negatively affected. For example, we generated limited revenue from sales of our ST-MRAM products to date. While we expect revenue from our ST-MRAM products to increase, if we are unable to scale MRAM to gigabit densities to address applications currently served by DRAM, we may not be able to materially increase our revenue. If we are unable to successfully develop and market our new and enhanced products that we have incurred significant expenses developing, our results of operations and financial condition will be materially and adversely affected.

***Our success and future revenue depend on our ability to secure design wins and on our customers' ability to successfully sell the products that incorporate our solutions. Securing design wins is a lengthy, expensive and competitive process, and may not result in actual orders and sales, which could cause our revenue to decline.***

We sell to customers that incorporate MRAM into their products. A design win occurs after a customer has tested our product, verified that it meets the customer's requirements and qualified our solutions for their products. Our customers may need several months to years to test, evaluate and adopt our product and additional time to begin volume production of the product that incorporates our solution. Due to this generally lengthy

design cycle, we may experience significant delays from the time we increase our operating expenses and make investments in our products to the time that we generate revenue from sales of these products. Moreover, even if a customer selects our solution, we cannot guarantee that this will result in any sales of our products, as the customer may ultimately change or cancel its product plans, or efforts by our customer to market and sell its product may not be successful. We may not generate any revenue from design wins after incurring the associated costs, which would cause our business and operating results to suffer.

If a current or prospective customer designs a competitor's solution into its product, it becomes significantly more difficult for us to sell our solutions to that customer because changing suppliers involves significant time, cost, effort and risk for the customer even if our solutions are superior to other solutions and remain compatible with their product design. If current or prospective customers do not include our solutions in their products and we fail to achieve a sufficient number of design wins, our results of operations and business may be harmed.

***We rely on our relationships with OEMs and ODMs to enhance our solutions and market position, and our failure to continue to develop or maintain such relationships in the future would harm our ability to remain competitive.***

We develop our products for leading OEMs and ODMs that serve a variety of end markets and are developing devices for automotive, transportation, industrial and storage applications. For each application, manufacturers create products that incorporate specialized semiconductor technology, which makers of memory products use as the basis for their products. These manufacturers set the specifications for many of the key components to be used on each generation of their products and, in the case of memory components, generally qualify only a few vendors to provide memory components for their products. As each new generation of their products is released, vendors are validated in a similar fashion. We must work closely with OEMs and ODMs to ensure our products become qualified for use in their products. As a result, maintaining close relationships with leading OEMs and ODMs that are developing devices for automotive, transportation, industrial and storage applications is crucial to the long-term success of our business. We could lose these relationships for a variety of reasons, including our failure to qualify as a vendor, our failure to demonstrate the value of our new solutions, declines in product quality, or if OEMs or ODMs seek to work with vendors with broader product suites, greater production capacity or greater financial resources. If our relationships with key industry participants were to deteriorate or if our solutions were not qualified by our customers, our market position and revenue could be materially and adversely affected.

***The loss of one or several of our customers or reduced orders or pricing from existing customers may have a significant adverse effect on our operations and financial results.***

We have derived and expect to continue to derive a significant portion of our revenues from a small group of customers during any particular period due in part to the concentration of market share in the semiconductor industry. Our four largest end customers together accounted for 41% of our total revenue for the year ended December 31, 2015, and two customers each accounted for more than 10% of our total revenue during the period. Our five largest end customers together accounted for 34% of our total revenue for the six months ended June 30, 2016, but none of these customers individually accounted for more than 10% of our total revenue during the period. The loss of a significant customer, a business combination among our customers, a reduction in orders or decrease in price from a significant customer or disruption in any of our commercial or distributor arrangements may result in a significant decline in our revenues and could have a material adverse effect on our business, liquidity, results of operations, financial condition and cash flows.

***Our results of operations can fluctuate from period to period, which could cause our share price to fluctuate.***

Our results of operations have fluctuated in the past and may fluctuate from period to period in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include the following factors, as well as other factors described elsewhere in this prospectus:

- the receipt, reduction, delay or cancellation of orders by large customers;
- the gain or loss of significant customers or distributors;
- the timing and success of our launch of new or enhanced products and those of our competitors;
- market acceptance of our products and our customers' products;
- the level of growth or decline in the industrial, automotive and transportation, enterprise storage and other markets;
- the timing and extent of research and development and sales and marketing expenditures;
- the amount and timing of operating expenses related to the maintenance and expansion of our business, operations and infrastructure;
- changes in our product mix;
- our ability to reduce the manufacturing costs of our products;
- competitive pressures resulting in lower than expected average selling prices;
- fluctuations in sales by and inventory levels of OEMs and ODMs that incorporate our memory products in their products;
- cyclical and seasonal fluctuations in our markets;
- fluctuations in the manufacturing yields of our third-party manufacturers;
- quality issues that arise from manufacturing issues at our third-party manufacturers;
- events that impact the availability of production capacity at our third-party subcontractors and other interruptions in the supply chain including due to geopolitical events, natural disasters, materials shortages, bankruptcy or other causes;
- supply constraints for and changes in the cost of the other components incorporated into our customers' products;
- the timing of expenses related to the acquisition of technologies or businesses;
- product rates of return or price concessions in excess of those expected or forecasted;
- costs associated with the repair and replacement of defective products;
- unexpected inventory write-downs or write-offs;
- costs associated with litigation over intellectual property rights and other litigation;
- the length and unpredictability of the purchasing and budgeting cycles of our customers;
- loss of key personnel or the inability to attract qualified engineers; and
- geopolitical events, such as war, threat of war or terrorist actions, or the occurrence of natural disasters.

The semiconductor memory industry is highly cyclical and our markets may experience significant cyclical fluctuations in demand as a result of changing economic conditions, budgeting and buying patterns of customers and others factors. As a result of these and other factors affecting demand for our products and our results of

operations in any given period, the results of any prior quarterly or annual periods should not be relied upon as indicative of our future revenue or operating performance. Fluctuations in our revenue and operating results could also cause our stock price to decline.

***If sales of our customers' products decline or if their products do not achieve market acceptance, our business and operating results could be adversely affected.***

Our revenue depends on our customers' ability to commercialize their products successfully. The markets for our customers' products are extremely competitive and are characterized by rapid technological change. Competition in our customers' markets is based on a variety of factors including price, performance, product quality, marketing and distribution capability, customer support, name recognition and financial strength. As a result of rapid technological change, the markets for our customers' products are characterized by frequent product introductions, short product life cycles, fluctuating demand and increasing product capabilities. As a result, our customers' products may not achieve market success or may become obsolete. We cannot assure you that our customers will dedicate the resources necessary to promote and commercialize their products, successfully execute their business strategies for such products, or be able to manufacture such products in quantities sufficient to meet demand or cost-effectively manufacture products at a high volume. Our customers do not have contracts with us that require them to manufacture, distribute or sell any products. Moreover, our customers may develop internally, or in collaboration with our competitors, technology that they may utilize instead of the technology available to them through us. Our customers' failure to achieve market success for their products, including as a result of general declines in our customers' markets or industries, could negatively affect their willingness to utilize our products, which may result in a decrease in our revenue and negatively affect our business and operating results.

Our revenue also depends on the timely introduction, quality and market acceptance of our customers' products that incorporate our solutions. Our customers' products are often very complex and subject to design complexities that may result in design flaws, as well as potential defects, errors and bugs. We incur significant design and development costs in connection with designing our solutions for customers' products. If our customers discover design flaws, defects, errors or bugs in their products, or if they experience changing market requirements, failed evaluations or field trials, or issues with other vendors, they may delay, change or cancel a project. If we have already incurred significant development costs, we may not be able to recoup those costs, which in turn would adversely affect our business and financial results.

***We face competition and expect competition to increase in the future. If we fail to compete effectively, our revenue growth and results of operations will be materially and adversely affected.***

The global semiconductor market in general, and the semiconductor memory market in particular, are highly competitive. We expect competition to increase and intensify as other semiconductor companies enter our markets, many of which have greater financial and other resources with which to pursue technology development, product design, manufacturing, marketing and sales and distribution of their products. Increased competition could result in price pressure, reduced profitability and loss of market share, any of which could materially and adversely affect our business, revenue and operating results. Currently, our competitors range from large, international companies offering a wide range of traditional memory technologies to companies specializing in other alternative, specialized emerging memory technologies. Our primary memory competitors include Cypress, Fujitsu, Integrated Silicon Solution, Macronix, Microchip, Micron, Renesas, Samsung, and Toshiba. The main competition for sensor products includes AMR, Crocus, GMR and Hall Effect. These technologies directly compete with our products and are supplied by Alps, Asahi Kasei Microdevices, Fairchild, Invensys (now Schneider), Kionix and Micronas. In addition, as the MRAM market opportunity grows, we expect new entrants such as Avalanche will enter this market and existing competitors, including leading semiconductor companies, may make significant investments to compete more effectively against our products. These competitors could develop technologies or architectures that make our products or technologies obsolete.

Our ability to compete successfully depends on factors both within and outside of our control, including:

- the functionality and performance of our products and those of our competitors;
- our relationships with our customers and other industry participants;
- prices of our products and prices of our competitors' products;
- our ability to develop innovative products;
- our competitors' greater resources to make acquisitions;
- our ability to obtain adequate capital to finance operations;
- our ability to retain high-level talent, including our management team and engineers; and
- the actions of our competitors, including merger and acquisition activity, launches of new products and other actions that could change the competitive landscape.

Competition could result in pricing pressure, reduced revenue and loss of market share, any of which could materially and adversely affect our business, results of operations and prospects. In the event of a market downturn, competition in the markets in which we operate may intensify as our customers reduce their purchase orders. Our competitors that are significantly larger and have greater financial, technical, marketing, distribution, customer support and other resources or more established market recognition than us may be better positioned to accept lower prices and withstand adverse economic or market conditions.

***Our customers require our products and our third-party contractors to undergo a lengthy and expensive qualification process. If we are unsuccessful or delayed in qualifying any of our products with a customer, our business and operating results would suffer.***

Prior to selecting and purchasing our products, our customers typically require that our products undergo extensive qualification processes, which involve testing of our products in the customers' systems, as well as testing for reliability. This qualification process may continue for several months or years. However, obtaining the requisite qualifications for a memory product does not assure any sales of the product. Even after successful qualification and sales of a product to a customer, a subsequent revision in our third-party contractors' manufacturing process or our selection of a new contract manufacturer may require a new qualification process, which may result in delays and excess or obsolete inventory. After our products are qualified and selected, it can and often does take several months or more before the customer commences volume production of systems that incorporate our products. Despite these uncertainties, we devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with customers in anticipation of sales. If we are unsuccessful or delayed in qualifying any of our products with a customer, sales of those products may be precluded or delayed, which may impede our growth and harm our business.

***Our costs may increase substantially if we or our third-party manufacturing contractors do not achieve satisfactory product yields or quality.***

The fabrication process is extremely complicated and small changes in design, specifications or materials can result in material decreases in product yields or even the suspension of production. From time to time, we and/or the third-party foundries that we contract to manufacture our products may experience manufacturing defects and reduced manufacturing yields. In some cases, we and/or our third-party foundries may not be able to detect these defects early in the fabrication process or determine the cause of such defects in a timely manner.

Generally, in pricing our products, we assume that manufacturing yields will continue to improve, even as the complexity of our products increases. Once our products are initially qualified either internally or with our third-party foundries, minimum acceptable yields are established. We are responsible for the costs of the units if the actual yield is above the minimum set with our third-party foundries. If actual yields are below the minimum

we are not required to purchase the units. Typically, minimum acceptable yields for our new products are generally lower at first and gradually improve as we achieve full production, but yield issues can occur even in mature processes due to break downs in mechanical systems, equipment failures or calibration errors. Unacceptably low product yields or other product manufacturing problems could substantially increase overall production time and costs and adversely impact our operating results. Product yield losses will increase our costs and reduce our gross margin. For example, cost of sales increased in the third and fourth quarters of 2015 due to product yield issues in our fabrication line. In addition to significantly harming our results of operations and cash flow, poor yields may delay shipment of our products and harm our relationships with existing and potential customers.

***The complexity of our products may lead to defects, which could negatively impact our reputation with customers and result in liability.***

Products as complex as ours may contain defects when first introduced to customers or as new versions are released. Delivery of products with production defects or reliability, quality or compatibility problems could significantly delay or hinder market acceptance of the products or result in a costly recall and could damage our reputation and adversely affect our ability to retain existing customers and attract new customers. Defects could cause problems with the functionality of our products, resulting in interruptions, delays or cessation of sales of these products to our customers. We may also be required to make significant expenditures of capital and resources to resolve such problems. We cannot assure you that problems will not be found in new products, both before and after commencement of commercial production, despite testing by us, our suppliers or our customers. Any such problems could result in:

- delays in development, manufacture and roll-out of new products;
- additional development costs;
- loss of, or delays in, market acceptance;
- diversion of technical and other resources from our other development efforts;
- claims for damages by our customers or others against us; and
- loss of credibility with our current and prospective customers.

Any such event could have a material adverse effect on our business, financial condition and results of operations.

***We may experience difficulties in transitioning to new wafer fabrication process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.***

We aim to use the most advanced manufacturing process technology appropriate for our solutions that is available from our third-party foundries. As a result, we periodically evaluate the benefits of migrating our solutions to other technologies to improve performance and reduce costs. These ongoing efforts require us from time to time to modify the manufacturing processes for our products and to redesign some products, which in turn may result in delays in product deliveries. We may face difficulties, delays and increased expense as we transition our products to new processes, and potentially to new foundries. We will depend on our third-party foundries as we transition to new processes. We cannot assure you that our third-party foundries will be able to effectively manage such transitions or that we will be able to maintain our relationship with our third-party foundries or develop relationships with new third-party foundries. If we or any of our third-party foundries experience significant delays in transitioning to new processes or fail to efficiently implement transitions, we could experience reduced manufacturing yields, delays in product deliveries and increased expenses, any of which could harm our relationships with our customers and our operating results.

As smaller line width geometry manufacturing processes become more prevalent, we intend to move our future products to increasingly smaller geometries to reduce costs while integrating greater levels of functionality into our products. This transition will require us and our third-party foundries to migrate to new designs and manufacturing processes for smaller geometry products. We may not be able to achieve smaller geometries with higher levels of design integration or to deliver new integrated products on a timely basis. We periodically evaluate the benefits, on a product-by-product basis, of migrating to smaller geometry process technologies to reduce our costs and increase performance. We are dependent on our relationships with our third-party foundries to transition to smaller geometry processes successfully. We cannot assure you that our third-party foundries will be able to effectively manage any such transition. If we or our third-party foundries experience significant delays in any such transition or fail to implement a transition, our business, financial condition and results of operations could be materially harmed.

***Changes to industry standards and technical requirements relevant to our products and markets could adversely affect our business, results of operations and prospects.***

Our products are only a part of larger electronic systems. All products incorporated into these systems must comply with various industry standards and technical requirements created by regulatory bodies or industry participants to operate efficiently together. Industry standards and technical requirements in our markets are evolving and may change significantly over time. For our products, the industry standards are developed by the Joint Electron Device Engineering Council, an industry trade organization. In addition, large industry-leading semiconductor and electronics companies play a significant role in developing standards and technical requirements for the product ecosystems within which our products can be used. Our customers also may design certain specifications and other technical requirements specific to their products and solutions. These technical requirements may change as the customer introduces new or enhanced products and solutions.

Our ability to compete in the future will depend on our ability to identify and comply with evolving industry standards and technical requirements. The emergence of new industry standards and technical requirements could render our products incompatible with products developed by other suppliers or make it difficult for our products to meet the requirements of certain of our customers in automotive, transportation, industrial, storage and other markets. As a result, we could be required to invest significant time and effort and to incur significant expense to redesign our products to ensure compliance with relevant standards and requirements. If our products are not in compliance with prevailing industry standards and technical requirements for a significant period of time, we could miss opportunities to achieve crucial design wins, our revenue may decline and we may incur significant expenses to redesign our products to meet the relevant standards, which could adversely affect our business, results of operations and prospects.

***Failure to protect our intellectual property could substantially harm our business.***

Our success and ability to compete depend in part upon our ability to protect our intellectual property. We rely on a combination of intellectual property rights, including patents, mask work protection, copyrights, trademarks, trade secrets and know-how, in the United States and other jurisdictions. The steps we take to protect our intellectual property rights may not be adequate, particularly in foreign jurisdictions such as China. Any patents we hold may not adequately protect our intellectual property rights or our products against competitors, and third parties may challenge the scope, validity or enforceability of our issued patents, which third parties may have significantly more financial resources with which to litigate their claims than we have to defend against them. In addition, other parties may independently develop similar or competing technologies designed around any patents or patent applications that we hold. Some of our products and technologies are not covered by any patent or patent application, as we do not believe patent protection of these products and technologies is critical to our business strategy at this time. A failure to timely seek patent protection on products or technologies generally precludes us from seeking future patent protection on these products or technologies.

In addition to patents, we also rely on contractual protections with our customers, suppliers, distributors, employees and consultants, and we implement security measures designed to protect our trade secrets and know-how. However, we cannot assure you that these contractual protections and security measures will not be breached, that we will have adequate remedies for any such breach or that our customers, suppliers, distributors, employees or consultants will not assert rights to intellectual property or damages arising out of such contracts.

We may initiate claims against third parties to protect our intellectual property rights if we are unable to resolve matters satisfactorily through negotiation. Litigation brought to protect and enforce our intellectual property rights could be costly, time-consuming and distracting to management. It could also result in the impairment or loss of portions of our intellectual property, as an adverse decision could limit our ability to assert our intellectual property rights, limit the value of our technology or otherwise negatively impact our business, financial condition and results of operations. Additionally, any enforcement of our patents or other intellectual property may provoke third parties to assert counterclaims against us. Our failure to secure, protect and enforce our intellectual property rights could materially harm our business.

***We may face claims of intellectual property infringement, which could be time-consuming, costly to defend or settle, result in the loss of significant rights, harm our relationships with our customers and distributors, or otherwise materially adversely affect our business, financial condition and results of operations.***

The semiconductor memory industry is characterized by companies that hold patents and other intellectual property rights and that vigorously pursue, protect and enforce intellectual property rights. These companies include patent holding companies or other adverse patent owners who have no relevant product revenue and against whom our own patents may provide little or no deterrence. From time to time, third parties may assert against us and our customers' patent and other intellectual property rights to technologies that are important to our business. We have in the past, and may in the future, face such claims.

Claims that our products, processes or technology infringe third-party intellectual property rights, regardless of their merit or resolution, could be costly to defend or settle and could divert the efforts and attention of our management and technical personnel. We may also be obligated to indemnify our customers or business partners in connection with any such litigation, which could result in increased costs. Infringement claims also could harm our relationships with our customers or distributors and might deter future customers from doing business with us. If any such proceedings result in an adverse outcome, we could be required to:

- cease the manufacture, use or sale of the infringing products, processes or technology;
- pay substantial damages for infringement;
- expend significant resources to develop non-infringing products, processes or technology, which may not be successful;
- license technology from the third-party claiming infringement, which license may not be available on commercially reasonable terms, or at all;
- cross-license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or
- pay substantial damages to our customers to discontinue their use of or to replace infringing technology sold to them with non-infringing technology, if available.

Any of the foregoing results could have a material adverse effect on our business, financial condition and results of operations. Furthermore, our exposure to the foregoing risks may also be increased if we acquire other companies or technologies. For example, we may have a lower level of visibility into the development process with respect to intellectual property or the care taken to safeguard against infringement risks with respect to the acquired company or technology. In addition, third parties may make infringement and similar or related claims after we have acquired technology that had not been asserted prior to the acquisition.

***We make significant investments in new technologies and products that may not achieve technological feasibility or profitability or that may limit our revenue growth.***

We have made and will continue to make significant investments in research and development of new technologies and products, including new and more technically advanced versions of our MRAM technology. Investments in new technologies are speculative and technological feasibility may not be achieved. Commercial success depends on many factors including demand for innovative technology, availability of materials and equipment, selling price the market is willing to bear, competition and effective licensing or product sales. We may not achieve significant revenue from new product investments for a number of years, if at all. Moreover, new technologies and products may not be profitable, and even if they are profitable, operating margins for new products and businesses may not be as high as the margins we have experienced historically or originally anticipated. Our inability to capitalize on or realize substantial revenue from our significant investments in research and development could harm our operating results and distract management, harming our business.

***As we expand into new potential markets, we expect to face intense competition, including from our customers and potential customers, and may not be able to compete effectively, which could harm our business.***

We expect that our new and future generation MRAM products will be applicable to markets in which we are not currently operating. Selling into these markets, including higher density memory markets and the module business could put us into direct competition with our current or potential customers or other competitors with substantially more resources and experience than us. The markets in which we operate and may operate in the future are extremely competitive and are characterized by rapid technological change, continuous evolving customer requirements and declining average selling prices. We may not be able to compete successfully against current or potential competitors, which include our current or potential customers as they seek to internally develop solutions competitive with ours or as we develop products potentially competitive with their existing products. If we do not compete successfully, our market share and revenue may decline. We compete with large semiconductor manufacturers and designers and others, and our current and potential competitors have longer operating histories, significantly greater resources and name recognition and a larger base of customers than we do. This may allow them to respond more quickly than we can to new or emerging technologies or changes in customer requirements. In addition, these competitors may have greater credibility with our existing and potential customers. Some of our current and potential customers with their own internally developed solutions may choose not to purchase products from third-party suppliers like us.

***Our success depends on our ability to attract and retain key employees, and our failure to do so could harm our ability to grow our business and execute our business strategies.***

Our success depends on our ability to attract and retain our key employees, including our management team and experienced engineers. Competition for personnel in the semiconductor memory technology field, and in the MRAM space in particular, is intense, and the availability of suitable and qualified candidates is limited. We compete to attract and retain qualified research and development personnel with other semiconductor companies, universities and research institutions. Given our experience as an early entrant in the MRAM space, our employees are frequently contacted by MRAM startups and MRAM groups within larger companies seeking to employ them. The members of our management and key employees are at-will employees and although we recently issued refresh equity awards to our personnel in connection with this offering, there can be no assurance that these awards will be effective to retain our key employees. If we lose the services of any key senior management member or employee, we may not be able to locate suitable or qualified replacements, and may incur additional expenses to recruit and train new personnel, which could severely impact our business and prospects. The loss of the services of one or more of our key employees, especially our key engineers, or our inability to attract and retain qualified engineers, could harm our business, financial condition and results of operations.

***We may not be able to effectively manage our growth, and we may need to incur significant expenditures to address the additional operational and control requirements of our growth, either of which could harm our business and operating results.***

As we continue to expand our business, we expect our headcount and overall size of our operations to grow significantly. To effectively manage our growth, we must continue to expand our operational, engineering and financial systems, procedures and controls and to improve our accounting and other internal management systems, such as our new ERP system that we have recently implemented. This may require substantial managerial and financial resources, and our efforts in this regard may not be successful. Our current systems, procedures and controls may not be adequate to support our future operations. If we fail to adequately manage our growth, or to improve our operational, financial and management information systems, or fail to effectively motivate or manage our new and future employees, the quality of our products and the management of our operations could suffer, which could adversely affect our operating results.

***We may engage in acquisitions of, or investments in, other companies, each of which may divert our management's attention, result in additional dilution to stockholders or use resources that are necessary to operate our business.***

We may in the future seek to acquire or invest in businesses, products or technologies that we believe could complement or expand our business, enhance our technical capabilities or otherwise offer growth opportunities. However, our term loan and revolving credit facility prohibits our ability to merge with or acquire any other entity. Even if we were allowed to pursue such acquisitions or investments, they could create risks for us, including:

- difficulties in assimilating acquired personnel, operations and technologies or realizing synergies expected in connection with an acquisition, particularly with acquisitions of companies with large and widespread operations, complex products or that operate in markets in which we historically have had limited experience;
- unanticipated costs or liabilities, including possible litigation, associated with the acquisition;
- incurrence of acquisition-related costs;
- diversion of management's attention from other business concerns;
- use of resources that are needed in other parts of our business; and
- use of substantial portions of our available cash to consummate an acquisition.

A significant portion of the purchase price of companies we acquire may be allocated to acquired goodwill, which must be assessed for impairment at least annually. If such acquisitions do not yield expected returns, we may be required to take charges to our earnings based on this impairment assessment process, which could harm our results of operations.

We may be unable to complete acquisitions at all or on commercially reasonable terms, which could limit our future growth. Acquisitions could also result in dilutive issuances of equity securities or the incurrence of additional debt, which could adversely affect our operating results and result in a decline in our stock price and further restrict our ability to pursue business opportunities, including potential acquisitions. In addition, if an acquired business fails to meet our expectations, our operating results may suffer.

***We maintain operations outside of the United States and intend to expand our international operations, which exposes us to significant risks.***

We have limited operations in Europe and Asia. We intend to expand our operations internationally. The success of our business depends, in large part, on our ability to operate successfully from geographically disparate locations and to further expand our international operations and sales. Operating in international

markets requires significant resources and management attention and subjects us to regulatory, economic and political risks that are different from those we face in the United States. We cannot be sure that further international expansion will be successful. In addition, we face risks in doing business internationally that could expose us to reduced demand for our products, lower prices for our products or other adverse effects on our operating results. Among the risks we believe are most likely to affect us are:

- difficulties, inefficiencies and costs associated with staffing and managing foreign operations;
- longer and more difficult customer qualification and credit checks;
- greater difficulty collecting accounts receivable and longer payment cycles;
- the need for various local approvals to operate in some countries;
- difficulties in entering some foreign markets without larger-scale local operations;
- compliance with local laws and regulations;
- unexpected changes in regulatory requirements, including the elimination of tax holidays;
- reduced protection for intellectual property rights in some countries;
- adverse tax consequences as a result of repatriating cash generated from foreign operations to the United States;
- adverse tax consequences, including potential additional tax exposure if we are deemed to have established a permanent establishment outside of the United States;
- the effectiveness of our policies and procedures designed to ensure compliance with the Foreign Corrupt Practices Act of 1977 and similar regulations;
- fluctuations in currency exchange rates, which could increase the prices of our products to customers outside of the United States, increase the expenses of our international operations by reducing the purchasing power of the U.S. dollar and expose us to foreign currency exchange rate risk if, in the future, we denominate our international sales in currencies other than the U.S. dollar;
- new and different sources of competition; and
- political and economic instability, and terrorism.

Our failure to manage any of these risks successfully could harm our operations and reduce our revenue.

***To comply with environmental laws and regulations, we may need to modify our activities or incur substantial costs, and if we fail to comply with environmental regulations we could be subject to substantial fines or be required to have our suppliers alter their processes.***

The semiconductor memory industry is subject to a variety of international, federal, state and local governmental regulations directed at preventing or mitigating environmental harm, as well as to the storage, discharge, handling, generation, disposal and labeling of toxic or other hazardous substances. Failure to comply with environmental regulations could subject us to civil or criminal sanctions and property damage or personal injury claims. Compliance with current or future environmental laws and regulations could restrict our ability to expand our business or require us to modify processes or incur other substantial expenses which could harm our business. In response to environmental concerns, some customers and government agencies impose requirements for the elimination of hazardous substances, such as lead (which is widely used in soldering connections in the process of semiconductor packaging and assembly), from electronic equipment. For example, the European Union adopted its Restriction on Hazardous Substance Directive which prohibits, with specified exceptions, the sale in the EU market of new electrical and electronic equipment containing more than agreed levels of lead or other hazardous materials and China has enacted similar regulations. Environmental laws and regulations such as these could become more stringent over time, causing a need to redesign technologies, imposing greater compliance costs and increasing risks and penalties associated with violations, which could seriously harm our business.

***Some of the facilities of our suppliers are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could damage our facilities, which could cause us to curtail our operations.***

Some of our foundries and suppliers' facilities in Asia are located near known earthquake fault zones and, therefore, are vulnerable to damage from earthquakes. We are also vulnerable to damage from other types of disasters, such as power loss, fire, floods and similar events. If any such disaster were to occur, our ability to operate our business could be seriously impaired. In addition, we may not have adequate insurance to cover our losses resulting from disasters or other similar significant business interruptions. Any significant losses that are not recoverable under our insurance policies could seriously impair our business and financial condition.

***We may require additional capital to fund our business, which may not be available to us on favorable terms or at all.***

We believe that our existing cash and cash equivalents as of June 30, 2016, together with the additional borrowings available under our credit facility, cash proceeds from the convertible promissory notes issued in August 2016 and net proceeds from this offering, will be sufficient to meet our anticipated cash requirements for the next 12 months. Our ability to access the revolving loan under our credit facility depends upon levels of our accounts receivable and, therefore, the full amount may not be available to us at any specific time. Without the net proceeds from this offering we will not have sufficient funds to meet our planned operating requirements throughout 2016 and beyond. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of our spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products. We may be required to seek additional equity or debt financing, and we cannot assure you that any such additional financing will be available to us on acceptable terms or at all. If we are unable to raise additional capital or generate sufficient cash from operations to adequately fund our operations, we will need to curtail planned activities to reduce costs. Doing so will likely harm our ability to execute on our business plan.

If we raise additional funds through issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer significant dilution in their percentage ownership of our company, and any new equity securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to grow or support our business and to respond to business challenges could be significantly limited.

The audit report from our independent registered public accounting firm for the year ended December 31, 2015, states that our recurring losses raise substantial doubt about our ability to continue as a going concern. This report does not take into account any proceeds we will receive in this proposed offering or our ability to draw down amounts under our line of credit. If we are unable to obtain adequate funding from this proposed offering or in the future, or if we are unable to grow our revenue substantially to achieve and sustain profitability, we may not be able to continue as a going concern.

***Provisions of our credit facility may restrict our ability to pursue our business strategies.***

Borrowings under our existing credit facility are secured by substantially all of our assets. Our term loan facility prohibits our ability to, among other things:

- dispose of or sell assets;
- consolidate or merge with other entities;
- incur additional indebtedness;
- create liens on our assets;
- pay dividends;

- make investments;
- enter into transactions with affiliates; and
- redeem subordinated indebtedness.

These restrictions are subject to certain exceptions. The operating restrictions and covenants in the term loan facility, as well as any future financing agreements that we may enter into, may restrict our ability to finance our operations, engage in business activities or expand or fully pursue our business strategies. Our ability to comply with these covenants may be affected by events beyond our control, and we may not be able to meet those covenants. A breach of any of these covenants could result in a default under the credit facility, which could cause all of the outstanding indebtedness thereunder to either become immediately due and payable or increase by five percent of the interest rate charged during the period of the unremedied breach.

***Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.***

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income, and tax credits to offset tax. In addition, although we do not expect to undergo an ownership change in connection with this offering, we may experience an ownership change in the future, and our ability to utilize our NOLs and tax credits could be further limited by Section 382 of the Code. Future changes in our stock ownership, many of which are outside of our control, could result in an ownership change under Section 382 of the Code. Our net operating losses and tax credits could also be impaired under state laws. As a result, we might not be able to utilize a material portion of our state NOLs and tax credits.

***We will incur significantly increased costs and devote substantial management time as a result of operating as a public company.***

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. For example, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and will be required to comply with the applicable requirements of the Sarbanes-Oxley Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, as well as rules and regulations subsequently implemented by the SEC and the NASDAQ Stock Market, including the establishment and maintenance of effective disclosure and internal controls and the establishment corporate governance practices. We expect that compliance with these requirements will increase our legal and financial compliance costs and will make some activities more time consuming and costly.

***If we fail to hire additional finance personnel and strengthen our financial reporting systems and infrastructure, we may not be able to timely and accurately report our financial results or comply with the requirements of being a public company, including compliance with the Sarbanes-Oxley Act and SEC reporting requirements.***

We intend to hire additional accounting and finance staff with technical accounting, SEC reporting and Sarbanes-Oxley Act compliance expertise. Any inability to recruit and retain such personnel would have an adverse impact on our ability to accurately and timely prepare our financial statements. We may be unable to locate and hire qualified professionals with requisite technical and public company experience when and as needed. In addition, new employees will require time and training to learn our business and operating processes and procedures. If our finance and accounting organization is unable for any reason to respond adequately to the increased demands that will result from being a public company, the quality and timeliness of our financial reporting may suffer, which could result in the identification of material weaknesses in our internal controls. Any consequences resulting from inaccuracies or delays in our reported financial statements could cause the trading price of our common stock to decline and could harm our business, operating results and financial condition.

If we fail to strengthen our financial reporting systems, infrastructure and internal control over financial reporting to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act, we may be unable to report our financial results timely and accurately and prevent fraud. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404.

***Interruptions in our information technology systems could adversely affect our business.***

We rely on the efficient and uninterrupted operation of complex information technology systems and networks to operate our business. Any significant disruption to our systems or networks, including, but not limited to, new system implementations, computer viruses, security breaches, facility issues, natural disasters, terrorism, war, telecommunication failures or energy blackouts, could have a material adverse impact on our operations, sales and financial results. Such disruption could result in a loss of our intellectual property or the release of sensitive competitive information or supplier, customer or employee personal data. Any loss of such information could harm our competitive position, result in a loss of customer confidence, and cause us to incur significant costs to remedy the damages caused by any such disruptions or security breaches. Additionally, any failure to properly manage the collection, handling, transfer or disposal of personal data of employees and customers may result in regulatory penalties, enforcement actions, remediation obligations, litigation, fines and other sanctions.

We may experience attacks on our data, attempts to breach our security and attempts to introduce malicious software into our IT systems. If attacks are successful, we may be unaware of the incident, its magnitude, or its effects until significant harm is done. Any such attack or disruption could result in additional costs related to rebuilding of our internal systems, defending litigation, responding to regulatory actions, or paying damages. Such attacks or disruptions could have a material adverse impact on our business, operations and financial results.

Third-party service providers, such as wafer foundries, assembly and test contractors, distributors and other vendors have access to certain portions of our and our customers' sensitive data. In the event that these service providers do not properly safeguard the data that they hold, security breaches and loss of data could result. Any such loss of data by our third-party service providers could negatively impact our business, operations and financial results, as well as our relationship with our customers.

***If we fail to remediate a material weakness in our internal control over financial reporting, or experience any additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, we may not be able to accurately report our financial condition or results of operations which may adversely affect investor confidence in us and, as a result, the value of our common stock.***

As a result of becoming a public company, we will be required, under Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting beginning with our Annual Report on Form 10-K for the year ended December 31, 2017. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a deficiency or combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual and interim financial statements will not be detected or prevented on a timely basis.

In connection with the audit of our financial statements as of and for the years ended December 31, 2014, and 2015, we identified a material weakness in our internal control over financial reporting, as defined in the standards established by the Public Company Accounting Oversight Board of the United States. Our management has determined that we had a material weakness in our internal control over financial reporting as of December 31, 2014 and 2015, relating to the design and operation of our financial reporting processes. We have concluded that this material weakness was due to the fact that we do not yet have the appropriate resources with the appropriate level of experience and technical expertise to oversee our closing and financial reporting processes.

We are enhancing our internal controls, processes and related documentation necessary to remediate our material weakness and to perform the evaluation needed to comply with Section 404. We may not be able to complete our remediation, evaluation and testing in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, such as the one we identified as described above, we will be unable to conclude that our internal controls are effective. The effectiveness of our controls and procedures may be limited by a variety of factors, including:

- faulty human judgment and simple errors, omissions or mistakes;
- fraudulent action of an individual or collusion of two or more people;
- inappropriate management override of procedures; and
- the possibility that any enhancements to controls and procedures may still not be adequate to assure timely and accurate financial control.

When we cease to be an "emerging growth company" under the federal securities laws, our auditors will be required to express an opinion on the effectiveness of our internal controls. If we are unable to confirm that our internal control over financial reporting is effective, or if our auditors are unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which could cause the price of our common stock to decline.

***The issuance of new accounting standards or future interpretations of existing accounting standards could adversely affect our operating results.***

We prepare our financial statements in accordance with GAAP. A change in those principles could have a significant effect on our reported results and might affect our reporting of transactions completed before a change is announced. GAAP is issued and subject to interpretation by the Financial Accounting Standards Board, the SEC and various other bodies formed to promulgate and interpret accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results, and could affect the reporting of transactions completed before the announcement of a change. The issuance of new accounting standards or future interpretations of existing accounting standards, or changes in our business practices or estimates, could result in future changes in our revenue recognition or other accounting policies that could have a material adverse effect on our results of operations.

***Regulations related to "conflict minerals" may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.***

Pursuant to the Dodd-Frank Act, the SEC has adopted requirements for companies that use certain minerals and metals, known as conflict minerals, in their products, whether or not these products are manufactured by third parties. These requirements will require companies to perform diligence and disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. The implementation of these requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of our products, and affect our costs and relationships with customers, distributors and suppliers as we must obtain additional information from them to ensure our compliance with the disclosure requirement. In addition, we will incur additional costs to comply with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. Since our supply chain is complex, we may not be able to sufficiently verify the origins for these minerals and metals used in our products through the due diligence procedures that we implement, which may harm our reputation. In such event, we may also face difficulties in satisfying customers who require that all of the components of our products are certified as conflict mineral free and these customers may discontinue, or materially reduce, purchases of our products, which could result in a material adverse effect on our results of operations and our financial condition may be adversely affected.

**Risks Related to Our Common Stock and This Offering**

***There has been no prior public market for our common stock and an active trading market may not develop.***

Prior to this offering, there has been no public market for our common stock. An active trading market may not develop following completion of this offering or, if developed, may not be sustained. The lack of an active market may impair the value of your shares and your ability to sell your shares at the time you wish to sell them. An inactive market may also impair our ability to both raise capital by selling shares and acquire other complementary products, technologies or businesses by using our shares as consideration.

***We expect that the price of our common stock will fluctuate substantially and you may not be able to sell the shares you purchase in this offering at or above the offering price.***

The initial public offering price for the shares of our common stock sold in this offering is determined by negotiation between the representatives of the underwriters and us. This price may not reflect the market price of our common stock following this offering. In addition, the market price of our common stock is likely to be highly volatile and may fluctuate substantially due to many factors, including:

- the introduction of new products or product enhancements by us or others in our industry;
- disputes or other developments with respect to our or others' intellectual property rights;
- product liability claims or other litigation;
- quarterly variations in our results of operations or those of others in our industry;
- sales of large blocks of our common stock, including sales by our executive officers and directors;
- changes in earnings estimates or recommendations by securities analysts; and
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our common stock shortly following this offering. If the market price of shares of our common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Securities litigation brought against us following volatility in our stock price, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management's attention and resources from our business.

These and other factors may make the price of our stock volatile and subject to unexpected fluctuation.

***Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.***

If a trading market for our common stock develops, the trading market will be influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. As a newly public company, we may be slow to attract research coverage and the analysts who publish information about our common stock will have had relatively little experience with our company or industry, which could affect their ability to accurately forecast our results and could make it more likely that we

fail to meet their estimates. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of our company or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

***We are an "emerging growth company" and we cannot be certain if the reduced disclosure requirements applicable to "emerging growth companies" will make our common stock less attractive to investors.***

We are an "emerging growth company," as defined in the JOBS Act, and we may take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not "emerging growth companies." In particular, while we are an "emerging growth company" (1) we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act, (2) we will be exempt from any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor's report on financial statements, (3) we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and (4) we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

We may remain an "emerging growth company" until as late as December 31, 2021, the fiscal year-end following the fifth anniversary of the completion of this initial public offering, though we may cease to be an "emerging growth company" earlier under certain circumstances, including (1) if the market value of our common stock that is held by nonaffiliates exceeds $700 million as of any June 30, in which case we would cease to be an "emerging growth company" as of the following December 31, or (2) if our gross revenue exceeds $1.0 billion in any fiscal year.

Investors may find our common stock less attractive if we rely on the exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline or become more volatile.

***If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.***

Investors purchasing common stock in this offering will pay a price per share that substantially exceeds the pro forma as adjusted net tangible book value per share. As a result, investors purchasing common stock in this offering will incur immediate dilution of $ per share, based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and our pro forma as adjusted net tangible book value per share as of June 30, 2016. For more information on the dilution you may suffer as a result of investing in this offering, see the section titled "Dilution."

This dilution is due to the substantially lower price paid by our investors who purchased shares prior to this offering as compared to the price offered to the public in this offering and the exercise of stock options granted to our employees. The exercise of any of these options would result in additional dilution. As a result of the dilution to investors purchasing shares in this offering, investors may receive significantly less than the purchase price paid in this offering, if anything, in the event of our liquidation.

***A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.***

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell their shares,

could result in a decrease in the market price of our common stock. Immediately after this offering, we will have outstanding of common stock based on the number of shares outstanding as of June 30, 2016, including the shares of common stock issuable upon conversion of outstanding preferred stock and the conversion of $8.5 million principal amount of convertible promissory notes, plus interest assuming a conversion date of September , 2016, and an initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) immediately prior to the closing of this offering. This includes the shares that we are selling in this offering, which may be resold in the public market immediately without restriction, unless purchased by our affiliates. Of the remaining shares, shares are currently restricted as a result of securities laws or lock-up agreements but will be able to be sold after the offering as described in the section of this prospectus titled "Shares Eligible for Future Sale." Moreover, immediately after this offering, holders of an aggregate of up to shares of our common stock, including shares of our common stock issuable upon the exercise or, in certain cases, net exercise of outstanding warrants, will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders as described in the section of this prospectus titled "Description of Capital Stock—Registration Rights." We also intend to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates and the lock-up agreements described in the "Underwriting" section of this prospectus.

***Our directors, officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.***

After this offering, our officers, directors and principal stockholders each holding more than 5% of our common stock, collectively, will control approximately % of our outstanding common stock. As a result, these stockholders, if they act together, will be able to control the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change of control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interests of our other stockholders.

***We have broad discretion in the use of proceeds from this offering for working capital and general corporate purposes.***

The net proceeds of this offering will be allocated to sales, marketing, research and development activities, working capital and general corporate purposes. We may also use a portion of the net proceeds of this offering to repay debt or acquire complementary products, technologies or businesses. Within those categories, we have not determined the specific allocation of the net proceeds of this offering. Our management will have broad discretion over the use and investment of the net proceeds of this offering within those categories. Accordingly, investors in this offering have only limited information concerning management's specific intentions and will need to rely upon the judgment of our management with respect to the use of proceeds.

***Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.***

Upon the closing of this offering, we will become subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to provide reasonable assurance that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. We believe that any disclosure controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

***Provisions in our corporate charter documents and under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our current management.***

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws that will become effective upon the closing of this offering may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. Among others, these provisions include that:

- our board of directors has the right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- our stockholders may not act by written consent or call special stockholders' meetings; as a result, a holder, or holders, controlling a majority of our capital stock would not be able to take certain actions other than at annual stockholders' meetings or special stockholders' meetings called by the board of directors, the chairman of the board, the chief executive officer or the president;
- our certificate of incorporation prohibits cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the affirmative vote of holders of at least 66-2/3% of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required (a) to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, removal of directors, special meetings, actions by written consent and cumulative voting and (b) to amend or repeal our bylaws, although our bylaws may be amended by a simple majority vote of our board of directors;
- stockholders must provide advance notice and additional disclosures to nominate individuals for election to the board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company; and
- our board of directors may issue, without stockholder approval, shares of undesignated preferred stock; the ability to issue undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements concerning our business, operations and financial performance and condition, as well as our plans, objectives and expectations for our business operations and financial performance and condition. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as “aim,” “anticipate,” “assume,” “believe,” “contemplate,” “continue,” “could,” “due,” “estimate,” “expect,” “goal,” “intend,” “may,” “objective,” “plan,” “predict,” “potential,” “positioned,” “seek,” “should,” “target,” “will,” “would,” and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These forward-looking statements include, but are not limited to, statements about:

- estimates of our future revenue, expenses, capital requirements and our needs for additional financing;
- our ability to obtain additional financing in this or future offerings;
- the implementation of our business model and strategic plans for our products, technologies and businesses;
- competitive companies and technologies and our industry;
- our ability to manage and grow our business by expanding our sales to existing customers or introducing our products to new customers;
- our ability to establish and maintain intellectual property protection for our products or avoid claims of infringement;
- our ability to hire and retain key personnel;
- our financial performance;
- our estimates of the MRAM market opportunity;
- the volatility of our share price; and
- our expectations regarding use of proceeds from this offering.

Forward-looking statements are based on management’s current expectations, estimates, forecasts, and projections about our business and the industry in which we operate, and management’s beliefs and assumptions are not guarantees of future performance or development and involve known and unknown risks, uncertainties, and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. Furthermore, if the forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under “Risk Factors” and elsewhere in this prospectus. Potential investors are urged to consider these factors carefully in evaluating the forward-looking statements. These forward-looking statements speak only as of the date of this prospectus. Except as required by law, we assume no obligation to update or revise these forward-looking statements for any reason, even if new information becomes available in the future. You should, however, review the factors and risks we describe in the reports we will file from time to time with the SEC after the date of this prospectus.

## MARKET, INDUSTRY AND OTHER DATA

This prospectus contains estimates, projections and other information concerning our industry and the market in which we operate, including our general expectations and market opportunity and market size, from our own internal estimates and research, and from industry publications and research, including the International Data Corporation (IDC) report, Worldwide Storage in Big Data Forecast, October 2015. This information involves a number of assumptions and limitations, and you are cautioned not to give undue weight to these estimates. We have not independently verified the accuracy or completeness of the data contained in these industry publications and reports. The industry in which we operate is subject to a high degree of uncertainty and risk due to variety of factors, including those described in the “Risk Factors” section and elsewhere in this prospectus. These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties and by us.

## USE OF PROCEEDS

We estimate that the net proceeds from this initial public offering of shares of common stock will be approximately $ million, or $ million if the underwriters exercise their option to purchase additional shares in full, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds from this offering by approximately $ million, assuming that the number of shares we are offering, as set forth on the cover page of this prospectus, remains the same, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of 100,000 shares in the number of shares we are offering would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming that the assumed initial public offering price remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to obtain additional capital, to create a public market for our common stock and to facilitate our future access to the public equity markets. We expect to use the net proceeds that we receive from this offering for working capital and other general corporate purposes, including an estimated payment of $8.5 million due to GLOBALFOUNDRIES in December 2016, research and development activities, sales and marketing activities and capital expenditures, to enhance existing and develop new products, expand our manufacturing capabilities and to fund our growth. We may also use a portion of the net proceeds that we receive from this offering for investments in or acquisitions of complementary businesses, products, services, technologies or other assets. We have not entered into any agreements or commitments with respect to any investments or acquisitions at this time.

We currently have no specific plans for the use of the net proceeds that we receive from this offering other than with respect to the payment to GLOBALFOUNDRIES set forth above. Accordingly, our management will have broad discretion over the use of the net proceeds from this offering. Pending the use of the proceeds from this offering, we intend to invest the net proceeds in short-term, interest-bearing, investment-grade securities, certificates of deposit or government securities.

## DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock, and we do not currently intend to pay any cash dividends on our capital stock in the foreseeable future. In addition, our term loan and revolving credit facility prohibits our ability to pay dividends on our capital stock. We currently intend to retain all available funds and any future earnings to support operations and to finance the growth and development of our business. Any future determination to pay dividends will be made at the discretion of our board of directors subject to applicable laws, and will depend upon, among other factors, our results of operations, financial condition, contractual restrictions and capital requirements. Our future ability to pay cash dividends on our capital stock may also be limited by the terms of any future debt or preferred securities or future credit facility.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2016, on:

- An actual basis;
- A pro forma basis, giving effect to (i) the conversion of the outstanding shares of our redeemable convertible preferred stock as of June 30, 2016, into 64,641,611 shares of our common stock, (ii) the conversion of warrants to purchase 720,000 shares of our redeemable convertible preferred stock into warrants to purchase 720,000 shares of common stock immediately prior to closing of this offering and the related reclassification of our convertible preferred stock warrant liability to additional paid-in capital; (iii) the conversion of $8.5 million principal amount of convertible promissory notes plus interest assuming a conversion date of September , 2016, and initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock immediately prior to the closing of this offering (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016), and (iv) the effectiveness of our amended and restated certificate of incorporation; and
- A pro forma as adjusted basis, giving effect to (i) the pro forma adjustments set forth above and (ii) the sale and issuance of shares of our common stock by us in this offering, based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted information set forth in the table below is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing.

You should read this table together with the section of this prospectus titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes included elsewhere in this prospectus.

| | June 30, 2016 | | |
|---|---|---|---|
| | Actual | Pro Forma | Pro Forma as Adjusted(1) |
| | (In thousands, except share and per share amounts) (unaudited) | | |
| Cash and cash equivalents | $ 2,642 | | |
| Derivative liability | $ 388 | | |
| Convertible promissory notes payable-related party | 4,861 | | |
| Long-term debt, current and non-current | 9,046 | | |
| Redeemable convertible preferred stock warrant liability | 416 | | |
| Redeemable convertible preferred stock, $0.0001 par value per share—68,080,000 shares authorized; 64,641,611 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted | 64,642 | | |
| Stockholders’ equity (deficit): | | | |
| Preferred stock, $0.0001 par value per share—no shares authorized, issued and outstanding, actual and pro forma; 5,000,000 shares authorized, no shares issued and outstanding, pro forma as adjusted | — | | |
| Common stock, $0.0001 par value per share – 175,000,000 shares authorized; 78,515,445 shares issued and outstanding, actual; 100,000,000 shares authorized, shares issued and outstanding, pro forma; and shares issued and outstanding, pro forma as adjusted | 8 | | |
| Additional paid-in capital | 10,975 | | |
| Accumulated deficit | (89,687) | | |
| Total stockholders’ equity (deficit) | (78,704) | | |
| Total capitalization | $ 649 | | |

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) our cash and cash equivalents, total stockholders' (deficit) equity, and total capitalization by approximately $ million, assuming that the number of shares of our common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us. Each increase (decrease) of 100,000 shares in the number of shares offered by us would increase (decrease) the amount of our cash and cash equivalents, total stockholders' equity (deficit) and total capitalization by approximately $ million, assuming an initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions payable by us.

The number of shares of our common stock issued and outstanding in the table above does not include the following shares:

- 22,425,749 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of June 30, 2016, with a weighted-average exercise price of $0.17 per share;
- 720,000 shares of our common stock issuable upon exercise of outstanding warrants as of June 30, 2016, with a weighted-average exercise price of $1.00 per share;
- 12,044,742 shares of common stock reserved for future grants under our 2008 Equity Incentive Plan as of June 30, 2016, which shares reserved for future issuance and not subject to an outstanding stock option will cease to be available for issuance at the time our 2016 Equity Incentive Plan becomes effective in connection with this offering;
- 13,000,000 shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering; and
- 2,500,000 shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering.

## DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock in this offering and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering.

As of June 30, 2016, our historical net tangible book value (deficit) was approximately $ million, or $ per share of common stock. Historical net tangible book value (deficit) per share represents our total tangible assets less total liabilities, less redeemable convertible preferred stock, divided by the number of our outstanding shares of common stock.

As of June 30, 2016, our pro forma net tangible book value was approximately $ million, or $ per share of common stock. Our pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the total number of shares of our common stock outstanding as of June 30, 2016, assuming the conversion of all outstanding shares of our redeemable convertible preferred stock into 64,641,611 shares of our common stock, which conversion will occur immediately prior to the completion of the offering, the conversion of warrants to purchase 720,000 shares of our redeemable convertible preferred stock into warrants to purchase 720,000 shares of common stock immediately prior to closing of this offering, the related reclassification of our redeemable convertible preferred stock warrant liability to stockholders' equity (deficit), and the conversion of $8.5 million aggregate principal amount of convertible promissory notes, plus interest assuming a conversion date of September , 2016, and initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, into shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) immediately prior to the closing of this offering.

After giving further effect to the sale of shares of our common stock in this offering, at the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of June 30, 2016, would have been approximately $ million, or $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value of $ per share to our existing stockholders and an immediate dilution of $ per share to investors purchasing shares in this offering.

The following table illustrates this dilution:

| | | |
|---|---|---|
| Assumed initial public offering price per share | | $ |
| Historical net tangible book deficit per share as of June 30, 2016 | $ | |
| Pro forma increase in net tangible book value per share | | |
| Pro forma net tangible book value per share as of June 30, 2016 | | |
| Increase in pro forma net tangible book value per share attributable to investors purchasing shares in this offering | | |
| Pro forma net tangible book value, as adjusted to give effect to this offering | | |
| Dilution in pro forma net tangible book value per share to investors purchasing shares in this offering | | $ |

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value by approximately $ per share and the dilution per share to new investors in this offering by $ per share, assuming the number of shares of our common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions payable by us.

Similarly, a 100,000 increase (decrease) in the number of shares of our common stock offered by us would increase (decrease) our pro forma as adjusted net tangible book value by approximately $ per share and the dilution per share to new investors in this offering by $ per share, assuming the assumed initial public offering price remains the same and after deducting underwriting discounts and commissions payable by us.

If the underwriters exercise their option to purchase additional shares in full, the pro forma as adjusted net tangible book value per share of our common stock would be $ per share, and the dilution in pro forma net tangible book value per share to investors purchasing shares in this offering would be $ per share.

The following table summarizes, on a pro forma as adjusted basis described above as of June 30, 2016, the differences between existing stockholders and new investors with respect to the number of shares of common stock purchased from us, the total consideration paid to us, and the average price per share paid, before deducting estimated underwriting discounts and commissions and estimated offering expenses:

| | Shares Purchased | | Total Consideration | | Average Price Per Share |
|---|---|---|---|---|---|
| | Number | Percent | Amount | Percent | |
| Existing stockholders | | % | $ | % | $ |
| Investors purchasing shares in this offering | | | | | |
| Total | | 100.0% | $ | 100.0% | |

Except as otherwise indicated, the above discussion and tables assume no exercise of the underwriters' option to purchase additional shares. If the underwriters exercise their option to purchase additional shares in full, our existing stockholders would own % and our new investors would own % of the total number of shares of our common stock outstanding upon the completion of this offering.

The number of shares of our common stock to be outstanding after the completion of this offering excludes:

- 22,425,749 shares of our common stock issuable upon the exercise of options to purchase shares of our common stock outstanding as of June 30, 2016, with a weighted-average exercise price of $0.17 per share;
- 720,000 shares of our common stock issuable upon exercise of outstanding warrants as of June 30, 2016, with a weighted-average exercise price of $1.00 per share;
- 12,044,742 shares of common stock reserved for future grants under our 2008 Equity Incentive Plan as of June 30, 2016, which shares reserved for future issuance and not subject to an outstanding stock option will cease to be available for issuance at the time our 2016 Equity Incentive Plan becomes effective in connection with this offering;
- 13,000,000 shares of common stock reserved for future issuance under our 2016 Equity Incentive Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering; and
- 2,500,000 shares of common stock reserved for future issuance under our 2016 Employee Stock Purchase Plan, as well as any automatic increases in the number of shares of common stock reserved for future issuance under this plan, which will become effective upon the execution of the underwriting agreement related to this offering.

To the extent that any outstanding options to purchase shares of our common stock or warrants to purchase shares of our common stock or convertible preferred stock are exercised or new awards are granted under our equity compensation plans, there will be further dilution to investors participating in this offering.

## SELECTED FINANCIAL DATA

The following selected statement of operations data for the years ended December 31, 2014 and 2015, and the balance sheet data as of December 31, 2014 and 2015, have been derived from our audited financial statements included elsewhere in this prospectus. The selected statements of operations data for the six months ended June 30, 2015 and 2016, and the selected balance sheet data as of June 30, 2016, have been derived from our unaudited interim financial statements included elsewhere in this prospectus. The unaudited interim financial statements have been prepared on the same basis as our audited financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, necessary to present fairly our financial position and results of operations. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read the following selected financial and other data below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this prospectus.

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands, except share and per share amounts) | | (unaudited) | |
| **Statements of Operations Data:** | | | | |
| Product sales | $ 23,071 | $ 25,875 | $ 12,437 | $ 12,723 |
| Licensing and royalty revenue | 1,825 | 671 | 217 | 143 |
| Total revenue | 24,896 | 26,546 | 12,654 | 12,866 |
| Cost of sales | 11,806 | 12,568 | 5,231 | 5,704 |
| Gross profit | 13,090 | 13,978 | 7,423 | 7,162 |
| Operating expenses: | | | | |
| Research and development(1) | 12,664 | 21,126 | 9,642 | 11,231 |
| General and administrative(1) | 7,085 | 6,565 | 3,574 | 3,295 |
| Sales and marketing(1) | 3,259 | 3,823 | 1,454 | 1,688 |
| Total operating expenses | 23,008 | 31,514 | 14,670 | 16,214 |
| Loss from operations | (9,918) | (17,536) | (7,247) | (9,052) |
| Interest expense | (263) | (653) | (183) | (1,184) |
| Other income (expense), net | (2) | 6 | 9 | 280 |
| Net loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| Net loss per common share, basic and diluted(2) | $ (0.15) | $ (0.27) | $ (0.11) | $ (0.15) |
| Shares used to compute net loss per common share, basic and diluted(2) | 66,159,420 | 66,357,720 | 66,357,197 | 66,440,718 |
| Pro forma net loss per share, basic and diluted (unaudited)(2) | | $ (0.14) | | |
| Shares used to compute pro forma net loss per share, basic and diluted (unaudited)(2) | | 130,999,331 | | |
| **Other Financial Data:** | | | | |
| Adjusted EBITDA(3) | $ (7,497) | $ (14,013) | $ (5,842) | $ (6,739) |

(1) Includes stock-based compensation as follows:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | (unaudited) | |
| Research and development | $ 304 | $ 169 | $ 74 | $ 89 |
| General and administrative | 392 | 190 | 85 | 100 |
| Sales and marketing | 103 | 57 | 27 | 22 |
| Total stock-based compensation expense | $ 799 | $ 416 | $ 186 | $ 211 |

(2) See Notes 2 and 12 to our financial statements included elsewhere in this prospectus for an explanation of the calculations of our basic and diluted net loss per common share, pro forma net loss per share, and the weighted-average number of shares used in the computation of the per share amounts.

(3) We define Adjusted EBITDA as net income or loss adjusted for depreciation and amortization, stock-based compensation expense, compensation expense related to the vesting of common stock held by GLOBALFOUNDRIES resulting from our joint development agreement and interest expense. We use Adjusted EBITDA in conjunction with traditional GAAP operating performance measures to understand and evaluate our operating performance and trends, to prepare and approve our annual budget and to develop short-term and long-term operating and financing plans. Accordingly, we believe that Adjusted EBITDA provides useful information for investors in understanding and evaluating our operating results in the same manner as our management and our board of directors.

Adjusted EBITDA has limitations as a financial measure and should not be considered a substitute for other measures of financial performance reported in accordance with GAAP. These limitations include the following:

- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us or the impact of deferred income tax;
- Adjusted EBITDA does not reflect cash expenditure requirements for replacements or for new capital expenditures;
- Adjusted EBITDA excludes some recurring costs, such as the dilutive impact of non-cash stock-based compensation and depreciation and amortization; and
- other companies, including companies in our industry, may calculate Adjusted EBITDA differently from how we calculate this measure or not at all, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures, including net loss and our financial results presented in accordance with GAAP. The following table presents a reconciliation of net loss, the most directly comparable GAAP measure, to Adjusted EBITDA for each of the periods indicated:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | | |
| **Adjusted EBITDA Reconciliation** | | | | |
| Net loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| Depreciation and amortization | 1,517 | 1,340 | 677 | 380 |
| Stock-based compensation expense | 799 | 416 | 186 | 211 |
| Compensation expense related to vesting of GLOBALFOUNDRIES common stock | 107 | 1,761 | 533 | 1,442 |
| Interest expense | 263 | 653 | 183 | 1,184 |
| Adjusted EBITDA | $ (7,497) | $ (14,013) | $ (5,842) | $ (6,739) |

| | As of December 31, | | As of June 30, 2016 |
|---|---|---|---|
| | 2014 | 2015 | |
| | (In thousands) | | (unaudited) |
| **Balance Sheet Data:** | | | |
| Cash and cash equivalents | $ 9,624 | $ 2,307 | $ 2,642 |
| Working capital (deficit) | 8,940 | (198) | (11,506) |
| Total assets | 17,775 | 10,961 | 13,696 |
| Derivative liability | — | — | 388 |
| Convertible promissory notes payable — related party | — | — | 4,861 |
| Total long-term debt, current and non-current | 2,874 | 7,914 | 9,046 |
| Redeemable convertible preferred stock warrant liability | 145 | 437 | 416 |
| Redeemable convertible preferred stock | 64,642 | 64,642 | 64,642 |
| Total stockholders' deficit | (54,428) | (70,430) | (78,704) |

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

*You should read the following discussion and analysis of our financial condition and results of operations together with "Selected Financial Data" and the financial statements and related notes included elsewhere in this prospectus. This discussion contains forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed in "Risk Factors" and in other parts of this prospectus.*

### Overview

We are the leading provider of MRAM solutions. Our MRAM solutions offer the persistence of non-volatile memory and the speed and endurance of random access memory (RAM) and enable the protection of mission critical data, particularly in the event of power interruption or failure. Our MRAM solutions allow our customers in the industrial, automotive and transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors. We are the only provider of commercially available MRAM solutions, and over the past eight years we have shipped over 60 million MRAM units.

Our revenue is derived from the sale of our MRAM-based products in discrete unit form, as embedded technology, and through licensing and royalties of our MRAM technology. Revenue grew from $24.9 million in 2014 to $26.5 million in 2015. Revenue was $12.7 million and $12.9 million for the six months ended June 30, 2015 and 2016, respectively. We work directly with our customers to have our MRAM devices designed into and qualified for their products. Although we maintain direct sales, support, and development relationships with our customers, once our products are designed into a customer's product, we sell a majority of our products to those customers through distributors. We generated 71%, 66%, and 52% of our revenue from products sold through distributors for the years ended December 31, 2014 and 2015, and the six months ended June 30, 2016, respectively.

We maintain a direct selling relationship, for strategic purposes, with several key customer accounts. Our direct sales personnel and representatives are organized into three primary regions: North America; Europe, Middle East and Africa (EMEA); and Asia-Pacific (APAC). In North America, our revenue was $7.0 million and $6.1 million for the years ended December 31, 2014 and 2015, respectively, and $2.7 million and $3.0 million for the six months ended June 30, 2015 and 2016, respectively. Our revenue in North America decreased for the year ended December 31, 2015, compared to the same period in 2014 primarily due to our licensing revenue decreasing year over year due to a non-recurring engineering payment of $1.0 million in 2014 from one of our customers related to a technology transfer agreement. In EMEA, our revenue was $3.5 million and $4.3 million for the years ended December 31, 2014 and 2015, respectively, and $2.3 million and $2.7 million for the six months ended June 30, 2015 and 2016, respectively. In APAC, our revenue was $14.5 million and $16.1 million for the years ended December 31, 2014 and 2015, respectively, and $7.6 million and $7.2 million for the six months ended June 30, 2015 and 2016, respectively. We recognize revenue by geography based on the region in which our products are sold, and not to where the end products are shipped.

We leverage both internal and outsourced capabilities to manufacture our MRAM products. We purchase industry-standard complementary metal-oxide semiconductor (CMOS) wafers from semiconductor foundries and complete the fabrication by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We believe this allows us to streamline research and development, rapidly prototype new products, and bring new products to market quickly and cost effectively. This strategy significantly reduces the capital investment that would otherwise be required to operate manufacturing facilities of our own. We intend to utilize leading semiconductor foundries, including GLOBALFOUNDRIES, to support high-volume production of our high density MRAM products at advanced process nodes.

During the years ended December 31, 2014, 2015 and the six months ended June 30, 2016, we continued to invest in research and development to support the development and production of our second generation of MRAM technology. We believe our continued investment will allow us to continue to develop and deploy products based on our Spin-Torque MRAM (ST-MRAM) technology. For the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, our research and development expenses were $12.7 million, $21.1 million, $9.6 million and $11.2 million, respectively. We expect that our research and development expenses will increase in the future as we continue to develop our MRAM technology internally and through our joint development agreement with GLOBALFOUNDRIES.

Our principal executive offices are located in Chandler, Arizona. The facility accommodates our principal sales, marketing and research and development. Also in Chandler, we lease office space, clean room space, and laboratory space for our 200mm production and research and development functions. Our primary product design personnel are located in our office in Austin, Texas.

For the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, we recorded revenue of $24.9 million, $26.5 million, $12.7 million and $12.9 million, gross margin of 52.6%, 52.7%, 58.7% and 55.7%, and a net loss of $10.2 million, $18.2 million, $7.4 million and $10.0 million, respectively.

**Key Metrics**

We monitor a variety of key financial metrics to help us evaluate growth trends, establish budgets, measure the effectiveness of our business strategies and assess operational efficiencies. These financial metrics include revenue, gross margin, operating expenses and operating income determined in accordance with GAAP. Additionally, we monitor and project cash flow to determine our sources and uses for working capital to fund our operations. We also monitor Adjusted EBITDA, a non-GAAP financial measure.

Our management and board of directors uses Adjusted EBITDA to understand and evaluate our operating performance and trends, to prepare and approve our annual budget and to develop short-term and long-term operating and financing plans. Accordingly, we believe that Adjusted EBITDA provides useful information for investors in understanding and evaluating our operating results in the same manner as our management and our board of directors. Adjusted EBITDA was $(7.5) million in 2014 and $(14.0) million in 2015. The change was primarily a result of increased payroll and contract labor and expenses resulting from our joint development agreement with GLOBALFOUNDRIES. Payroll and contract labor increased $2.9 million, from $10.7 million in 2014 to $13.6 million in 2015, accounting for approximately 45% of the decrease of Adjusted EBITDA from 2014 to 2015. Adjusted EBITDA was $(5.8) million and $(6.7) million in the six months ended June 30, 2015 and 2016, respectively. Expenses from our joint development agreement with GLOBALFOUNDRIES increased from $0 in 2014 to $3.6 million in 2015, accounting for approximately 55% of the decrease in Adjusted EBITDA. In the six months ended June 30, 2016, expenses from our joint development agreement increased from $1.8 million to $2.0 million in the same period in 2015 and payroll and contracted labor increased $0.4 million from $6.3 million in the six months ended June 30, 2015 to $6.7 million in the same period in 2016. The increases in payroll and contract labor is consistent with our strategy to expand our operations and develop our MRAM technologies and products to support future growth.

See “Selected Financial Data” for more information and reconciliation of Adjusted EBITDA to net loss, the most directly comparable financial measure calculated in accordance with GAAP.

**Factors Affecting Our Results of Operations**

*Design wins*. In order to continue to grow our revenue, we must continue to achieve design wins for our MRAM products. We consider a design win to occur when an original equipment manufacturer (OEM) or

contract manufacturer notifies us that it has selected one of our products to be incorporated into a product or system under development. Because the life cycles for our customers' products can last for several years, if these products have successful commercial introductions, we expect to continue to generate revenues over an extended period of time for each successful design win.

*Customer acceptance of our technology and customer product success*. In order for our customers to use our products, they may have to redesign certain components of their existing designs. We have established relationships with several controller companies, including Broadcom (formerly LSI and Avago) and Microsemi (formerly PMC-Sierra), and IP core companies, including Cadence, Northwest Logic and Altera (now part of Intel), to accelerate the implementation of our MRAM solutions into our customers end products. Delays in our customers' design cycles may have adverse effects on the demand, and therefore sales, of our products.

*Customer concentration*. A relatively small number of end customers have historically accounted for a significant percentage of our revenue. Revenue, including through distributors, from Broadcom, NXP, STMicroelectronics, and Dell, collectively, accounted for 37.1% and 41.2% of our total revenue in 2014 and 2015, respectively. Two of these customers accounted for more than 10% of our revenue in 2015. Revenue, including through distributors, from Dell, Broadcom, ST Microelectronics, NXP, and Nikkiso, collectively, accounted for 33.7% of our total revenue in the six months ended June 30, 2016. None of these customers individually accounted for in excess of 10% of our total revenue in the six months ended June 30, 2016. It would be difficult to replace lost revenue resulting from the loss, reduction, cancellation or delay in purchase orders by any one of these customers. Consolidation among our customers may further concentrate our customer base and expose us to increased risks relating to increased customer concentration. In addition, any significant pricing pressure exerted by a significant customer could adversely affect our operating results.

*Pricing, product cost and gross margins of our products*. Our gross margin has been, and will continue to be, affected by a variety of factors, including the timing of changes in pricing, shipment volumes, new product introductions, changes in product mix, changes in our purchase price of fabricated wafers, assembly and test service expenses, manufacturing yields and inventory write downs, if any. In general, newly introduced products, and products with higher densities and performance, tend to be priced higher than older, more mature products. Average selling prices in the semiconductor industry typically decline as products mature. Consistent with this historical trend, we expect that the average selling prices of our products will decline as they mature. In the normal course of business, we seek to offset the effect of declining average selling prices on existing products by reducing manufacturing expenses and introducing newer, higher value-added products. If we are unable to maintain overall average selling prices or to offset any declines in average selling prices with savings on product costs, our gross margin will decline.

*Gross margin impact of licensing revenue*. Our licensing revenue, which we collect as licensing fees and royalty payments, generates significantly higher gross margin than product revenue. Due to the high gross margin profile of this revenue stream, fluctuations in licensing revenue may have a greater impact on gross margin than a corresponding change in the demand for our products. Therefore, as licensing revenue fluctuates, we may see significant variations in gross margin.

*Technology, process, and product development investment*. We invest heavily to develop our MRAM technology, including the core MRAM technology, the joint development agreement with GLOBALFOUNDRIES, and the design of new and innovative products based on MRAM, to provide solutions to our current and future customers. We anticipate that we will continue to investment in our research and development to achieve our technology and product roadmaps. Our product development is targeted to specific segments of the market where we believe the densities and performance of our products can provide the most benefit. We believe our close coordination with our customers regarding their future product requirements enhances the efficiency of our research and development expenditures.

**Components of Results of Operations**

***Revenue***

We derive our revenue from the sale of our MRAM-based products in discrete unit form, as embedded technology, and through licensing of and royalties on our MRAM technology. For sales through distributors, we defer recognition of revenue and the related expenses of our discrete MRAM products until the distributor has sold the products to its end customer. We recognize license fees when the applicable development milestones have been met in accordance with the terms of the licensing agreement. Our licensing revenue is largely dependent on a small number of transactions during a given year. We recognize revenue for royalties resulting from our licensing agreements in accordance with the terms of the licensing agreement.

***Cost of Sales and Gross Margin***

Cost of sales primarily includes the cost of our products including costs to purchase wafers, costs paid for wafer fabrication, costs associated with the assembly and testing of our products, shipping costs and costs of our manufacturing personnel. Cost of sales also includes indirect costs, such as warranty, inventory valuation reserves and overhead costs.

Gross profit is revenue less cost of sales. Gross margin is gross profit expressed as a percentage of total revenue. We expect that our gross margin may fluctuate from period to period, primarily as a result of changes in average selling price, revenue mix among our products, product yields and manufacturing costs. In addition, we may reserve against the value at which we carry our inventory based upon the product's life cycle and conditions in the markets in which we sell. Declines in average selling prices may be paired with improvements in our cost of sales, which may offset some of the gross margin reduction that could result from lower selling prices.

***Operating Expenses***

Our operating expenses consist of research and development, general and administrative and sales and marketing expenses. Personnel-related expenses, including salaries, benefits, bonuses and stock-based compensation, are the most significant component of each of our operating expense categories. In addition, we expect to increase research and development expenditures, hire additional personnel necessary to support our growth, and incur additional expenses associated with being a public company.

*Research and Development Expenses*

Our research and development expenses consist primarily of personnel-related expenses for the design and development of our products and technologies, test wafers required to characterize our technology, and expenses associated with our joint development agreement with GLOBALFOUNDRIES. Research and development expenses also include consulting services, circuit design costs, materials and laboratory supplies, fabrication and new packaging technology, and an allocation of related facilities and equipment costs. We expect our research and development expenses to increase as we hire additional personnel to develop new products and product enhancements. We recognize research and development expenses as they are incurred.

*General and Administrative Expenses*

Our general and administrative expenses consist primarily of personnel expenses, allocated facilities costs, expenses for outside professional services, and expenses for personnel and consultants engaged in executive, finance, legal, information technology and administrative activities. We expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the Securities and Exchange Commission, or SEC, and those of any national securities exchange on which our securities are traded, additional insurance expenses, investor relations activities and other administrative and professional services.

*Sales and Marketing Expenses*

Our sales and marketing expenses consist primarily of compensation for our sales, marketing, and business development personnel, including bonuses and commissions for our sales representatives. We expect our sales and marketing expenses to increase as we hire additional sales personnel and representatives and increase our marketing activities.

***Interest Expense***

Interest expense consists of cash and non-cash components. The non-cash component consists of interest expense recognized from the amortization of debt discounts derived from the issuance of warrants and debt issuance costs capitalized on our balance sheets as a reduction of the debt balance. The cash component of interest expense is attributable to our borrowings under our loan agreements.

***Other Income (Expense), Net***

Other income (expense), net consists primarily of the change in fair value of our convertible preferred stock warrant liability. Our convertible preferred stock warrants are exercisable into shares that are contingently redeemable and as such, are classified as a liability on our balance sheets at their estimated fair value and are marked to market at each reporting period.

***Results of Operations***

The following table sets forth our results of operations for the periods indicated:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | (unaudited) | |
| Product sales | $ 23,071 | $ 25,875 | $12,437 | $12,723 |
| Licensing and royalty revenue | 1,825 | 671 | 217 | 143 |
| Total revenue | 24,896 | 26,546 | 12,654 | 12,866 |
| Cost of sales | 11,806 | 12,568 | 5,231 | 5,704 |
| Gross profit | 13,090 | 13,978 | 7,423 | 7,162 |
| Operating expenses(1): | | | | |
| Research and development | 12,664 | 21,126 | 9,642 | 11,231 |
| General and administrative | 7,085 | 6,565 | 3,574 | 3,295 |
| Sales and marketing | 3,259 | 3,823 | 1,454 | 1,688 |
| Total operating expenses | 23,008 | 31,514 | 14,670 | 16,214 |
| Loss from operations | (9,918) | (17,536) | (7,247) | (9,052) |
| Interest expense | (263) | (653) | (183) | (1,184) |
| Other income (expense), net | (2) | 6 | 9 | 280 |
| Net loss | $(10,183) | $(18,183) | $ (7,421) | $ (9,956) |

(1) Includes stock-based compensation expense as follows:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | (unaudited) | |
| Research and development | $ 304 | $ 169 | $ 74 | $ 89 |
| General and administrative | 392 | 190 | 85 | 100 |
| Sales and marketing | 103 | 57 | 27 | 22 |
| Total stock-based compensation expense | $ 799 | $ 416 | $ 186 | $ 211 |

The following table set forth the statements of operations data for each of the periods presented as a percentage of revenue:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| Total revenue | 100% | 100% | 100% | 100% |
| Cost of sales | 47 | 47 | 41 | 44 |
| Gross margin | 53 | 53 | 59 | 56 |
| Operating expenses: | | | | |
| Research and development | 51 | 80 | 76 | 87 |
| General and administrative | 28 | 25 | 28 | 26 |
| Sales and marketing | 13 | 14 | 11 | 13 |
| Total operating expenses | 92 | 119 | 116 | 126 |
| Loss from operations | (40) | (66) | (57) | (70) |
| Interest expense | (1) | (2) | (1) | (9) |
| Other income (expense), net | * | * | * | 2 |
| Net loss | (41)% | (68)% | (59)% | (77)% |

* Not material.

***Comparison of the Six Months Ended June 30, 2015 and 2016***

*Revenue*

| | Six Months Ended June 30, | | Change | |
|---|---|---|---|---|
| | 2015 | 2016 | Amount | % |
| | (Dollars in thousands) | | | |
| Product sales | $12,437 | $12,723 | $ 286 | 2.3% |
| Licensing and royalty revenue | 217 | 143 | (74) | (34.1)% |
| Total revenue | $12,654 | $12,866 | $ 212 | 1.7% |

Total revenue increased by $0.2 million or 1.7%, from $12.7 million during the six months ended June 30, 2015, to $12.9 million during the six months ended June 30, 2016. Product sales increased $0.3 million for the first half of 2016 compared to the same period in 2015 due primarily to an increase of $1.1 million in first generation MRAM sales partially offset by a decrease of $0.8 million in embedded MRAM sales. The decrease in embedded MRAM sales was due to a significant customer's decision to decrease the amount of product held in

inventory, which resulted in lower orders from this customer for the first half of 2016. The customer resumed its customary order level late in the second quarter of 2016.

Licensing and royalty revenue is a highly variable revenue item characterized by a small number of transactions annually with revenues based on size and terms of each transaction.

*Cost of Sales and Gross Margin*

| | Six Months Ended June 30, | | Change | |
|---|---|---|---|---|
| | 2015 | 2016 | Amount | % |
| | (Dollars in thousands) | | | |
| Cost of sales | $5,231 | $5,704 | $ 473 | 9.0% |
| Gross margin | 58.7% | 55.7% | * | * |

(*) Not meaningful.

Cost of sales increased by $0.5 million or 9.0%, from $5.2 million during the six months ended June 30, 2015, to $5.7 million during the six months ended June 30, 2016. The increase was primarily due to a 13% increase in first generation MRAM product sales, and product mix. In an effort to fulfill pending customer orders, in the second half of 2016 we substituted product with a higher cost basis in place of a lower cost product for which we are expecting qualification certification late in the third quarter of 2016. Once the qualification certification is obtained, assuming the same order quantity, we expect we will achieve modest cost savings by shipping the new product.

Gross margin decreased from 58.7% during the six months ended June 30, 2015, to 55.7% during the six months ended June 30, 2016. The decrease was primarily due to product mix and product substitution as discussed above. In addition, although revenue increased, margin decreased because we were not able to use the lower cost basis version of a product, as discussed above. We expect to obtain certification of the lower cost product in the third quarter of 2016, which we expect will increase our gross margin.

*Operating Expenses*

| | Six Months Ended June 30, | | Change | |
|---|---|---|---|---|
| | 2015 | 2016 | Amount | % |
| | (Dollars in thousands) | | | |
| Research and development | $ 9,642 | $11,231 | $1,589 | 16.5% |
| General and administrative | 3,574 | 3,295 | (279) | (7.8)% |
| Sales and marketing | 1,454 | 1,688 | 234 | 16.1% |
| Total operating expenses | $14,670 | $16,214 | $1,544 | 10.5% |

*Research and Development.* Research and development expenses increased $1.6 million, or 16.5%, from $9.6 million during the six months ended June 30, 2015, to $11.2 million during the six months ended June 30, 2016. The increase was primarily attributable to an increase of $0.9 million related to the vesting of common stock issued to GLOBALFOUNDRIES and increased payroll expense of $0.4 million due to additional headcount in product engineering.

*General and Administrative*. General and administrative expenses decreased by $0.3 million, or 7.8%, from $3.6 million during the six months ended June 30, 2015, to $3.3 million during the six months ended June 30, 2016. The decrease was primarily due to a decrease of an aggregate $0.4 million in payroll and contract labor and employee related expenses primarily attributable to the redeployment of existing general and administrative operations personnel to research and development functions. These employees previously performed operations

related duties such as planning and scheduling but have shifted focus to yield improvement and product certification efforts related to advanced product lifecycle and development stages. This decrease was partially offset by an increase of $0.1 million in professional services incurred related to our preparation and audit of financial statements in connection with our proposed initial public offering.

*Sales and Marketing.* Sales and marketing expenses increased $0.2 million, or 16.1%, from $1.5 million during the six months ended June 30, 2015, to $1.7 million during the six months ended June 30, 2016. The increase was primarily attributable to additional payroll expense and contract labor expense due to increased headcount.

*Interest Expense*

| | Six Months Ended June 30, | | Change | |
|---|---|---|---|---|
| | 2015 | 2016 | Amount | % |
| | (Dollars in thousands) | | | |
| Interest expense | $183 | $1,184 | $1,001 | 547.0% |

Interest expense increased $1.0 million from $0.2 million during the six months ended June 30, 2015, to $1.2 million during the six months ended June 30, 2016. The increase was primarily attributable to the increase in our outstanding debt balance year over year and amortization of debt discounts.

*Other Income (Expense), Net*

| | Six Months Ended June 30, | | Change | |
|---|---|---|---|---|
| | 2015 | 2016 | Amount | % |
| | (Dollars in thousands) | | | |
| Other income (expense), net | $ 9 | $280 | $ 271 | * |

(*) Not meaningful.

Other income (expense), net increased from $9,000 during the six months ended June 30, 2015, to $0.3 million during the six months ended June 30, 2016. The change was primarily related to the fair value remeasurement of our warrant liabilities at each balance sheet date and the fair value remeasurement of our derivative liability, which was initially recognized in the first quarter of 2016.

***Comparison of the Years Ended December 31, 2014 and 2015***

*Revenue*

| | Year Ended December 31, | | Change | |
|---|---|---|---|---|
| | 2014 | 2015 | Amount | % |
| | (Dollars in thousands) | | | |
| Product sales | $23,071 | $25,875 | $ 2,804 | 12.2% |
| Licensing and royalty revenue | 1,825 | 671 | (1,154) | (63.2)% |
| Total revenue | $24,896 | $26,546 | $ 1,650 | 6.6% |

Total revenue increased by $1.7 million, or 6.6%, from $24.9 million during the year ended December 31, 2014, to $26.5 million during the year ended December 31, 2015. The increase in revenue was attributable to increased customer adoption of discrete MRAM products, partially offset by a decrease in licensing and royalty revenue primarily related to the timing of milestone payments under existing or new licensing arrangements.

*Cost of Sales and Gross Margin*

| | Year Ended December 31, | | Change | |
|---|---|---|---|---|
| | 2014 | 2015 | Amount | % |
| | (Dollars in thousands) | | | |
| Cost of sales | $11,806 | $12,568 | $ 762 | 6.5% |
| Gross margin | 52.6% | 52.7% | * | * |

* Not meaningful.

Cost of sales increased by $0.8 million, or 6.5%, from $11.8 million during the year ended December 31, 2014, to $12.6 million during the year ended December 31, 2015. The increase was primarily due to an increase in the volume of products produced and sold.

Gross margin increased from 52.6% during the year ended December 31, 2014, to 52.7% during the year ended December 31, 2015. The increase was not material in comparing the results of 2014 to 2015.

*Operating Expenses*

| | Year Ended December 31, | | Change | |
|---|---|---|---|---|
| | 2014 | 2015 | Amount | % |
| | (Dollars in thousands) | | | |
| Research and development | $12,664 | $21,126 | $8,462 | 66.8% |
| General and administrative | 7,085 | 6,565 | (520) | (7.3)% |
| Sales and marketing | 3,259 | 3,823 | 564 | 17.3% |
| Total operating expenses | $23,008 | $31,514 | $8,506 | 37.0% |

*Research and Development.* Research and development expenses increased $8.5 million, or 66.8%, from $12.7 million during the year ended December 31, 2014, to $21.1 million during the year ended December 31, 2015. The increase was primarily attributable to spending to develop ST-MRAM technology, including $5.3 million in support of the joint development agreement with GLOBALFOUNDRIES, which included a non-cash charge of $1.8 million related to the vesting of common stock issued to GLOBALFOUNDRIES, and $2.8 million of additional payroll, contract labor, and direct materials for technology, process, design and systems development.

*General and Administrative.* General and administrative expenses decreased $0.5 million, or 7.3%, from $7.1 million during the year ended December 31, 2014, to $6.6 million during the year ended December 31, 2015. The decrease was primarily attributable to the redeployment of existing general and administrative operations headcount to research and development functions.

*Sales and Marketing.* Sales and marketing expenses increased $0.6 million, or 17.3%, from $3.3 million during the year ended December 31, 2014, to $3.8 million during the year ended December 31, 2015. The increase was attributable to additional payroll expense due to increased headcount and increased commissions to sales representatives.

*Interest Expense*

| | Year Ended December 31, | | Change | |
|---|---|---|---|---|
| | 2014 | 2015 | Amount | % |
| | (Dollars in thousands) | | | |
| Interest expense | $263 | $653 | $ 390 | 148.3% |

Interest expense increased $0.4 million from $0.3 million during the year ended December 31, 2014, to $0.7 million during the year ended December 31, 2015. The increase was attributable to the increase in our outstanding debt balance year over year.

*Other Income (Expense), Net*

| | Year Ended December 31, | | Change | |
|---|---|---|---|---|
| | 2014 | 2015 | Amount | % |
| | (In thousands) | | | |
| Other income (expense), net | $ (2) | $ 6 | $ 8 | * |

* Not meaningful.

Other income (expense), net was an expense of $2,000 during the year ended December 31, 2014, compared to income of $6,000 during the year ended December 31, 2015. The change was primarily related to the fair value remeasurement of our warrant liabilities at each balance sheet date.

**Quarterly Results of Operations and Other Data**

The following table sets forth our unaudited quarterly statements of operations data and other operating data for each of the quarters indicated. We have prepared the quarterly data on a basis consistent with the audited financial statements included in this prospectus. In the opinion of management, the quarterly information reflects all necessary adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of this data. This information should be read in conjunction with audited financial statements and related notes and other information included elsewhere in this prospectus. The results of historical periods are not necessarily indicative of results of operations for a full year or for any future period.

| | Three Months Ended, | | | | | |
|---|---|---|---|---|---|---|
| | Mar. 31 2015 | Jun. 30 2015 | Sept. 30 2015 | Dec. 31 2015 | Mar. 31 2016 | Jun. 30 2016 |
| | (In thousands) | | | | | |
| **Statements of Operations Data:** | | | | | | |
| Product revenue | $ 6,088 | $ 6,349 | $ 6,671 | $ 6,767 | $ 6,126 | $ 6,597 |
| Licensing and royalty revenue | 217 | — | 421 | 33 | 81 | 62 |
| Total revenue | 6,305 | 6,349 | 7,092 | 6,800 | 6,207 | 6,659 |
| Cost of sales | 2,513 | 2,718 | 3,458 | 3,879 | 2,545 | 3,159 |
| Gross profit | 3,792 | 3,631 | 3,634 | 2,921 | 3,662 | 3,500 |
| Operating expenses: | | | | | | |
| Research and development | 5,645 | 3,997 | 5,081 | 6,403 | 5,137 | 6,094 |
| General and administrative | 1,637 | 1,937 | 1,634 | 1,357 | 1,715 | 1,580 |
| Sales and marketing | 624 | 830 | 1,198 | 1,171 | 827 | 861 |
| Total operating expenses | 7,906 | 6,764 | 7,913 | 8,931 | 7,679 | 8,535 |
| Loss from operations | (4,114) | (3,133) | (4,279) | (6,010) | (4,017) | (5,035) |
| Interest expense | (40) | (143) | (231) | (239) | (466) | (718) |
| Other income (expense), net | 1 | 8 | 1 | (4) | (57) | 337 |
| Net loss | $ (4,153) | $ (3,268) | $ (4,509) | $ (6,253) | $ (4,540) | $ (5,416) |
| **Other Financial Data:** | | | | | | |
| Adjusted EBITDA | $ (3,544) | $ (2,298) | $ (3,273) | $ (4,898) | $ (3,247) | $ (3,492) |

We recognized consecutive quarterly product sales revenue growth during 2015 as product revenue increased from $6.1 million in the first quarter of 2015 to $6.8 million in the fourth quarter of 2015. Our product revenue decreased to $6.1 million in the first quarter of 2016 as compared to the fourth quarter of 2015, primarily due to a decrease in first generation and embedded MRAM product sales. This decrease was primarily due to a significant customer's decision to decrease the amount of product held in inventory, which resulted in lower orders from this customer for the first half of 2016. The customer resumed its customary order level late in the second quarter of 2016, which contributed to the increase in product revenue in the second quarter of 2016.

Licensing revenue is a highly variable revenue item characterized by a small number of transactions annually with revenue based on size and terms of each transaction. In the first and third quarters of 2015, licensing revenue was higher primarily due to the timing of milestone payments under existing or new licensing arrangements.

Cost of sales increased during each quarter in 2015, primarily due to volume and mix of product sold in the first generation MRAM product line and product yield issues in the third and fourth quarters of 2015. In the first quarter of 2016 as compared to fourth quarter of 2015, cost of sales decreased 34%, to $2.5 million, as a result of a decrease in product revenue and the cessation and correction of yield issues experienced in the second half of 2015. In an effort to fulfill pending customer orders, in the first half of 2016, we substituted product with a higher cost basis in place of a lower cost product for which we are expecting qualification certification late in the third quarter of 2016; this product substitution resulted in higher costs in the first half of 2016. Qualification certification has since been obtained, so assuming the same order quantity, we expect we will achieve modest cost savings by shipping the new product.

Gross profit decreased from the third quarter to the fourth quarter of 2015 primarily due to volume, mix and product yield issues encountered in third and fourth quarters of 2015. The third quarter 2015 did not reflect a decrease from the prior quarter primarily as a result of the increased licensing revenue during that quarter.

Operating expenses were primarily impacted by increased headcount to support growth and investment in research and development activities. The increase was also attributable to the increase in stock-based compensation expense due to the increase in the fair value of our common stock and the related vesting of common stock issued to GLOBALFOUNDRIES. The decrease in the second quarter of 2015 was primarily driven by decreased research and development spending due to our investment in product development in the first quarter of 2015 that we were able to utilize throughout the year, offset primarily by increased headcount and increased expenses related to product certification goals. The decrease from the fourth quarter of 2015 to the first quarter of 2016 was primarily driven by $1.1 million of additional costs incurred in the fourth quarter on production of test units awaiting certification and increased non-cash charges related to the vesting of our common stock held by GLOBALFOUNDRIES in the fourth quarter 2015 compared to the first quarter 2016 in the amount of $0.5 million.

The increase in interest expense quarter over quarter was primarily attributable to the increase in our outstanding debt balance and amortization of debt discounts.

We define Adjusted EBITDA as net income or loss adjusted for depreciation and amortization, stock-based compensation expense, compensation expense related to the vesting of common stock held by GLOBALFOUNDRIES resulting from our joint development agreement and interest expense. See "Selected Financial Data" for the explanation of why we track Adjusted EBITDA, why Adjusted EBITDA may be a useful measure for investors, and the limitations of this measure as an analytical tool. The following table presents a reconciliation of net loss, the most directly comparable GAAP measure, to Adjusted EBITDA for each of the periods indicated:

| | Three Months Ended, | | | | | |
|---|---|---|---|---|---|---|
| | Mar. 31 2015 | Jun. 30 2015 | Sept. 30 2015 | Dec. 31 2015 | Mar. 31 2016 | Jun. 30 2016 |
| Net loss | $ (4,153) | $ (3,268) | $ (4,509) | $ (6,253) | $ (4,540) | $ (5,416) |
| Depreciation and amortization | 272 | 405 | 396 | 267 | 196 | 184 |
| Stock-based compensation expense | 89 | 97 | 115 | 115 | 111 | 100 |
| Compensation expense related to vesting of GLOBALFOUNDRIES common stock | 208 | 325 | 494 | 734 | 520 | 922 |
| Interest expense | 40 | 143 | 231 | 239 | 466 | 718 |
| Adjusted EBITDA | $ (3,544) | $ (2,298) | $ (3,273) | $ (4,898) | $ (3,247) | $ (3,492) |

**Liquidity and Capital Resources**

We have generated significant losses since our inception and had an accumulated deficit of $89.7 million as of June 30, 2016. We have financed our operations primarily through sales of our redeemable convertible preferred stock, debt financing and the sale of our products. As of June 30, 2016, we had $2.6 million of cash and cash equivalents, compared to $2.3 million as of December 31, 2015.

In June 2015, we refinanced our existing indebtedness and entered into a loan and security agreement with Ares Venture Finance (the 2015 Credit Facility) for a term loan of $8.0 million and a $4.0 million revolving loan, which increased our borrowing costs and extended the maturity of our debt to June 2019 for the term loan and June 2017 for the revolving loan. The facility is collateralized by substantially all of our assets and contains various covenants as described in "—Contractual Obligations—2015 Credit Facility" below. We were in compliance with the financial covenants at December 31, 2015, and June 30, 2016. Our ability to access the revolving loan depends upon levels of our accounts receivable and, therefore, the full amount may not be available to us at any specific time.

We believe that our existing cash and cash equivalents as of June 30, 2016, and the $3.5 million from our August 2016 Notes, together with the additional borrowings available under our 2015 Credit Facility, and net proceeds from this offering, will be sufficient to meet our anticipated cash requirements for the next 12 months. Our future capital requirements will depend on many factors, including our growth rate, the timing and extent of our spending to support research and development activities, the timing and cost of establishing additional sales and marketing capabilities, and the introduction of new products. Our independent registered public accounting firm has expressed in its auditors' report on our financial statements, included as part of this prospectus, a "going concern" opinion, meaning that we have suffered recurring losses from operations and negative cash flows from operations that raise substantial doubt regarding our ability to continue as a going concern. We need additional capital to meet our planned operating requirements throughout 2016 and beyond, which is one of the reasons why we are conducting this proposed initial public offering. We may be required to seek additional equity or debt financing, and we cannot assure you that any such additional financing will be available to us on acceptable terms or at all. If we are unable to raise additional capital or generate sufficient cash from operations to adequately fund our operations, we will need to curtail planned activities to reduce costs and extend the time period over which our current resources will be able to fund operations. Doing so will likely harm our ability to execute on our business plan.

The following table summarizes our cash flows for the periods indicated:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | (In thousands) | | (unaudited) | |
| Cash used in operating activities | $ (7,938) | $(10,670) | $(6,587) | $(4,650) |
| Cash used in investing activities | (525) | (1,295) | (666) | (427) |
| Cash provided by financing activities | 13,712 | 4,648 | 4,759 | 5,412 |

***Cash Used in Operating Activities***

During the six months ended June 30, 2016, cash used in operating activities was $4.7 million, which consisted of a net loss of $10.0 million, adjusted by non-cash charges of $2.6 million and an increase of $2.7 million in our net operating assets and liabilities. The non-cash charges primarily comprised compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES under our joint development agreement of $1.4 million, depreciation and amortization of $0.4 million, non-cash interest expense of $0.8 million, stock-based compensation of $0.2 million and a gain of $0.3 million from the fair value remeasurement of our derivative liability. The increase in our net operating assets and liabilities was primarily due to a net increase of $2.1 million in the related party amount due to GLOBALFOUNDRIES in connection with the joint development agreement, a decrease of $0.4 million in inventory and an increase of $1.3 million in accounts payable and accrued liabilities due to an increase in purchases and timing of payments. These changes were partially offset by an increase in accounts receivable of $0.8 million due to timing of cash receipts for outstanding balances and $0.5 million in prepaid expenses and other current assets for advances made for the purchase of wafers.

During the six months ended June 30, 2015, cash used in operating activities was $6.6 million, which consisted of a net loss of $7.4 million, adjusted by non-cash charges of $1.5 million and a decrease of $0.7 million in our net operating assets and liabilities. The non-cash charges primarily comprised depreciation and amortization of $0.7 million, compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES under our joint development agreement of $0.5 million, stock-based compensation of $0.2 million and non-cash interest of $0.1 million. The decrease in our net operating assets and liabilities was primarily due to an increase of $1.0 million inventory, an increase of $0.9 million in prepaid and other expenses for advances made for the purchase of wafers, and an increase of $0.3 million in accounts receivable due to timing of cash receipts for outstanding balances, a decrease of $0.6 million in accounts payable and accrued liabilities due to timing of payments. These changes were substantially offset by a net increase of $1.6 million in the related party amount due to GLOBALFOUNDRIES in connection with the joint development agreement and an increase of $0.5 million in the deferred income on shipments to distributors due to increase in such activity since year end.

During the year ended December 31, 2015, cash used in operating activities was $10.7 million, which consisted of a net loss of $18.2 million, adjusted by non-cash charges of $3.7 million and an increase of $3.8 million in our net operating assets and liabilities. The non-cash charges primarily comprised compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES under our joint development agreement of $1.8 million, depreciation and amortization of $1.3 million, stock-based compensation of $0.4 million and non-cash interest expense of $0.2 million. The increase in our net operating assets and liabilities was primarily due to $3.3 million in accrued expenses associated with the joint development agreement.

During the year ended December 31, 2014, cash used in operating activities was $7.9 million, which consisted of a net loss of $10.2 million, adjusted by non-cash charges of $2.5 million and a decrease of $0.3 million in our net operating assets and liabilities. The non-cash charges primarily comprised depreciation and amortization of $1.5 million, stock-based compensation of $0.8 million, compensation expense related to vesting

of common stock issued to GLOBALFOUNDRIES of $0.1 million and non-cash interest expense of $0.1 million. The decrease in our net operating assets and liabilities was primarily due to an increase in trade and related parties receivables resulting from an increase in our revenue in 2014.

***Cash Used in Investing Activities***

Cash used in investing activities during the six months ended June 30, 2016 and 2015, was $0.4 million and $0.7 million, respectively, consisting of capital expenditures primarily for the purchase of manufacturing equipment.

Cash used in investing activities during the years ended December 31, 2014 and 2015, was $0.5 million and $1.3 million, respectively, which consisted of capital expenditures primarily for the purchase of manufacturing equipment, and purchased software.

***Cash Provided by Financing Activities***

During the six months ended June 30, 2016, cash provided by financing activities was $5.4 million consisting of proceeds of $6.5 million from borrowings partially offset by payments on deferred offering costs of $0.6 million, long-term debt of $0.4 million, and capital lease obligations of $0.1 million.

During the six months ended June 30, 2015, cash provided by financing activities was $4.8 million consisting of from $8.0 million in borrowings partially offset by payments on long-term debt of $3.0 million, debt issuance costs of $0.1 million and capital lease obligations of $0.1 million.

During the year ended December 31, 2015, cash provided by financing activities was $4.6 million consisting of proceeds of $8.0 million from borrowings under our long-term debt facility partially offset by $3.2 million in payments on long-term debt and capital lease obligations.

During the year ended December 31, 2014, cash provided by financing activities was $13.7 million consisting primarily of net proceeds of $10.0 million from the issuance of redeemable convertible preferred stock and proceeds of $4.0 million from borrowing under our debt facility.

**Off-Balance Sheet Arrangements**

We have not entered into any off-balance sheet arrangements and do not have any holdings in variable interest entities.

**Contractual Obligations**

The following table summarizes our contractual obligations as of December 31, 2015 (in thousands):

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| | Less Than 1 Year | 1 to 3 Years | 3 to 5 Years | More Than 5 Years | Total |
| Long-term debt, current and non-current, including interest(1) | $ 1,684 | $6,622 | $1,423 | $ — | $ 9,729 |
| Capital lease obligation | 205 | — | — | — | 205 |
| Operating leases | 1,301 | 796 | — | — | 2,097 |
| Total | $ 3,190 | $7,418 | $1,423 | $ — | $12,031 |

(1) The interest charges have been calculated using a rate of 8.75%, which was the rate in effect for 2015. The debt bears interest at a variable rate and interest charges in future periods may be higher.

The following table summarizes our contractual obligations as of June 30, 2016 (in thousands):

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| | Less Than 1 Year | 1 to 3 Years | 3 to 5 Years | More Than 5 Years | Total |
| Convertible promissory notes payable – related party(1) | $ 5,169 | $ — | $— | $ — | $ 5,169 |
| Long-term debt, current and non-current, including interest(2) | 4,308 | 6,293 | — | — | 10,601 |
| Capital lease obligation | 109 | — | — | — | 109 |
| Operating leases | 1,118 | 328 | — | — | 1,446 |
| Total | $ 10,704 | $6,621 | $— | $ — | $17,325 |

(1) The interest charges for convertible promissory notes have been calculated using a fixed rate of 5.0%.
(2) The interest charges for the 2015 Credit Facility have been calculated using a rate of 8.75%, which was the rate in effect for the first half of 2016. The debt bears interest at a variable rate and interest charges in future periods may be higher.

In May 2016, we entered into an amendment to our joint development agreement with GLOBALFOUNDRIES to modify the payment schedule and clarify our payment obligations for certain past project costs. Under the amendment, GLOBALFOUNDRIES has the right to terminate the joint development agreement if we do not pay the project costs, with interest, by December 15, 2016. As of June 30, 2016, the amount owed to GLOBALFOUNDRIES is $5.6 million, and is estimated to be $8.5 million in December 2016.

In August 2016, we entered into an amendment to the facility lease for our design facility located in Austin, Texas to increase the leased space from 5,002 square feet to 11,084 square feet and extend the lease term from September 2016 to January 2022. The aggregate amount of payments due under the amended lease is $1.1 million.

In September 2016, we entered into an amendment to the January 2016 Notes and August 2016 Notes to extend the maturity date from September 30, 2016 to December 15, 2016.

***2015 Credit Facility***

In June 2015, we entered into a loan and security agreement with Ares Venture Finance for a term loan of $8.0 million and a $4.0 million revolving loan for working capital purposes and to repay our existing debt to another lender. The term loan bears interest at a floating rate equal to the greater of (i) 8.75% or (ii) LIBOR plus 7.75%, and matures in June 2019. The revolving loan bears interest at a floating rate equal to the prime rate plus 3.75% and matures on June 5, 2017. The outstanding balance on our revolving loan is limited to the lesser of $4.0 million or 85% of the outstanding balance of our receivables. Our obligations under the 2015 Credit Facility are secured by substantially all of our assets. The 2015 Credit Facility contains customary covenants restricting our activities, including limitations on our ability to sell assets, engage in mergers and acquisitions, enter into transactions involving related parties, incur indebtedness or grant liens or negative pledges on our assets, make loans or make other investments. Under these covenants, we are prohibited from paying dividends with respect to our capital stock. We were in compliance with all covenants at June 30, 2016.

In connection with the 2015 Credit Facility, we issued a warrant to the lender to purchase 480,000 shares of Series B redeemable convertible preferred stock at $1.00 a share.

***January 2016 Convertible Promissory Notes***

In January 2016, we entered into a Note Purchase Agreement, as amended in September 2016, with several of our stockholders for the issuance of convertible promissory notes (the “January 2016 Notes”) for an aggregate principal amount of $5.0 million. The January 2016 Notes bear interest at 5.0% per annum and have a maturity date

of December 15, 2016, extended from the original maturity date of September 30, 2016. The outstanding principal amount and accrued interest on the January 2016 Notes are convertible into shares of Series B redeemable convertible preferred stock, at any time, upon written election of the holders of at least a majority of the outstanding principal balance of the January 2016 Notes. In the event of an equity financing with proceeds in excess of $5.0 million ("Qualified Financing") prior to the maturity of the January 2016 Notes, the outstanding principal and accrued interest automatically convert into shares of stock issued in the equity financing based on a price per share equal to the price per share paid by investors in the financing. In the event of a firmly underwritten initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (an IPO), the outstanding principal and accrued interest convert into shares of our common stock at a price per share equal to 80% of the per share price of the common stock issued in the IPO. In the event of a deemed liquidation event occurring before the maturity date, the January 2016 Notes will be repaid in cash in an amount equal to three times the outstanding principal amount. The redemption of the January 2016 Notes upon a deemed liquidation event and in the event of an IPO are contingent redemption features that are not clearly and closely related to the debt instrument and have been bifurcated and recognized as a derivative liability on the balance sheet as of June 30, 2016. The compound derivative was recorded as a debt discount of $0.7 million on the issuance date of the January 2016 Notes and is being amortized over the term of the January 2016 Notes using the effective interest method. At June 30, 2016, the carrying values of the January 2016 Notes and the derivative liability were $4.9 million and $0.4 million, respectively.

***August 2016 Convertible Promissory Notes***

In August 2016, we entered into a Note Purchase Agreement, as amended in September 2016, with several of our stockholders for the issuance of subordinated convertible promissory notes (the "August 2016 Notes") for an aggregate principal amount of $3.5 million. The August 2016 Notes bear interest at 5.0% per annum and have a maturity date of December 15, 2016, extended from the original maturity date of September 30, 2016. In the event of a Qualified Financing prior to the maturity of the August 2016 Notes, the outstanding principal and accrued interest convert into shares of stock issued in the Qualified Financing based on a price per share equal to the price per share paid by investors in such financing. In the event of an IPO, the outstanding principal and accrued interest convert into shares of common stock at a price per share equal to 80% of the per share price of the common stock issued in the IPO. In the event of a deemed liquidation event occurring before the maturity date, the August 2016 Notes will be repaid in cash in an amount equal to three times the outstanding principal amount. The redemption of the August 2016 Notes upon a deemed liquidation event and in the event of an IPO are contingent redemption features that are not clearly and closely related to the debt instrument and will be bifurcated and recognized as a derivative liability on the balance sheet at the date of issuance.

**Internal Control over Financial Reporting**

Prior to this offering we were a private company and have had limited accounting and financial reporting personnel and other resources with which to address our internal controls and procedures. In connection with the audits of our consolidated financial statements as of and for the years ended December 31, 2014 and 2015, we identified a material weakness in our internal control over financial reporting, as defined in the standards established by the Sarbanes-Oxley Act. Our management has determined that we had a material weakness in our internal control over financial reporting as of December 31, 2014 and 2015 relating to the design and operation of our financial reporting processes. We have concluded that this material weakness in our internal controls was due to the fact that we did not have resources with the appropriate level of experience and technical expertise to oversee our financial reporting processes.

In order to remediate this material weakness, we have taken the following actions:

- we are continuing to actively seek accounting and finance staff members to augment our current staff and to improve the effectiveness of our closing and financial reporting processes;
- we are currently updating our information technology tools, including the recent implementation of an ERP system;

- we are formalizing our accounting policies and internal controls documentation and strengthening supervisory reviews by our management;
- we have engaged external consultants to assist us with preparation and review activities associated with the financial statements and our financial reporting processes; and
- in May 2016, we added an independent board member with significant semiconductor CFO experience to chair our audit committee.

In connection with the initiatives we are implementing to remediate the material weakness, we expect to incur additional expense as we hire additional financial accounting staff, utilize consultants and improve our accounting and financial reporting systems. The initiatives we are implementing are subject to continued management review supported by confirmation and testing, as well as audit committee oversight. We expect to complete the measures above as soon as practicable following this offering and will continue to implement measures to remedy our internal control deficiencies in order to meet the deadline imposed by Section 404 of the Sarbanes-Oxley Act of 2002. However, we cannot be certain that the measures we have taken or may take in the future will ensure that we will establish and maintain adequate controls over our financial processes and reporting in the future.

Notwithstanding the material weakness that existed as of December 31, 2014 and 2015, our management has concluded that the financial statements included elsewhere in this prospectus present fairly, in all material respects, our financial position, results of operation and cash flows in conformity with GAAP.

If we fail to fully remediate this material weakness or fail to maintain effective internal controls in the future, it could result in a material misstatement of our financial statements that would not be prevented or detected on a timely basis, which could cause investors to lose confidence in our financial information or cause our stock price to decline. Our independent registered public accounting firm has not assessed the effectiveness of our internal control over financial reporting and, under the JOBS Act, will not be required to provide an attestation report on the effectiveness of our internal control over financial reporting so long as we qualify as an “emerging growth company,” which may increase the risk that weaknesses or deficiencies in our internal control over financial reporting go undetected.

## Critical Accounting Policies and Estimates

Our financial statements and related notes included elsewhere in this prospectus have been prepared in accordance with United States generally accepted accounting principles. The preparation of these financial statements requires our management to make judgments and estimates that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these judgments and estimates under different assumptions or conditions and any such differences may be material. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management’s judgments and estimates.

### *Revenue Recognition—Distributors*

We sell the majority of our products to our distributors at a uniform list price. Price protection rights grant distributors the right to a credit in the event of declines in the price of our products. Distributors are provided with price concessions subsequent to delivery of product to them depending on their end customer and sales price. These concessions are based on a variety of factors, including customer, product, quantity, geography and competitive differentiation. We defer revenue on shipments to distributors as the price is not fixed or

determinable until delivery has been made by the distributor to its customer and the final sales price has been established. At the time of shipment to distributors, we record a trade receivable for the selling price as there is a legally enforceable obligation of the distributor to pay for the product delivered, we relieve inventory for the carrying value of goods shipped, and the net of these amounts, the gross profit, we record as deferred income on shipments to distributors on the balance sheet. The amount of gross profit that will be ultimately recognized in our statements of operations on such sales could be lower than the deferred income recorded on our balance sheet as a result of (a) credits granted to distributors on specifically identified products and customers to allow the distributors to earn a competitive gross profit on the sale of our products to the end customer and (b) price protection concessions related to market pricing conditions. We are unable to estimate the credits to the distributors due to the wide variability of negotiated price concessions granted to them. Therefore, we record the price concessions against deferred income at the time the distributor sells the product to its customers. The recognition of revenue from deferred income on shipments to distributors is ultimately contingent upon delivery of product to the distributor's customer, at which point the price is fixed or determinable.

At June 30, 2016, we had approximately $3.0 million of deferred revenue and $1.4 million of deferred cost of sales, resulting in the recognition of $1.6 million of deferred income on shipments to distributors. At December 31, 2015, we had approximately $2.6 million of deferred revenue and $1.2 million of deferred cost of sales, resulting in the recognition of $1.4 million of deferred income on shipments to distributors. At December 31, 2014, we had approximately $3.4 million of deferred revenue and $1.6 million of deferred cost of sales, resulting in the recognition of $1.8 million of deferred income on shipments to distributors.

Products returned by distributors and subsequently scrapped have historically been immaterial to our results of operations. We routinely evaluate the risk of impairment of the deferred cost of sales component of deferred income on shipments to distributors. Because of the historically immaterial amounts of inventory that have been scrapped, and historically rare instances where discounts given to a distributor result in a price less than our cost, we believe the deferred costs are recorded at their approximate carrying values.

***Inventory***

We record inventories at the lower of cost, determined on a first-in, first-out basis or specific identification method, or market. We routinely evaluate quantities and values of inventory on hand and inventory that may be returned from distributors in light of current market conditions and market trends, and record provisions for inventories in excess of demand and subject to obsolescence. This evaluation may take into consideration expected demand, the effect new products may have on the sale of existing products, technological obsolescence and other factors. We record inventory write-downs for the valuation of inventory when required based on the analysis of the information immediately above and inventory balances are not readjusted until sold. Unanticipated changes in technology or customer demand could result in a decrease in demand for our products, which may require additional inventory write-downs that could materially affect our results of operations.

***Derivative Liability***

Our January 2016 Notes contain certain redemption features that meet the definition of a derivative. We estimated the fair value of the derivative liability using a with-and without-model and the probability-weighted expected return method, which estimates a discounted value based upon an analysis of various future outcomes. The with-and without-model calculates the value of our convertible debt with features being evaluated for separate accounting, and an identical instrument without those features. The outcomes of each scenario in the probability-weighted expected return method are based on a market multiple approach. The derivative liability is subject to re-measurement at each balance sheet date and the change in fair value, if any, is recognized as other income (expense), net in the statements of operations. We will continue to adjust the liability for changes in fair value until the earlier of: (i) maturity of the January 2016 Notes; (ii) the completion of an IPO; (iii) the completion of a Qualified Financing; or (iv) the optional conversion into Series B preferred stock.

***Stock-based Compensation***

We recognize compensation costs related to stock options granted to employees and directors based on the estimated fair value of the awards on the date of grant, net of estimated forfeitures. We estimate the grant date fair value and the resulting stock-based compensation expense using the Black-Scholes option-pricing model. We expense the grant date fair value of stock-based awards on a straight-line basis over the period during which the employee is required to provide service in exchange for the award (generally the vesting period).

We estimate the fair value of our stock-based awards using the Black-Scholes option-pricing model, which requires the input of highly subjective assumptions. Our assumptions are as follows:

*Expected Term.* The expected term represents the period we expect the stock-based awards to be outstanding. We use the simplified method to determine the expected term, which is calculated as the average of the time to vesting and the contractual life of the options.

*Expected Volatility.* As our common stock has never been publicly traded, we derive the expected volatility from the average historical volatilities of publicly traded companies within our industry that we consider to be comparable to our business over a period approximately equal to the expected term for employees' options and the remaining contractual life for non-employees' options.

*Risk-free Interest Rate.* We base the risk-free interest rate on the U.S. Treasury yield with a maturity equal to the expected term of the option in effect at the time of grant.

*Dividend Yield.* We assume the expected dividend to be zero as we have never paid dividends and have no current plans to pay any dividends on our common stock.

In addition to the assumptions used in the Black-Scholes option-pricing model, we also estimate a forfeiture rate to calculate the stock-based compensation for our equity awards. We will continue to use judgment in evaluating the expected volatility, expected terms and forfeiture rates utilized for our stock-based compensation calculations on a prospective basis.

We recorded stock-based compensation expense of $0.8 million, $0.4 million, $0.2 million and $0.2 million for the years ended December 31, 2014 and 2015, and for the six months ended June 30, 2015 and 2016, respectively. We expect to continue to grant stock options and other equity-based awards in the future, and to the extent that we do, the stock-based compensation expense we recognize in future periods will likely increase.

Historically, for all periods prior to this offering, the fair values of the shares of common stock underlying our stock-based awards were estimated on each grant date by our board of directors. In order to determine the fair value of our common stock underlying option grants, our board of directors considered, among other things, contemporaneous valuations of our common stock prepared by an unrelated third-party valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation.* Given the absence of a public trading market for our common stock, our board of directors exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our common stock, including: the rights, preferences and privileges of our preferred stock relative to those of our common stock; our operating results and financial condition; our levels of available capital resources; equity market conditions affecting comparable public companies; general U.S. market conditions; and the lack of marketability of our common stock.

For valuations after the completion of this offering, our board of directors intends to determine the fair value of each share of underlying common stock based on the closing price of our common stock as reported on the date of grant.

The intrinsic value of all outstanding options as of June 30, 2016, was $ million based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover of this prospectus.

**JOBS Act Accounting Election**

We are an emerging growth company, as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

**Recent Accounting Pronouncements**

In May 2014, the Financial Accounting Standards Board (FASB) issued ASU No. 2014-09, Revenue from Contracts with Customers. Areas of revenue recognition that will be affected include, but are not limited to, transfer of control, variable consideration, allocation of transfer pricing, licenses, time value of money, contract costs and disclosures. In August 2015, the FASB issued ASU No. 2015-14, Revenue from Contracts with Customers: Deferral of Effective Date, which defers the effective date of ASU 2014-09 by one year and allows early adoption as of the original effective date of fiscal years and interim reporting periods beginning after December 15, 2016, at which time companies may adopt the new standard update under the full retrospective method or the modified retrospective method. The deferral results in the new revenue standard will become effective for us for fiscal years and interim reporting periods beginning after December 15, 2017. We are currently evaluating the impact that the adoption of ASU 2014-09 will have on our financial statements and related disclosures.

In August 2014, the FASB issued ASU No. 2014-15, Presentation of Financial Statements—Going Concern, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern. The new standard provides guidance around management's responsibility to evaluate whether there is substantial doubt about an entity's ability to continue as a going concern and to provide related financial statement note disclosures. The new standard is effective for annual periods ending after December 15, 2016, and interim periods within annual periods beginning after December 15, 2016. Early adoption is permitted. We do not expect the adoption of this standard to have a material impact on our financial statements and related disclosures.

In April 2015, the FASB issued ASU No. 2015-03, Interest-Imputation of Interest, Simplifying the Presentation of Debt Issuance Costs, which requires that the debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. This ASU is effective retrospectively for fiscal years and interim periods within those years beginning after December 15, 2015. Early adoption is permitted, and we have elected to early adopt this ASU retrospectively, effective January 1, 2014.

In July 2015, the FASB issued ASU No. 2015-11, Simplifying the Measurement of Inventory, which requires an entity to measure in scope inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016. We do not expect the adoption of this ASU to have a material impact on our financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, Leases, which establishes a comprehensive new lease accounting model. The new standard: (a) clarifies the definition of a lease; (b) requires a dual approach to lease classification similar to current lease classifications; and, (c) causes lessees to recognize leases on the balance sheet as a lease liability with a corresponding right-of-use asset for leases with a lease term of more than twelve months. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2018. We are currently evaluating the impact that the adoption of ASU 2016-02 will have on our financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09 Compensation-Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting, which is intended to simplify several aspects of the accounting for employee share-based payment transactions, including the income tax consequences, the determination of forfeiture rates, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016, and early adoption is permitted. We are currently evaluating the impact that the adoption of ASU 2016-09 will have on our financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments — Credit Losses (Topic 326), which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. The new standard replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. The amended guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2019, and early adoption is permitted. We are currently evaluating the impact that the adoption of ASU 2016-13 will have on our financial statements and related disclosures.

**Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risks in the ordinary course of our business, including the effects of interest rate changes and foreign currency fluctuations. Information relating to quantitative and qualitative disclosures about these markets risks is described below.

*Interest Rate Risk*

We are primarily exposed to interest rate risk from variable rate borrowings under our 2015 Credit Facility, and to a lesser extent, from our cash position. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. We have not been exposed to, nor do we anticipate being exposed to, material risks due to changes in interest rates. A hypothetical 10% increase in our borrowing rates would not have a material impact on interest expense on our principal balances as of December 31, 2015, and June 30, 2016.

*Foreign Currency Risk*

Our results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates.

Substantially all of our revenue is denominated in United States dollars. Our expenses are generally denominated in United States dollars; however, we do incur expenses in the currencies of our subcontracted manufacturing suppliers, which are located in Europe and in Asia. Our results of operations and cash flows are, therefore, subject to fluctuations due to changes in foreign currency exchange rates and may be adversely affected in the future due to changes in foreign exchange rates. The effect of a hypothetical 10% change in foreign currency exchanges rates applicable to our business would not have a material impact on our historical financial statements.

We have not hedged exposures denominated in foreign currencies or used any other derivative financial instruments. Although we transact the substantial majority of our business in U.S. dollars, future fluctuations in the value of the U.S. dollar may affect the competitiveness of our products and thus may impact our results of operations and cash flows.

# BUSINESS

## Overview

We are the leading provider of MRAM solutions. Our MRAM solutions offer the persistence of non-volatile memory with the speed and endurance of random access memory (RAM) and enable the protection of mission critical data particularly in the event of power interruption or failure. Our MRAM solutions allow our customers in the industrial, automotive and transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors. We are the only provider of commercially available MRAM solutions, and over the past eight years we have shipped over 60 million MRAM units.

Our magnetoresistive random access memory (MRAM) technology, unlike traditional semiconductor memory technologies, stores data as a magnetic state rather than an electrical charge, and is offered as either a discrete or embedded solution. Our products read and write data at speeds on par with most dynamic RAM (DRAM) and static RAM (SRAM). Our products offer the non-volatility of flash memory, but with significantly superior endurance. We offer our MRAM solutions with different densities and interfaces to address the various needs of our customers. Our lower-density MRAM products, which we define as having bit densities from 128kb to 16Mb, offer write-speeds on par with SRAM, with virtually unlimited endurance. Our higher-density products, which we define as having bit densities at or greater than 64Mb, offer write-speeds on par with DRAM and have superior endurance compared to most other non-volatile memory technologies.

Our lower-density products are optimized for use in industrial and automotive and transportation applications, while our higher-density products are optimized for use in enterprise storage applications. In the enterprise storage market, we collaborate with industry-leading memory controller companies to enable compatibility of their controllers with our MRAM products, facilitating the adoption of our solutions into our customers' existing end products. We have over 600 customers worldwide, including Honeywell, ifm, Nikkiso and Siemens in the industrial market, Airbus and Hyundai Mobis in the automotive and transportation market, and Broadcom, Dell, IBM and Lenovo in the enterprise storage market. We sell our products directly and through our established distribution channel to industry-leading OEMs and original design manufacturers (ODMs).

We leverage both internal and outsourced manufacturing capabilities to produce our MRAM products. We purchase industry-standard complementary metal-oxide semiconductor (CMOS) wafers from semiconductor foundries and complete the processing of our products by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We have entered into a manufacturing agreement with GLOBALFOUNDRIES for 300mm high-volume production of our higher-density products. We believe our strategic relationship with GLOBALFOUNDRIES accelerates the development of our MRAM solutions, provides us with leading-edge outsourced manufacturing capabilities, and enables us to operate a variable cost financial model. In addition, GLOBALFOUNDRIES has the ability to embed our technology in its products for sale to its customers, from which we would earn licensing or royalty revenue.

For the years ended December 31, 2014 and 2015, we recorded revenue of $24.9 million and $26.5 million, gross margin of 52.6% and 52.7%, and a net loss of $10.2 million and $18.2 million, respectively. For the six months ended June 30, 2015 and 2016, we recorded revenue of $12.7 million and $12.9 million, gross margin of 58.7% and 55.7%, and a net loss of $7.4 million and $10.0 million, respectively. As of June 30, 2016, we had 86 employees, approximately half of whom are engaged in research and development. Our headquarters are located in Chandler, Arizona. We also operate a design center in Austin, Texas and additional sales operations in the Americas, Europe and Asia-Pacific regions.

## Industry Trends

The advent of cloud computing and growth in the number of connected devices is increasing the need for the transmission and storage of a vast amount of data. Connected devices combine hardware and software elements that produce, receive and analyze data, and communicate to one another through direct network

connections or through a cloud computing platform. The requirement for access to data in the private and public cloud is increasing the total amount of data traffic received and subsequently stored. According to IDC, big data capacity is expected to grow to 73.4 billion gigabytes in 2019 from 26.2 billion gigabytes in 2015, representing a compound annual growth rate, or CAGR, of 29%.

Increased connectivity and computing requirements have created greater demand for memory solutions that have the speed to capture data quickly and the endurance to store it reliably. As more systems become connected, new memory technology will be vital to improve power efficiency and performance, while at the same time ensuring reliability in the event of power interruption or failure. Improvements in system performance for the industrial, automotive and transportation, and enterprise storage end markets may require continued advancements in memory and storage technologies.

*Enterprise Storage*. Enterprise and cloud storage providers seek to offer solutions that provide end-users with faster, more secure and more reliable access to data. The adoption of Solid-State Drives (SSD), which is a NAND flash-based storage system, in the enterprise storage market has resulted in faster access to data in cloud computing environments and data centers. However, to meet end-user demand for even faster access to data, DRAM is used as a buffer to transmit data to and from the SSD system. Data that is passing through DRAM is referred to as data-in-flight. In order to protect data-in-flight from power interruption or failure, enterprise storage architects have traditionally installed batteries or large capacitors in their systems. However, batteries and capacitors are not always reliable, consume a large amount of space within a system that could otherwise be used for additional memory capacity, and make it increasingly difficult to design smaller form factor and higher performing systems.

RAID controllers and RAID host bus adapters enable greater reliability and higher performance in enterprise storage systems. RAID controllers use DRAM as a data buffer, data cache and storage of critical system data. Protecting this data in the event of power interruption or failure is important to the performance of RAID storage systems. In order to protect data-in-flight, RAID systems use a complex scheme to write the unprotected data in DRAM to a NAND flash memory module in the event of power interruption or failure. To provide the time and energy needed to complete the writing of data, bulky batteries or super capacitors must be designed into the RAID system.

*Industrial, Automotive and Transportation*. Industrial, automotive and transportation applications require critical system data to be captured continuously at high speeds, preserved for long periods of time in harsh environments, protected in the event of power interruption or failure, and restored at the point when power was lost. Increasing automation and connectivity of applications in industrial, automotive and transportation markets is driving the need for reliable, persistent memory. The predominant memory solutions used in these applications are SRAM and flash memory. While SRAM is able to capture data very quickly, it is unable to retain data in the event of power interruption or failure, and therefore requires the use of external batteries, which increases system and maintenance cost, and decreases overall system reliability. The slow write-speed and low write-cycle endurance of flash memory limit its use in these intensive data-logging applications.

**Limitations of Existing and Emerging Memory Solutions**

The memory market consists primarily of two memory types, volatile memory, which requires power to maintain stored information, and non-volatile memory, which maintains stored information even in the absence of power. DRAM accounts for a majority of the volatile memory market, while other volatile memories such as SRAM accounts for a smaller portion of the overall volatile memory market. NAND flash accounts for the majority of the non-volatile memory, while other non-volatile memories such as NOR flash, make up a smaller portion of the overall non-volatile memory market. Emerging memory technologies, such as Resistive RAM (ReRAM), Conductive Bridge RAM (CB RAM), and 3D XPoint may offer certain advantages to existing NAND flash memory and DRAM, but these technologies have yet to be produced in volume, and we believe volume production may prove to be difficult. In addition, we believe these emerging memory technologies are not well suited for write caching and buffering in enterprise storage applications given their slower write-speeds and significantly lower write-cycle endurance, which require wear leveling, resulting in unpredictable latency.

None of today's traditional memory technologies offer a complete solution for the expanding need for nonvolatile memory with fast write-speeds and high write-cycle endurance. Existing and emerging volatile memory solutions offer fast write-speeds but require external power sources, such as batteries and capacitors, to protect against data loss in the event of power interruption or failure. Existing non-volatile memory solutions offer the ability to maintain data in the absence of power, but lack the write-speed or write-cycle endurance required by system processors. Moreover, existing volatile and non-volatile memory solutions are reaching practical limits on their ability to continue to scale down in size and cost. As feature sizes scale down, DRAM cells will continue to become increasingly complex with diminishing scalability. NAND flash provides low cost storage technology, but the advances in density, such as multi-level cell data storage, have degraded write cycle endurance.

**The Opportunity for Fast, Persistent Memory—MRAM**

Traditional memory technologies have either fast write-speeds or are non-volatile, but not both. MRAM combines both features into a single solution, making it an ideal memory to protect data in the event of power interruption or failure, and to store data that is frequently written and accessed. We believe customers that employ MRAM in their systems are better able to design higher performance, lower power, more reliable and simpler systems than they would be able to design using existing memory technologies. The following attributes make MRAM an increasingly important application specific memory solution for system architectures that require non-volatile memory with the speed and endurance of RAM:

***Non-Volatile***

MRAM can retain data in the event of power interruption or failure, which enables end-system designers to create products without costly power-loss protection systems, such as batteries and capacitors.

***Fast-Write Speeds***

MRAM offers write-speeds that are on par with the fastest available volatile memory technologies, including most DRAM and SRAM and is significantly faster than other non-volatile memories used today. For example, MRAM writes a block over 100,000 times faster than NAND flash.

***Superior Write Cycle Endurance***

MRAM offers superior write-cycle endurance to existing non-volatile solutions, enabling end-systems designers to offer products that are not limited by memory wear-out. For example, MRAM write-cycle endurance is nearly 10 million times greater than NAND flash.

***Scalable to Greater Densities and Smaller Process Geometries***

MRAM's write-speed and endurance are scalable with increasing bit densities and smaller geometries, which we believe will allow system designers to employ MRAM in applications that require more memory and smaller form factors.

***Proven to be Manufacturable at High Volumes***

MRAM can be manufactured in high volumes and in advanced nodes, and is compatible with standard CMOS.

***Low Energy Requirement***

MRAM utilizes energy efficiently over the duration of its write and read cycles. It has the ability to be completely powered down, consuming no energy while still retaining data, which can be accessed quickly once power is restored.

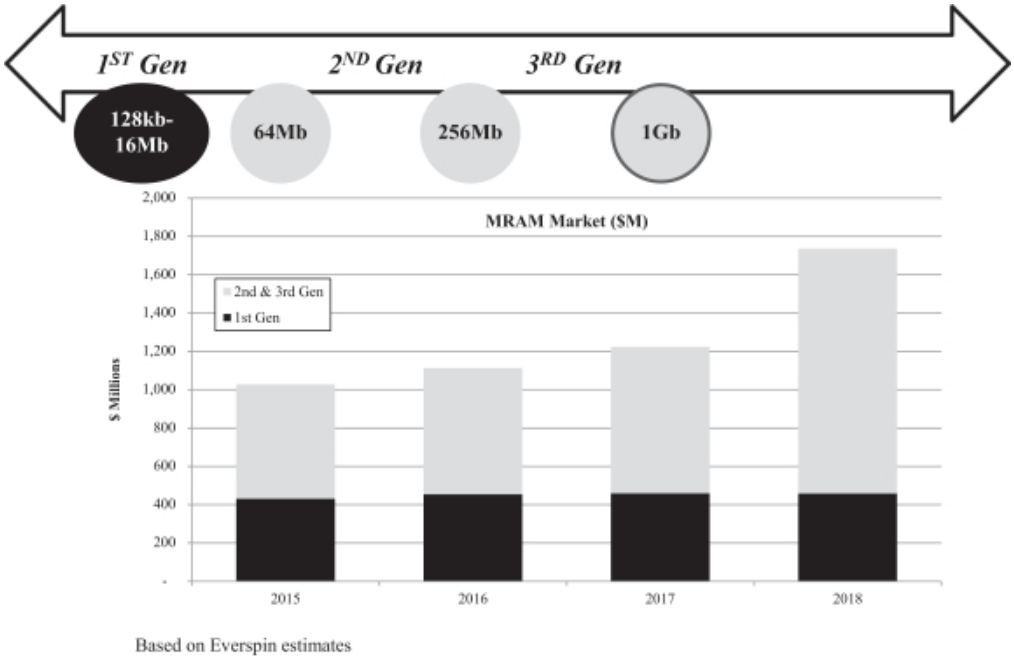
These attributes enable MRAM to be used as a true Storage Class Memory, by which we mean a form of memory that has non-volatility that is similar to storage but with performance that is similar to memory. MRAM has already proven its commercial viability as a discrete and embedded solution in application specific memory markets and we believe it will become a mainstream memory technology in the future.

**Discrete MRAM Market Opportunity**

We estimate the market opportunity for application specific MRAM products to be approximately $1.8 billion by 2018, growing approximately at a 19% compound annual growth rate (CAGR) from approximately $1 billion in 2015. We expect the introduction of increasingly higher density MRAM solutions will result in greater adoption of MRAM technology into a wider range of applications and end markets.

We expect our first generation MRAM solutions, which have lower bit densities ranging from 128kb to 16Mb, to continue to serve customers in the industrial, automotive and transportation end markets, where products tend to have long product life cycles. As MRAM bit densities increase, we believe MRAM solutions will be well-suited to address a wider range of large and growing markets, such as server and storage, increasing the overall market opportunity for MRAM. We believe our second and third generation MRAM solutions, which are designed to have bit densities at or greater than 64Mb, will drive the rapid adoption of our products into enterprise storage applications. We believe the introduction of MRAM solutions with bit densities greater than 1Gb will extend the opportunity for MRAM into additional adjacent markets such as server and mobile computing.

**MRAM Roadmap Expands the Market Opportunity**




Based on Everspin estimates

**Embedded MRAM Technology**

In addition to use as a discrete product, MRAM can serve as embedded memory in a variety of CMOS technologies. Memory accounts for a significant portion of the area of System-on-a-Chips (SoC), application specific integrated circuits (ASIC), application specific standard products, microcontrollers, baseband processors, storage controllers, application processors and field-programmable gate arrays. Memory that is integrated in these products is called embedded memory and offers similar performance to its discrete counterparts.

Today's embedded memory solutions include embedded SRAM (eSRAM), embedded Flash (eFlash), and embedded DRAM (eDRAM). We believe these technologies have difficulties scaling to advanced CMOS processing nodes. Embedded MRAM's (eMRAM) compatibility with CMOS processes, combined with its lower leakage, byte addressability and high write-cycle endurance make it well-suited as a replacement for eSRAM, eFlash and eDRAM. We believe the use of eMRAM will be more cost effective for foundries by maintaining compatibility with standard CMOS, thus improving manufacturing efficiency.

eSRAM, which uses six transistors (6-T) to construct a memory bit, requires more silicon area and additional power due to leakage current from its multiple-transistor architecture. Embedded MRAM, which uses a single transistor architecture, results in less leakage current and requires a smaller area on an integrated circuit to achieve equivalent or better performance than eSRAM.

eFlash requires relatively high voltage and area overhead to program the memory bits, which is contrary to the trend of scaling down the CMOS process for lower power and less chip area. eFlash also has a limited number of write cycles, which can render it ineffective as working memory on the chip. Compared to eFlash, eMRAM requires lower voltage to program bits, which results in greater power efficiency and it has higher write-cycle endurance. eMRAM is byte-addressable and has symmetric read and write timing, which makes it suitable as working memory. eFlash must be erased and programmed in pages, which is less efficient for intensive writing applications.

eDRAM is a volatile memory that does not retain data when power is off. eDRAM manufacturing requires additional process steps and costs to build a capacitor to store the data. This manufacturing process could diminish the functionality of the memory or logic components in the integrated circuit. eMRAM, however, can be added towards the end of the manufacturing process, which does not impact the overall performance of the integrated circuit.

The versatility of eMRAM can simplify the design and architecture of the overall integrated circuit by providing the ability to have one memory type serve as both working memory and code storage memory.

**Our Solutions**

We are the only commercial provider of MRAM solutions. We have a strong track record of innovation in MRAM technology, as demonstrated by our successive introduction of MRAM products that address an increasingly broad spectrum of applications.

| Everspin Product | Everspin Technology | Incumbent Technology | Memory Densities | Primary Applications | Status |
|---|---|---|---|---|---|
| 1st Generation | Field Switched (FS) | SRAM | 128kb - 16Mb | Industrial / Automotive & Transportation | Shipping |
| | Embedded | eSRAM | 128kb - 16Mb | Industrial / Automotive & Transportation | Shipping |
| 2nd Generation | In-Plane Spin Torque (iST) | DRAM | 64Mb - 256Mb | Enterprise Storage | Shipping 64Mb; Sampling 256Mb |
| 3rd Generation | Perpendicular Spin Torque (pST) | DRAM | 64Mb - 1Gb+ | Enterprise Storage & Servers | Sampling 256Mb; 1Gb+ in Development |

***First Generation***

Our first generation products, which we have been shipping since 2008, are primarily designed to address applications in the industrial, automotive and transportation markets. Our customers in these markets require

memory technology that is non-volatile, writes continuously at high speeds to limit data loss, operates in harsh environments, and maintains endurance over long product lifecycles. To address these requirements, we designed our first generation of MRAM products to offer the persistence of non-volatile memory, speeds comparable to SRAM, reliability across a wide temperature range, and virtually unlimited write-cycles. We have designed our first generation products to be compatible with industry standard interfaces, including standard SRAM, SPI (Serial Peripheral Interface) and QSPI (Quad SPI) interfaces, enabling our customers to replace incumbent memory solutions with our first generation MRAM solutions. We believe this has been important for the initial success and early adoption of our first generation products.

***Second Generation***

Our second generation products, which began shipping in 2014, are principally designed to address the requirements of the enterprise storage market, which includes high performance SSDs, RAID systems and servers. Our customers require low latency, protection of data against power interruption and failure, high density and reliability. Our second generation products offer performance comparable to DRAM, and are up to five orders of magnitude faster than flash block writes, non-volatile to protect against power loss, four times the density of our largest first generation product, and offer endurance superior to flash. We have designed our second generation products to be compatible with industry standard DDR3 interfaces, enabling our customers to realize the benefits of higher performance and power efficiency as compared to traditional memory products requiring batteries or super capacitors.

***Third Generation***

Our third generation products, which are currently in development, are initially targeted for enterprise-class storage and server applications. We use our Perpendicular Magnetic Tunnel Junction (PMTJ) technology to deliver further bit density and power efficiency increases to create a true Storage Class Memory solution. Our third generation products are designed to be compatible with standard DDR3, DDR4, SPI, and QSPI interfaces, which we believe will facilitate market adoption of our products in the enterprise storage and server markets.

***Embedded MRAM***

We offer embedded MRAM (eMRAM) to our customers for integration in their SoC solutions. We also enable GLOBALFOUNDRIES to offer eMRAM in the solutions they manufacture for their customers. Our embedded memory solutions offer high performance, low cost and low power and can be manufactured using standard CMOS. eMRAM offers significant advantages over existing embedded memory solutions, particularly in endurance, bandwidth, energy and area requirements, leakage and persistence. We believe our eMRAM solutions offer the performance benefits and process compatibility to become the embedded memory of choice for our current and future foundry partners.

***Sensors***

We have developed and are currently shipping a high performance, high-reliability magnetic sensor, which is based on our MTJ technology. Our magnetic sensor offers three-axis orientation in a single die, and is integrated into consumer electronics applications as an electronic compass. We believe our magnetic sensor technology can be used for additional power management applications in the industrial, and automotive and transportation, end markets. We currently license our magnetic sensor technology to third parties for their commercial use and plan to continue this strategy.

***Aerospace***

Aerospace and satellite electronic systems require memory that is able to withstand exposure to the levels of radiation encountered in avionics and space applications. MRAM is not susceptible to radiation induced errors

because data is stored as a magnetic state rather than as an electrical charge. Aerospace and satellite equipment manufacturers license our technology for use in their electronic systems. Through license agreements, we provide manufacturing service and technology access to certain of our customers, and we sell products to value added subcontractors.

**Our Competitive Strengths**

We apply our strengths to enhance our position as the leading supplier of MRAM products. We consider our key strengths to include the following:

*Technology Leadership in MRAM.* We are recognized as the industry leader in MRAM technology. We have invested significant capital resources in research and development, which has enabled us to become the only commercial supplier of MRAM. We have successfully developed and launched successive generations of solutions, each of which is based on the continued advancement of our MTJ technology. We have a substantial intellectual property portfolio that consists of more than 300 patents and more than 150 patent applications.

*Strong Customer Base.* We have sold our products to over 600 customers worldwide, which include industry leaders such as Honeywell, ifm, Nikkiso and Siemens in the industrial market, Airbus and Hyundai Mobis in the automotive and transportation market, and Broadcom, Dell, IBM and Lenovo in the enterprise storage market. We collaborate closely with our customers on product development, which helps us to optimize the performance, capability and features of our MRAM products. We believe our multi-year relationships with our industry-leading customers and their familiarity with our proven MRAM technologies enable us to drive more rapid adoption of our solutions into their current and future products.

*Flexible Manufacturing and Integrated Value Chain.* We leverage both internal and outsourced capabilities to manufacture our MRAM products. We purchase industry-standard CMOS wafers from semiconductor foundries and complete the processing by inserting our magnetic-bit technology at our 200mm fabrication facility in Chandler, Arizona. We also utilize leading foundries to support high-volume production of our MRAM products at advanced process nodes. Additionally, we have established relationships at industry-leading packaging, assembly and test providers to ensure the quality and availability of products for our customers. We believe our flexible approach to manufacturing allows us to streamline research and development, rapidly prototype new products, and bring new products to market quickly and cost-effectively with limited capital expenditure requirements.

*Strategic Relationship with GLOBALFOUNDRIES.* We have a manufacturing agreement with GLOBALFOUNDRIES related to 300mm production, and we also have a joint development agreement to support research and development of MRAM. GLOBALFOUNDRIES has committed significant investment to support high volume production of our products at advanced technology nodes. We believe this relationship allows us to leverage GLOBALFOUNDRIES' manufacturing expertise and technology portfolio to support our continued development of MRAM technology, and enables GLOBALFOUNDRIES to offer eMRAM technology in the products it manufactures for its customers.

*Proven Track Record.* We have produced successive generations of MRAM products, and have continued to invest in research and development to develop new products. We have successfully established a manufacturing ecosystem, including internal and outsourced fabrication coupled with leading packaging, assembly and test providers, to maintain high quality and availability of our products. We believe our relationship with GLOBALFOUNDRIES validates our leadership position in current and next-generation MRAM technology.

**Our Strategy**

Our growth strategy focuses on increasing the adoption of our MRAM technology which we believe will enable a change in the architecture of storage and computing systems. We believe MRAM will continue to be

adopted because it is replacing alternative solutions in a market that already exists. Our strategy comprises the following elements:

*Grow our Technology Leadership.* Our leadership in designing, developing and manufacturing MRAM solutions provides a strong foundation for delivering new products. We plan to grow our technology leadership position by offering higher density memory solutions, including 1Gb and above, to our customers through the continued advancement of our technology.

*Expand our Presence with Existing Customers.* We intend to continue to collaborate with our industry-leading customers to accelerate the adoption of our MRAM solutions into their systems. We believe our established and collaborative relationships with industry-leading SSD, RAID, and memory controller providers will allow us to further penetrate enterprise storage applications with our MRAM solutions. We believe that our customers' experience with our first generation of products will help increase adoption of our current and future high density MRAM products and will allow MRAM to become a higher percentage of our customers' memory usage.

*Expand our Customer Base.* We believe there are significant opportunities to expand our customer base within the industrial, automotive and transportation, and enterprise storage markets. Our success has facilitated a growing knowledge and acceptance of MRAM technology that we intend to leverage to acquire new customers. Additionally, as we release higher density products, we expect to broaden the applications for our MRAM solutions in the enterprise storage market, and address complementary end markets such as server and mobile computing.

*Grow our Embedded MRAM Business.* We expect to leverage our expertise in embedded MRAM technology to grow our licensing business, which generates a royalty-based revenue stream. Currently, we collaborate with GLOBALFOUNDRIES to provide our embedded MRAM technology to its customers.

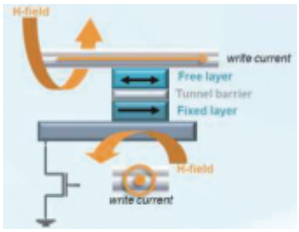
## Our Technology

### *Memory Architecture*

Our MRAM solutions are based on our MTJ technology, which writes data by establishing a stable magnetic state, and reads data by measuring the resistance of the MTJ. MTJ devices are multilayered structures, including thin metal and dielectric layers, which are fabricated with methods commonly used in semiconductor manufacturing. The resistance is determined by the orientation of the magnetic field in the free layer relative to the fixed layer.

### *First Generation MRAM Technology*

Our first generation MRAM technology uses a magnetic field to program, or write, bits. A significant advantage of this "field switching" is virtually unlimited write endurance, as reversing the free-layer magnetization with a magnetic field does not have any wear-out mechanism. Field Switched MRAM products are currently in production at the 180nm and 130nm nodes.




Field Switched MRAM bit cell. Each bit cell comprises an MTJ connected in series with a select transistor.

***Second and Third Generation MRAM Technology***

Our second and third generations of MRAM technologies use the spin-torque transfer property, which is the manipulation of the spin of electrons with a polarizing current, to establish the desired magnetic state of the free layer to program, or write, the bits in the memory array. Spin Torque MRAM, or ST-MRAM, provides a significant reduction in switching energy compared to Field Switched MRAM, and is highly scalable, enabling higher density memory products. Our second generation MRAM technology uses an In-Plane MTJ structure, while our third generation uses a Perpendicular MTJ. We have developed materials and Perpendicular MTJ stack designs with high perpendicular magnetic anisotropy, which provides long data retention, small cell size, greater density, high endurance and low power.

**Second Generation** **Third Generation**


Schematic depiction of the In-Plane MTJ and Perpendicular MTJ bit cells.

***Embedded MRAM Technology***

MRAM technology is more easily embedded than most other memory technologies, due to the way the MRAM module is integrated in standard CMOS. Since the MRAM module is inserted between metal layers in the back-end-of-line part of the fabrication process, above the transistor layers, it does not disturb the CMOS fabrication process. Integrating MRAM in standard CMOS for SoC applications does not impact the performance of the integrated circuit.

**Customers**

Our MRAM products are used by industry-leading customers in the industrial, automotive and transportation, and enterprise storage markets. Representative customers using our discrete products in these end markets include:

| Industrial | Automotive and Transportation | Enterprise Storage |
|---|---|---|
| Honeywell | Airbus | Broadcom |
| ifm | Hyundai Mobis | Dell |
| Nikkiso | | IBM |
| Siemens | | Lenovo |

We sell our products through our direct sales force and through a network of distributors and contract manufacturers. Direct, distributor and contract manufacturer customers purchase our solutions on an individual purchase order basis, rather than pursuant to long-term agreements.

We consider our customer to be the end customer purchasing either directly from a distributor, a contract manufacturer or us. An end customer purchasing through a contract manufacturer typically instructs the contract manufacturer to obtain our products and to incorporate our products with other components for sale by the contract manufacturer to the end customer. Although we actually sell the products to, and are paid by, the distributors and contract manufacturers, we refer to the end customer as our customer.

During the year ended December 31, 2015, more than 600 end customers purchased our products. Sales to NXP and Avago Technologies Ltd. (Broadcom) whether directly by us or through distributors or contract manufacturers, each accounted for 13% of our revenue during 2015, and 6% and 9% for the six months ended June 30, 2016, respectively. Sales to Dell accounted for 9% of our revenue during the six months ended June 30, 2016. No other end customers accounted for more than 10% of our revenue during 2015. None of our end customers individually accounted for more than 10% of our revenue during the first six months of 2016. NXP is a customer for our embedded and sensor solutions.

**Sales and Marketing**

We sell our products through a direct sales channel and a network of representatives and distributors. The majority of our customers, and their associated contract manufacturers, buy our products through our distributors. We maintain sales, supply chain and logistics operations and have distributors in Asia to service the production needs of contract manufacturers such as us Flextronics, Foxconn, Inventec and Sanmina. We also maintain direct selling relationships with several strategic customers. Our direct sales representatives are located in North America, the United Kingdom, Germany, Hong Kong, and Taiwan.

Our typical sales cycle consists of a sales and development process in which our field engineers and sales personnel work closely with our customers' design engineers. This process can take from three to 12 months to complete, and a successful sales cycle culminates in a design win. Once we establish a relationship with a customer, we continue a sales process to maintain our position and to secure subsequent new design wins at the customer. Each customer lead, whether new or existing, is tracked through our CRM tool and followed in stages of prospect, design in, design win and production. This tracking results in a design win pipeline that provides a measure of the future business potential of the opportunities.

Our technical support personnel have expertise in hardware and software, and have access to our development team to ensure proper service and support for our OEM customers. Our field application and engineering team provides technical training and design support to our customers.

**Manufacturing**

We rely on third-party suppliers for most phases of the manufacturing process, including initial fabrication and assembly.

***Wafer Manufacturing***

We manufacture our first generation and second generation MRAM discrete products, and provide foundry services for embedded MRAM, licensed MRAM products and MTJ based sensors in our 200mm manufacturing facility. Our facility is in an ISO-4 clean room and is qualified for the production of automotive grade products. We actively manage inventory, including automated process flows, process controls and recipe management, and we use standard equipment to manufacture our products.

For our second generation products, GLOBALFOUNDRIES will manufacture our 256Mb in-plane MTJ discrete memory on 40nm CMOS on 300mm wafers. Our third generation of ST-MRAM, based on perpendicular MTJ, is in development in our 200mm fabrication facility and at GLOBALFOUNDRIES. Volume production of our third generation of ST-MRAM products is planned to be at more advanced process nodes at GLOBALFOUNDRIES on 300mm wafers.

***Assembly and Test***

We have designed test protocols to maximize yields at assembly and final test, reduce manufacturing costs and improve quality. Our design and product engineering teams have developed and implemented wafer-level test programs to characterize the behavior of our MRAM devices. We create predictive models and test each of

our parts to assure the reliability of the products in the field. We also add unique electronic part identification numbers to provide material traceability.

To protect the MRAM devices from stray magnetic fields, we developed packaging solutions, which we have qualified at independent, industry-leading sub-contractors, including Amkor, ASE and UTAC. We have successfully qualified our MRAM devices in various packages at temperatures ranging from commercial to automotive grade. Stringent test protocols have ensured high quality product with no reported field failures in our shipped products since inception. As part of our commitment to quality, our quality management system has been certified to ISO 9001:2000 standards. Our foundry vendors and sub-contractors are also ISO 9001 certified.

***ST-MRAM Joint Development Agreement***

On October 17, 2014, we entered into a joint development agreement with GLOBALFOUNDRIES Inc., a semiconductor foundry, for the joint development of our ST-MRAM technology. The term of the agreement is the later of four years from the effective date or until the completion, termination, or expiration of the last statement of work entered into pursuant the joint development agreement.

The joint development agreement also states that the specific terms and conditions for the production and supply of the developed MRAM technology would be pursuant to a separate manufacturing agreement entered into between the parties. See "—ST-MRAM Manufacturing Agreement" below.

Under the joint development agreement, each party granted licenses to its relevant intellectual property to the other party. For certain jointly developed works, the parties have agreed to follow an invention allocation procedure to determine ownership. In addition, GLOBALFOUNDRIES possesses the exclusive right to manufacture our discrete and embedded spin torque MRAM devices developed pursuant to the agreement until the earlier of three years after the qualification of the MRAM device for a particular technology node or four years after the completion of the relevant statement of work under which the device was developed. For the same exclusivity period associated with the relevant device, GLOBALFOUNDRIES agreed not to license intellectual property developed in connection with the agreement to named competitors of ours.

Generally, unless otherwise specified in the agreement or a statement of work, we and GLOBALFOUNDRIES share defined project costs equally under the joint development agreement. If GLOBALFOUNDRIES manufactures, sells or transfers wafers containing production qualified MRAM devices that utilized certain Everspin design information to its customers, GLOBALFOUNDRIES will pay royalties to us for each such wafer transferred or sold to a customer.

Except for breaches of confidentiality provisions and each party's indemnification obligations to one another under the agreement, liability under the agreement is capped at a range depending on project costs and royalty amounts. Either party may terminate the agreement if the other party materially breaches a term of the agreement, and fails to remedy the breach after receiving notice from the non-breaching party. If a party terminates the manufacturing agreement for material breach in accordance with its terms, that party may also terminate the joint development agreement.

On May 27, 2016, we entered into an amendment to the joint development agreement to modify the payment schedule and to clarify our payment obligations for certain past project costs. Under the amendment, GLOBALFOUNDRIES has the right to terminate the joint development agreement if we do not pay the project costs by December 15, 2016, which were $5.6 million as of June 30, 2016, and are estimated to be $8.5 million in December 2016. See "Risk Factors" for further discussion of our agreements with GLOBALFOUNDRIES.

***ST-MRAM Manufacturing Agreement***

On October 23, 2014, we entered into a manufacturing agreement with GLOBALFOUNDRIES Singapore Pte. Ltd. that sets forth the specific terms and conditions for the production and supply of wafers manufactured

using our spin torque MRAM technology developed under the joint development agreement with GLOBALFOUNDRIES. Pursuant to that joint development agreement, GLOBALFOUNDRIES possesses certain exclusive rights to manufacture such wafers for our discrete and embedded spin torque MRAM devices. Our manufacturing agreement with GLOBALFOUNDRIES includes a customary forecast and ordering mechanism for the supply of certain of our wafers, and we are obligated to order and pay for, and GLOBALFOUNDRIES is obligated to supply, wafers consistent with the binding portion of our forecast. GLOBALFOUNDRIES also has the ability to discontinue its manufacture of any of our wafers upon due notice and completion of the notice period. The initial term of the manufacturing agreement is for three years, which automatically renews for successive one year periods thereafter unless either party provides sufficient advance notice of non-renewal.

Except for breaches of confidentiality provisions and each party's indemnification obligations to one another under the agreement, liability under the agreement is capped at the lesser of a set amount or the total purchase price received by GLOBALFOUNDRIES from us in the twelve months immediately preceding the claim for the specific product that caused the damages. Either party may terminate the agreement if the other party materially breaches a term of the agreement, and fails to remedy the breach after receiving notice from the non-breaching party. GLOBALFOUNDRIES may terminate the agreement if we fail to pay any undisputed sum which has been outstanding for sixty or more days from the date of invoice.

**Competition**

Our products, all of which offer the persistence of non-volatile memory with the speed and endurance of random access memory, enable the protection of mission critical data particularly in the event of power interruption or failure. Our solutions are designed for use in applications in the industrial, automotive and transportation, and enterprise storage markets where the combination of high write-cycle endurance and fast write-speeds are of critical importance.

Our principal competitors to our first generation Field Switched MRAM products, which are tailored primarily for the industrial, automotive and transportation, and enterprise storage markets, include companies that offer non-volatile SRAM (NVSRAM), SRAM, and FRAM products, such as Cypress, Fujitsu and Integrated Silicon Solution (ISSI). Our second and third generation ST-MRAM products are designed primarily for the enterprise storage market, which includes high performance SSDs, RAID systems and servers. Our second and third generation ST-MRAM products are intended to replace DRAM-based solutions, which are comprised of DRAM and additional back-up power supply components, such as supercapacitors and batteries that are required to make DRAM persistent. Customers typically purchase DRAM and super capacitors and batteries from separate vendors, and pair them together in order to create a DRAM-based solution capable of protecting data against power interruption or loss. Companies that offer DRAM devices include Hynix, Micron, Samsung, and several other smaller companies. In the future we may also face competition from companies developing MRAM technologies, such as Avalanche, Spin Transfer Technologies, and other larger and smaller semiconductor companies.

Our sensor products compete with giant magnetoresistive (GMR), anisotropic magnetoresistive (AMR) and Hall effect sensors supplied by Alps, Asahi Kasei Microdevices, Crocus, Fairchild, Invensys (now Schneider), Kionix and Micronas.

Our ability to compete successfully in the market for our products is based on a number of factors, including:

- our product attributes and specifications;
- successful customer engagements from throughout the product life cycle;
- high quality and reliability as measured by our customers;
- the ease of implementation of our products by customers;
- preferred supplier status at numerous customers and ODMs

- manufacturing expertise and strength;
- reputation and strength of customer relationships;
- competitive pricing in the market against the competition while maintaining our gross margin profile; and
- our success in meeting the needs of future customer requirements through continued development of new products.

We believe we compete favorably with respect to each of these factors.

**Intellectual Property**

Our success depends, in part, on our ability to protect our products and technologies from unauthorized third-party copying and use. To accomplish this, we rely on a combination of intellectual property rights, including patents, trade secrets, copyrights and trademarks, as well as customary contractual protections. As of June 30, 2016, we held 341 issued patents that expire at various times between August 2016 and September 2034, and had 157 patent applications pending. Included in our issued patents and pending applications are patents/applications in the United States, China, Europe, France, Germany, Japan, the Republic of Korea, Italy, Singapore, Taiwan, and the United Kingdom.

We seek to file for patents that have broad application in the semiconductor industry and that would be helpful in the magnetoresistive memory and sensor markets. However, there can be no assurance that our pending patent applications or any future applications will be approved, that any issued patents will provide us with competitive advantages or will not be challenged by third parties, or that the patents or applications of others will not have an adverse effect on our ability to do business. In addition, there can be no assurance that others will not independently develop substantially equivalent intellectual property or otherwise gain access to our trade secrets or intellectual property, or disclose such intellectual property or trade secrets, or that we can effectively protect our intellectual property.

We generally control access to and use of our confidential information through employing internal and external controls, including contractual protections with employees, contractors and customers. We rely in part on U.S. and international copyright laws to protect our mask work. All employees and consultants are required to execute confidentiality agreements in connection with their employment and consulting relationships with us. We also require them to agree to disclose and assign to us all inventions conceived or made in connection with the employment or consulting relationship.

**Employees**

At June 30, 2016, we had 86 employees in the United States and 21 full time equivalent contractors and consultants in Singapore, China, Taiwan, the United Kingdom, the United States and Germany. None of our employees are either represented by a labor union or subject to a collective bargaining agreement. We have not experienced any work stoppages, and we consider our relations with our employees to be good.

**Facilities**

Our headquarters is located in Chandler, Arizona, where we lease 8,464 square feet of office space under a lease that expires in the first half of 2018. This facility accommodates our principal sales, marketing, research and development, and administrative activities. Also in Chandler, we lease 18,041 square feet of office, cleanroom, and laboratory space for our 200mm manufacturing and research and development functions, which lease expires in April 2017. We are currently in the process of renegotiating the cleanroom portion of the lease and moving office and laboratory space to alternate facilities. Our primary product design personnel are located in Austin, Texas in a leased 11,084 square foot office that expires in January 2022.

We believe that our existing facilities are sufficient for our current needs. Upon renewal of all leases, we will evaluate our space needs as we add employees and grow our business. We further believe that suitable additional or substitute space will be available on commercially reasonable terms to meet our future needs.

**Legal Proceedings**

We are not currently a party to any legal proceedings. From time to time, however, we may become involved in legal proceedings and claims arising in the ordinary course of our business. The semiconductor industry is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights, as well as improper hiring practices. Any such claims, even if not meritorious, could result in the expenditure of significant financial and managerial resources.

## MANAGEMENT

### Executive Officers, Key Employees and Directors

The following table sets forth information regarding our executive officers, key employees and directors, as of August 12, 2016:

| Name | Age | Position(s) |
|---|---|---|
| **Executive Officers and Key Employees** | | |
| Phillip LoPresti | 55 | President, Chief Executive Officer and Director |
| Jeffrey Winzeler | 56 | Chief Financial Officer |
| Jon Slaughter, Ph.D. | 56 | Vice President, Technology Research and Development |
| Sanjeev Aggarwal, Ph.D. | 49 | Vice President, Manufacturing and Process Development |
| Scott Sewell | 54 | Vice President, Worldwide Sales and Marketing |
| Thomas Andre | 47 | Vice President, Design Engineering |
| Terry Hulett | 58 | Vice President, Storage Solutions |
| Angelo Ugge | 69 | Vice President, Operations |
| **Non-Employee Directors** | | |
| Robert W. England(1)(2) | 64 | Director |
| Lawrence G. Finch(2)(3) | 82 | Director |
| Ron Foster(1)(4) | 65 | Director |
| Peter Hébert(1)(3) | 38 | Director |
| Stephen J. Socolof(2) | 56 | Director |
| Geoffrey R. Tate(3) | 62 | Director |

(1) Member of the audit committee.
(2) Member of the compensation committee.
(3) Member of the nominating and corporate governance committee.
(4) Mr. Foster was appointed to our board of directors effective May 10, 2016.

### Executive Officers and Key Employees

***Phillip LoPresti*** has served as our President and Chief Executive Officer and as a member of our board of directors since June 2010. From October 2008 to May 2010, Mr. LoPresti served as Director of High Speed Data Converters for Intersil Corporation. From June 2006 to October 2008. Mr. LoPresti was President and Chief Executive Officer of Kenet, Inc. Prior to joining Kenet, Mr. LoPresti spent 22 years in various roles, ultimately as Vice President and general manager of NEC Electronics America. Mr. LoPresti received both his bachelor's and master's of science degrees in electrical engineering from Boston University. We believe Mr. LoPresti's experience in the industry, his role as our President and Chief Executive Officer and his knowledge of our company enables him to make valuable contributions to our board of directors.

***Jeffrey Winzeler*** has served as our Chief Financial Officer since April 2015. From March 2014 to January 2015, Mr. Winzeler served as Chief Financial Officer at Avnera Corporation, a privately held semiconductor company specializing in analog and digital SoCs, where he was responsible for all aspects of the finance function. From January 2012 to January 2014, Mr. Winzeler served as Chief Financial Officer at Rackwise Inc. a provider of data center management software, where he was responsible for all aspects of the finance function. From December 2006 to November 2011, Mr. Winzeler worked at Solar Power Incorporated. He was a Vice President of Franchise Development for Solar Power and developed the first residential solar franchise offering in the United States. He subsequently became the Chief Financial Officer for Solar Power. From January 2005 to December 2006, Mr. Winzeler served as Chief Financial Officer for International Display Works Inc. Prior to International Display Works, Mr. Winzeler worked at Intel Corporation from March 1988 to August 2004. At Intel, he held numerous positions including Flash Division Controller, Worldwide Assembly Test Manufacturing Controller, Israel Finance controller, Fab 9 and Fab 11 Controller, and Finance Analyst. Mr. Winzeler received his degree in finance from the University of Idaho.

***Jon Slaughter, Ph.D.*** has served as our Vice President, Technology Research and Development since the spin-off of the company from Freescale Semiconductor, Inc. in June 2008. Dr. Slaughter directs research and development efforts for our ST-MRAM. From March 2007 to June 2008, Dr. Slaughter was manager of MRAM Process and Magnetic Materials for Freescale Semiconductor, Inc., where his team was responsible for fabrication of the first commercial MRAM products as well as development of next generation MRAM materials. From 1996 to 2007, Dr. Slaughter and his team developed the magnetic materials and devices used to bring the first MRAM to volume production in 2006, starting in Motorola, Inc. and continuing with Freescale when Freescale separated from Motorola. Before joining Motorola, Dr. Slaughter was an Associate Research Professor at the University of Arizona's Optical Sciences Center. Dr. Slaughter received his bachelor's degree in physics and mathematics from University of Wisconsin, River Falls, and doctorate in physics from Michigan State University.

***Sanjeev Aggarwal, Ph.D.*** has served as our Vice President, Manufacturing and Process Development since March 2010, where he supervises research and development efforts for integration of spin torque MRAM onto CMOS and manages our production for Field Switched MRAM on 200mm and ST-MRAM on 300mm wafers. From June 2008 to February 2010, Dr. Aggarwal served as our Director, Manufacturing and Process Technology. From September 2006 to May 2008, Dr. Aggarwal was senior member of the technical staff at Freescale Semiconductor, Inc. and led the integration efforts for Field Switched MRAM development. From July 2000 to August 2006, Dr. Aggarwal was member Group Technical Staff at Texas Instruments. Dr. Aggarwal received his bachelor's degree in ceramic engineering from Indian Institute of Technology (BHV) Varanasi, and doctorate in materials science and engineering from Cornell University.

***Scott Sewell*** has served as our Vice President, Worldwide Sales and Marketing since September 2010. From 1999 to 2010, Mr. Sewell was President of West Associates, Inc. Mr. Sewell also has served in multi-national sales management positions at NEC Electronics Corp. and Sharp Electronics Corporation. Early in his career, Mr. Sewell was a senior design engineer for General Dynamics Corporation in the Command, Control, Communication and Intelligence group. Mr. Sewell received his bachelor's of science degree in electronic engineering from Oklahoma State University.

***Thomas Andre*** has served as our Vice President, Design Engineering since July 2013 and as our Director of Engineering from April 2011 to July 2013. From August 2001 to April 2011, Mr. Andre was a design project leader for the MRAM development team at Motorola, Inc., Freescale Semiconductor, Inc., following its spin-off from Motorola, and then at Everspin, following our spin-off from Freescale. In addition, Mr. Andre has led several stand-alone DRAM designs at Alliance Semiconductor Corp and held design positions in the Defense Systems and Electronics Group at Texas Instruments Incorporated. Mr. Andre has served on the Custom Integrated Circuits Conference Technical Program Committee since 2003 including Technical Program Chair in 2010. Mr. Andre received his bachelor's of science degree in electrical engineering from Clarkson University in New York.

***Terry Hulett*** has served as our Vice President, Storage Solutions since October 2013. Mr. Hulett has a background in architecture, hardware and software development and operations on products including leading edge network controllers and leading edge CPUs. From March 2009 to September 2013, Mr. Hulett was a Strategic Planner at Intel Corporation, where he was responsible for strategies for high end networking products and server class CPUs. From 1985 to 2008, when Mr. Hullet joined Intel, Mr. Hulett held several engineering executive roles at NetEffec Inc., Banderacom Inc., Silicon Solutions, Inc. and Advanced Micro Devices, Inc. Mr. Hulett holds several patents and has published technical articles, and was a member of the original 68000 design team at Motorola, Inc. Mr. Hulett received his bachelor's of science degree in electrical engineering from Oklahoma State University.

***Angelo Ugge*** has served as our Vice President, Operations since July 2014. From August 2006 to June 2014, Mr. Ugge was President of Eviteck Consulting LLC, a marketing and business development consulting firm in Europe focused on helping to develop small and medium size technology companies, where he was

responsible for managing two major development programs in cooperation with the European Community and the Italian Ministry of Industrial Development. Prior to Eviteck, Mr. Ugge held the Chief Executive Officer position at Bridgeco AG of Zurich, Switzerland and MemsOptical Inc. of Huntsville, Alabama, and was Vice President and General Manager of ST Microelectronics N.V. Mr. Ugge received his bachelor's degree in electrical engineering from the Technical Industrial Institute of State, Milano, and master's degree in physics from the University of Milano, Italy.

**Non-Employee Directors**

***Robert W. England*** has served as a member of our Board of Directors since July 2009. Since 2006, Mr. England has served as an independent engineering and operations management consultant for various companies ranging from Fortune 500 companies to venture-backed firms. From 2001 to 2006, Mr. England served as the Chief Executive Officer and President at Cumbre Pharmaceuticals, Inc. (formerly Cumbre, Inc.). Previously, Mr. England spent 27 years at Texas Instruments Incorporated, which he joined in 1973, in integrated circuit design and product engineering, manufacturing supervision, integrated circuit process development and operations management. Mr. England also served as Senior Vice President and Manager of Texas Instruments Incorporated's worldwide semiconductor memory business and as Senior Vice President responsible for the Digital Light Processing business unit. Mr. England received his bachelor's of science degree in electronic engineering technology from the University of Dayton, Ohio. We believe that Mr. England's extensive leadership experience in technology companies qualifies him to serve on our board of directors.

***Lawrence G. Finch*** has served as a member of our Board of Directors since June 2008. Mr. Finch has served as managing director at Sigma Partners, a venture capital firm, since joining the firm in 1987. Mr. Finch brings a wealth of operational experience in moving early-stage technology companies through high-growth stages of development. He has advised more than 20 companies throughout his career. We believe that Mr. Finch's 40 years of experience in founding, managing, and financing businesses, strong relationships in the semiconductor space, and his knowledge of our company qualifies him to serve on our board of directors.

***Ronald C. Foster*** has served as a member of our Board of Directors since May 2016. Since November 2014, Mr. Foster has served on the Board of Directors of Advanced Energy Industries, Inc. From April 2008 to March 2015, Mr. Foster served as Chief Financial Officer and Vice President of Finance of Micron Technology, Inc., where he served as a member of Micron's Board of Directors from June 2004 to April 2005. Before joining Micron, Mr. Foster was the Chief Financial Officer and Senior Vice President of FormFactor, Inc., a semiconductor wafer test equipment company. Prior to joining FormFactor, Inc., Mr. Foster served as the Chief Financial Officer for JDS Uniphase, Inc. and Novell, Inc., and also served in various financial and operational roles at Applied Materials, Inc. and Hewlett-Packard Company. Mr. Foster previously served as a board member of Inotera Memories Inc., LUXIM Corporation, and Aptina Company. Mr. Foster received his bachelor's of arts degree in economics from Whitman College and an M.B.A. from the University of Chicago. We believe that Mr. Foster's knowledge and experience in the semiconductor industry, financial management, accounting and finance issues enable him to make valuable contributions to our board of directors.

***Peter Hébert*** was appointed as a member of our Board of Directors in June 2008. Mr. Hébert is a managing partner at Lux Capital, a venture capital firm, which he co-founded in 2000. In addition to Everspin, Mr. Hébert currently serves on the Board of Directors for Auris Surgical Robotics, Inc., Gridco Inc., Lux Research, Inc., Halo Neuro, Inc., Flex Logix Technologies, Inc. and Matterport, Inc. From 2003 to 2008, Mr. Hébert served as founding Chief Executive Officer of Lux Research, which he helped build into a leading emerging technology research firm. During his time at Lux Research, Mr. Hébert launched the publicly-listed Lux Nanotech Index and the PowerShares Lux Nanotech Portfolio. Mr. Hébert received his bachelor's of science degree from Syracuse University, where he graduated cum laude from the S.I. Newhouse School of Public Communications. We believe that Mr. Hébert possesses specific attributes that qualify him to serve as a director, including his experience in founding, managing, and financing businesses and his knowledge of emerging technologies, which enable him to make valuable contributions to our board of directors.

***Stephen J. Socolof*** has served as a member of our Board of Directors since June 2008. Mr. Socolof is Managing Partner of New Venture Partners, a venture capital firm that he co-founded in 2001. Previously, Mr. Socolof worked at Lucent Technologies, Inc. from 1996 to 2001 where he established Lucent's New Ventures Group. Before joining Lucent, Mr. Socolof spent eight years with Booz, Allen & Hamilton Inc., where he was a leader of the firm's innovation consulting practice. Mr. Socolof is currently also a director of GainSpan Corporation, NVMdurance and Vasona Networks Inc. He was a director of SyChip, Inc. before its acquisition by Murata and an investor and observer of Flarion Technologies, Inc., until its acquisition by Qualcomm Inc., and Silicon Hive, until its acquisition by Intel Corporation. Mr. Socolof holds a bachelor's of arts degree in economics and a bachelor's of science degree in mathematical sciences from Stanford University and received his M.B.A. from the Amos Tuck School at Dartmouth College, where he was a Tuck Scholar. He currently serves on the Board of Directors of the Center for the Study of Private Equity at the Tuck School. We believe that Mr. Socolof's financial, business, and investment expertise and his knowledge of our company enable him to make valuable contributions to our board of directors.

***Geoffrey R. Tate*** has served as a member of our Board of Directors since August 2009. From March 2010 until January 2012, Mr. Tate was the interim Chief Executive Officer and a member of the Board of Directors of Nanosolar, Inc. Mr. Tate was the founding Chief Executive Officer of Rambus Inc. in May 1990 and served as CEO and a member of the Board of Directors until January 2005. Mr. Tate served as the non-employee Chairman of the Board of Directors of Rambus from January 2005 to August 2006. From Rambus' IPO in 1997 to late 2003, Mr. Tate was also the sole member of the Stock Option Committee, which was authorized to approve and administer the issuance of options to Rambus non-executive employees. In 2006, Rambus' audit committee commenced an internal investigation of the timing of past stock option grants and related accounting issues. While Mr. Tate did not develop relevant policies and was not responsible for accounting judgments, Mr. Tate entered into a settlement agreement with Rambus. From 1979 to 1990, Mr. Tate served in various marketing and product line management positions and ultimately as Senior Vice President, Microprocessors and Logic, with Advanced Micro Devices, Inc. Mr. Tate received his bachelor's of science degree in computer science from University of Alberta and his M.B.A. from the Harvard Graduate School of Business Administration. We believe that Mr. Tate's possesses specific attributes that qualify him to serve as a director, including his extensive leadership experience as both executive and board director in the global semiconductor business and his deep industry knowledge.

**Family Relationships**

There are no family relationships among any of our directors or executive officers.

**Board Composition**

The primary responsibilities of our board of directors are to provide oversight, strategic guidance, counseling and direction to our management. Our board of directors meets on a regular basis and additionally as required. Our board of directors currently consists of seven directors. The members of our board of directors were elected in compliance with the provisions of our amended and restated certificate of incorporation and a voting agreement among certain of our stockholders. The voting agreement will terminate upon the closing of this offering and none of our stockholders will have any special rights regarding the election or designation of members of our board of directors. Our amended and restated certificate of incorporation to become effective upon the completion of this offering, or the amended and restated certificate of incorporation, will permit our board of directors to establish by resolution the authorized number of directors. Each director serves until the expiration of the term for which such director was elected or appointed, or until such director's earlier death, resignation or removal. At each annual meeting of stockholders, directors whose terms then expire will be elected to serve from the time of election and qualification until the next annual meeting following election. Our amended and restated certificate of incorporation provides that the authorized number of directors may be changed only by resolution of the board of directors.

**Director Independence**

Upon the completion of this offering, we anticipate that our common stock will be listed on The Nasdaq Global Market. Under the listing requirements and rules of The Nasdaq Global Market, independent directors must compose a majority of a listed company's board of directors within 12 months after its initial public offering. In addition, the rules of The Nasdaq Global Market require that, subject to specified exceptions and phase in periods following its initial public offering, each member of a listed company's audit and compensation, nominating and governance committee be independent. Audit committee members must also satisfy the independence criteria set forth in Rule 10A-3 under the Exchange Act, or Rule 10A-3. Under the rules of The Nasdaq Global Market, a director will only qualify as an "independent director" if, in the opinion of that company's board of directors, that person does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

To be considered to be independent for purposes of Rule 10A-3, a member of an audit committee of a listed company may not, other than in his or her capacity as a member of our audit committee, our board of directors, or any other board committee: (1) accept, directly or indirectly, any consulting, advisory, or other compensatory fee from the listed company or any of its subsidiaries; or (2) be an affiliated person of the listed company or any of its subsidiaries.

Our board of directors has undertaken a review of its composition, the composition of its committees, and the independence of each director. Based upon information requested from and provided by each director concerning his or her background, employment, and affiliations, including family relationships, our board of directors has determined that all of our board of directors except Phillip LoPresti do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the applicable rules and regulations of the SEC, and the listing requirements and rules of The Nasdaq Global Market. In making this determination, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director. Our board of directors also determined that Messrs. Foster, England and Hébert, who compose our audit committee, upon the completion of this offering, satisfy the independence standards for the audit committee established by applicable SEC rules and the listing standards of The Nasdaq Global Market and Rule 10A-3 of the Exchange Act. Our board of directors has determined that Messrs. Socolof, England and Finch, who compose our compensation committee, upon the completion of this offering, are "non-employee directors" as defined in Rule 16b-3 promulgated under the Exchange Act and are "outside directors" as that term is defined in Section 162(m) of the Code, or Section 162(m). Each member of the nominating and corporate governance committee is independent within the meaning of the applicable NASDAQ listing standards, is a non-employee director and is free from any relationship that would interfere with the exercise of his or her independent judgment.

**Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. Our board of directors may establish other committees to facilitate the management of our business. The composition and functions of each committee are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors.

***Audit Committee***

Our audit committee consists of Ron Foster, Robert W. England and Peter Hébert. The chair of our audit committee is Mr. Foster, who our board of directors has determined is an "audit committee financial expert" as that term is defined under the SEC rules implementing Section 407 of the Sarbanes-Oxley Act, and accordingly possesses the requisite enhanced financial sophistication required under the listing standards of The Nasdaq Global Market for at least one member of the audit committee. Our board of directors has also determined that

each member of our audit committee can read and understand fundamental financial statements in accordance with applicable requirements. In arriving at these determinations, the board of directors has examined each audit committee member's scope of experience and the nature of their experience in the corporate finance sector.

The primary purpose of the audit committee is to discharge the responsibilities of our board of directors with respect to our accounting, financial and other reporting and internal control practices and to oversee our independent registered public accounting firm. Specific responsibilities of our audit committee include:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- discussing the scope and results of the audit with the independent registered public accounting firm and reviewing, with management and the independent accountants, our interim and year-end operating results;
- developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our financial statements and critical accounting policies and estimates;
- reviewing the adequacy and effectiveness of our internal controls;
- reviewing our policies on risk assessment and risk management;
- reviewing related-party transactions;
- obtaining and reviewing a report by the independent registered public accounting firm, at least annually, that describes our internal quality-control procedures, any material issues with such procedures and any steps taken to deal with such issues when required by applicable law; and
- approving (or, as permitted, pre-approving) all audit and all permissible non-audit services, other than *de minimis* non-audit services, to be performed by the independent registered public accounting firm.

***Compensation Committee***

Our compensation committee consists of Stephen J. Socolof, Robert W. England and Lawrence G. Finch. The chair of our compensation committee is Mr. Socolof.

The primary purpose of our compensation committee is to discharge the responsibilities of our board of directors to oversee our compensation policies, plans and programs and to review and determine the compensation to be paid to our executive officers, directors and other senior management, as appropriate. Specific responsibilities of our compensation committee include:

- reviewing and approving, or recommending that our board of directors approve, the compensation of our executive officers;
- reviewing and recommending to our board of directors the compensation of our directors;
- reviewing and approving, or recommending that our board of directors approve, the terms of compensatory arrangements with our executive officers;
- administering our stock and equity incentive plans;
- selecting independent compensation consultants and assessing whether there are any conflicts of interest with any of the committees compensation advisers;

- reviewing and approving, or recommending that our board of directors approve, incentive compensation and equity plans, severance agreements, change-of-control protections and any other compensatory arrangements for our executive officers and other senior management, as appropriate; and
- reviewing and establishing general policies relating to compensation and benefits of our employees and reviewing our overall compensation philosophy.

***Nominating and Corporate Governance Committee***

Our nominating and corporate governance committee consists of Geoffrey R. Tate, Lawrence G. Finch and Peter Hébert. The chair of our nominating and corporate governance committee is Mr. Tate. Specific responsibilities of our nominating and corporate governance committee include:

- identifying, evaluating and selecting, or recommending that our board of directors approve, nominees for election to our board of directors;
- evaluating the performance of our board of directors and of individual directors;
- considering and making recommendations to our board of directors regarding the composition of the committees of the board of directors;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of our corporate governance practices and reporting;
- reviewing management succession plans;
- developing and making recommendations to our board of directors regarding corporate governance guidelines and matters; and
- overseeing an annual evaluation of the board of directors' performance.

**Role of the Board in Risk Oversight**

The audit committee of the board of directors is primarily responsible for overseeing our risk management processes on behalf of the board of directors. Going forward, we expect that the audit committee will receive reports from management on at least a quarterly basis regarding our assessment of risks. In addition, the audit committee reports regularly to the board of directors, which also considers our risk profile. The audit committee and the board of directors focus on the most significant risks we face and our general risk management strategies. While the board of directors oversees our risk management, management is responsible for day-to-day risk management processes. Our board of directors expects management to consider risk and risk management in each business decision, to proactively develop and monitor risk management strategies and processes for day-to-day activities and to effectively implement risk management strategies adopted by the audit committee and the board of directors. We believe this division of responsibilities is the most effective approach for addressing the risks we face and that our board of directors leadership structure, which also emphasizes the independence of the board of directors in its oversight of its business and affairs, supports this approach.

**Code of Business Conduct and Ethics**

Effective upon the closing of this offering, we have adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including those officers responsible for financial reporting. Following the closing of this offering, the code of business conduct and ethics will be available on our website at *www.Everspin.com*. We intend to disclose any amendments to the code, or any waivers of its requirements, on our website to the extent required by the applicable rules and exchange requirements. The inclusion of our website address in this prospectus does not incorporate by reference the information on or accessible through our website into this prospectus.

**Compensation Committee Interlocks and Insider Participation**

None of the members of our compensation committee has ever been an officer or employee of the company. None of our executive officers serve, or have served during the last fiscal year, as a member of the board of directors, compensation committee or other board committee performing equivalent functions of any entity that has one or more executive officers serving as one of our directors or on our compensation committee.

**Director Compensation**

We have a policy of reimbursing our directors for their reasonable out-of-pocket expenses in connection with attending board of directors and committee meetings. From time to time, we have granted stock options to certain of our non-employee directors as compensation for their services. None of our non-employee directors were granted a stock option during the year ended December 31, 2015. Mr. England and Mr. Tate are our only non-employee directors who hold options to purchase our common stock. As of December 31, 2015, each of Mr. England and Mr. Tate held options to purchase 283,000 shares of our common stock.

In April 2016, our board of directors approved a policy for the compensation of our non-employee directors following the closing of this offering. Our non-employee directors will receive compensation in the form of equity and cash, as described below:

*Equity Compensation for Current Directors.* On the date of each annual meeting of stockholders, each current non-employee director will be granted an option to purchase shares of common stock, which we refer to as the Annual Grant, in an amount to be determined by our compensation committee. All of the shares underlying an Annual Grant will vest upon the earlier of (i) the next year's annual meeting of stockholders or (ii) one year from the date of grant, subject to continued service on the vesting date. In the event of a change in control, any unvested portion of the shares underlying an Annual Grant will fully vest and become exercisable immediately prior to the effective time of such change in control.

*Equity Compensation for Future Directors*. Following this offering, newly-elected directors will be granted an option to purchase 422,500 shares of common stock, which we refer to as the Initial Grant. The shares underlying the Initial Grant will vest in a series of three equal annual installments on each anniversary of the date of grant, subject to continued service on each vesting date. In the event of a change in control, any unvested portion of the shares underlying an Initial Grant will fully vest and become exercisable immediately prior to the effective time of the change in control.

*Cash Compensation.* Each non-employee director will receive an annual fee of $40,000 in cash for serving on our board of directors and $1,500 for each meeting of the board of directors attended. The chairman of the audit committee of our board of directors will be entitled to an additional annual cash fee of $15,000. All fees in cash will be payable in equal quarterly installments, payable in arrears.

## EXECUTIVE COMPENSATION

### Compensation

#### Summary Compensation Table

The following summary compensation table shows information regarding the compensation awarded to, earned by or paid to our Chief Executive Officer and our other two most highly compensated executive officers in 2015, which we refer to as our "named executive officers," during the year ended December 31, 2015.

| Name and Principal Position | Year | Salary | Bonus(2) | Stock Options(1) | Total |
|---|---|---|---|---|---|
| Phillip LoPresti<br>*President and Chief Executive Officer* | 2015 | $ 275,000 | 60,000 | 94,885 | 429,885 |
| Terry Hulett<br>*Vice President, Storage Solutions* | 2015 | $ 213,213 | 51,880 | 17,115 | 282,208 |
| Scott Sewell<br>*Vice President, Worldwide Sales and Marketing* | 2015 | $ 197,920 | 62,114 | 11,605 | 271,639 |

(1) The amounts included in the Stock Options column represent the grant date fair value of stock options granted, calculated in accordance with FASB Accounting Standards Codification Topic 718. For a discussion of the assumptions made in the valuations reflected in this column, see Note 7 of the Financial Statements included elsewhere in this prospectus.
(2) 2015 bonus was approved by the board of directors in March 2016 but has not yet been paid.

#### Outstanding Equity Awards as of December 31, 2015

The following table shows stock options outstanding for each of our named executive officers as of December 31, 2015.

| Name | Vesting Commencement Date | Number of Securities Underlying Unexercised Options | | Option Exercise Price(5) | Option Expiration Date |
|---|---|---|---|---|---|
| | | Exercisable | Unexercisable | | |
| Phillip LoPresti | 08/20/2013 | 834,166(1) | 595,834 | $ 0.17 | 05/12/2024 |
| | 08/20/2013 | 1,512,583(1) | 1,080,417 | $ 0.17 | 05/12/2024 |
| | 03/20/2012 | 562,500(2) | 37,500 | $ 0.17 | 03/19/2022 |
| | 06/15/2010 | 2,400,000(3) | — | $ 0.17 | 06/14/2020 |
| Terry Hulett | 10/04/2013 | 216,666(4) | 183,334 | $ 0.17 | 05/12/2024 |
| | 10/04/2013 | 216,666(4) | 183,334 | $ 0.17 | 05/12/2024 |
| Scott Sewell | 08/20/2013 | 201,250(1) | 143,750 | $ 0.17 | 05/12/2024 |
| | 08/20/2013 | 116,666(1) | 83,334 | $ 0.17 | 05/12/2024 |
| | 09/21/2010 | 400,000(3) | — | $ 0.17 | 09/20/2020 |

(1) Approximately 58.3% of the shares subject to this option were vested as of December 31, 2015, and the remainder vest in equal increments on a monthly basis thereafter through August 20, 2017.
(2) Approximately 93.7% of the shares subject to this option were vested as of December 31, 2015, and the remainder vest in equal increments on a monthly basis thereafter through March 20, 2016.
(3) All of the shares subject to this option were vested as of December 31, 2015.
(4) Approximately 54.2% of the shares subject to this option were vested as of December 31, 2015, and the remainder vest in equal increments on a monthly basis thereafter through October 4, 2017.
(5) On May 13, 2014, our board of directors approved a reduction of the exercise price of stock options to an exercise price of $0.17 per share (the then current fair market value of our common stock).

***Employee Benefits***

We provide standard employee benefits to our full- and part-time employees, including our named executive officers, in the United States (in the case of part-time, those that work 30 or more hours per week), including health, disability and life insurance and a 401(k) plan as a means of attracting and retaining our executives and employees.

***Tax Considerations***

Our Board has considered the potential future effects of Section 162(m) of the Code on the compensation paid to our named executive officers. Section 162(m) disallows a tax deduction for any publicly held corporation for individual compensation exceeding $1.0 million in any taxable year for our chief executive officer and each of the other named executive officers (other than our chief financial officer), unless compensation is performance-based. As we only recently became publicly-traded, our Board has not previously taken the deductibility limit imposed by Section 162(m) into consideration in setting compensation.

***Limitation on Liability and Indemnification***

Upon the closing of this offering, our amended and restated certificate of incorporation will contain provisions that limit the liability of our current and former directors for monetary damages to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to the corporation or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Such limitation of liability does not apply to liabilities arising under federal securities laws and does not affect the availability of equitable remedies, such as injunctive relief or rescission. Our amended and restated certificate of incorporation and our amended and restated bylaws will provide that we are required to indemnify our directors to the fullest extent permitted by Delaware law. Our amended and restated bylaws will also provide that, upon satisfaction of certain conditions, we shall advance expenses incurred by a director in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. Our amended and restated certificate of incorporation and amended and restated bylaws will also provide our board of directors with discretion to indemnify our officers and employees when determined appropriate by the board. We have entered and expect to continue to enter into agreements to indemnify our directors and executive officers. With certain exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain customary directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty. These provisions may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At

present, there is no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought and we are not aware of any threatened litigation that may result in claims for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted for directors, executive officers or persons controlling us, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Executive Employment Agreements and Bonus Plan**

We extended Executive Employment Agreements to each of our named executive officers in connection with their employment. The letters generally provide for at-will employment and set forth the named executive officer's initial base salary, initial equity grant amount and eligibility for employee benefits. In addition, each of our named executive officers has executed a form of our standard confidential information and invention assignment agreement. The key terms of the offer letters extended to our named executive officers that continue to be in effect are described below.

***Phillip LoPresti***

Mr. LoPresti's current Executive Employment Agreement became effective April 25, 2016. Mr. LoPresti will be eligible for a target bonus in 2016 equal to 50% of his annual base salary. His eligibility for such annual bonus and the amount of such annual bonus in 2016 and thereafter will be determined by our board of directors in its sole discretion based upon the company's and Mr. LoPresti's achievement of objectives and milestones to be determined on an annual basis by our board in consultation with Mr. LoPresti.

Mr. LoPresti's Executive Employment Agreement provides for certain severance benefits if his employment is terminated without cause or if he resigns for good reason. If Mr. LoPresti's employment is terminated without cause or he resigns for good reason, Mr. LoPresti would be entitled to: (i) continuation payments over a six month severance period of his six month base salary, beginning on the sixtieth day following his separation from service; (ii) payment by us of COBRA premiums to continue health insurance coverage for himself and his eligible dependents over at most a six month severance period; and (iii) the accelerated vesting of a certain portion of Mr. LoPresti's equity awards. In addition, if Mr. LoPresti's employment is terminated without cause or he resigns for good reason within eighteen months of certain change-in-control events, the vesting of Mr. LoPresti's equity awards will be fully accelerated.

***Terry Hulett***

Mr. Hulett's current Executive Employment Agreement became effective April 25, 2016. Mr. Hulett will be eligible for a target bonus in 2016 equal to 25% of his annual base salary. His eligibility for such annual bonus and the amount of such annual bonus in 2016 and thereafter will be determined by our board of directors in its sole discretion based upon the company's and Mr. Hulett's achievement of objectives and milestones to be determined on an annual basis by our board in consultation with Mr. Hulett.

Mr. Hulett's Executive Employment Agreement provides for certain severance benefits if his employment is terminated without cause or if he resigns for good reason. If Mr. Hulett's employment is terminated without cause or he resigns for good reason, Mr. Hulett would be entitled to: (i) continuation payments over a six month severance period of his six month base salary, beginning on the sixtieth day following his separation from service; (ii) payment by us of COBRA premiums to continue health insurance coverage for himself and his eligible dependents over at most a six month severance period; and (iii) the accelerated vesting of a certain portion of Mr. Hulett's equity awards. In addition, if Mr. Hulett's employment is terminated without cause or he resigns for good reason within twelve months of certain change-in-control events, the vesting of Mr. Hulett's equity awards will be accelerated with respect to fifty percent of his equity awards.

***Scott Sewell***

Mr. Sewell's current Executive Employment Agreement became effective April 25, 2016. Mr. Sewell will be eligible for a bonus in 2016 based on sales targets. His eligibility for such annual bonus and the amount of such annual bonus in 2016 and thereafter will be determined by our board of directors in its sole discretion based upon the company's and Mr. Sewell's achievement of objectives and milestones to be determined on an annual basis by our board in consultation with Mr. Sewell.

Mr. Sewell's Executive Employment Agreement provides for certain severance benefits if his employment is terminated without cause or if he resigns for good reason. If Mr. Sewell's employment is terminated without cause or he resigns for good reason, Mr. Sewell would be entitled to: (i) continuation payments over a six month severance period of his six month base salary, beginning on the sixtieth day following his separation from service; (ii) payment by us of COBRA premiums to continue health insurance coverage for himself and his eligible dependents over at most a six month severance period; and (iii) the accelerated vesting of a certain portion of Mr. Sewell's equity awards. In addition, if Mr. Sewell's employment is terminated without cause or he resigns for good reason within twelve months of certain change-in-control events, the vesting of Mr. Sewell's equity awards will be fully accelerated.

**Stock Plans**

The principal features of our equity incentive plans and our 401(k) plan are summarized below. These summaries are qualified in their entirety by reference to the actual text of the plans, which, other than the 401(k) plan, are filed as exhibits to the registration statement of which this prospectus is a part.

***2016 Equity Incentive Plan***

Our board of directors adopted our 2016 Equity Incentive Plan, or the 2016 Plan, on April 25, 2016, and our stockholders subsequently approved the 2016 Plan on , 2016. The 2016 Plan will become effective on the date the registration statement of which this prospectus forms a part is declared effective by the SEC. Once the 2016 Plan becomes effective, no further grants will be made under our 2008 Equity Incentive Plan, which is described below.

Our 2016 Plan provides for the grant of incentive stock options, or ISOs, within the meaning of Section 422 of the Code, to our employees and our parent and subsidiary corporations' employees, and for the grant of nonstatutory stock options, or NSOs, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards, and other forms of equity compensation to our employees, directors and consultants. Addition, our 2016 Plan provides for the grant of performance cash awards to our employees, directors and consultants.

*Authorized Shares*. The maximum number of shares of our common stock that may be issued under our 2016 Plan is 13,000,000. The number of shares of our common stock reserved for issuance under our 2016 Plan will automatically increase on January 1 of each year, beginning on January 1, 2017, and continuing through and including January 1, 2024, by 3% of the total number of shares of our capital stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares determined by our board of directors. The maximum number of shares that may be issued upon the exercise of ISOs under our 2016 Plan is .

Shares issued under our 2016 Plan will be authorized but unissued or reacquired shares of our common stock. Shares subject to stock awards granted under our 2016 Plan that expire or terminate without being exercised in full, or that are paid out in cash rather than in shares, will not reduce the number of shares available for issuance under our 2016 Plan. Additionally, shares issued pursuant to stock awards under our 2016 Plan that we repurchase or that are forfeited, as well as shares used to pay the exercise price of a stock award or to satisfy the tax withholding obligations related to a stock award, will become available for future grant under our 2016 Plan.

*Plan Administration.* Our board of directors, or a duly authorized committee of our board of directors, will administer our 2016 Plan. Our board of directors may also delegate to one or more of our officers the authority to (1) designate employees (other than officers) to receive specified stock awards, and (2) determine the number of shares subject to such stock awards. Subject to the terms of our 2016 Plan, the board of directors has the authority to determine the terms of awards, including recipients, the exercise, purchase or strike price of stock awards, if any, the number of shares subject to each stock award, the fair market value of a share of our common stock, the vesting schedule applicable to the awards, together with any vesting acceleration, and the form of consideration, if any, payable upon exercise or settlement of the award and the terms of the award agreements for use under our 2016 Plan.

Our board of directors has the power to modify outstanding awards under our 2016 Plan. Our board of directors has the authority to reprice any outstanding option or stock appreciation right, cancel any outstanding stock award in exchange for new stock awards, cash or other consideration, or take any other action that is treated as a repricing under generally accepted accounting principles, with the consent of any adversely affected participant.

*Section 162(m) Limits.* At such time as necessary for compliance with Section 162(m) of the Code, no participant may be granted stock awards covering more than 3,000,000 shares (5,000,000 shares in the year of hire) of our common stock under our 2016 Plan during any calendar year pursuant to stock options, stock appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise price or strike price of at least 100% of the fair market value of our common stock on the date of grant. Additionally, no participant may be granted in a calendar year a performance stock award covering more than 3,000,000 shares of our common stock or a performance cash award having a maximum value in excess of $3 million under our 2016 Plan. These limitations are designed to allow us to grant compensation that will not be subject to the $1,000,000 annual limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Code.

*Non-Employee Director Limit.* The maximum number of shares subject to awards granted during a single calendar year to any non-employee director under the 2016 Plan, taken together with any cash fees paid to such non-employee director during the fiscal year, shall not exceed $3 million in total value (calculating the value of any such awards based on the grant date fair value of such awards for financial reporting purposes). Our board of directors may make exceptions to this limit for individual non-employee directors in extraordinary circumstances (for example, to compensate such individual for interim service in the capacity of an officer of the company), as our board of directors may determine in its discretion, provided that the non-employee director receiving such additional compensation may not participate in the decision to award such compensation.

*Stock Options.* Incentive stock options and nonstatutory stock options are granted pursuant to stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for stock options, within the terms and conditions of the 2016 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the 2016 Plan vest at the rate specified in the stock option agreement as determined by the plan administrator.

*Restricted Stock Unit Awards.* Restricted stock unit awards are granted pursuant to restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, restricted stock units that have not vested will be forfeited upon the participant’s cessation of continuous service for any reason.

*Restricted Stock Awards.* Restricted stock awards are granted pursuant to restricted stock award agreements adopted by the plan administrator. A restricted stock award may be awarded in consideration for cash, check, bank draft or money order, past services to us or any other form of legal consideration that may be acceptable to our board of directors and permissible under applicable law. The plan administrator determines the terms and conditions of restricted stock awards, including vesting and forfeiture terms. If a participant's service relationship with us ceases for any reason, we may receive through a forfeiture condition or a repurchase right any or all of the shares of common stock held by the participant that have not vested as of the date the participant terminates service with us.

*Stock Appreciation Rights.* Stock appreciation rights are granted pursuant to stock appreciation grant agreements adopted by the plan administrator. The plan administrator determines the purchase price or strike price for a stock appreciation right, which generally cannot be less than 100% of the fair market value of our common stock on the date of grant. A stock appreciation right granted under the 2016 Plan vests at the rate specified in the stock appreciation right agreement as determined by the plan administrator.

*Performance Awards*. Our 2016 Plan permits the grant of performance-based stock and cash awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Code. Our compensation committee can structure such awards so that the stock or cash will be issued or paid pursuant to such award only following the achievement of certain pre-established performance goals during a designated performance period.

*Other Stock Awards.* The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the stock award and all other terms and conditions of such awards.

*Changes to Capital Structure.* In the event there is a specified type of change in our capital structure, such as a stock split, reverse stock split or recapitalization, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under the 2016 Plan, (2) the class and maximum number of shares by which the share reserve may increase automatically each year, (3) the class and maximum number of shares that may be issued upon the exercise of incentive stock options, (4) the class and maximum number of shares subject to stock awards that can be granted in a calendar year (as established under the 2016 Plan pursuant to Section 162(m) of the Code) and (5) the class and number of shares and exercise price, strike price or purchase price, if applicable, of all outstanding stock awards.

Our compensation committee may establish performance goals by selecting from one or more of the following performance criteria: (1) earnings (including earnings per share and net earnings); (2) earnings before interest, taxes and depreciation; (3) earnings before interest, taxes, depreciation and amortization; (4) earnings before interest, taxes, depreciation, amortization and legal settlements; (5) earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense); (6) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation; (7) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation and changes in deferred revenue; (8) total stockholder return; (9) return on equity or average stockholder's equity; (10) return on assets, investment, or capital employed; (11) stock price; (12) margin (including gross margin); (13) income (before or after taxes); (14) operating income; (15) operating income after taxes; (16) pre-tax profit; (17) operating cash flow; (18) sales or revenue targets; (19) increases in revenue or product revenue; (20) expenses and cost reduction goals; (21) improvement in or attainment of working capital levels; (22) economic value added (or an equivalent metric); (23) market share; (24) cash flow; (25) cash flow per share; (26) share price performance; (27) debt reduction; (28) implementation or completion of projects or processes; (29) user satisfaction; (30) stockholders' equity; (31) capital expenditures; (32) debt levels; (33) operating profit or net operating profit; (34) workforce diversity; (35) growth of net income or operating income; (36) billings; (37) bookings; (38) the number of users, including but not limited to unique users; (39) employee retention; (40) budget management; (41) partner satisfaction; (42) entry into or completion of

strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property); and (43) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

Our compensation committee may establish performance goals on a company-wide basis, with respect to one or more business units, divisions, affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise (1) in the award agreement at the time the award is granted or (2) in such other document setting forth the performance goals at the time the goals are established, our compensation committee will appropriately make adjustments in the method of calculating the attainment of the performance goals as follows: (a) to exclude restructuring or other nonrecurring charges; (b) to exclude exchange rate effects; (c) to exclude the effects of changes to generally accepted accounting principles; (d) to exclude the effects of any statutory adjustments to corporate tax rates; and (e) to exclude the effects of any items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (f) to exclude the dilutive effects of acquisitions or joint ventures; (g) to assume that any business divested achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (h) to exclude the effect of any change in the outstanding shares of our common stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (i) to exclude the effects of stock based compensation and the award of bonuses under our bonus plans; (j) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; (k) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles; and (l) to exclude the effect of any other unusual, non-recurring item of gain or loss; and (m) to exclude the effects of entering into or achieving milestones involved in licensing arrangements.

*Corporate Transactions.* Our 2016 Plan provides that in the event of certain specified significant corporate transactions including: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of at least 50% of our outstanding securities, (3) the consummation of a merger or consolidation where we do not survive the transaction and (4) the consummation of a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding prior to such transaction are converted or exchanged into other property by virtue of the transaction, each outstanding award will be treated as the administrator determines unless otherwise provided in an award agreement or other written agreement between us and the award holder. The administrator may (1) arrange for the assumption, continuation or substitution of a stock award by a successor corporation; (2) arrange for the assignment of any reacquisition or repurchase rights held by us to a successor corporation; (3) accelerate the vesting, in whole or in part, of the stock award and provide for its termination prior to the transaction; (4) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us; (5) cancel or arrange for the cancellation of the stock award prior to the transaction and pay and pay such cash payment, or no consideration, determined by the board; or (6) make a payment, in the form determined by the board, equal to the excess, if any, of the value of the property the participant would have received upon exercise of the awards prior to the transaction over any exercise price payable by the participant in connection with the exercise. The plan administrator is not obligated to treat all stock awards or portions of stock awards, even those that are of the same type, in the same manner.

In the event of a change in control, awards granted under the 2016 Plan will not receive automatic acceleration of vesting and exercisability, although this treatment may be provided for in an award agreement. Under the 2016 Plan, a change in control is defined to include (1) the acquisition by any person or company of more than 50% of the combined voting power of our then outstanding stock, (2) a merger, consolidation or similar transaction in which our stockholders immediately prior to the transaction do not own, directly or indirectly, more than 50% of the combined voting power of the surviving entity (or the parent of the surviving entity), (3) a sale, lease, exclusive license or other disposition of all or substantially all of our assets to an entity that did not previously hold more than 50% of the voting power over company stock, and (4) our stockholders

approve and the Board approves a plan of complete dissolution or liquidation or a complete dissolution or liquidation of the company otherwise occurs except for a liquidation into a parent corporation.

*Transferability*. A participant may not transfer stock awards under our 2016 Plan other than by will, the laws of descent and distribution or as otherwise provided under our 2016 Plan.

*Plan Amendment or Termination.* Our board of directors has the authority to amend, suspend, or terminate our 2016 Plan, provided that such action does not materially impair the existing rights of any participant without such participant's written consent. Certain material amendments also require the approval of our stockholders. No ISOs may be granted after the tenth anniversary of the date our board of directors adopted our 2016 Plan. No stock awards may be granted under our 2016 Plan while it is suspended or after it is terminated.

***2016 Employee Stock Purchase Plan***

Our board of directors adopted our 2016 Employee Stock Purchase Plan, or the ESPP, on April 25, 2016, and our stockholders subsequently approved the ESPP on , 2016. The ESPP will become effective immediately upon the execution and delivery of the underwriting agreement related to this offering. The purpose of the ESPP is to secure the services of new employees, to retain the services of existing employees and to provide incentives for such individuals to exert maximum efforts toward our success and that of our affiliates. The ESPP is intended to qualify as an "employee stock purchase plan" within the meaning of Section 423 of the Code.

*Authorized Shares*. The maximum aggregate number of shares of our common stock that may be issued pursuant to the exercise of purchase rights under our ESPP that are granted to our employees or to employees of any of our designated affiliates is 2,500,000 shares. Additionally, the number of shares of our common stock reserved for issuance under our ESPP will increase automatically each year, beginning on January 1, 2017, and continuing through and including January 1, 2026, by 1% of the total number of shares of our common stock outstanding on December 31 of the preceding calendar year, or a lesser number as determined by our board of directors. Shares subject to purchase rights granted under our ESPP that terminate without having been exercised in full will not reduce the number of shares available for issuance under our ESPP.

*Administration*. Our board of directors, or a duly authorized committee thereof, will administer our ESPP. Our board of directors has delegated concurrent authority to administer our ESPP to our compensation committee under the terms of the compensation committee's charter. The ESPP is implemented through a series of offerings under which eligible employees are granted purchase rights to purchase shares of our common stock on specified dates during such offerings. Under the ESPP, we may specify offerings with durations of not more than 27 months, and may specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering. We currently intend to have 12-month offerings with multiple purchase periods (of approximately six months in duration) per offering, except that the first purchase period under our first offering may be shorter or longer than six months, depending on the date on which the underwriting agreement relating to this offering becomes effective. An offering under the ESPP may be terminated under certain circumstances.

*Payroll Deductions*. Generally, all regular employees, including executive officers, employed by us or by any of our designated affiliates, may participate in the ESPP and may contribute, normally through payroll deductions, up to 15% of their earnings (as defined in the ESPP) for the purchase of our common stock under the ESPP. Unless otherwise determined by our board of directors, common stock will be purchased for the accounts of employees participating in the ESPP at a price per share equal to the lower of (a) 85% of the fair market value of a share of our common stock on the first date of an offering or (b) 85% of the fair market value of a share of our common stock on the date of purchase. For the initial offering, which we expect will commence upon the execution and delivery of the underwriting agreement relating to this offering, the fair market value on the first day of the initial offering will be the price at which shares are first sold to the public.

*Limitations*. Our employees, including executive officers, or any of our designated affiliates may have to satisfy one or more of the following service requirements before participating in our ESPP, as determined by the administrator: (1) customary employment with us or one of our affiliates for more than 20 hours per week and more than five months per calendar year, or (2) continuous employment with us or one of our affiliates for a minimum period of time, not to exceed two years, prior to the first date of an offering. An employee may not be granted rights to purchase stock under our ESPP if such employee (1) immediately after the grant would own stock possessing 5% or more of the total combined voting power or value of our common stock, or (2) holds rights to purchase stock under our ESPP that would accrue at a rate that exceeds $25,000 worth of our common stock based on the fair market value per share of our common stock at the beginning of an offering for each calendar year that the purchase rights remain outstanding.

*Changes to Capital Structure*. In the event that there occurs a change in our capital structure through such actions as a stock split, merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or similar transaction, the board of directors will make appropriate adjustments to (1) the number of shares reserved under the ESPP, (2) the maximum number of shares by which the share reserve may increase automatically each year, (3) the number of shares and purchase price of all outstanding purchase rights and (4) the number of shares that are subject to purchase limits under ongoing offerings.

*Corporate Transactions*. In the event of certain significant corporate transactions including: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of 50% of our outstanding securities, (3) the consummation of a merger or consolidation where we do not survive the transaction and (4) the consummation of a merger or consolidation where we do survive the transaction but the shares of our common stock outstanding immediately prior to such transaction are converted or exchanged into other property by virtue of the transaction, any then-outstanding rights to purchase our stock under the ESPP may be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such purchase rights, then the participants' accumulated payroll contributions will be used to purchase shares of our common stock within 10 business days prior to such corporate transaction, and such purchase rights will terminate immediately.

*ESPP Amendments, Termination*. Our board of directors has the authority to amend or terminate our ESPP, provided that except in certain circumstances such amendment or termination may not materially impair any outstanding purchase rights without the holder's consent. We will obtain stockholder approval of any amendment to our ESPP as required by applicable law or listing requirements.

***2008 Equity Incentive Plan***

Our board of directors adopted our 2008 Equity Incentive Plan, or the 2008 Plan, in July 2008, and our stockholders subsequently approved the 2008 Plan in October 2008. The 2008 Plan provides for the discretionary grant of ISOs, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, and other stock awards to our employees, directors and consultants or our affiliates. ISOs may be granted only to our employees or employees of our affiliates. The option exercise price of all ISOs, nonstatutory stock options and stock appreciation rights may not be less than 100% of the fair market value of our common stock on the date of grant. The term of each ISO, nonstatutory stock option and stock appreciation right may not exceed ten years from the date of grant.

The 2008 Plan will be terminated on the date the 2016 Plan becomes effective. However, any outstanding stock awards granted under the 2008 Plan will remain outstanding, subject to the terms of our 2008 Plan and the applicable stock award agreements, until such outstanding stock awards that are stock options are exercised or until they terminate or expire by their terms, or until such stock awards are fully settled, terminated or forfeited.

*Authorized Shares*. The maximum number of shares of our common stock that may be issued under our 2008 Plan is 35,188,096. The maximum number of shares that may be issued upon the exercise of ISOs under our 2008 Plan is two (2) times the 2008 Plan share reserve.

*Plan Administration.* Our board of directors or a duly authorized committee of our board of directors administers our 2008 Plan and the stock awards granted under it. Our board of directors may also delegate to one or more of our officers the authority to (1) designate officers and employees to receive specified stock awards and (2) determine the number of shares subject to such stock awards. Subject to the terms of our 2008 Plan, the board of directors has the authority to determine and amend the terms of awards, including recipients, the exercise, purchase or strike price of stock awards, if any, the number of shares subject to each stock award, the fair market value of a share of our common stock, the vesting schedule applicable to the awards, together with any vesting acceleration, and the form of consideration, if any, payable upon exercise or settlement of the award and the terms of the award agreements for use under our 2008 Plan.

Our board of directors has the power to modify outstanding awards under our 2008 Plan. Our board of directors has the authority to reprice any outstanding option or stock appreciation right, cancel any outstanding stock award in exchange for new stock awards, cash or other consideration, or take any other action that is treated as a repricing under generally accepted accounting principles, with the consent of any adversely affected participant.

*Corporate Transactions.* Our 2008 Plan provides that in the event of certain specified significant corporate transactions, as defined under our 2008 Plan, each outstanding award will be treated as the administrator determines. The administrator may (1) arrange for the assumption, continuation or substitution of a stock award by a successor corporation, or the acquiring corporation's parent company; (2) arrange for the assignment of any reacquisition or repurchase rights held by us to a successor corporation, or the acquiring corporation's parent company; (3) accelerate the vesting, in whole or in part, of the stock award and provide for its termination prior to the transaction; (4) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us; or (5) make a payment in such form as determined by the board of directors equal to the excess of the value of the property that would have been received and the exercise price. The plan administrator is not obligated to treat all stock awards or portions of stock awards, even those that are of the same type, in the same manner.

In the event of a change in control, as defined in the 2008 Plan, awards granted under the 2008 Plan will not receive automatic acceleration of vesting and exercisability, although this treatment may be provided for in an award agreement.

*Transferability.* A participant may not transfer stock awards under our 2008 Plan other than by will, the laws of descent and distribution, or as otherwise provided under our 2008 Plan.

*Plan Amendment or Termination.* Our board of directors has the authority to amend, suspend or terminate our 2008 Plan, provided that such action is approved by our stockholders to the extent stockholder approval is necessary and that such action does not impair the existing rights of any participant without such participant's written consent. As described above, our 2008 Plan will be terminated upon the effective date of this offering and no future stock awards will be granted thereunder.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a description of transactions since January 1, 2013, to which we have been a party, in which the amount involved exceeds $120,000, and in which any of our directors, executive officers or beneficial holders of more than 5% of our common stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest.

Each agreement described below is filed as an exhibit to the registration statement of which this prospectus forms a part, and the following descriptions are qualified by reference to such agreements.

Compensation arrangements for our directors and named executive officers are described in this prospectus under the section titled "Executive Compensation."

### Bridge Financings

#### *March 2013 Bridge Financing*

In March 2013, we sold an aggregate of $2.0 million in convertible promissory notes at a price equal to the principal amount of such notes. These notes had an annual interest rate of 10% and a maturity date in March 2013, and were converted in July 2013 as described below. The following table summarizes the participation in the convertible note financing by any of our executive officers, directors and holders of more than 5% of our capital stock.

| Name of 5% Stockholder | Convertible Note Principal Amount |
|---|---|
| Entities affiliated with NV Partners(1) | $ 738,613 |
| Entities affiliated with Sigma Partners(2) | 393,927 |
| Entities affiliated with Lux Ventures(3) | 322,528 |
| Entities affiliated with Draper Fisher Jurvetson(4) | 196,964 |
| EPIC Venture Fund IV, LLC | 196,964 |
| Lawrence G. Finch(5) | 98,482 |
| The Tate Family Trust Dated 9/30/98(6) | 32,827 |

(1) Consists of (a) a note issued to NV Partners IV LP with a principal amount of $642,272 and (b) a note issued to NV Partners IV-C LP with a principal amount of $96,341 (together, "NV Partners"). Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Consists of (a) a note issued to Sigma Partners 8, L.P. with a principal amount of $377,764, (b) a note issued to Sigma Associates 8, L.P. with a principal amount of $12,102 and (c) a note issued to Sigma Investors 8, L.P. with a principal amount of $4,061 (collectively, "Sigma Partners"). Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.
(3) Consists of (a) a note issued to Lux Ventures II, L.P. with the principal amount of $309,547 and (b) a note issued to Lux Ventures II Sidecar, L.P. with the principal amount of $12,981 (together, "Lux Ventures"). Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.
(4) Consists of (a) a note issued to Draper Fisher Jurvetson Fund IX, L.P. with the principal amount of $185,343, (b) a note issued to Draper Associates Riskmasters Fund II, LLC with the principal amount of $6,598 and (c) a note issued to Draper Fisher Jurvetson Partners IX, LLC with the principal amount of $5,023 (collectively, "Draper Fisher Jurvetson").
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and a trustee of the Tate Family Trust Dated 9/30/98.

***August 2014 Bridge Financing***

In August 2014, we sold an aggregate of $2.0 million in convertible promissory notes at a price equal to the principal amount of such notes. These notes had an annual interest rate of 5% and a maturity date in August 2015, and were converted in December 2014 as described below. The following table summarizes the participation in the convertible note financing by any of our executive officers, directors and holders of more than 5% of our capital stock.

| Name of 5% Stockholder | Convertible Note Principal Amount |
|---|---|
| Entities affiliated with NV Partners(1) | $ 745,960 |
| Entities affiliated with Sigma Partners(2) | 397,845 |
| Entities affiliated with Lux Ventures(3) | 325,736 |
| Entities affiliated with Draper Fisher Jurvetson(4) | 198,922 |
| EPIC Venture Fund IV, LLC | 198,923 |
| Lawrence G. Finch(5) | 99,461 |
| The Tate Family Trust Dated 9/30/98(6) | 33,153 |

(1) Consists of (a) a note issued to NV Partners IV LP with a principal amount of $648,661 and (b) a note issued to NV Partners IV-C LP with a principal amount of $97,299. Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Consists of (a) a note issued to Sigma Partners 8, L.P. with a principal amount of $381,643, (b) a note issued to Sigma Associates 8, L.P. with a principal amount of $12,176 and (c) a note issued to Sigma Investors 8, L.P. with a principal amount of $4,026. Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.
(3) Consists of (a) a note issued to Lux Ventures II, L.P. with the principal amount of $312,626 and (b) a note issued to Lux Ventures II Sidecar, L.P. with the principal amount of $13,110. Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.
(4) Consists of (a) a note issued to Draper Fisher Jurvetson Fund IX, L.P. with the principal amount of $187,186, (b) a note issued to Draper Associates Riskmasters Fund II, LLC with the principal amount of $6,664 and (c) a note issued to Draper Fisher Jurvetson Partners IX, LLC with the principal amount of $5,072.
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and a trustee of the Tate Family Trust Dated 9/30/98.

***January 2016 Bridge Financing***

In January 2016, we sold an aggregate of $5.0 million in convertible promissory notes to existing investors at a price equal to the principal amount of such notes. These notes had an annual interest rate of 5% and, pursuant to an amendment in September 2016, a maturity date in December 2016. The following table summarizes the participation in the convertible note financing by any of our executive officers, directors and holders of more than 5% of our capital stock.

| Name of 5% Stockholder | Convertible Note Principal Amount |
|---|---|
| Entities affiliated with NV Partners(1) | $ 1,864,899 |
| Entities affiliated with Sigma Partners(2) | 994,612 |
| Entities affiliated with Lux Ventures(3) | 814,339 |
| Entities affiliated with Draper Fisher Jurvetson(4) | 497,306 |
| EPIC Venture Fund IV, LLC | 497,306 |
| Lawrence G. Finch(5) | 248,653 |
| The Tate Family Trust Dated 9/30/98(6) | 82,884 |

(1) Consists of (a) a note issued to and held by NV Partners IV LP with a principal amount of $1,621,651 and (b) a note issued to and held by NV Partners IV-C LP with a principal amount of $243,248. Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Consists of (a) a note issued to and held by Sigma Partners 8, L.P. with a principal amount of $954,379, (b) a note issued to and held by Sigma Associates 8, L.P. with a principal amount of $30,164 and (c) a note issued to and held by Sigma Investors 8, L.P. with a principal amount of $10,069. Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.
(3) Consists of (a) a note issued to and held by Lux Ventures II, L.P. with the principal amount of $781,564 and (b) a note issued to and held by Lux Ventures II Sidecar, L.P. with the principal amount of $32,775. Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.

(4) Consists of (a) a note issued to and held by Draper Fisher Jurvetson Fund IX, L.P. with the principal amount of $467,965, (b) a note issued to and held by Draper Associates Riskmasters Fund II, LLC with the principal amount of $16,660 and (c) a note issued to and held by Draper Fisher Jurvetson Partners IX, LLC with the principal amount of $12,681.
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and a trustee of the Tate Family Trust Dated 9/30/98.

***August 2016 Bridge Financing***

In August 2016, we sold an aggregate of $3.5 million in convertible promissory notes to existing investors at a price equal to the principal amount of such notes. These notes have an annual interest rate of 5% and, pursuant to an amendment in September 2016, a maturity date in December 2016. The following table summarizes the participation in the convertible note financing by any of our executive officers, directors and holders of more than 5% of our capital stock.

| Name of 5% Stockholder | Convertible Note Principal Amount |
|---|---|
| Entities affiliated with NV Partners(1) | $ 1,305,430 |
| Entities affiliated with Sigma Partners(2) | $ 696,229 |
| Entities affiliated with Lux Ventures(3) | $ 570,038 |
| Entities affiliated with Draper Fisher Jurvetson(4) | $ 348,113 |
| Epic Venture Fund IV, LLC | $ 348,114 |
| Lawrence G. Finch(5) | $ 174,057 |
| The Tate Family Trust dated 9/30/98(6) | $ 58,019 |

(1) Consists of (a) a note issued to and held by NV Partners IV LP with a principal amount of $1,135,156 and (b) a note issued to and held by NV Partners IV-C LP with a principal amount of $170,274. Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Consists of (a) a note issued to and held by Sigma Partners 8, L.P. with a principal amount of $668,066, (b) a note issued to and held by Sigma Associates 8, L.P. with a principal amount of $21,115 and (c) a note issued to and held by Sigma Investors 8, L.P. with a principal amount of $7,048. Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.
(3) Consists of (a) a note issued to and held by Lux Ventures II, L.P. with the principal amount of $547,095 and (b) a note issued to and held by Lux Ventures II Sidecar, L.P. with the principal amount of $22,943. Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.
(4) Consists of (a) a note issued to and held by Draper Fisher Jurvetson Fund IX, L.P. with the principal amount of $327,575, (b) a note issued to and held by Draper Associates Riskmasters Fund II, LLC with the principal amount of $11,662 and (c) a note issued to and held by Draper Fisher Jurvetson Partners IX, LLC with the principal amount of $8,876.
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and a trustee of the Tate Family Trust Dated 9/30/98.

**Convertible Preferred and Common Stock Financings**

***Sale of Common Stock and Series B Convertible Preferred Stock***

In July 2013, we completed the closing of the sale of units in the aggregate of 51,297,840 shares of our common stock and 17,099,280 shares of our Series B convertible preferred stock (Unit Shares) at a purchase price of $1.00 per Unit Share for an aggregate purchase price of $15,324,480. Of the Unit Shares issued, 21,297,861 shares of the common stock and 7,099,287 shares of the Series B convertible preferred stock were issued upon conversion in full of the convertible notes sold in March 2013 and described above at a 75% discount to the purchase price.

The following table summarizes purchases of shares of our Series B convertible preferred stock by our executive officers, directors and holders of more than 5% of our capital stock.

| Name | Common Stock | Series B Convertible Preferred Stock | Aggregate Purchase Price |
|---|---|---|---|
| Entities affiliated with NV Partners(1) | 18,931,029 | 6,310,343 | $5,654,892 |
| Entities affiliated with Sigma Partners(2) | 10,096,539 | 3,365,513 | 3,015,942 |
| Entities affiliated with Lux Ventures(3) | 8,266,545 | 2,755,515 | 2,469,302 |
| EPIC Venture Fund IV, LLC | 5,048,268 | 1,682,756 | 1,507,971 |
| Entities affiliated with Draper Fisher Jurvetson(4) | 5,048,250 | 1,682,750 | 1,507,969 |
| Lawrence G. Finch(5) | 2,524,134 | 841,378 | 753,985 |
| The Tate Family Trust Dated 9/30/98(6) | 841,371 | 280,457 | 251,328 |

(1) Includes (a) 16,461,768 shares of common stock and 5,487,256 shares of Series B convertible preferred stock issued to and held by NV Partners IV LP and (b) 2,469,261 shares of common stock and 823,087 shares of Series B convertible preferred stock issued to and held by NV Partners IV-C LP. Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Includes (a) 9,684,090 shares of common stock and 3,228,030 shares of Series B convertible preferred stock issued to and held by Sigma Partners 8, L.P., (b) 309,483 shares of common stock and 103,161 shares of Series B convertible preferred stock issued to and held by Sigma Associates 8, L.P. and (c) 102,966 shares of common stock and 34,322 shares of Series B convertible preferred stock issued to and held by Sigma Investors 8, L.P. Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.
(3) Includes (a) 7,933,839 shares of common stock and 2,644,613 shares of Series B convertible preferred stock issued to and held by Lux Ventures II, L.P. and (b) 332,706 shares of common stock and 110,902 shares of Series B convertible preferred stock issued to and held by Lux Ventures II Sidecar, L.P. Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.
(4) Includes (a) 4,750,422 shares of common stock and 1,583,474 shares of Series B convertible preferred stock issued to and held by Draper Fisher Jurvetson Fund IX, L.P., (b) 169,107 shares of common stock and 56,369 shares of Series B convertible preferred stock issued to and held by Draper Associates Riskmasters Fund II, LLC and (c) 128,721 shares of common stock and 42,907 shares of Series B convertible preferred stock issued to and held by Draper Fisher Jurvetson Partners IX, LLC.
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and a trustee of the Tate Family Trust Dated 9/30/98.

***Sale of Series B Convertible Preferred Stock***

In January 2014, October 2014 and December 2014, we completed the closing of the sale of an aggregate of 12,042,331 shares of our Series B convertible preferred stock at a purchase price of $1.00 per share for an aggregate purchase price of $12,016,263. 2,015,609 of the shares of Series B convertible preferred stock were issued upon conversion in full of the convertible notes sold in August 2014 and described above.

The following table summarizes purchases of shares of our Series B convertible preferred stock by our executive officers, directors and holders of more than 5% of our capital stock.

| Name | Series B Convertible Preferred Stock | Aggregate Purchase Price |
|---|---|---|
| GLOBALFOUNDRIES Inc. | 5,000,000 | $5,000,000 |
| Entities affiliated with NV Partners(1) | 751,783 | 751,784 |
| Entities affiliated with Sigma Partners(2) | 400,950 | 400,951 |
| Entities affiliated with Lux Ventures(3) | 328,278 | 328,279 |
| EPIC Venture Fund IV, LLC | 200,475 | 200,476 |
| Entities affiliated with Draper Fisher Jurvetson(4) | 200,474 | 200,475 |
| Lawrence G. Finch(5) | 100,237 | 100,238 |
| The Tate Family Trust Dated 9/30/98(6) | 33,412 | 33,413 |

(1) Includes (a) 653,725 shares issued to and held by NV Partners IV LP and (b) 98,058 shares issued to and held by NV Partners IV-C LP. Mr. Socolof, a member of our board of directors, is affiliated with NV Partners.
(2) Includes (a) 384,623 shares issued to and held by Sigma Partners 8, L.P., (b) 12,270 shares issued to and held by Sigma Associates 8, L.P. and (c) 4,057 shares issued to and held by Sigma Investors 8, L.P. Mr. Finch, a member of our board of directors, is affiliated with Sigma Partners.

(3) Includes (a) 315,066 shares issued to and held by Lux Ventures II, L.P. and (b) 13,212 shares issued to and held by Lux Ventures II Sidecar, L.P. Mr. Hébert, a member of our board of directors, is affiliated with Lux Ventures.
(4) Includes (a) 188,647 shares issued to and held by Draper Fisher Jurvetson Fund IX, L.P., (b) 6,715 shares issued to and held by Draper Associates Riskmasters Fund II, LLC and (c) 5,112 shares issued to and held by Draper Fisher Jurvetson Partners IX, LLC.
(5) Mr. Finch is a member of our board of directors and is affiliated with Sigma Partners.
(6) Mr. Tate is a member of our board of directors and the trustee of the Tate Family Trust Dated 9/30/98.

**Common Stock Issuance to GLOBALFOUNDRIES Inc.**

In October 2014, we entered into a ST-MRAM Joint Development Agreement with GLOBALFOUNDRIES Inc. (the Development Agreement) for the joint development of our ST-MRAM technology and as partial consideration for entering into the Development Agreement, issued to GLOBALFOUNDRIES 12,000,000 shares of our Common Stock subject to vesting upon the achievement of a goal as set forth in the Statement of Work #1 under the Development Agreement, which shares are further subject to a repurchase option in our favor for up to one year in the event the Development Agreement is terminated for any reason. In addition, and as disclosed above, in October 2014, we issued 5,000,000 shares of our Series B convertible preferred stock to GLOBALFOUNDRIES for aggregate proceeds to us of $5,000,000.

**Other Agreements with GLOBALFOUNDRIES**

We have entered into a joint development agreement and a manufacturing agreement with GLOBALFOUNDRIES. See “Risk Factors” and “Business—ST-MRAM Joint Development Agreement” and “Business—ST-MRAM Manufactory Agreement” for a discussion of these agreements.

**Transactions with Freescale**

We have entered into various transactions with Freescale (a wholly-owned subsidiary of NXP), a holder of in excess of 5% of our outstanding stock. We lease our manufacturing facility in Chandler, Arizona, from Freescale and total rent payments made during the years ended December 31, 2014 and 2015, and the six months ended June, 2015 and 2016, were $1.0 million, $1.0 million, $582,000 and $520,000, respectively. Freescale also performs processing of our products in its facility which is capitalized as part of the cost of inventory. The total processing costs incurred by us were $3.3 million, $3.9 million, $1.9 million and $1.3 million for the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, respectively. In addition, Freescale is one of our largest customers for the sale of embedded wafers, and total revenue from Freescale was $3.2 million, $3.5 million, $1.8 million and $0.7 million for the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, respectively. Amounts due from Freescale were $541,000, $564,000 and $502,000 at December 31, 2014 and 2015, and June 30, 2016, respectively. Amounts due to Freescale were $484,000, $207,000 and $596,000 at December 31, 2014 and 2015, and June 30, 2016, respectively.

**Indemnification Agreements**

Our amended and restated certificate of incorporation, which will be effective upon the closing of this offering, will contain provisions limiting the liability of directors, and our amended and restated bylaws will provide that we will indemnify each of our directors to the fullest extent permitted under Delaware law. Our amended and restated certificate of incorporation and amended and restated bylaws will also provide our board of directors with discretion to indemnify our officers and employees when determined appropriate by the board. In addition, we have entered and expect to continue to enter into agreements to indemnify our directors and executive officers. For more information regarding these agreements, see the section of this prospectus titled “Executive Compensation—Limitation on Liability and Indemnification.”

**Investor Rights Agreement**

We are party to an investor rights agreement that provides holders of our convertible preferred stock, including certain holders of 5% of our capital stock and entities affiliated with certain of our directors, with

certain registration rights, including the right to demand that we file a registration statement or request that their shares be covered by a registration statement that we are otherwise filing. The investor rights agreement also provides for a right of first refusal in favor of certain holders of our stock with regard to certain issuances of our capital stock. The rights of first refusal will not apply to, and will terminate upon, closing of this offering. For a more detailed description of these registration rights, see the section of this prospectus titled "Description of Capital Stock—Registration Rights."

**Voting Agreement**

We are party to a voting agreement under which certain holders of our capital stock, including certain holders of 5% of our capital stock and entities affiliated with certain of our directors, have agreed to vote in a certain way on certain matters, including with respect to the election of directors. Pursuant to the voting agreement, each of New Venture Partners LLC, Lux Capital Management, LLC and Sigma Management 8, L.L.C. had the right to designate one member of our board of directors. Stephen J. Socolof, Peter Hébert and Lawrence G. Finch were designated by New Venture Partners LLC, Lux Capital Management, LLC and Sigma Management 8, L.L.C., respectively, under the voting agreement. The voting agreement and rights regarding the election or designation of members of our board of directors will terminate upon the closing of this offering and none of our stockholders will have any special rights regarding the election or designation of members of our board of directors.

**Right of First Refusal and Co-Sale Agreement**

We are party to a right of first refusal and co-sale agreement with holders of our convertible preferred stock and our founders, including certain holders of 5% of our capital stock and entities affiliated with certain of our directors, pursuant to which the holders of convertible preferred stock have a right of first refusal and co-sale in respect of certain sales of securities by our founders. The right of first refusal and co-sale agreement will terminate upon the closing of this offering.

**Employment Arrangements**

We have entered into Executive Employment Agreements with our executive officers as described in greater detail in the section of this prospectus titled "Executive Compensation—Executive Employment Agreements and Bonus Plan."

**Stock Option Repricing**

In May 2014, we amended certain of our outstanding stock options to reset their respective exercise prices to $0.17 per share, the fair market value of our common stock as of such date, as determined by our board of directors.

The following table summarizes options that were repriced for certain of our directors and executive officers:

| Name | Number of Options | Original Exercise Price | New Exercise Price | Expiration Date |
|---|---|---|---|---|
| Phillip LoPresti | 2,400,000 | $ 0.29 | $ 0.17 | 6/14/2020 |
| | 600,000 | $ 0.52 | $ 0.17 | 3/19/2022 |
| Jon Slaughter, Ph.D. | 125,000 | $ 0.29 | $ 0.17 | 7/21/2018 |
| | 30,000 | $ 0.29 | $ 0.17 | 7/13/2019 |
| | 95,000 | $ 0.29 | $ 0.17 | 4/20/2020 |
| | 150,000 | $ 0.29 | $ 0.17 | 9/20/2020 |
| | 50,000 | $ 0.52 | $ 0.17 | 6/18/2022 |
| Sanjeev Aggarwal, Ph.D. | 100,000 | $ 0.29 | $ 0.17 | 7/21/2018 |
| | 25,000 | $ 0.29 | $ 0.17 | 7/13/2019 |
| | 45,000 | $ 0.29 | $ 0.17 | 4/20/2020 |
| | 230,000 | $ 0.29 | $ 0.17 | 9/20/2020 |
| | 50,000 | $ 0.52 | $ 0.17 | 6/19/2022 |
| Scott Sewell | 400,000 | $ 0.29 | $ 0.17 | 9/20/2020 |
| Thomas Andre | 125,000 | $ 0.29 | $ 0.17 | 7/21/2018 |
| | 75,000 | $ 0.29 | $ 0.17 | 8/25/2018 |
| | 50,000 | $ 0.29 | $ 0.17 | 4/20/2020 |
| | 40,000 | $ 0.29 | $ 0.17 | 1/24/2021 |
| | 70,000 | $ 0.52 | $ 0.17 | 6/19/2022 |
| Robert W. England | 100,000 | $ 0.29 | $ 0.17 | 7/13/2019 |
| | 25,000 | $ 0.29 | $ 0.17 | 1/24/2021 |
| Geoffrey R. Tate | 100,000 | $ 0.29 | $ 0.17 | 8/17/2019 |
| | 25,000 | $ 0.29 | $ 0.17 | 1/24/2021 |

**Policies and Procedures for Related Party Transactions**

Our board of directors has adopted a written related-person transaction policy setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy covers, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar or related transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds $120,000 and a related person had or will have a direct or indirect material interest, including, without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person.

In addition, under our code of conduct, our employees and directors have an affirmative responsibility to disclose any transaction or relationship that reasonably could be expected to give rise to a conflict of interest to our legal department, or, if the employee is an executive officer, to our board of directors.

In considering related-person transactions, our audit committee (or other independent body of our board of directors) will take into account the relevant available facts and circumstances including, but not limited to, the risks, costs and benefits to us, the terms of the transaction, the availability of other sources for comparable services or products and, if applicable the impact on a director’s independence in the event that the related person is a director, immediate family member of a director or an entity with which a director is affiliated.

Although we did not have a written policy for the review and approval of transactions with related persons prior to this offering, our board of directors has historically reviewed and approved any transaction where a director or officer had a financial interest, including all of the transactions described above. Prior to approving

such a transaction, the material facts as to a director's or officer's relationship or interest as to the agreement or transaction were disclosed to our board of directors. Our board of directors would take this information into account when evaluating the transaction and in determining whether such a transaction was fair to us and in the best interests of all of our stockholders. In addition, for each related party transaction described above, the disinterested directors in the context of each such transaction approved the applicable agreement and transaction.

## PRINCIPAL STOCKHOLDERS

The following table presents information as to the beneficial ownership of our common stock as of June 30, 2016, for:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our common stock;
- each named executive officer;
- each of our directors; and
- all executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned, subject to community property laws where applicable. Common stock subject to options that are currently exercisable or exercisable within 60 days of June 30, 2016, are deemed to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

Percentage ownership of our common stock "before the offering" in the table is based on 143,157,056 shares of common stock issued and outstanding as of June 30, 2016, adjusted for the conversion of all outstanding shares of convertible preferred stock into 64,641,611 shares of common stock upon the completion of this offering. Percentage ownership of our common stock "after this offering" in the table is based on shares of common stock issued and outstanding on June 30, 2016, adjusted for the conversion of all outstanding shares of convertible preferred stock and convertible promissory notes issued in January 2016 and August 2016 (assuming a conversion date of August 29, 2016, and initial offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus) into shares of common stock upon the completion of this offering, and the issuance of shares of common stock in this offering and assumes no exercise of the underwriters' option to purchase additional shares. Unless otherwise indicated, the address of each of the individuals and entities named below is c/o 1347 N. Alma School Road, Suite 220, Chandler, Arizona 85224.

| Name and Address of Shares Beneficially Owned | Shares Beneficially Owned | Shares Exercisable Within 60 Days | Total Shares Beneficially Owned | | Percentage of Shares Beneficially Owned | |
|---|---|---|---|---|---|---|
| | | | Before the Offering | After the Offering | Before the Offering | After the Offering |
| **5% Stockholders:** | | | | | | |
| Entities affiliated with NV Partners(1)# | 39,087,417 | 1,919,312 | 41,006,729 | | 28.3% | % |
| Entities affiliated with Sigma Partners(2)# | 20,846,609 | 1,023,632 | 21,870,241 | | 15.2% | % |
| Entities affiliated with Lux Ventures(3)# | 17,068,166 | 838,099 | 17,906,265 | | 12.4% | % |
| GLOBALFOUNDRIES Inc.(4) | 17,000,000 | — | 17,000,000 | | 11.9% | % |
| Freescale Semiconductor, Inc.(5) | 14,500,000 | — | 14,500,000 | | 10.1% | % |
| EPIC Venture Fund IV, LLC(6)# | 10,423,302 | 511,816 | 10,935,118 | | 7.6% | % |
| Entities affiliated with Draper Fisher Jurvetson(7)# | 10,423,277 | 511,816 | 10,935,093 | | 7.6% | % |
| **Directors and Named Executive Officers:** | | | | | | |
| Robert W. England | — | 349,125 | 349,125 | | * | * |
| Lawrence G. Finch(8)# | 5,211,651 | 255,908 | 5,467,559 | | 3.8% | % |
| Geoffrey R. Tate(9)# | 1,737,207 | 434,427 | 2,171,634 | | 1.5% | % |
| Peter Hébert(10)# | 17,068,166 | 838,099 | 17,906,265 | | 12.4% | % |
| Stephen J. Socolof(11)# | 39,087,417 | 1,919,312 | 41,006,729 | | 28.3% | % |
| Phillip LoPresti | — | 4,006,729 | 4,006,729 | | 4.0% | % |
| Scott Sewell | — | 808,750 | 808,750 | | * | * |
| Terry Hulett | — | 566,666 | 566,666 | | * | * |
| Ron Foster | — | 105,625 | 105,625 | | * | * |
| **All directors and executive officers as a group (14 persons)**(12) | 63,104,441 | 14,796,911 | 77,901,352 | | 49.3% | % |

* Represents beneficial ownership of less than one percent of the outstanding common stock.

(#) The shares in the column "Shares Exercisable Within 60 Days" include shares of common stock issuable upon conversion of shares of preferred stock issuable upon exercise of $5.0 million of convertible promissory notes issued in January 2016 outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. The shares in the column "Shares Exercisable Within 60 Days" do not include shares of common stock issuable upon conversion of shares of preferred stock issuable upon exercise of $3.5 million of convertible promissory notes issued in August 2016; however, these shares are included in shares beneficially owned after the offering.

(1) Consists of (a) 33,989,063 shares held by NV Partners IV LP, (b) 5,098,354 shares held by NV Partners IV-C LP (together with NV Partners IV LP, the "NVP Funds") and (c) 1,919,312 shares of common stock held by the NVP Funds issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. NVPG IV, LLC is the general partner of NV Partners IV LP and NV Partners IV-C LP. Andrew Garman, Stephen Socolof and Thomas Uhlman are the managing members of NVPG IV, LLC, and share voting and dispositive power with respect to the shares held by such entity. Percentage of shares owned after the offering reflects shares issued upon conversion

of $1,305,430 principal amount of promissory notes. Each managing member disclaims beneficial ownership of these shares except to the extent of his pecuniary interest. The address for each of the entities affiliated with NV Partners is 430 Mountain Avenue, Suite 404, 4th Floor, Murray Hill, NJ 07974.

(2) Consists of (a) 674,057 shares held by Sigma Associates 8, L.P., ("Sigma Associates"), (b) 215,233 shares held by Sigma Investors 8, L.P., ("Sigma Investors"), (c) 19,957,319 shares held by Sigma Partners 8, L.P., ("Sigma Partners"), and (d) 1,023,632 shares of common stock held by the Sigma Funds (as defined below) issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. Percentage of shares owned after the offering reflects shares issued upon conversion of $696,229 principal amount of promissory notes. Sigma Management 8, L.L.C. is the general partner of Sigma Associates 8, L.P., Sigma Investors 8, L.P. and Sigma Partners 8, L.P. (collectively, the "Sigma Funds"). Sigma Management 8, L.L.C. has sole voting and investment power. Robert Davoli, Fahri Diner, Paul Flanagan, Gregory Gretsch, John Mandile, Peter Solvik, Robert Spinner and Wade Woodson, as managing members of Sigma Management 8, L.L.C., share this power. The address for each of the Sigma Funds is 156 Diablo Rd., Suite 320, Danville, CA 94526.

(3) Consists of (a) 16,381,215 shares held by Lux Ventures II, L.P. ("LV-II"), (b) 686,951 shares held by Lux Ventures II Sidecar, L.P. ("Sidecar") (together with LV-II, the "Lux Funds") and (c) 838,099 shares of common stock held by the Lux Funds issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. Percentage of shares owned after the offering reflects shares issued upon conversion of $570,037 principal amount of promissory notes. Lux Venture Partners II, L.P. ("LVP-II") is the general partner of the Lux Funds. Lux Venture Associates II, LLC ("LVA-II") is the general partner of LVP-II and Lux Capital Management, LLC ("LCM LLC") is the sole member of LVA-II. Joshua Wolfe and Peter Hébert are the individual managers of LCM LLC (the "Individual Managers"). LVP II and LCM LLC disclaim beneficial ownership of such shares, except to the extent of their pecuniary interest therein. LCM LLC, as sole member, may be deemed to share voting and investment powers for the shares held by the Lux Funds. As one of two individual managers, each of the Individual Managers disclaims beneficial ownership over the shares reported herein, and in all events disclaims beneficial ownership except to the extent of his pecuniary interest therein. The address for each of the Lux Funds is 295 Madison Ave., 24th Floor, NY, NY 10017.

(4) The address of GLOBALFOUNDRIES Inc. is PO Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands.

(5) The address of Freescale Semiconductor, Inc. is 6501 William Cannon Dr. West, Austin, TX 78735.

(6) Includes 511,816 shares of common stock held by EPIC Venture Fund IV, LLC issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. Percentage of shares owned after the offering reflects shares issued upon conversion of $348,114 principal amount of promissory notes. Nicholaus Efstratis and Kent Madsen have shared voting and investment power with respect to the shares held by EPIC Venture Fund IV, LLC, each of whom disclaims beneficial ownership of the securities held by EPIC Venture Fund IV, LLC, except to the extent of any pecuniary interest therein. The address of EPIC Venture Fund IV, LLC and Messrs. Efstratis and Madsen is 15 W. South Temple, #500 Salt Lake City, UT 84101.

(7) Consists of (a) 9,808,330 shares held by Draper Fisher Jurvetson Fund IX, L.P. ("Fund IX"), (b) 100,500 shares held by Draper Associates, L.P. ("DALP"), (c) 265,781 shares held by Draper Fisher Jurvetson Partners IX, LLC ("Partners IX"), (d) 248,666 shares held by Draper Associates Riskmasters Fund II, LLC ("DARF II," collectively with Fund IX, DALP and Partners IX, the "DFJ Funds") and (e) 511,816 shares of common stock held by the DFJ Funds issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. Percentage of shares owned after the offering reflects shares issued upon conversion of $348,114 principal amount of promissory notes. Timothy C. Draper, John H.N. Fisher and Stephen T. Jurvetson are Managing Directors of the general partner entity of Fund IX that directly holds shares and as such, may be deemed to have voting and investment power with respect to such shares. The Managing Members of Partners IX are Timothy C. Draper, John H.N. Fisher and Stephen T. Jurvetson. The General Partner of DALP is Draper Associates, Inc. which is controlled by its President and majority shareholder, Timothy C. Draper. The Managing Member of DARF II is Timothy C. Draper. These individuals disclaim beneficial ownership with respect to such shares except to the extent of their pecuniary interest therein. The address of each of the entities affiliated with Draper Fisher Jurvetson is 2882 Sand Hill Road, Suite 150, Menlo Park, California 94025.

(8) Includes 255,908 shares of common stock held by Mr. Finch issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016. Percentage of shares owned after the offering reflects shares issued upon conversion of $174,057 principal amount of promissory notes.

(9) Consists of (a) 349,125 shares of common stock issuable to Mr. Tate upon exercise of options exercisable within 60 days of June 30, 2016, (b) 85,302 shares of common stock held by the Tate Family Trust Dated 9/30/98 (the "Tate Family Trust") issuable upon conversion of shares of preferred stock issuable upon exercise of convertible promissory notes outstanding as of June 30, 2016, calculated with interest accruing through and until August 29, 2016, and (c) 1,737,207 shares of common stock held by the Tate Family Trust, of which Mr. Tate is a trustee. Mr. Tate shares voting and investment power with respect to such shares with Colleen Tate. Percentage of shares owned after the offering reflects shares issued upon conversion of $58,019 principal amount of promissory notes.

(10) Consists solely of shares held by the Lux Funds. See footnote 1 above

(11) Consists solely of shares held by the NVP Funds. See footnote 3 above.

(12) Consists of shares held by each executive officer and director, including the shares described in footnote 8 above.

# DESCRIPTION OF CAPITAL STOCK

## Capital Structure

The following description of our capital stock and certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the amended and restated certificate of incorporation and the amended and restated bylaws that will be in effect upon the closing of this offering. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of our common stock and convertible preferred stock reflect changes to our capital structure that will occur upon the closing of this offering.

### *General*

Upon the closing of this offering, our authorized capital stock will consist of 105,000,000 shares, all with a par value of $0.0001 per share, of which:

- 100,000,000 shares are designated as common stock; and
- 5,000,000 shares are designated as preferred stock.

### *Common stock*

As of June 30, 2016, after giving effect to the conversion of all outstanding shares of convertible preferred stock into 64,641,611 shares of common stock immediately prior to the closing of this offering, we had outstanding 143,157,056 shares of common stock held of record by 44 stockholders.

*Voting Rights*. Each holder of our common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders, except as otherwise expressly provided in our amended and restated certificate of incorporation or required by applicable law. Cumulative voting for the election of directors is not provided for in our amended and restated certificate of incorporation, which means that the holders of a majority of our shares of common stock can elect all of the directors then standing for election.

*Dividends and Distributions*. Subject to preferences that may apply to any shares of convertible preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of funds legally available at the times and in the amounts that our board of directors may determine.

*Liquidation Rights.* Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating convertible preferred stock outstanding at that time after payment of liquidation preferences, if any, on any outstanding shares of convertible preferred stock and payment of other claims of creditors.

The rights, preferences, and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of holders of shares of any series of convertible preferred stock that we may designate and issue in the future.

*Preemptive or Similar Rights*. Our common stock is not entitled to preemptive rights and is not subject to conversion, redemption or sinking fund provisions.

### *Convertible Preferred Stock*

As of June 30, 2016, there were 64,641,611 shares of our convertible preferred stock outstanding. Immediately prior to the closing of this offering, all outstanding shares of our convertible preferred stock will convert into 64,641,611 shares of our common stock.

Upon the closing of this offering, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges and restrictions of up to an aggregate of 5,000,000 shares of preferred stock in one or more series and authorize their issuance. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of our common stock. The issuance of our preferred stock could adversely affect the voting power of holders of our common stock and the likelihood that these holders will receive dividend payments and payments upon liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change of control or other corporate action. Upon the closing of this offering, no shares of preferred stock will be outstanding, and we have no present plan to issue any shares of preferred stock.

***Warrants***

As of June 30, 2016, we had warrants to purchase an aggregate of 80,000 shares of our Series A convertible preferred stock outstanding with an exercise price of $1.00 per share. Unless earlier exercised, these warrants will expire in December 2019. Upon the closing of this offering, these warrants will become exercisable for 80,000 shares of our common stock with an exercise price of $1.00 per share.

As of June 30, 2016, we had a warrant to purchase an aggregate of up to 160,000 shares of our Series B convertible preferred stock outstanding with an exercise price of $1.00 per share and a warrant to purchase an aggregate of up to 480,000 shares of our Series B convertible preferred stock outstanding with an exercise price of $1.00 per share. Unless earlier exercised, these warrants will expire in February 2024 and June 2025, respectively. Upon the closing of this offering, these warrants will become exercisable for up to 640,000 shares of our common stock with an exercise price of $1.00 per share.

***Convertible Debt***

As of June 30, 2016, we had outstanding convertible debt in the total principal amount of $5.0 million pursuant to convertible promissory notes issued in January 2016 (which does not include convertible debt in the total principal amount of $3.5 million pursuant to convertible promissory notes issued in August 2016). Upon the closing of this offering, the outstanding principal balance and all unpaid accrued interest of these convertible promissory notes will convert into shares of our common stock at a 20% discount of the per share price of the common stock issued in this offering, unless otherwise converted pursuant to their terms prior to the closing of this offering.

**Registration Rights**

We are party to an investor rights agreement that provides that holders of our convertible preferred stock, certain holders of our common stock, holders of convertible promissory notes and warrants issued by us, and certain holders of common stock that received the common stock upon conversion of convertible preferred stock have certain registration rights. This investor rights agreement was entered into in October 2014 and has been amended or amended and restated from time to time in connection with our convertible preferred stock financings. The registration of shares of our common stock pursuant to the exercise of registration rights described below would enable the holders who have these rights to sell these shares without restriction under the Securities Act when the applicable registration statement is declared effective. We will pay the registration expenses, other than underwriting discounts and commissions, of the shares registered pursuant to the demand, piggyback and Form S-3 registrations described below.

Generally, in an underwritten offering, the managing underwriter, if any, has the right, subject to specified conditions and limitations, to limit the number of shares the registration rights holders participating in any offering may include in any particular registration. The demand, piggyback and Form S-3 registration rights described below will expire on the earlier of (1) the date that is three years after the closing of this offering,(2)

with respect to each stockholder following the closing of this offering, at such time as such stockholder can sell all of its shares pursuant to Rule 144 of the Securities Act, or (3) a deemed liquidation event.

*Demand registration rights.* The holders of an aggregate of 121,461,909 shares of our common stock (including shares previously issued upon conversion of convertible preferred stock, shares issuable upon conversion of outstanding convertible preferred stock and shares issuable upon conversion of shares of convertible preferred stock issuable upon the exercise or exercise of outstanding warrants) are entitled to certain demand registration rights. At any time beginning six months after the closing of this offering, the holders of not less than 75% of these shares may, on not more than two occasions, request that we file a registration statement to register at least 40% of their shares (or a lesser percent if having an aggregate offering price to the public, net of certain selling expenses, would exceed $15,000,000).

*Piggyback registration rights.* In connection with this offering, the holders of an aggregate of 136,201,909 shares of our common stock previously issued upon conversion of convertible preferred stock and common stock issuable upon conversion of outstanding convertible preferred stock and shares of convertible preferred stock issuable upon the exercise or, in certain cases, net exercise of outstanding warrants, were entitled to, and the necessary percentage of holders waived, rights to include their shares of registrable securities in this offering. In the event that we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders, the holders of these shares will be entitled to certain "piggyback" registration rights allowing them to include their shares in such registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act other than with respect to a demand registration or a registration statement on Form S-3, S-4 or S-8, the holders of these shares are entitled to notice of the registration and have the right, subject to limitations that the underwriters may impose on the number of shares included in the registration, to include their shares in the registration.

*Form S-3 registration rights.* The holders of an aggregate of 121,701,909 shares of our common stock previously issued upon conversion of convertible preferred stock and common stock issuable upon conversion of outstanding convertible preferred stock and shares of convertible preferred stock issuable upon the exercise or, in certain cases, net exercise of outstanding warrants will be entitled to certain Form S-3 registration rights. Such holders may make a request that we register their shares on Form S-3 if we are qualified to file a registration statement on Form S-3, provided that they hold 10% of such shares and have an anticipated aggregated offering price of at least $10 million, less certain expenses.

**Anti-Takeover Provisions**

***Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws***

Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the voting power of our shares of common stock outstanding will be able to elect all of our directors. Our amended and restated certificate of incorporation and amended and restated bylaws to be effective upon the closing of this offering will provide that all stockholder actions must be effected at a duly called meeting of stockholders and not by consent in writing. A special meeting of stockholders may be called only by a majority of our whole board of directors, the chair of our board of directors, or our chief executive officer.

Our amended and restated certificate of incorporation will further provide that, immediately after this offering, the affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, removal of directors, special meetings, actions by written consent and cumulative voting. The affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required to amend or repeal our bylaws, although our bylaws may be amended by a simple majority vote of our board of directors.

The foregoing provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of our company by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change the control of our company.

These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of our company. These provisions are also designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy rights. However, these provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in control of our company or our management. As a consequence, these provisions also may inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

Our amended and restated certificate of incorporation provides that stockholder litigation alleging certain claims against us or our board of directors may only be brought in the courts located within the State of Delaware.

***Section 203 of the Delaware General Corporation Law***

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an "interested stockholder" as an entity or person who, together with the person's affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

**Limitations on Liability and Indemnification**

See the section of this prospectus titled "Executive Compensation—Limitation on Liability and Indemnification."

**Listing**

We have applied to have our common stock listed on The Nasdaq Global Market under the trading symbol "MRAM."

**Transfer Agent and Registrar**

Upon the closing of this offering, the transfer agent and registrar for our common stock will be Computershare Trust Company, N.A.

## SHARES ELIGIBLE FOR FUTURE SALE

Future sales of our common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Based on the number of shares outstanding as of June 30, 2016, and after giving effect to the conversion of our outstanding convertible preferred stock and convertible promissory notes (assuming a conversion date of , 2016) into an aggregate of shares of common stock (which includes shares of common stock issuable upon conversion of convertible promissory notes in the aggregate principal amount of $3.5 million issued in August 2016) upon the completion of this offering, shares of common stock will be outstanding, or shares of common stock if the underwriters exercise their option to purchase additional shares in full. All of the shares sold in this offering will be freely tradable unless purchased by our affiliates, as that term is defined in Rule 144 under the Securities Act. The remaining outstanding shares of our common stock will be "restricted securities" as that term is defined under Rule 144 of the Securities Act.

As a result of the lock-up agreements and the provisions of Rules 144 and 701 under the Securities Act, the shares of common stock that will be deemed restricted securities after this offering will be available for sale in the public market as follows:

- no shares will be available for sale until 180 days after the date of this prospectus, subject to certain limited exceptions provided for in the lock-up agreements; and
- shares will be eligible for sale beginning more than 180 days after the date of this prospectus, subject, in the case of shares held by our affiliates, to the volume limitations under Rule 144.

### Rule 144

In general, under Rule 144, beginning 90 days after the date of this prospectus, a person who has beneficially owned restricted shares for at least six months would be entitled to sell those securities provided that (1) such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale and (2) we have been subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale and are current in filing our periodic reports. Persons who have beneficially owned restricted shares of common stock for at least six months but who are our affiliates at the time of, or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed 1% of the number of our common stock then outstanding, which will equal approximately shares immediately after this offering, based on the number of shares of common stock outstanding as of June 30, 2016. Such sales by affiliates must also comply with the manner of sale and notice provisions of Rule 144 and to the availability of current public information about us.

### Rule 701

Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

**Lock-Up Agreements**

We, our executive officers and directors and all of our stockholders have agreed, with certain limited exceptions, that for a period of 180 days from the date of this prospectus, we and they will not, without the prior written consent of Stifel, Nicolaus & Company, Incorporated and Needham & Company, LLC (the Representatives), dispose of or hedge any shares or any securities convertible into or exchangeable for our common stock subject to certain exceptions. The Representatives in their sole discretion may release any of the securities subject to these lock-up agreements at any time. These agreements are described in the section of this prospectus titled “Underwriting.”

The Representatives have advised us that they have no present intent or arrangement to release any common stock subject to a lock-up, and will consider the release of any lock-up on a case-by-case basis. Upon a request to release any shares of common stock subject to a lock-up, The Representatives would consider the particular circumstances surrounding the request, including, but not limited to, the length of time before the lock-up expires, the number of shares of common stock requested to be released, the reasons for the request, the possible impact on the market for our common stock and whether the holder of our common stock requesting the release is an officer, director or other affiliate of ours.

## MATERIAL UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a discussion of the material U.S. federal income tax considerations applicable to non-U.S. holders (as defined below) with respect to their ownership and disposition of shares of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. All prospective non-U.S. holders of our common stock should consult with their own tax advisors with respect to the U.S. federal income tax consequences of the purchase, ownership and disposition of our common stock, as well as any consequences arising under the laws of any other taxing jurisdiction, including any state, local and non-U.S. tax consequences and any other U.S. federal tax consequences. In general, a non-U.S. holder means a beneficial owner of our common stock (other than a partnership or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) that is not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation, or an entity treated as a corporation for U.S. federal income tax purposes, created or organized in the United States or under the laws of the United States or of any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust if (1) a U.S. court can exercise primary supervision over the trust's administration and one or more U.S. persons have the authority to control all of the trust's substantial decisions or (2) the trust has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person.

This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, existing U.S. Treasury Regulations promulgated thereunder, published administrative rulings and judicial decisions, all as in effect as of the date of this prospectus. These laws are subject to change and to differing interpretation, possibly with retroactive effect. Any change or differing interpretation could alter the tax consequences to non-U.S. holders described in this prospectus.

This discussion is limited to non-U.S. holders that hold shares of our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, for investment). This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular non-U.S. holder in light of that non-U.S. holder's individual circumstances, nor does it address any aspects of U.S. federal generation-skipping, gift or (except to the limited extent set forth below) estate tax, or any state, local or non-U.S. taxes. This discussion also does not consider any specific facts or circumstances that may apply to a non-U.S. holder and does not address the special tax rules applicable to particular non-U.S. holders, such as holders that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below), corporations that accumulate earnings to avoid U.S. federal income tax, tax-exempt organizations, banks, financial institutions, insurance companies, brokers, dealers or traders in securities, commodities or currencies, tax-qualified retirement plans, holders subject to the alternative minimum tax or Medicare contribution tax, holders who hold or receive our common stock pursuant to the exercise of employee stock options or otherwise as compensation, holders holding our common stock as part of a hedge, straddle or other risk reduction strategy, conversion transaction or other integrated investment, holders deemed to sell our common stock under the constructive sale provisions of the Code, controlled foreign corporations, passive foreign investment companies, and U.S. expatriates and certain former citizens or long-term residents of the United States.

In addition, this discussion does not address the tax treatment of partnerships (or entities or arrangements that are treated as partnerships for U.S. federal income tax purposes) or persons that hold their common stock through such partnerships or such entities or arrangements. If a partnership, including any entity or arrangement treated as a partnership for U.S. federal income tax purposes, holds shares of our common stock, the U.S. federal income tax treatment of a partner in such partnership will generally depend upon the status of the partner, the activities of the partnership and certain determinations made at the partner level. Such partners and partnerships should consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of our common stock.

There can be no assurance that the Internal Revenue Service, which we refer to as the IRS, will not challenge one or more of the tax consequences described herein, and we have not obtained, nor do we intend to obtain, a ruling with respect to the U.S. federal income tax consequences with respect to the matters discussed below.

**Distributions on Our Common Stock**

Distributions, if any, on our common stock generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's adjusted tax basis in the common stock. Any remaining excess will be treated as capital gain from the sale or exchange of such common stock, subject to the tax treatment described below in "Gain on Sale, Exchange or Other Disposition of Our Common Stock."

Subject to the discussion below regarding backup withholding and FATCA withholding, dividends paid to a non-U.S. holder will generally be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. A non-U.S. holder of our common stock who claims the benefit of an applicable income tax treaty generally will be required to provide a properly executed IRS Form W-8BEN (in the case of an individual), IRS Form W-8BEN-E (in the case of a corporation), or other appropriate form and satisfy relevant certification and other requirements. Non-U.S. holders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States and, if an applicable income tax treaty so provides, that are attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder within the United States, are generally exempt from the 30% withholding tax if the non-U.S. holder satisfies applicable certification and disclosure requirements. To claim the exemption, the non-U.S. holder must furnish to us or our paying agent a valid IRS Form W-8ECI (or applicable successor form), certifying that the dividends are effectively connected with the non-U.S. holder's conduct of a trade or business within the United States. However, such U.S. effectively connected income, net of specified deductions and credits, is taxed at the same graduated U.S. federal income tax rates applicable to U.S. persons (as defined in the Code), unless a specific treaty exemption applies. Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

Non-U.S. Holders may be required to periodically update their IRS Form W-8.

**Gain on Sale, Exchange or Other Disposition of Our Common Stock**

Subject to the discussion below regarding backup withholding and FATCA withholding, in general, a non-U.S. holder will not be subject to any U.S. federal income tax on any gain realized upon such holder's sale, exchange or other disposition of shares of our common stock unless:

- the gain is effectively connected with a U.S. trade or business of the non-U.S. holder and, if an applicable income tax treaty so provides, is attributable to a permanent establishment or a fixed base maintained in the United States by such non-U.S. holder, in which case the non-U.S. holder generally will be taxed at the graduated U.S. federal income tax rates applicable to U.S. persons (as defined in the Code) and, if the non-U.S. holder is a foreign corporation, the branch profits tax described above in "Distributions on Our Common Stock" may also apply;

- the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty) on the net gain derived from the disposition, which may be offset by U.S.-source capital losses of the non-U.S. holder, if any (even though the individual is not considered a resident of the United States) provided the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses; or
- our common stock constitutes a U.S. real property interest because we are, or have been, at any time during the five-year period preceding such disposition (or the non-U.S. holder's holding period, if shorter) a "U.S. real property holding corporation." Even if we are or become a U.S. real property holding corporation, provided that our common stock is regularly traded on an established securities market, our common stock will be treated as a U.S. real property interest only with respect to a non-U.S. holder that holds more than 5% of our outstanding common stock, directly or indirectly, actually or constructively, at any time during the shorter of the 5-year period ending on the date of the disposition or the period that the non-U.S. holder held our common stock. In such case, such non-U.S. holder generally will be taxed on its net gain derived from the disposition at the graduated U.S. federal income tax rates applicable to U.S. persons (as defined in the Code). Generally, a corporation is a U.S. real property holding corporation only if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we do not believe that we are, or have been, a U.S. real property holding corporation, or that we are likely to become one in the future. No assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rules described above.

**Information Reporting and Backup Withholding**

We must report annually to the IRS and to each non-U.S. holder the gross amount of distributions on our common stock (whether or not the distribution represents taxable dividend income) paid to such holder and the tax withheld, if any, with respect to such dividends. Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement. Non-U.S. holders will have to comply with specific certification procedures to establish that the holder is not a U.S. person (as defined in the Code) in order to avoid backup withholding at the applicable rate with respect to dividends on our common stock. U.S. backup withholding generally will not apply to a non-U.S. holder who provides a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E or otherwise establishes an exemption.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a non-U.S. holder where the transaction is effected outside the United States through a non-U.S. office of a broker. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Notwithstanding the foregoing, information reporting and backup withholding may apply if the broker has actual knowledge, or reason to know, that the holder is a U.S. person. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder may be allowed as a credit against the non-U.S. holder's U.S. federal income tax liability, if any, and may entitle such holder to a refund, provided that the required information is timely furnished to the IRS.

Non-U.S. holders should consult with their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

**FATCA Withholding**

Sections 1471 through 1474 of the Code and related Treasury Regulations (commonly referred to as "FATCA") generally impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (as specifically defined for this purpose), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the foreign financial institution is subject to the diligence and reporting requirements, such institution must enter into an agreement with the U.S. government to, among other things, withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which may include certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing these withholding and reporting requirements may be subject to different rules. This U.S. federal withholding tax of 30% also applies to dividends and the gross proceeds of a disposition of our common stock paid to a non-financial foreign entity, unless such entity provides the withholding agent with either a certification that it does not have any substantial direct or indirect U.S. owners or provides information regarding substantial direct and indirect U.S. owners of the entity. The withholding tax described above will not apply if the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from the rules. The withholding provisions described above will generally apply to dividends on our common stock paid on or after July 1, 2014, and with respect to gross proceeds of a sale or other disposition of our common stock on or after January 1, 2019. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. Non-U.S. holders are encouraged to consult with their own tax advisors regarding the possible implications of the legislation on their investment in our common stock.

**Federal Estate Tax**

An individual who is not a citizen of the United States and is also a nonresident (as specially defined for estate tax purposes) who is treated as the owner of, or has made certain lifetime transfers of, an interest in our common stock will be required to include the value thereof in his or her gross estate for U.S. federal estate tax purposes, and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise, even though such individual was not a citizen or resident of the United States at the time of his or her death.

**EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK IN THEIR PARTICULAR CIRCUMSTANCES, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAW, AS WELL AS TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL, NON-U.S. OR U.S. FEDERAL TAX LAWS.**

## UNDERWRITING

Stifel, Nicolaus & Company, Incorporated and Needham & Company, LLC are acting as representatives of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement, each of the underwriters named below has severally agreed to purchase from us the aggregate number of shares of common stock set forth opposite their respective names below:

| Name | Number of Shares |
|---|---|
| Stifel, Nicolaus & Company, Incorporated | |
| Needham & Company, LLC | |
| Canaccord Genuity Inc. | |
| Craig-Hallum Capital Group LLC | |
| Total | |

The underwriting agreement provides that the obligations of the several underwriters are subject to various conditions, including approval of legal matters by counsel. The nature of the underwriters' obligations commits them to purchase and pay for all of the shares of common stock listed above if any are purchased. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part. Under the underwriting agreement, if an underwriter defaults in its commitment to purchase shares of common stock, the commitments of non-defaulting underwriters may be increased or the underwriting agreement may be terminated, depending on the circumstances.

### Option to Purchase Additional Shares of Common Stock

We have granted an option to the underwriters, exercisable for 30 days from the date of this prospectus, to purchase up to a total of additional shares of common stock from us at the initial public offering price, less the underwriting discount, solely to cover over-allotments. If the underwriters exercise their option in whole or in part, then each of the underwriters will be separately committed, subject to the conditions described in the underwriting agreement, to purchase the additional shares in proportion to their respective commitments set forth in the table above.

### Determination of Offering Price

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to currently prevailing general conditions in the equity securities markets, including current market valuations of publicly traded companies considered comparable to our company, the factors to be considered in determining the initial public offering price will include:

- our results of operations;
- our current financial condition;
- our future prospects;
- our management;
- the economic conditions in and future prospects for the industry in which we compete; and
- other factors we and the representatives deem relevant.

We cannot assure you that an active or orderly trading market will develop for our common stock or that our common stock will trade in the public markets subsequent to this offering at or above the initial public offering price.

**Commissions and Discounts**

The underwriters propose to offer the shares directly to the public at the initial public offering price set forth on the cover page of this prospectus, and at this price less a concession not in excess of $ per share to other dealers. After this offering, the offering price, concessions and other selling terms may be changed by the underwriters. The shares are offered subject to receipt and acceptance by the underwriters and to the other conditions, including the right to reject orders in whole or in part.

The following table summarizes the compensation to be paid to the underwriters and the proceeds, before expenses, payable to us:

| | Per Share | Total Without Exercise of Option to Purchase Additional Shares | Total With Exercise of Option to Purchase Additional Shares |
|---|---|---|---|
| Public offering price | $ | $ | $ |
| Underwriting discounts and commissions | $ | $ | $ |
| Proceeds, before expenses, to us | $ | $ | $ |

We estimate that our total expenses in connection with this offering, excluding underwriting discounts and commissions, will be approximately $ . We have also agreed to reimburse the underwriters up to $30,000 for certain of their expenses relating to the clearance of the offering by the Financial Industry Regulatory Authority, Inc.

**Indemnification of Underwriters**

We will indemnify the underwriters against some civil liabilities, including liabilities under the Securities Act and liabilities arising from breaches of our representations and warranties contained in the underwriting agreement. If we are unable to provide this indemnification, we will contribute to payments the underwriters may be required to make in respect of those liabilities. We will also indemnify the underwriters for losses if the shares (other than those purchased pursuant to the underwriters' option to purchase additional shares) are not delivered to the underwriters' accounts on the initial settlement date.

**No Sales of Similar Securities**

We, our directors and executive officers and substantially all of our other securityholders have entered into lock-up agreements with Stifel, Nicolaus & Company, Incorporated and Needham & Company, LLC as representatives of the underwriters prior to the commencement of this offering pursuant to which each of these persons or entities, for a period of 180 days after the date of this prospectus, may not offer, sell, contract to sell (including any short sale), pledge, hypothecate, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, grant any option, right or warrant for the sale of, purchase any option or contract to sell, sell any option or contract to purchase or otherwise encumber, dispose of or transfer, grant any rights with respect to, directly or indirectly, any shares of common stock or securities convertible into or exchangeable for shares of common stock, enter into a transaction which would have the same effect or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock, whether such aforementioned transaction is to be settled by delivery of the common stock or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap hedge or other arrangement, subject to specified exceptions. These restrictions shall also apply to any common stock received upon exercise of options granted to or warrants owned by each of the persons or entities described in the immediately preceding sentence. These restrictions will not apply to us with respect to issuances of common stock or securities exercisable for, convertible into or exchangeable for common stock in connection with any acquisition, collaboration, merger, licensing or other joint venture or strategic transaction involving our company, subject to certain limitations.

Stifel, Nicolaus & Company, Incorporated and Needham & Company, LLC, as representatives of the underwriters, may release any of the securities subject to these lock-up agreements which, in the case of officers and directors, shall be with notice.

**Listing**

We have applied to list our common stock on the NASDAQ Global Market under the symbol “MRAM.”

**Short Sales, Stabilizing Transactions and Penalty Bids**

In order to facilitate this offering, persons participating in this offering may engage in transactions that stabilize, maintain or otherwise affect the price of the shares during and after this offering. Specifically, the underwriters may engage in the following activities in accordance with the rules of the SEC.

***Short Sales***

Short sales involve the sales by the underwriters of a greater number of shares of common stock than they are required to purchase in the offering. Covered short sales are short sales made in an amount not greater than the underwriters’ option to purchase additional shares of common stock. The underwriters may close out any covered short position by either exercising their option or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of our common stock available for purchase in the open market as compared to the price at which they may purchase the shares through their option.

Naked short sales are any short sales in excess of such option to purchase additional shares of common stock. The underwriters must close out any naked short position by purchasing shares of our common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

***Stabilizing Transactions***

The underwriters may make bids for or purchases of shares of our common stock for the purpose of pegging, fixing or maintaining the price of our common stock, so long as stabilizing bids do not exceed a specified maximum.

***Penalty Bids***

If the underwriters purchase shares of our common stock in the open market in a stabilizing transaction or syndicate covering transaction, they may reclaim a selling concession from the underwriters and selling group members who sold those shares as part of this offering. Stabilization and syndicate covering transactions may cause the price of our common stock to be higher than it would be in the absence of these transactions. The imposition of a penalty bid might also have an effect on the price of the shares if it discourages presales of the shares.

The transactions above may occur on the NASDAQ Global Market or otherwise. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our common stock. If such transactions are commenced, they may be discontinued without notice at any time.

**Discretionary Sales**

The underwriters have informed us that they do not expect to confirm sales of the shares of common stock offered by this prospectus to accounts over which they exercise discretionary authority without obtaining the specific approval of the account holder.

**Electronic Distribution**

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by one or more of the underwriters participating in this offering, or by their affiliates. Other than the prospectus in electronic format, the information on any underwriter's website and any information contained in any other website maintained by an underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or any underwriter in its capacity as underwriter and should not be relied upon by investors.

**Relationships**

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their affiliates have in the past provided, and may in the future from time to time provide, investment banking and other financing and banking services to us, for which they have in the past received, and may in the future receive, customary fees and reimbursement for their expenses. In the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments including bank loans for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments.

**Notice to Residents of the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date), an offer of securities described in this prospectus may not be made to the public in that relevant member state other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- to fewer than 100, or if the relevant member state has implemented the relevant provision of the 2010 PD Amending Directive (2010/73/EU) 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives; or
- in any other circumstances that do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive,

provided that no such offer of securities shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Directive. For purposes of this provision, the expression an "offer of securities to the public" in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state, and the expression "Prospectus Directive" means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

We have not authorized and do not authorize the making of any offer of securities through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the securities as contemplated in this prospectus. Accordingly, no purchaser of the securities, other than the underwriters, is authorized to make any further offer of the securities on behalf of us or the underwriters.

**Notice to Residents of the United Kingdom**

This document is only being distributed to, and is only directed at (i) persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 as amended, or the Order, (ii) persons falling within Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the Order; or (iii) persons to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

**Notice to Residents of Switzerland**

The securities which are the subject of the offering contemplated by this prospectus may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This prospectus has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. None of this prospectus or any other offering or marketing material relating to the securities or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

None of this prospectus or any other offering or marketing material relating to the offering, us or the securities have been or will be filed with or approved by any Swiss regulatory authority. In particular, this prospectus will not be filed with, and the offer of securities will not be supervised by the Swiss Financial Market Supervisory Authority, or FINMA, and the offer of securities has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of the securities.

**Notice to Residents of Japan**

The underwriters will not offer or sell any of the shares of common stock directly or indirectly in Japan or to, or for the benefit of, any Japanese person or to others, for reoffering or resale directly or indirectly in Japan or to any Japanese person, except in each case pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law of Japan and any other applicable laws and regulations of Japan. For purposes of this paragraph, "Japanese person" means any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

**Notice to Residents of Hong Kong**

The underwriters and each of their affiliates have not (i) offered or sold, and will not offer or sell, in Hong Kong, by means of any document, any shares of common stock other than (a) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; and (ii) issued or had in its possession for the purposes of issue, and will not issue or have in its possession for the purposes of issue, whether in Hong Kong or elsewhere any advertisement,

invitation or document relating to the shares of common stock which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the shares of common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance and any rules made under that Ordinance. The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.

**Notice to Residents of Singapore**

This document has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this document and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares of common stock may not be circulated or distributed, nor may the shares of common stock be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the Securities and Futures Act), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the Securities and Futures Act or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the Securities and Futures Act.

Where the shares of common stock are subscribed or purchased under Section 275 by a relevant person, which is:

(a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferable for six months after that corporation or that trust has acquired the shares of common stock under Section 275 except:

(1) to an institutional investor or to a relevant person, or to any person pursuant to an offer that is made on terms that such rights or interest are acquired at a consideration of not less than $200,000 (or its equivalent in a foreign currency) for each transaction, whether such amount is to be paid for in cash or by exchange of securities or other assets;

(2) where no consideration is given for the transfer; or

(3) by operation of law.

**Notice to Residents of Canada**

This document constitutes an "exempt offering document" as defined in and for the purposes of applicable Canadian securities laws. No prospectus has been filed with any securities commission or similar regulatory authority in Canada in connection with the offer and sale of the shares. No securities commission or similar regulatory authority in Canada has reviewed or in any way passed upon this document or on the merits of the shares and any representation to the contrary is an offence.

**Canadian investors are advised that this document has been prepared in reliance on section 3A.3 of National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105"). Pursuant to section 3A.3 of NI 33-105, this document is exempt from the requirement that the Company and the underwriters provide investors with certain conflicts of interest disclosure pertaining to "connected issuer" and/or "related issuer" relationships that may exist between the Company and the underwriters as would otherwise be required pursuant to subsection 2.1(1) of NI 33-105.**

***Resale Restrictions***

The offer and sale of the shares in Canada is being made on a private placement basis only and is exempt from the requirement that the Company prepares and files a prospectus under applicable Canadian securities laws. Any resale of shares acquired by a Canadian investor in this offering must be made in accordance with applicable Canadian securities laws, which may vary depending on the relevant jurisdiction, and which may require resales to be made in accordance with Canadian prospectus requirements, a statutory exemption from the prospectus requirements, in a transaction exempt from the prospectus requirements or otherwise under a discretionary exemption from the prospectus requirements granted by the applicable local Canadian securities regulatory authority. These resale restrictions may under certain circumstances apply to resales of the shares outside of Canada.

***Representations of Purchasers***

Each Canadian investor who purchases the shares will be deemed to have represented to the Company, the underwriters and to each dealer from whom a purchase confirmation is received, as applicable, that the investor (i) is purchasing as principal, or is deemed to be purchasing as principal in accordance with applicable Canadian securities laws, for investment only and not with a view to resale or redistribution; (ii) is an "accredited investor" as such term is defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106") or, in Ontario, as such term is defined in section 73.3(1) of the *Securities Act* (Ontario); and (iii) is a "permitted client" as such term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

***Taxation and Eligibility for Investment***

Any discussion of taxation and related matters contained in this document does not purport to be a comprehensive description of all of the tax considerations that may be relevant to a Canadian investor when deciding to purchase the shares and, in particular, does not address any Canadian tax considerations. No representation or warranty is hereby made as to the tax consequences to a resident, or deemed resident, of Canada of an investment in the shares or with respect to the eligibility of the shares for investment by such investor under relevant Canadian federal and provincial legislation and regulations.

***Rights of Action for Damages or Rescission***

Securities legislation in certain of the Canadian jurisdictions provides certain purchasers of securities pursuant to an offering memorandum, including where the distribution involves an "eligible foreign security" as such term is defined in Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* and in Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions*, as applicable, with a remedy for damages or rescission, or both, in addition to any other rights they may have at law, where the offering memorandum, or other offering document that constitutes an offering memorandum, and any amendment thereto, contains a "misrepresentation" as defined under applicable Canadian securities laws. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed under, and are subject to limitations and defences under, applicable Canadian securities legislation. In addition, these remedies are in addition to and without derogation from any other right or remedy available at law to the investor.

***Language of Documents***

Upon receipt of this document, each Canadian investor hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the securities described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *Par la réception de ce document, chaque investisseur canadien confirme par les présentes qu'il a expressément exigé*

*que tous les documents faisant foi ou se rapportant de quelque manière que ce soit à la vente des valeurs mobilières décrites aux présentes (incluant, pour plus de certitude, toute confirmation d'achat ou tout avis) soient rédigés en anglais seulement.*

## LEGAL MATTERS

The validity of the issuance of our common stock offered in this prospectus will be passed upon for us by Cooley LLP, Palo Alto, California. Pillsbury Winthrop Shaw Pittman LLP, Palo Alto, California, is acting as counsel for the underwriters in connection with certain legal matters relating to the shares of common stock offered by this prospectus.

## EXPERTS

The financial statements of Everspin Technologies, Inc. at December 31, 2015 and 2014, and for each of the two years in the period ended December 31, 2015, appearing in this prospectus and registration statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon (which contains an explanatory paragraph describing conditions that raise substantial doubt about the company's ability to continue as a going concern as described in Note 1 to the financial statements) appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information with respect to Everspin Technologies, Inc. and the shares of common stock offered hereby, reference is made to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. A copy of the registration statement and the exhibits and schedules filed therewith may be inspected without charge at the public reference room maintained by the SEC, located at 100 F Street N.E., Room 1580, Washington, D.C. 20549, and copies of all or any part of the registration statement may be obtained from such offices upon the payment of the fees prescribed by the SEC. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains a website that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address is www.sec.gov.

We maintain a website at www.Everspin.com. The reference to our website address does not constitute incorporation by reference of the information contained on our website, and you should not consider the contents of our website in making an investment decision with respect to our common stock.

You may also request a copy of these filings, at no cost to you, by writing or telephoning us at the following address:

Everspin Technologies, Inc.
1347 N. Alma School Road
Suite 220
Chandler, Arizona 85224
Attention: Chief Financial Officer
(480) 347-1111

**EVERSPIN TECHNOLOGIES, INC**

**INDEX TO FINANCIAL STATEMENTS**

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Everspin Technologies, Inc.

We have audited the accompanying balance sheets of Everspin Technologies, Inc. (the "Company") as of December 31, 2014 and 2015, and the related statements of operations and comprehensive loss, redeemable convertible preferred stock and stockholders' deficit and cash flows for each of the two years in the period ended December 31, 2015. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Everspin Technologies, Inc. as of December 31, 2014 and 2015, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2015, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has recurring losses from operations and has a net capital deficiency. Without access to additional liquidity, the Company does not expect it will be able to fund its obligations as they come due in 2016 and beyond, which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ ERNST & YOUNG LLP

Phoenix, Arizona
May 13, 2016

**EVERSPIN TECHNOLOGIES, INC**
**Balance Sheets**
**(In thousands, except share and per share amounts)**

| | December 31, 2014 | December 31, 2015 | June 30, 2016 | Pro Forma June 30, 2016 (unaudited) |
|---|---|---|---|---|
| **Assets** | | | | |
| Current assets: | | | | |
| Cash and cash equivalents | $ 9,624 | $ 2,307 | $ 2,642 | |
| Accounts receivable, net | 2,248 | 1,909 | 2,730 | |
| Amounts due from related parties | 666 | 564 | 502 | |
| Inventory | 3,745 | 4,176 | 3,772 | |
| Prepaid expenses and other current assets | 73 | 190 | 677 | |
| Total current assets | 16,356 | 9,146 | 10,323 | |
| Property and equipment, net | 1,118 | 1,654 | 1,721 | |
| Intangible assets, net | 282 | 132 | 66 | |
| Deferred offering costs | — | — | 1,560 | |
| Other assets | 19 | 29 | 26 | |
| Total assets | $ 17,775 | $ 10,961 | $ 13,696 | |
| **Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit** | | | | |
| Current liabilities: | | | | |
| Accounts payable | $ 929 | $ 1,162 | $ 2,883 | |
| Accrued liabilities | 1,327 | 1,755 | 2,235 | |
| Amounts due to related parties | 484 | 3,812 | 6,161 | |
| Deferred income on shipments to distributors | 1,802 | 1,440 | 1,643 | |
| Derivative liability | — | — | 388 | |
| Convertible promissory notes payable-related party | — | — | 4,861 | |
| Current portion of long-term debt | 2,874 | 1,175 | 3,658 | |
| Total current liabilities | 7,416 | 9,344 | 21,829 | |
| Redeemable convertible preferred stock warrant liability | 145 | 437 | 416 | $ — |
| Deferred revenue | — | 229 | 125 | |
| Long-term debt, net of current portion | — | 6,739 | 5,388 | |
| Total liabilities | 7,561 | 16,749 | 27,758 | |
| Commitments and contingencies | | | | |
| Redeemable convertible preferred stock, $0.0001 par value per share; 68,080,000 shares authorized as of December 31, 2014 and 2015, and June 30, 2016 (unaudited); 64,641,611 shares issued and outstanding as of December 31, 2014 and 2015, and June 30, 2016 (unaudited); aggregate liquidation preference of $64,642 as of December 31, 2015, and June 30, 2016 (unaudited); no shares authorized, issued and outstanding, pro forma (unaudited) | 64,642 | 64,642 | 64,642 | — |
| Stockholders' deficit: | | | | |
| Common stock, $0.0001 par value per share; 175,000,000 shares authorized as of December 31, 2014 and 2015, and June 30, 2016 (unaudited); 78,357,197, 78,397,717 and 78,515,445 (unaudited) shares issued and outstanding as of December 31, 2014 and 2015, and June 30, 2016, respectively; 100,000,000 shares authorized; shares issued and outstanding, pro forma (unaudited) | 8 | 8 | 8 | |
| Additional paid-in capital | 7,112 | 9,293 | 10,975 | |
| Accumulated deficit | (61,548) | (79,731) | (89,687) | |
| Total stockholders' deficit | (54,428) | (70,430) | (78,704) | |
| Total liabilities, redeemable convertible preferred stock and stockholders' deficit | $ 17,775 | $ 10,961 | $ 13,696 | |

See accompanying notes to financial statements.

**EVERSPIN TECHNOLOGIES, INC**
**Statements of Operations and Comprehensive Loss**
**(In thousands except shares and per share amounts)**

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Product sales (including related party sales of $3,191 and $3,472 for the years ended December 31, 2014 and 2015, and $1,772 (unaudited) and $735 (unaudited) for the six months ended June 30, 2015 and 2016 | $ 23,071 | $ 25,875 | $ 12,437 | $ 12,723 |
| Licensing and royalty revenue | 1,825 | 671 | 217 | 143 |
| Total revenue | 24,896 | 26,546 | 12,654 | 12,866 |
| Cost of sales | 11,806 | 12,568 | 5,231 | 5,704 |
| Gross profit | 13,090 | 13,978 | 7,423 | 7,162 |
| Operating expenses: | | | | |
| Research and development | 12,664 | 21,126 | 9,642 | 11,231 |
| General and administrative | 7,085 | 6,565 | 3,574 | 3,295 |
| Sales and marketing | 3,259 | 3,823 | 1,454 | 1,688 |
| Total operating expenses | 23,008 | 31,514 | 14,670 | 16,214 |
| Loss from operations | (9,918) | (17,536) | (7,247) | (9,052) |
| Interest expense | (263) | (653) | (183) | (1,184) |
| Other income (expense), net | (2) | 6 | 9 | 280 |
| Net loss and comprehensive loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| Net loss per common share, basic and diluted | $ (0.15) | $ (0.27) | $ (0.11) | $ (0.15) |
| Weighted-average shares used to compute net loss per common share, basic and diluted | 66,159,420 | 66,357,720 | 66,357,197 | 66,440,718 |
| Pro forma net loss per share, basic and diluted (unaudited) | | $ (0.14) | | $ |
| Weighted-average shares used to compute pro forma net loss per share, basic and diluted (unaudited) | | 130,999,331 | | |

See accompanying notes to financial statements.

**EVERSPIN TECHNOLOGIES, INC**
**Statements of Redeemable Convertible Preferred Stock and Stockholders' Deficit**
**(In thousands, except share amounts)**

| | Redeemable Convertible Preferred Stock | | Common Stock | | Additional Paid-In Capital | Accumulated Deficit | Total Stockholders' Deficit |
|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | |
| Balances at December 31, 2013 | 52,599,280 | $ 52,599 | 66,101,135 | $ 7 | $ 6,165 | $ (51,365) | $ (45,193) |
| Issuance of Series B redeemable convertible stock | 10,026,722 | 10,027 | — | — | — | — | — |
| Conversion of convertible promissory notes | 2,015,609 | 2,016 | — | — | — | — | — |
| Issuance of shares to GLOBALFOUNDRIES subject to vesting provisions | — | — | 12,000,000 | 1 | — | — | 1 |
| Issuance of common stock upon exercise of stock options | — | — | 256,062 | — | 41 | — | 41 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES | — | — | — | — | 107 | — | 107 |
| Stock-based compensation expense | — | — | — | — | 799 | — | 799 |
| Net loss | — | — | — | — | — | (10,183) | (10,183) |
| Balances at December 31, 2014 | 64,641,611 | 64,642 | 78,357,197 | 8 | 7,112 | (61,548) | (54,428) |
| Issuance of common stock upon exercise of stock options | — | — | 40,520 | — | 4 | — | 4 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES | — | — | — | — | 1,761 | — | 1,761 |
| Stock-based compensation expense | — | — | — | — | 416 | — | 416 |
| Net loss | — | — | — | — | — | (18,183) | (18,183) |
| Balances at December 31, 2015 | 64,641,611 | 64,642 | 78,397,717 | 8 | 9,293 | (79,731) | (70,430) |
| Issuance of common stock upon exercise of stock options (unaudited) | — | — | 117,728 | — | 29 | — | 29 |
| Compensation expense related to vesting of common stock issued to GLOBALFOUNDRIES (unaudited) | — | — | — | — | 1,442 | — | 1,442 |
| Stock-based compensation expense (unaudited) | — | — | — | — | 211 | — | 211 |
| Net loss (unaudited) | — | — | — | — | — | (9,956) | (9,956) |
| Balances at June 30, 2016 (unaudited) | 64,641,611 | $ 64,642 | 78,515,445 | $ 8 | $ 10,975 | $ (89,687) | $ (78,704) |

See accompanying notes to financial statements.

**EVERSPIN TECHNOLOGIES, INC**
**Statements of Cash Flows**
**(In thousands)**

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| **Cash flows from operating activities** | | | | |
| Net loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | | |
| Depreciation and amortization | 1,517 | 1,340 | 677 | 380 |
| Loss on disposal of property and equipment | — | — | — | 80 |
| Stock-based compensation | 799 | 416 | 186 | 211 |
| Change in fair value of redeemable convertible preferred stock warrant liability | (6) | (15) | (15) | (21) |
| Change in fair value of derivative liability | — | — | — | (265) |
| Non-cash interest expense | 98 | 232 | 126 | 783 |
| Compensation expense related to vesting of common stock | 107 | 1,761 | 533 | 1,442 |
| Changes in operating assets and liabilities: | | | | |
| Accounts receivable | (579) | 339 | (305) | (821) |
| Amounts due from related parties | (455) | 102 | 33 | 62 |
| Prepaid expenses and other current assets | 52 | (77) | (884) | (507) |
| Inventory | (297) | (431) | (973) | 404 |
| Other assets | 63 | (10) | (9) | 3 |
| Accounts payable | 514 | 233 | (526) | 967 |
| Accrued liabilities | 73 | 428 | (122) | 292 |
| Amounts due to related parties | (142) | 3,328 | 1,613 | 2,197 |
| Deferred income on shipments to distributors | 501 | (362) | 500 | 203 |
| Deferred revenue | — | 229 | — | (104) |
| Net cash used in operating activities | (7,938) | (10,670) | (6,587) | (4,650) |
| **Cash flows from investing activities** | | | | |
| Purchases of property and equipment | (525) | (1,295) | (666) | (427) |
| Net cash used in investing activities | (525) | (1,295) | (666) | (427) |
| **Cash flows from financing activities** | | | | |
| Proceeds from convertible promissory notes-related party | — | — | — | 5,000 |
| Proceeds from debt | 4,000 | 8,000 | 8,000 | 1,500 |
| Payments on debt | (281) | (3,000) | (3,000) | (355) |
| Payment of debt issuance costs | (76) | (130) | (130) | (15) |
| Payments on capital lease obligation | — | (226) | (111) | (129) |
| Payments of deferred offering costs | — | — | — | (618) |
| Proceeds from issuance of convertible preferred stock | 10,027 | — | — | — |
| Proceeds from exercise of stock options | 41 | 4 | — | 29 |
| Proceeds from issuance of common stock | 1 | — | — | — |
| Net cash provided by (used in) financing activities | 13,712 | 4,648 | 4,759 | 5,412 |
| Net increase (decrease) in cash and cash equivalents | 5,249 | (7,317) | (2,494) | 335 |
| Cash and cash equivalents at beginning of period | 4,375 | 9,624 | 9,624 | 2,307 |
| Cash and cash equivalents at end of period | $ 9,624 | $ 2,307 | $ 7,130 | $ 2,642 |
| **Supplementary cash flow information:** | | | | |
| Interest paid | $ 165 | $ 421 | $ 57 | $ 401 |
| **Non-cash investing and financing activities:** | | | | |
| Purchase of property and equipment under capital lease obligations | $ — | $ 431 | $ 399 | $ 34 |
| Conversion of convertible promissory notes | $ 2,016 | $ — | $ — | $ — |
| Issuance of warrants with debt | $ 106 | $ 307 | $ 307 | $ — |
| Deferred offering costs recorded in accounts payable and accrued liabilities | $ — | $ — | $ — | $ 942 |

See accompanying notes to financial statements.

**EVERSPIN TECHNOLOGIES, INC**
**Notes to Financial Statements**

## 1. Organization and Operations

Everspin Technologies, Inc. (the "Company") was incorporated in Delaware on May 16, 2008. The Company's MRAM solutions offer the persistence of non-volatile memory with the speed and endurance of random access memory (RAM) and enable the protection of mission critical data particularly in the event of power interruption or failure. The Company's MRAM solutions allow its customers in the industrial, automotive and transportation, and enterprise storage markets to design high performance, power efficient and reliable systems without the need for bulky batteries or capacitors.

### *Need to Raise Additional Capital and Going Concern*

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates continuity of operations, the realization of assets and the satisfaction of liabilities and commitments in the normal course of business for the twelve month period following the date of these financial statements. The accompanying financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result should the Company be unable to continue as a going concern.

The Company has incurred net losses from operations since its inception and had an accumulated deficit of $79.7 million and $89.7 million (unaudited) as of December 31, 2015, and June 30, 2016, respectively. At December 31, 2015, and June 30, 2016, the Company's total liquidity to fund operations was $6.3 million and $5.5 million (unaudited), respectively, which consisted of cash and cash equivalent balances of $2.3 million and $2.6 million (unaudited), respectively, and availability under the Company's revolving loan of $4.0 million and $2.9 million (unaudited), respectively. The ability to access the revolving loan is dependent upon levels of accounts receivable, thus the full $4.0 million may not be available. The Company expects to incur additional losses and negative operating cash flows and, as a result, it will require additional capital to fund its operations and to execute its business plan. Management plans to finance its operations in the future with equity and debt financing arrangements. However, if capital is not available at adequate levels or on acceptable terms, management believes that planned expenditures may need to be reduced, extending the time period over which the currently available resources will be adequate to fund the Company's operations. In January 2016, the Company issued convertible promissory notes to its stockholders for $5.0 million in cash and drew down $1.5 million from its revolving credit facility (see Notes 5, 9 and 13). In addition, in August 2016, the Company issued $3.5 million principal amount of subordinated convertible promissory notes to its stockholders (see Note 14). Nevertheless, additional capital will be needed to meet the operating requirements of the Company throughout 2016 and beyond. The circumstances and events described above raise substantial doubt as to whether the Company will be able to continue as a going concern for a reasonable period of time. Based upon the Company's current financial condition as discussed above, management believes that additional or replacement debt or equity capital will need to be raised in order for the Company to continue to operate as a going concern and to avoid filing for protection under the U.S. Bankruptcy Code.

## 2. Summary of Significant Accounting Policies

### *Use of Estimates*

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, management evaluates its estimates, including those related to revenue recognition, fair value of assets and liabilities, inventory, income taxes, redeemable convertible preferred stock and related warrants, common stock, and stock-based compensation. Actual results could differ from those estimates and assumptions.

***Unaudited Interim Financial Statements***

The accompanying balance sheet as of June 30, 2016, the statements of operations and comprehensive loss and cash flows for the six months ended June 30, 2015 and 2016, and the statement of redeemable convertible preferred stock and stockholders' deficit as of June 30, 2016, are unaudited. The financial data and other information disclosed in these notes to the financial statements related to June 30, 2016, and the six months ended June 30, 2015 and 2016, are also unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company's financial position as of June 30, 2016, and the results of its operations and cash flows for the six months ended June 30, 2015 and 2016. The results for the six months ended June 30, 2016, are not necessarily indicative of results to be expected for the year ending December 31, 2016, or for any annual or interim period.

***Unaudited Pro Forma Financial Information***

The unaudited pro forma financial information as June 30, 2016 presents the Company's balance sheet information as though all of the Company's outstanding redeemable convertible preferred stock had converted into shares of common stock upon the completion of a qualifying initial public offering of the Company's common stock (an "IPO"). In addition, the pro forma balance sheet information assumes the reclassification of the redeemable convertible preferred stock warrant liability to stockholders' deficit upon completion of an IPO, as the warrants to purchase redeemable convertible preferred stock will be converted into warrants to purchase common stock. The unaudited pro forma balance sheet information does not assume any proceeds from the proposed IPO.

***Segments***

The Company's chief operating decision maker is its Chief Executive Officer. The Company operates its business as one operating segment for purposes of assessing performance and making operating decisions. All of the Company's assets are maintained in the United States. The Company derives its revenue from domestic and international markets, based on the billing address of the customer.

***Cash and Cash Equivalents***

The Company considers all highly liquid, short-term investments with remaining maturity dates of three months or less at the date of purchase to be cash equivalents. The Company's cash equivalents consist of money market funds.

***Accounts Receivable***

Accounts receivable are recorded at the invoiced amount and do not bear interest. The Company generally does not require collateral or other security in support of accounts receivable. Allowances are provided for individual accounts receivable when the Company becomes aware of a customer's inability to meet its financial obligations, such as in the case of bankruptcy, deterioration in the customer's operating results or change in financial position. If circumstances related to customers change, estimates of the recoverability of receivables would be further adjusted. The Company also considers a number of factors in evaluating the sufficiency of its allowance for doubtful accounts, including the length of time receivables are past due, significant one-time events, creditworthiness of customers and historical experience. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. At December 31, 2014 and 2015, and June 30, 2016 (unaudited), there was no allowance for doubtful accounts.

The Company also establishes an allowance for product returns. The Company analyzes historical returns, current economic trends and changes in customer demand and acceptance of products when evaluating the adequacy of sales returns. As the returns are processed as credits on future purchases, the allowance is recorded against the balance of trade accounts receivable. The allowance was $206,000, $344,000 and $190,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively.

***Concentration of Credit Risk***

Financial instruments that potentially expose the Company to a concentration of credit risk consist principally of cash and cash equivalents that are held by a financial institution in the United States and accounts receivable. Amounts on deposit with a financial institution may at times exceed federally insured limits. The Company maintains its cash accounts with high credit quality financial institutions and accordingly, minimal credit risk exists with respect to the financial institutions.

Significant customers are those which represent more than 10% of the Company's total revenue or gross accounts receivable balance at each respective balance sheet date. For each significant customer, revenue as a percentage of total revenue and accounts receivable as a percentage of total accounts receivable, net are as follows:

| | Revenue | | Revenue | | Accounts Receivable, net | | |
|---|---|---|---|---|---|---|---|
| | Year Ended December 31, | | Six Months Ended June 30, | | As of December 31, | | June 30, |
| Customers | 2014 | 2015 | 2015 | 2016 | 2014 | 2015 | 2016 |
| | | | (unaudited) | | | | (unaudited) |
| Customer A | 26% | 26% | 25% | 24% | 22% | 28% | 18% |
| Customer B | 13 | 13 | 14 | * | 19 | 23 | 18 |
| Customer C | 15 | * | * | 10 | 12 | * | 16 |
| Customer D | * | * | * | * | * | * | 15 |
| Customer E | * | * | 11 | * | * | * | * |
| Customer F | * | * | 11 | 11 | * | * | * |
| Customer G | * | * | 10 | * | * | * | * |

* Less than 10%

***Inventories***

Inventories are valued at the lower of cost, using the first-in, first-out or specific identification method, or market. The carrying value of inventory is adjusted for excess and obsolete inventory based on inventory age, shipment history and the forecast of demand over a specific future period. At the point of loss recognition, a new lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that new cost basis.

***Deferred Offering Costs***

Deferred offering costs, primarily consisting of legal, accounting, printer and other direct fees and costs relating to the proposed initial public offering, are capitalized. The deferred offering costs will be offset against the Company's planned initial public offering proceeds upon the closing of the offering. In the event the offering is terminated, all of the deferred offering costs will be expensed. As of June 30, 2016, the Company capitalized $1.6 million (unaudited) of deferred offering costs on the balance sheets. No costs were capitalized as of December 31, 2015.

***Fair Value of Financial Instruments***

The Company discloses and recognizes the fair value of its assets and liabilities using a hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the reporting date. The hierarchy gives the highest priority to valuations based upon unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to valuations based upon unobservable inputs that are significant to the valuation (Level 3 measurements). The guidance establishes three levels of the fair value hierarchy as follows:

*Level 1*—Inputs are unadjusted quoted prices in active markets for identical assets or liabilities at the measurement date.

*Level 2*—Inputs (other than quoted market prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date and for the duration of the instrument's anticipated life.

*Level 3*—Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

The carrying value of accounts receivable, accounts payable, and other accruals readily convertible into cash approximate fair value because of the short-term nature of the instruments. The carrying value of the Company's variable interest rate debt, excluding unamortized debt issuance costs, approximates fair value. The Company's financial instruments consist of Level 1 assets and Level 3 liabilities. Where quoted prices are available in an active market, securities are classified as Level 1. Level 1 assets consist primarily of highly liquid money market funds that are included in cash equivalents. Level 3 liabilities consist of the redeemable convertible preferred stock warrant liability. Generally, increases or decreases in the fair value of the underlying redeemable convertible preferred stock would result in a directionally similar impact in the fair value measurement of the warrant liability.

The following table sets forth the fair value of the Company's financial assets and liabilities measured at fair value on a recurring basis based on the three-tier fair value hierarchy (in thousands):

| | December 31, 2014 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Assets** | | | | |
| Money market funds | $6,492 | $ — | $ — | $6,492 |
| Total assets measured at fair value | $6,492 | $ — | $ — | $6,492 |
| **Liabilities** | | | | |
| Redeemable convertible preferred stock warrant liability | $ — | $ — | $ 145 | $ 145 |
| Total liabilities measured at fair value | $ — | $ — | $ 145 | $ 145 |

| | December 31, 2015 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Assets** | | | | |
| Money market funds | $2,354 | $ — | $ — | $2,354 |
| Total assets measured at fair value | $2,354 | $ — | $ — | $2,354 |
| **Liabilities** | | | | |
| Redeemable convertible preferred stock warrant liability | $ — | $ — | $ 437 | $ 437 |
| Total liabilities measured at fair value | $ — | $ — | $ 437 | $ 437 |

| | June 30, 2016 (unaudited) | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Assets** | | | | |
| Money market funds | $3,009 | $ — | $ — | $3,009 |
| Total assets measured at fair value | $3,009 | $ — | $ — | $3,009 |
| **Liabilities** | | | | |
| Redeemable convertible preferred stock warrant liability | $ — | $ — | $ 416 | $ 416 |
| Derivative liability | — | — | 388 | 388 |
| Total liabilities measured at fair value | $ — | $ — | $ 804 | $ 804 |

The following table sets forth a summary of the changes in the fair value of the redeemable convertible preferred stock warrant liability, the Company's Level 3 financial liability, which is measured on a recurring basis (in thousands):

| | December 31, | | June 30, |
|---|---|---|---|
| | 2014 | 2015 | 2016 |
| | | | (unaudited) |
| Beginning balance | $ 45 | $145 | $ 437 |
| Issuance of redeemable convertible preferred stock warrants | 106 | 307 | — |
| Change in fair value recorded in other income (expense), net | (6) | (15) | (21) |
| Ending balance | $145 | $437 | $ 416 |

The key assumptions used in the Black-Scholes option-pricing model for the valuation of the redeemable convertible preferred stock warrants were:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Expected volatility | 52.8 – 53.8% | 43.6 – 52.9% | 45.7 – 51.8% | 41.5 – 52.5% |
| Risk-free interest rate | 1.81 – 2.17% | 1.76 – 2.27% | 1.76 – 2.27% | 1.33 – 1.98% |
| Expected term (in years) | 6 – 10 | 5 – 10 | 5.5 – 10 | 4.5 – 9.0 |
| Exercise price | $ 1.00 | $ 1.00 | $ 1.00 | $ 1.00 |
| Dividend yield | — % | — % | — % | — % |

The following table sets forth a summary of the changes in the fair value of the derivative liability, the Company's Level 3 financial liability, which is measured on a recurring basis (in thousands):

| | June 30, |
|---|---|
| | 2016 |
| Beginning balance | $ — |
| Issuance of derivative liability (unaudited) | 653 |
| Change in fair value (unaudited) | (265) |
| Ending balance (unaudited) | $ 388 |

The Company estimates the fair value of the derivative liability using a with- and without-model and the probability-weighted expected return method, which estimates a discounted value based upon analyses of various future outcomes, such as an equity financing with proceeds greater than $5.0 million, an IPO, a merger or sale, and staying private. The with- and without-model calculates the value of the Company's convertible debt with the features being evaluated for separate accounting, and an identical instrument without those features. The outcomes of each scenario in the probability-weighted expected return method are based upon a market multiple approach, that involves various market multiples and projected financial information, as well as option-pricing models, to reflect optionality within features of the convertible debt instrument. The change in fair value is recognized as a gain or loss in the other income (expense), net line on the statements of operations and comprehensive loss. See below and Note 9 for additional information regarding the derivative liability in connection with the convertible promissory notes.

***Property and Equipment***

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation begins at the time the asset is placed in service. Maintenance and repairs are charged to operations as incurred. Depreciation is computed using the straight-line method over the following estimated useful lives of the assets:

| | Useful Lives |
|---|---|
| Computer and network equipment | 2 years |
| Manufacturing equipment | 2 – 7 years |
| Furniture and fixtures | 7 years |
| Software | 3 years |

Leasehold improvements are amortized over the shorter of the lease term or useful life. Upon sale or retirement of assets, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operations. Amortization expense of assets acquired through capital leases is included in depreciation and amortization expense in the statements of operations.

***Impairment of Long-lived Assets***

The Company evaluates its long-lived assets, including property and equipment, for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate over its remaining life. If the asset is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. There have been no impairments of the Company's long-lived assets during any of the periods presented.

***Intangible Assets***

Intangible assets consist of the cost of acquired technology for use in research and development activities. Costs associated with patent applications, patent prosecution, patent defense and maintenance of patents are charged to expense as incurred.

***Redeemable Convertible Preferred Stock Warrant Liability***

Warrants for shares that are contingently redeemable are classified as liabilities on the balance sheet at their estimated fair value because the shares underlying the warrants may obligate the Company to transfer assets to the holders at a future date under certain circumstances such as a deemed liquidation event. The warrants are subject to re-measurement at each balance sheet date and the change in fair value, if any, is recognized as other income (expense), net in the statements of operations. The Company will continue to adjust the liability for changes in fair value until the earlier of (i) exercise or expiration of the warrants, or (ii) the completion of an IPO, at which time all redeemable convertible preferred stock warrants will be converted into warrants to purchase common stock and the liability will be reclassified to additional paid-in capital.

***Derivative Liability***

The convertible promissory notes contain certain redemption features that meet the definition of a derivative. The redemption of the convertible promissory notes upon an equity financing with proceeds in excess of $5.0 million and in the event of an IPO are contingent redemption features that are not clearly and closely related to the debt instrument and have been bifurcated and recognized as a derivative liability on the balance sheet as of June 30, 2016. The derivative liability is subject to re-measurement at each balance sheet date and the change in fair value, if any, is recognized as other income (expense), net in the statements of operations and comprehensive loss. The Company will continue to adjust the liability for changes in fair value until the earlier of: (i) maturity of the convertible promissory notes; (ii) the completion of an IPO; or (iii) the completion of an equity financing with proceeds in excess of $5.0 million; or (iv) the optional conversion into Series B preferred stock.

***Revenue Recognition***

The Company recognizes revenue when the following criteria are met: persuasive evidence of an arrangement exists; the price is fixed or determinable; delivery has occurred and title passed; and collectibility is reasonably assured. For sales to OEMs and contract manufacturers, this occurs generally upon shipment. Provisions for product returns and allowances are recorded in the same period as related revenues. The Company analyzes historical returns, current economic trends and changes in customer demand and acceptance of product when evaluating the adequacy of sales returns and other allowances, which are netted against accounts receivable, as these are processed as credits against future purchases or balances outstanding.

The Company sells the majority of its products to its distributors at a uniform list price. However, distributors resell the Company's products to end customers at a very broad range of individually negotiated price points. Distributors are provided with price concessions subsequent to delivery of product to them depending on their end customer and sales price. These concessions are based on a variety of factors, including customer, product, quantity, geography and competitive differentiation. Price protection rights grant distributors the right to a credit in the event of declines in the price of the Company's products. Under these circumstances, the Company remits back to the distributor a portion of their original purchase price after the resale transaction is completed in the form of a credit against the distributors' outstanding accounts receivable balance. The credits are on a per unit basis and are not given to the distributor until the distributor provides information regarding the sale to their end customer. Revenue on shipments to distributors is deferred as the price is not fixed or determinable until delivery has been made by the distributor to its customer and the final sales price has been established.

At the time of shipment to distributors, the Company records a trade receivable for the selling price as there is a legally enforceable obligation of the distributor to pay for the product delivered, inventory is reduced by the carrying value of goods shipped, and the net of these amounts, the gross profit, is recorded as deferred income on shipments to distributors on the balance sheet. The amount of gross profit that will be ultimately recognized in the statements of operations on such sales could be lower than the deferred income recorded on the balance sheets as a result of credits granted to distributors from the price protection rights. The Company is unable to estimate the credits to the distributors due to the wide variability of negotiated price concessions granted to them.

Thus, a portion of the "deferred income on shipments to distributors" balance represents the amount of distributors' original purchase price that will be credited back to the distributor in the future. The wide range and variability of negotiated price concessions granted to distributors does not allow the Company to accurately estimate the portion of the balance in the deferred income on shipments to distributor accounts that will be credited back to the distributor. Therefore, the Company does not reduce deferred income on shipments to distributors or accounts receivable by anticipated future price concessions rather, price concessions are recorded against deferred income on shipments to distributors when incurred, which is generally at the time the distributor sells the product.

At December 31, 2014, the Company had $3.4 million of deferred revenue and $1.6 million of deferred cost of sales recognized as $1.8 million of deferred income on shipments to distributors. At December 31, 2015, the Company had $2.6 million of deferred revenue and $1.2 million of deferred cost of sales recognized as $1.4 million of deferred income on shipments to distributors. At June 30, 2016, the Company had $3.0 million (unaudited) of deferred revenue and $1.4 million (unaudited) of deferred cost of sales recognized as $1.6 million (unaudited) of deferred income on shipments to distributors.

Products returned by distributors and subsequently scrapped have historically been immaterial to the Company's results of operations. The Company routinely evaluates the risk of impairment of the deferred cost of sales component of the deferred income on shipments to distributors account. Because of the historically immaterial amounts of inventory that have been scrapped, and historically rare instances where discounts given to a distributor result in a price less than our cost, the Company believes the deferred costs are recorded at their approximate carrying values.

For licenses of technology, recognition of revenue is dependent upon whether the Company delivered rights to the technology, and whether there are future performance obligations. In some instances, the license agreements

call for future milestones to be met for amounts to be due from the customer. In such scenarios, revenue is recognized using the milestone method, whereby revenue is recognized upon the completion of substantive milestones once the customers acknowledge the milestones have been met and the collection of the amounts are reasonably assured. Royalties received are recognized when reported to the Company, which generally coincides with the receipt of payment.

***Product Warranty***

The Company generally sells products with a limited warranty of product quality and a limited indemnification of customers against intellectual property infringement claims related to the Company's products. The Company accrues for known warranty and indemnification issues if a loss is probable and can be reasonably estimated, and accrues for estimated losses incurred for unidentified issues based on historical experience. A warranty liability was not recorded at December 31, 2014 and 2015, and June 30, 2016 (unaudited), as the estimated future warranty costs were insignificant based on the Company's historical experience.

***Research and Development***

Research and development expenses are incurred in support of internal development programs or as part of our joint development agreement with GLOBALFOUNDRIES (see Note 9). Research and development expenses include personnel-related costs (including stock-based compensation), circuit design costs, purchases of materials and laboratory supplies, fabrication and packaging of experimental integrated circuit products, depreciation of research and development related capital equipment and overhead, and are expensed as incurred.

***Stock-based Compensation***

The Company measures its stock-based awards made to employees based on the estimated fair values of the awards as of the grant date using the Black-Scholes option-pricing model. Stock-based compensation expense is recognized over the requisite service period using the straight-line method and is based on the value of the portion of stock-based payment awards that is ultimately expected to vest. As such, the Company's stock-based compensation is reduced for the estimated forfeitures at the date of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Stock-based compensation expense for options granted to non-employees as consideration for services received is measured on the date of performance at the fair value of the consideration received or the fair value of the equity instruments issued, using the Black-Scholes option-pricing model, whichever can be more reliably measured. Compensation expense for options granted to non-employees is periodically remeasured as the underlying options vest.

***Income Taxes***

The Company uses the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the differences between the financial reporting and the tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company must then assess the likelihood that the resulting deferred tax assets will be realized. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. Due to the Company's lack of earnings history, the net deferred tax assets have been fully offset by a valuation allowance.

The Company recognizes benefits of uncertain tax positions if it is more likely than not that such positions will be sustained upon examination based solely on their technical merits, as the largest amount of benefit that is more likely than not to be realized upon the ultimate settlement. The Company's policy is to recognize interest and penalties related to the underpayment of income taxes as a component of income tax expense or benefit. To date, there have been no interest or penalties charged in relation to the unrecognized tax benefits.

***Comprehensive Loss***

Comprehensive loss represents all changes in stockholders' deficit except those resulting from and distributions to stockholders. The Company's comprehensive loss was equal to its net loss for the years ended December 31, 2014 and 2015, and for the six months ended June 30, 2015 and 2016 (unaudited).

***Net Loss per Common Share***

Basic net loss per common share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period, without consideration of potentially dilutive securities. Diluted net loss per common share is the same as basic net loss per common share since the effect of potentially dilutive securities is anti-dilutive.

***Unaudited Pro Forma Net Loss per Share***

The unaudited pro forma basic and diluted net loss per share has been computed to give effect to the conversion of the shares of redeemable convertible preferred stock into common stock as if such conversion had occurred at the earlier of the beginning of the period or the date of issuance, if later. Also, the numerator in the pro forma basic and diluted net loss per share calculation has been adjusted to remove gains or losses resulting from the remeasurement of the redeemable convertible preferred stock warrant liability as it will be reclassified to additional paid-in capital upon the completion of an IPO of the Company's common stock. The unaudited pro forma net loss per share does not include the shares to be sold and related proceeds to be received from an IPO.

***Recent Accounting Pronouncements***

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which supersedes all existing revenue recognition requirements, including most industry-specific guidance. The new standard requires a company to recognize revenue when it transfers goods or services to customers in an amount that reflects the consideration that the company expects to receive for those goods or services. In August 2015, the FASB issued an accounting update to defer the effective date by one year such that it is now applicable for annual periods beginning after December 15, 2018. The Company is currently evaluating the potential impact of the adoption of this standard on its financial statements.

In August 2014, the FASB issued ASU No. 2014-15, *Presentation of Financial Statements-Going Concern: Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. This new standard gives a company's management the final responsibilities to decide whether there is substantial doubt about the company's ability to continue as a going concern and to provide related footnote disclosures. The standard provides guidance to management, with principles and definitions that are intended to reduce diversity in the timing and content of disclosures that companies commonly provide in their footnotes. Under the new standard, management must decide whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the company's ability to continue as a going concern within one year after the date that the financial statements are issued, or within one year after the date that the financial statements are available to be issued when applicable. This guidance is effective for annual periods ending after December 15, 2016, and interim periods within annual periods beginning after December 31, 2016. Early adoption is permitted. The adoption of this standard is not expected to have a material impact on the Company's financial statements and related disclosures.

In April 2015, the FASB issued ASU No. 2015-03, *Interest-Imputation of Interest, Simplifying the Presentation of Debt Issuance Costs*, which requires that the debt issuance costs related to a recognized debt liability be presented on the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. This ASU is effective retrospectively for fiscal years and interim periods within those years

beginning after December 15, 2015. Early adoption is permitted and the Company has elected to early adopt this guidance retrospectively on January 1, 2014.

In July 2015, the FASB issued ASU No. 2015-11, *Simplifying the Measurement of Inventory*, which requires an entity to measure in scope inventory at the lower of cost and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016. The adoption of this standard is not expected to have a material impact on the Company's financial statements.

In November 2015, FASB issued ASU 2015-17, *Balance Sheet Classification of Deferred Taxes*, which is intended to simplify and improve how deferred taxes are classified on the balance sheet. The guidance in this ASU eliminates the current requirement to present deferred tax assets and liabilities as current and noncurrent in a classified balance sheet and now requires entities to classify all deferred tax assets and liabilities as noncurrent. The guidance is effective for annual periods beginning after December 15, 2016, and for interim periods within those annual periods. Early adoption is permitted. The adoption of this standard is not expected to have a material impact on the Company's financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*, which establishes a comprehensive new lease accounting model. The new standard: (a) clarifies the definition of a lease; (b) requires a dual approach to lease classification similar to current lease classifications; and (c) causes lessees to recognize leases on the balance sheet as a lease liability with a corresponding right-of-use asset for leases with a lease-term of more than twelve months. The Company is currently evaluating the impact that the adoption of ASU 2016-02 will have on its financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09, *Compensation-Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting*, which is intended to simplify several aspects of the accounting for employee share-based payment transactions, including the income tax consequences, the determination of forfeiture rates, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This ASU is effective for fiscal years and interim periods within those years beginning after December 15, 2016, and early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU 2016-09 will have on its financial statements and related disclosures.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326)*, which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. The new standard replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. The amended guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2019, and early adoption is permitted. The Company is currently evaluating the impact that the adoption of ASU 2016-13 will have on its financial statements and related disclosures.

### 3. Balance Sheet Components

***Inventory***

Inventory consists of the following (in thousands):

| | December 31, 2014 | December 31, 2015 | June 30, 2016 (unaudited) |
|---|---|---|---|
| Raw materials | $ 210 | $ 361 | $ 610 |
| Work-in-process | 2,308 | 2,205 | 2,088 |
| Finished goods | 1,227 | 1,610 | 1,074 |
| Total inventory | $3,745 | $4,176 | $ 3,772 |

***Property and Equipment, Net***

Property and equipment, net consists of the following (in thousands):

| | December 31, 2014 | December 31, 2015 | June 30, 2016 (unaudited) |
|---|---|---|---|
| Manufacturing equipment | $ 7,065 | $ 8,256 | $ 8,509 |
| Computer and network equipment | 468 | 546 | 568 |
| Furniture and fixtures | 146 | 184 | 184 |
| Software | 322 | 227 | 257 |
| Leasehold improvements | 13 | 13 | 13 |
| Total property and equipment, gross | 8,014 | 9,226 | 9,531 |
| Less: accumulated depreciation | (6,896) | (7,572) | (7,810) |
| Total property and equipment, net | $ 1,118 | $ 1,654 | $ 1,721 |

Depreciation and amortization expense during the years ended December 31, 2014 and 2015, was $1.3 million and $1.2 million, respectively, and $587,000 (unaudited) and $314,000 (unaudited) for the six months ended June 30, 2015 and 2016, respectively.

***Intangible Assets, Net***

In 2008, the Company spun-out of Freescale Semiconductor, Inc. (“Freescale,” a wholly-owned subsidiary of NXP Semiconductors N.V.) and acquired certain intellectual property assets and related licenses used in the MRAM business of Freescale. The value assigned to these acquired intangible assets was $910,000. Intangible assets, net consists of the following (in thousands):

| | December 31, 2014 | December 31, 2015 | June 30, 2016 (unaudited) |
|---|---|---|---|
| Acquired technology | $ 910 | $ 910 | $ 910 |
| Less: accumulated amortization | (628) | (778) | (844) |
| Total intangible assets, net | $ 282 | $ 132 | $ 66 |

Amortization expense was $182,000 and $150,000 for the years ended December 31, 2014 and 2015, respectively, and $90,000 (unaudited) and $66,000 (unaudited) for the six months ended June 30, 2015 and 2016, respectively. The carrying value of the intangible assets will be fully amortized during the year ending December 31, 2016.

***Accrued Liabilities***

Accrued liabilities consist of the following (in thousands):

| | December 31, 2014 | December 31, 2015 | June 30, 2016 (unaudited) |
|---|---|---|---|
| Accrued payroll-related expenses | $ 688 | $ 636 | $ 1,188 |
| Accrued manufacturing-related costs | 305 | 339 | — |
| Deferred licensing revenue | — | 250 | 229 |
| Deferred rent | 154 | 220 | 233 |
| Accrued sales commissions payable to sales representatives | 96 | 165 | 169 |
| Other | 84 | 145 | 416 |
| Total accrued liabilities | $1,327 | $1,755 | $ 2,235 |

**4. Commitments and Contingencies**

***Operating Leases***

The Company leases office space for its corporate headquarters located in Chandler, Arizona and for its design facility located in Austin, Texas. The leases expire in October 2018 and September 2016, respectively. Rent expense is recognized on a straight-line basis over the term of the leases and accordingly, the Company records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability.

The Company has an operating lease for its Arizona manufacturing facility lease, as amended, for certain of the fabrication, laboratory and office premises of Freescale, a related party. This lease is cancellable upon 24 months' notice by either of the parties. Under the terms of the lease, the base annual rent is increased by 4% per year on the anniversary date of the lease through its expiration in June 2020. In April 2015, Freescale exercised its termination rights and accordingly, the lease will terminate effective April 14, 2017. The Company is currently in the process of negotiating the fabrication portion of the lease and moving 6,000 square feet of office and lab space to alternate facilities.

The following is a schedule of minimum rental commitments under the Company's operating leases at December 31, 2015 (in thousands):

| | Amount |
|---|---|
| Year Ending December 31, | |
| 2016 | $1,301 |
| 2017 | 589 |
| 2018 | 207 |
| Total minimum lease payments | $2,097 |

Total rent expense was $1.3 million and $1.4 million for the years ended December 31, 2014 and 2015, respectively, and $672,000 (unaudited) and $696,000 (unaudited) for the six months ended June 30, 2015 and 2016, respectively.

***Legal Proceedings***

From time to time, the Company may become involved in legal proceedings arising from the ordinary course of its business. Management is currently not aware of any matters that will have a material adverse effect on the financial position, results of operations or cash flows of the Company.

***Indemnifications***

In the ordinary course of business, the Company enters into agreements that may include indemnification provisions. Pursuant to such agreements, the Company may indemnify, hold harmless and defend an indemnified party for losses suffered or incurred by the indemnified party. Some of the provisions will limit losses to those arising from third party actions. In some cases, the indemnification will continue after the termination of the agreement. The maximum potential amount of future payments the Company could be required to make under these provisions is not determinable. The Company has never incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. The Company has also entered into indemnification agreements with its directors and officers that may require the Company to indemnify its directors and officers against liabilities that may arise by reason of their status or service as directors or officers to the fullest extent permitted by Delaware corporate law. The Company currently has directors' and officers' insurance.

**5. Debt and Related Warrants**

***Prior Facilities***

In December 2010, the Company executed a Loan and Security Agreement with Silicon Valley Bank ("SVB Credit Facility"). The SVB Credit Facility included a $2.0 million term loan and a $2.0 million revolving line of credit. The term loan provided for interest at a floating rate equal to the prime rate plus 2.25% and had a term of four years. The revolving line of credit loan provided for interest at a floating rate equal to the greater of (a) 5% or (b) the prime rate plus 2.75% and had a term of two years, with a limit on advances based on a percentage of domestic and foreign qualified receivables outstanding. Security for the SVB Credit Facility included all of the Company's assets except for intellectual property and leased equipment.

The Company was required to comply with certain covenants under the SVB Credit Facility, including requirements to maintain a minimum liquidity ratio, perform below a specified maximum loss, raise additional equity financing, and restrictions on certain actions without the consent of the lender, such as the disposal and acquisition of its business or property, changes in business, ownership or location of collateral, and mergers or acquisitions. The Company was in violation of its financial covenants as of December 31, 2014, and, accordingly, has classified the SVB Credit Facility as a current liability.

In connection with the SVB Credit Facility, the Company issued to Silicon Valley Bank a warrant to purchase 80,000 shares of the Company's Series A redeemable convertible preferred stock at an exercise price of $1.00 per share. The warrant can be exercised at any time and expires on December 14, 2019. In the event of an IPO of the Company's common stock, at which time the Series A redeemable convertible preferred stock would convert into common stock, the warrant will become exercisable for 80,000 shares of the Company's common stock. The Company recorded the warrant as a debt discount of $63,000 and as a liability on the balance sheet at its fair value. The fair value of the warrant was $41,000, $32,000 and $29,000 (unaudited) as of December 31, 2014 and 2015, and June 30, 2016, respectively.

In February 2014, the Company executed an Amended and Restated Loan and Security Agreement ("Amended SVB Credit Facility"). The Amended SVB Credit Facility included a $4.0 million term loan and a $4.0 million revolving line of credit. The term loan provided for interest at a floating rate equal to the greater of (a) 5% or (b) the prime rate plus 3.75%, and had a term of four years. The revolving line of credit loan provided for interest at a floating rate equal to the greater of (a) 5% or (b) the prime rate plus 1.75% and had a term of two years. All other terms of the agreement were essentially unchanged.

In connection with the Amended SVB Credit Facility, the Company issued to Silicon Valley Bank a warrant to purchase 160,000 shares of the Company's Series B redeemable convertible preferred stock at an exercise price of $1.00 per share. The warrant can be exercised at any time and expires 10 years after the date of issuance. In the event of an IPO of the Company's common stock, at which time the Series B redeemable convertible preferred stock would convert into common stock, the warrant will become exercisable for 160,000 shares of the Company's

common stock. The Company recorded the warrant as a debt discount and as a liability on the balance sheet at its fair value of $106,000 on the date of issuance using the Black-Scholes option-pricing model with the following assumptions: no dividend yield, an estimated life equal to 10 years, a risk-free interest rate of 2.75%, and volatility of 54.7%. The fair value of the warrant was $104,000, $98,000 and $94,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively.

The carrying value of the Amended SVB Credit Facility at December 31, 2014, was as follows (in thousands):

| | Total |
|---|---|
| Debt | $3,000 |
| Less: | |
| Discount attributable to warrants and debt issuance costs | (126) |
| Net carrying value of debt | $2,874 |

In June 2015, the outstanding principal balance on the Amended SVB Credit Facility of $2.8 million was repaid, at which time the unamortized balance of the debt discount of $114,000 and a prepayment penalty of $20,000 were recognized as interest expense.

***2015 Facility***

In June 2015, the Company executed a Loan and Security Agreement with Ares Venture Finance (“2015 Credit Facility”) comprised of an $8.0 million term loan and a $4.0 million revolving loan. The term loan provides for interest at a floating rate equal to the greater of (a) 8.75% or (b) LIBOR plus 7.75% and has a term of four years. The term loan is payable in 15 monthly installments of interest only and 33 payments of principal and interest with an end-of-term fee of $180,000 due upon maturity. The revolving loan provides for interest at a floating rate equal to the prime rate plus 3.75% and has a term of two years. The Company may draw upon the loan facility for working capital purposes as required depending upon accounts receivable balances and other required conditions. In January 2016, the Company borrowed $1.5 million from the revolving loan. (See Note 13) A portion of the proceeds was used to pay off the outstanding balance on the Amended SVB 2014 Credit Facility.

Security for the 2015 Credit Facility includes all of the Company’s assets except for leased equipment. The 2015 Credit Facility contains customary covenants restricting the Company’s activities, including limitations on its ability to sell assets, engage in mergers and acquisitions, enter into transactions involving related parties, incur indebtedness or grant liens or negative pledges on its assets, make loans or make other investments. Under these covenants, the Company is prohibited from paying dividends with respect to its capital stock. The Company was in compliance with all covenants at December 31, 2015, and June 30, 2016.

In connection with the 2015 Credit Facility, the Company issued to Ares Venture Finance a warrant to purchase 480,000 shares of the Company’s Series B redeemable convertible preferred stock at an exercise price of $1.00 per share. The warrant can be exercised at any time and expires 10 years after the date of issuance. In the event of an IPO of the Company’s common stock at which time the Series B redeemable convertible preferred stock would convert into common stock, the warrant will become exercisable for 480,000 shares of the Company’s common stock. The Company recorded the warrant as a debt discount and as a liability on the balance sheet at its fair value of $307,000 on the date of issuance using the Black-Scholes option-pricing model with the following assumptions: no dividend yield, an estimated life equal to ten years, a risk-free interest rate of 2.41%, and volatility of 51.8%. The fair value of the warrant was $307,000 and $293,000 (unaudited) at December 31, 2015, and June 30, 2016, respectively.

The carrying value of the Company's 2015 Credit Facility at December 31, 2015, was as follows (in thousands):

| | Current portion | Long-term debt | Total |
|---|---|---|---|
| Debt, including end of term fee | $ 970 | $ 7,210 | $8,180 |
| Less: | | | |
| Discount attributable to warrants, end of term fee and debt issuance costs | — | (471) | (471) |
| Net carrying value of debt | $ 970 | $ 6,739 | $7,709 |

The carrying value of the Company's 2015 Credit Facility at June 30, 2016, was as follows (in thousands):

| | Current portion | Long-term debt | Total |
|---|---|---|---|
| | | (unaudited) | |
| Debt, including end of term fee | $3,570 | $ 5,756 | $9,326 |
| Less: | | | |
| Discount attributable to warrants, end of term fee and debt issuance costs | (22) | (367) | (389) |
| Net carrying value of debt | $3,548 | $ 5,389 | $8,937 |

The table below shows the principal repayments of the 2015 Credit Facility as of December 31, 2015 (in thousands):

| | |
|---|---|
| 2016 | $ 970 |
| 2017 | 2,909 |
| 2018 | 2,909 |
| 2019 | 1,392 |
| Total | $8,180 |

***Capital Lease Obligations***

The Company leases certain equipment under capital lease obligations expiring at various dates in 2016.

Future minimum lease payments of the capital lease obligations as of December 31, 2015, are as follows (in thousands):

| | |
|---|---|
| Total payments in 2016 | $209 |
| Less: interest portion | (4) |
| Total capital lease obligations | $205 |

Property and equipment under capital leases amounted to $0, $431,000, and $463,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively. Accumulated depreciation and amortization on these assets was $0, $256,000, and $353,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively.

**6. Redeemable Convertible Preferred Stock and Stockholders' Deficit**

***Redeemable Convertible Preferred Stock***

The following table summarizes the authorized, issued and outstanding redeemable convertible preferred stock of the Company as of December 31, 2014 and 2015, and June 30, 2016 (unaudited) (in thousands, except share amounts):

| | Shares Authorized | Shares Issued and Outstanding | Carrying Value | Liquidation Preference |
|---|---|---|---|---|
| Series A | 35,580,000 | 35,500,000 | $35,500 | $ 35,500 |
| Series B | 32,500,000 | 29,141,611 | 29,142 | 29,142 |
| Total | 68,080,000 | 64,641,611 | $64,642 | $ 64,642 |

Significant provisions of the Series A and Series B redeemable convertible preferred stock are as follows:

*Conversion*

At any time and at the option of the holder, each share of Series A and Series B redeemable convertible preferred stock (Series Preferred) is convertible into common stock at a rate of one share of common stock for each share of redeemable convertible preferred stock, subject to adjustment for certain dilutive stock issuances and stock splits. The shares of redeemable convertible preferred stock will be converted to shares of common stock upon (a) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $55.0 million of gross proceeds and a price of at least $2.50 per share; or (b) the vote of at least 60% of the then outstanding shares of Series Preferred voting together as a single class.

*Voting*

Each share of redeemable convertible preferred stock has voting rights equal to the number of common shares into which it is convertible. The holders of Series Preferred, voting together as a single class, are entitled to elect three directors of the Company.

*Dividends*

The holders of Series Preferred are entitled to receive noncumulative dividends at a rate per annum equal to $0.08 per share, subject to adjustment, if and when declared by the board of directors. These dividends are to be paid in advance of any distributions to common stockholders. No dividends have been declared through December 31, 2015, and June 30, 2016.

*Liquidation Preferences*

In the event of any voluntary or involuntary liquidation, the holders of the Series Preferred are entitled, before any distribution or payment is made to the holders of common stock, to receive payment based on the original issue price of the Series Preferred of $1.00 per share, plus all declared but unpaid dividends. If upon liquidation, the assets to be distributed to the holders of Series Preferred are insufficient to permit payment of the full amounts distributable, the entire assets of the Company shall be distributed ratably among the holders of Series Preferred. After the payment of the Series Preferred liquidation preference, the holders of Series Preferred are also entitled to share any remaining available funds on a pro-rata basis with holders of common stock. A liquidation may be deemed to be occasioned by or to include (i) a consolidation or merger of the Company with or into any other corporation in which the Company's stockholders of record as constituted immediately prior to such transaction will, immediately after such transaction, fail to hold at least 50% of the voting power of the

result of the surviving corporation; or (ii) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

*Redemption*

Shares of Series Preferred are redeemable by the Company at a per share price equal to the original issue price, plus any declared but unpaid dividends, in three installments commencing not more than 60 days after receipt by the Company of a written request for redemption from the holders of at least 60% of the outstanding shares of the Series Preferred at any time on or after July 17, 2018.

*Classification*

The Company has classified the redeemable convertible preferred stock as mezzanine equity on the balance sheets as the shares can be redeemed by the Company after receipt by the Company, at any time on or after July 17, 2018, of written notice requesting redemption of such stock by the holders of the Series Preferred, as discussed above. The carrying values of the redeemable convertible preferred stock have been adjusted to their redemption value.

***Common Stock***

Common stockholders are entitled to dividends if and when declared by the board of directors subject to the prior rights of the preferred stockholders. As of December 31, 2015, no dividends on common stock had been declared by the board of directors.

The Company had reserved shares of common stock for future issuance as follows:

| | December 31, | | June 30 |
|---|---|---|---|
| | 2014 | 2015 | 2016 |
| | | | (unaudited) |
| Redeemable convertible preferred stock | 64,641,611 | 64,641,611 | 64,641,611 |
| Options issued and outstanding | 22,172,500 | 24,110,748 | 22,425,749 |
| Shares available for future option grants | 2,768,143 | 1,438,232 | 12,044,742 |
| Redeemable convertible preferred stock warrants | 240,000 | 720,000 | 720,000 |
| Total | 89,822,254 | 90,910,591 | 99,832,102 |

**7. Stock-Based Compensation**

***2008 Employee Incentive Plan***

In July 2008, the board of directors of the Company adopted the 2008 Equity Incentive Plan (the “2008 Plan”). The 2008 Plan provides for the issuance of incentive stock options (“ISO”), nonqualified stock options, and other stock compensation awards. As of December 31, 2015, and June 30, 2016, the Company’s board of directors had authorized the issuance of up to 26,148,857 and 35,188,096 shares of common stock to be issued to employees, consultants, and members of the board of directors under the 2008 Plan, respectively. All such shares authorized for issuance under the 2008 Plan have been reserved. Under the terms of the 2008 Plan, the exercise price of an ISO shall be not less than 100% of the fair value of the stock at the date of grant, as determined by the board of directors, or in the case of certain ISOs, at 110% of the fair market value at the date of grant. The fair value of the Company’s common stock is determined by the Company’s board of directors at each option measurement date based on a variety of factors including the Company’s financial position and historical financial performance, the status of technological developments within the Company, the prevailing market conditions, the illiquid nature of

the common stock, arm's length sales of the Company's capital stock (including redeemable convertible preferred stock) and the effect of the rights and preferences of the Company's preferred stockholders, among others.

The term and vesting periods for options granted under the 2008 Plan are determined by the Company's board of directors. Options granted generally vest over four years. Options must be exercised within a 10-year period or sooner if so specified within the option agreement.

The following table summarizes the stock option activity for all grants under the 2008 Plan:

| | | Options Outstanding | | | |
|---|---|---|---|---|---|
| | Options Available for Grant | Number of Options | Weighted-Average Exercise Price Per Share | Weighted-Average Remaining Contractual Life (years) | Aggregate Intrinsic Value (In thousands) |
| **Balances at December 31, 2013** | 12,892,705 | 8,804,000 | $ 0.33 | 6.7 | $ 1,630 |
| Options authorized | 3,500,000 | — | — | | |
| Options granted | (14,544,333) | 14,544,333 | 0.17 | | |
| Options exercised | — | (256,062) | 0.17 | | $ — |
| Options cancelled/forfeited | 919,771 | (919,771) | 0.17 | | |
| **Balances at December 31, 2014** | 2,768,143 | 22,172,500 | 0.17 | 8.0 | $ — |
| Options authorized | 648,857 | — | — | | |
| Options granted | (3,220,000) | 3,220,000 | 0.17 | | |
| Options exercised | — | (40,520) | 0.17 | | $ 11 |
| Options cancelled/forfeited | 1,241,232 | (1,241,232) | 0.17 | | |
| **Balances at December 31, 2015** | 1,438,232 | 24,110,748 | 0.17 | 7.3 | $ 6,500 |
| Options authorized (unaudited) | 9,039,239 | — | — | | |
| Options exercised (unaudited) | — | (117,728) | 0.17 | | $ 32 |
| Options cancelled/forfeited (unaudited) | 1,567,271 | (1,567,271) | 0.17 | | |
| **Balances at June 30, 2016 (unaudited)** | 12,044,742 | 22,425,749 | 0.17 | 6.8 | $ 6,045 |
| **Options exercisable—December 31, 2015** | | 15,365,833 | 0.17 | 6.4 | $ 4,148 |
| **Options vested and expected to vest—December 31, 2015** | | 24,110,748 | 0.17 | 7.3 | $ 6,500 |
| **Options exercisable—June 30, 2016 (unaudited)** | | 16,429,415 | 0.17 | 6.3 | $ 4,433 |
| **Options vested and expected to vest—June 30, 2016 (unaudited)** | | 22,425,749 | 0.17 | 6.8 | $ 6,045 |

The aggregate intrinsic values of options outstanding, exercisable, vested and expected to vest were calculated as the difference between the exercise price of the options and the estimated fair value of the Company's common stock, as determined by the board of directors, as of December 31, 2015, and June 30, 2016.

During the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015, the Company granted options with a weighted-average grant date fair value of $0.07, $0.17 per share and $0.14, respectively. The Company did not grant any options in the six months ended June 30, 2016.

The total fair value of options vested during the year was $332,000 and $353,000 for the years ended December 31, 2014 and 2015, respectively. The total fair value of options vested during the six months ended June 30, 2015 and 2016, was $169,000 (unaudited) and $276,000 (unaudited), respectively.

***Stock-based Compensation Expense***

The Company recognized stock-based compensation expense as follows (in thousands):

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Research and development | $304 | $169 | $ 74 | $ 89 |
| General and administrative | 392 | 190 | 85 | 100 |
| Sales and marketing | 103 | 57 | 27 | 22 |
| Total | $799 | $416 | $186 | $211 |

As of December 31, 2015, and June 30, 2016, there was $924,000 and $710,000 (unaudited), respectively, of total unrecognized compensation expense related to unvested options. These expenses are expected to be recognized over a weighted-average period of 2.4 years and 2.1 years, respectively.

***Employee Stock-based Compensation***

Stock-based compensation expense for employees was $776,000 and $407,000 for the years ended December 31, 2014 and 2015, respectively, and $181,000 (unaudited) and $201,000 (unaudited) for the six months ended June 30, 2015 and 2016, respectively. In May 2014, the Company modified the terms of 8,679,000 vested and unvested stock option awards, affecting 75 employees, by reducing their exercise price from $0.29 and $0.52 per share to $0.17 per share. There was no change in any of the other terms of the option awards. The modification resulted in an incremental value of $939,000 being allocated to the options, of which $207,000 was recognized to expense immediately based on options that were vested at the time of the modification. The remaining incremental value of $732,000 attributable to unvested options is being recognized over their remaining vesting term.

The Company estimated the fair value of each option using the Black-Scholes option-pricing model. The fair value of employee stock options is being amortized on a straight-line basis over the requisite service period of the awards. The fair value of employee stock options was estimated using the assumptions below. Each of these inputs is subjective and its determination generally requires significant judgment.

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Expected volatility | 36.4 – 53.2% | 44.1 – 48.9% | 45.9 – 48.7% | — |
| Risk-free interest rate | 0.43 – 2.04% | 1.51 – 1.79% | 1.51 – 1.79% | — |
| Expected term (in years) | 2.1 – 6.1 | 5.6 – 6.1 | 6.0 – 6.1 | — |
| Dividend yield | — % | — % | — % | — |

*Expected term.* The expected term represents the period that the stock-based awards are expected to be outstanding. The Company used the simplified method to determine the expected term, which is calculated as the average of the time to vesting and the contractual life of the options.

*Expected volatility.* As the Company's common stock has never been publicly traded, the expected volatility is derived from the average historical volatilities of publicly traded companies within a similar industry that are considered to be comparable to the Company's business over a period approximately equal to the expected term for employees' options.

*Risk-free interest rate.* The risk-free interest rate is based on the U.S. Treasury yield with a maturity equal to the expected term of the option in effect at the time of grant.

*Dividend yield.* The Company has never paid dividends on its common stock and is prohibited from paying dividends on its common stock. Therefore, the Company used an expected dividend yield of zero.

***Non-employee Stock-based Compensation***

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options vest. During the year ended December 31, 2014, the Company granted options to purchase 613,833 shares of common stock to non-employees with a weighted-average exercise price of $0.17 per share. During the year ended December 31, 2015, and the six months ended June 30, 2016 (unaudited), the Company did not grant any options to non-employees. As of December 31, 2014 and 2015, and June 30, 2016, options to purchase 403,000 shares, 403,000 shares and 278,000 shares (unaudited) of common stock were outstanding with a weighted-average exercise price of $0.17 per share. Stock-based compensation expense for non-employees was $23,000 and $9,000 for the years ended December 31, 2014 and 2015, respectively, and $5,000 (unaudited) and $10,000 (unaudited) for the six months ended June 30, 2015 and 2016, respectively.

The Company believes that the fair value of the stock options is more reliably measurable than the fair value of services received. The fair value of the stock options granted is calculated at each reporting date using the Black-Scholes option pricing model with the following assumptions:

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Expected volatility | 52.8 – 53.8% | 51.6 – 52.9% | 49.8 – 53.0% | — |
| Risk-free interest rate | 2.17 – 2.48% | 1.72 – 2.02% | 1.71 – 2.04% | — |
| Expected term (in years) | 7.3 – 9.8 | 6.6 – 9.1 | 6.5 – 9.2 | — |
| Dividend yield | — % | — % | — % | — |

**8. 401(k) Plan**

The Company has a defined contribution employee benefit plan pursuant to Section 401(k) of the Internal Revenue Code. The plan allows eligible employees to defer a portion of their annual compensation up to certain statutory limits. At the election of the Board of Directors, the Company may elect to match employee contributions but has not done so to date.

**9. Related Party Transactions**

***Convertible Promissory Notes***

In August 2014, the Company entered into a Note Purchase Agreement with several of its stockholders for the issuance of convertible promissory notes (the “2014 Notes”) for an aggregate amount of $2.0 million. The 2014 Notes bear interest at 5% per annum and have a one year term. The outstanding principal amount and accrued interest on the Notes were convertible into shares of Series B redeemable convertible preferred stock, at any time, upon written election of the holders of at least a majority of the outstanding principal balance of the 2014 Notes (“Majority Holders”). In the event of an equity financing with proceeds in excess of $5.0 million prior to the maturity of the 2014 Notes, the Majority Holders could elect to convert the outstanding principal and accrued interest on the 2014 Notes into shares of stock issued in the equity financing based on a price per share equal to the price per share paid by investors in said financing. On October 21, 2014, contemporaneously with the Series B redeemable convertible preferred stock issuance, the outstanding principal balance of the 2014 Notes, including accrued interest of $2.0 million, was converted into 2,015,609 shares of Series B redeemable convertible preferred stock.

In January 2016, the Company entered into a Note Purchase Agreement with several of its stockholders for the issuance of convertible promissory notes (the “2016 Notes”) for an aggregate amount of $5.0 million. The 2016

Notes bear interest at 5.0% per annum and have a maturity date of September 30, 2016. The outstanding principal amount and accrued interest on the 2016 Notes are convertible into shares of Series B redeemable convertible preferred stock, at any time, upon written election of the holders of at least a majority of the outstanding principal balance of the 2016 Notes. In the event of an equity financing with proceeds in excess of $5.0 million ("Qualified Financing") prior to the maturity of the 2016 Notes, the outstanding principal and accrued interest convert into shares of stock issued in the equity financing based on a price per share equal to the price per share paid by investors in said financing. In the event of an IPO, the outstanding principal and accrued interest convert into shares of common stock at a price per share equal to 80% of the per share price of the common stock issued in the IPO. In the event of a deemed liquidation event occurring before the maturity date, the 2016 Notes will be repaid in cash in an amount equal to three times the outstanding principal amount. The redemption of the 2016 Notes upon a deemed liquidation event and in the event of an IPO are contingent redemption features that are not clearly and closely related to the debt instrument and thus have been bifurcated and recognized as a derivative liability on the balance sheet as of June 30, 2016. The compound derivative was recorded as a debt discount at fair value of $653,000 on the issuance date of the 2016 Notes and is being amortized over the term of the 2016 Notes using the effective interest method. At June 30, 2016, the carrying values of the 2016 Notes and the derivative liability were $4.9 million and $388,000, respectively.

***Joint Development Agreement—GLOBALFOUNDRIES***

On October 17, 2014, the Company entered into a Joint Development Agreement ("JDA") with GLOBALFOUNDRIES, Inc. ("GF"), a related party due to its equity ownership in the Company, for the joint development of the Company's Spin Torque MRAM ("ST-MRAM") technology. The term of the agreement is the later of four years from the effective date or until the completion, termination or expiration of the last statement of work entered into pursuant to the JDA. The JDA also states that the specific terms and conditions for the production and supply of the developed ST-MRAM technology would be pursuant to a separate manufacturing agreement entered into between the parties.

Under the JDA, each party licenses its relevant intellectual property to the other party. For certain jointly developed works, the parties have agreed to follow an invention allocation procedure to determine ownership. In addition, GF possesses the exclusive right to manufacture the Company's discrete and embedded ST-MRAM devices developed pursuant to the agreement until the earlier of three years after the qualification of the MRAM device for a particular technology node or four years after the completion of the relevant statement of work under which the device was developed. For the same exclusivity period associated with the relevant device, GF agreed not to license intellectual property developed in connection with the JDA to named competitors of the Company.

Generally, unless otherwise specified in the agreement or a statement of work, the Company and GF share project costs, which do not include personnel or production qualification costs, equally under the JDA. If GF manufactures, sells or transfers to customers wafers containing production quantified ST-MRAM devices that utilize certain design information, GF will be required to pay the Company a royalty. The term of the agreement is four years and is extended until the completion of any development work, if later.

In May 2016, the Company entered into an amendment to the JDA to modify the payment schedule and clarify its payment obligations for certain past project costs. Under the amendment, GF has the right to terminate the JDA if the Company does not pay the project costs, with interest, by an agreed-upon date.

As of December 31, 2014 and 2015, and June 30, 2016, $0, $3.5 million, and $5.6 million (unaudited), respectively, were payable to GF for the Company's share of the project costs under the JDA and the Company prepaid $125,000 to GF in 2014. The Company incurred project costs, recognized as in research and development expense, of $0 and $3.6 million during the years ended December 31, 2014 and 2015, respectively, and of $1.8 million (unaudited), and $2.0 million (unaudited) during the six months ended June 30, 2015 and 2016, respectively.

On October 21, 2014, GF participated, along with other investors, in the Company's Series B redeemable convertible preferred stock financing and purchased 5,000,000 shares at $1.00 per share. Contemporaneously, the Company sold 12,000,000 shares of its common stock to GF at a discounted price of $0.00001 per share. The common shares vest upon the achievement of a goal as set forth in the Statement of Work #1 under the JDA. The unvested common shares are subject to repurchase by the Company, if the JDA is terminated for any reason, for a one-year period after such termination, at a price that is the lower of the original price paid by GF or the fair value of the Company's common stock as of the date of repurchase. The Company has determined that the issuance of these shares of common stock to GF represents compensation for services to be provided under the JDA. Accordingly, the shares are accounted for similar to a stock award granted to a non-employee of the Company and are remeasured to their fair value as they vest. Although the shares issued do not commence vesting until the achievement of the product qualification (the "Initial Measurement Date"), the Company has deemed it probable that the qualification requirement will be met and compensation expense related to the shares issued is being recognized prior to the Initial Measurement Date. Due to the vesting conditions, there will be multiple measurement dates, occurring on the Initial Measurement Date and at the end of each month thereafter. The fair value of vesting shares is effectively fixed at each measurement date while the fair value of the remaining unvested shares will be remeasured each subsequent measurement date until the shares are fully vested.

During the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, the Company recognized non-cash compensation expense of $107,000, $1.8 million, $533,000 (unaudited) and $1.4 million (unaudited), respectively, in research and development expense, related to the vesting of the shares of common stock. The Company recognizes compensation expense based on the estimated fair value of the common stock at each reporting period, which was $0.52 and $0.65 (unaudited) per share as of December 31, 2015, and June 30, 2016, respectively.

***Transactions with Freescale***

The Company has entered into various transactions with Freescale (a wholly-owned subsidiary of NXP), a related party due to its equity ownership in the Company. The Company leases its manufacturing facility in Chandler, Arizona, from Freescale and total rent payments made during the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, were $1.0 million, $1.0 million, $582,000 (unaudited) and $520,000 (unaudited), respectively. Freescale also performs processing of the Company's products in its facility which are capitalized as part of the cost of inventory. The total processing costs incurred by the Company were $3.3 million, $3.9 million, $1.9 (unaudited) and $1.3 million (unaudited) for the years ended December 31, 2014 and 2015, and the six months ended June 30, 2015 and 2016, respectively. In addition, Freescale is one of the Company's largest customers for the sale of embedded wafers, and total revenue from Freescale was $3.2 million, $3.5 million, $1.8 million (unaudited) and $735,000 (unaudited) for the years ended December 31, 2014, and 2015, and the six months ended June 30, 2015 and 2016, respectively. Amounts due from Freescale were $541,000, $564,000 and $502,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively. Amounts due to Freescale were $484,000, $207,000 and $569,000 (unaudited) at December 31, 2014 and 2015, and June 30, 2016, respectively.

### 10. Geographic Information

Revenue from customers is designated based on the geographic region or country to which the product is delivered or licensee is located. Revenue by country was as follows (in thousands):

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| United States | $ 6,055 | $ 5,362 | $ 2,049 | $ 2,757 |
| Singapore | 3,399 | 4,614 | 2,671 | 1,726 |
| Taiwan | 3,097 | 3,759 | 1,846 | 1,009 |
| Germany | 2,933 | 3,546 | 2,045 | 1,302 |
| Hong Kong | 3,133 | 2,744 | 1,110 | 1,911 |
| Japan | 4,408 | 2,280 | 967 | 1,724 |
| All other | 1,871 | 4,241 | 1,966 | 2,437 |
| Total revenue | $ 24,896 | $ 26,546 | $ 12,654 | $ 12,866 |

### 11. Income Taxes

For both the years ended December 31, 2014 and 2015, the Company recorded no provision for income taxes primarily due to losses incurred. For the six months ended June 30, 2016, the Company did not record an income tax provision due to the expected loss for the year. The Company has incurred net operating losses for all the periods presented. The Company has not reflected any benefit of the net operating loss carryforwards in the accompanying financial statements. The Company has established a full valuation allowance against its deferred tax assets due to the uncertainty surrounding the realization of such assets.

The reconciliation of the statutory federal income tax rate to the Company's effective tax rate is as follows:

| | December 31, | |
|---|---|---|
| | 2014 | 2015 |
| Tax at statutory federal rate | (34.0)% | (34.0)% |
| State taxes, net of federal benefit | (2.7) | (1.9) |
| Stock-based compensation | 2.8 | 0.8 |
| Change in valuation allowance | 37.9 | 34.3 |
| Other | (4.1) | 0.8 |
| Provision for income taxes | — % | — % |

The tax effects of temporary differences and carryforwards that give rise to significant portions of the deferred tax assets are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2014 | 2015 |
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 19,593 | $ 23,526 |
| Inventory | 1,197 | 1,309 |
| Accruals | 399 | 1,693 |
| Depreciation and amortization | 51 | 290 |
| Other | 87 | 752 |
| Gross deferred tax assets | 21,327 | 27,570 |
| Valuation allowance | (21,307) | (27,554) |
| Deferred tax assets | 20 | 16 |
| Deferred tax liabilities: | | |
| Prepaid expenses | (20) | (16) |
| Deferred tax liabilities | (20) | (16) |
| Net deferred tax assets | $ — | $ — |

The Company is required to reduce its deferred tax assets by a valuation allowance if it is more likely than not that some or all of its deferred tax assets will not be realized. Management must use judgment in assessing the potential need for a valuation allowance, which requires an evaluation of both negative and positive evidence. The weight given to the potential effect of negative and positive evidence should be commensurate with the extent to which it can be objectively verified. In determining the need for and amount of the valuation allowance, if any, the Company assesses the likelihood that it will be able to recover its deferred tax assets using historical levels of income, estimates of future income and tax planning strategies. As a result of historical cumulative losses, the Company determined that, based on all available evidence, there was substantial uncertainty as to whether it will recover recorded net deferred taxes in future periods. Accordingly, the Company recorded a valuation allowance against all of its net deferred tax assets as of December 31, 2014 and 2015. The net valuation allowance increased by $3.9 million and $6.2 million and in 2014 and 2015, respectively.

As of December 31, 2015, the Company had federal net operating loss carryforwards of approximately $66.1 million which will begin to expire in the year of 2028 if not utilized. In addition, the Company had state net operating loss carryforwards of approximately $28.6 million, which will begin to expire in 2015 if not utilized.

The Tax Reform Act of 1986 (the “Act”) provides for a limitation on the annual use of net operating loss and research and development tax credit carryforwards following certain ownership changes (as defined by the Act) that could limit the Company’s ability to utilize these carryforwards.

The Company files income tax returns in the U.S. federal and various state jurisdictions. The Company is subject to U.S. federal and state income tax examinations by authorities for all tax years due to the accumulated net operating losses that are being carried forward for tax purposes.

The Company has not identified any unrecognized tax benefits as December 31, 2014 and 2015. As the Company has a full valuation allowance on its deferred tax assets, any unrecognized tax benefits would reduce the deferred tax assets and the valuation allowance in the same amount. The Company does not expect the amount of unrecognized tax benefits to materially change in the next twelve months.

**12. Net Loss Per Common Share and Pro Forma Net Loss Per Share (unaudited)**

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share amounts):

| | Year Ended December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| **Numerator:** | | | | |
| Net loss | $ (10,183) | $ (18,183) | $ (7,421) | $ (9,956) |
| **Denominator:** | | | | |
| Weighted-average common shares outstanding | 68,526,543 | 78,357,720 | 78,357,197 | 78,440,718 |
| Less: weighted-average unvested common shares subject to repurchase | (2,367,123) | (12,000,000) | (12,000,000) | (12,000,000) |
| Weighted-average common shares outstanding used to calculate net loss per common share, basic and diluted | 66,159,420 | 66,357,720 | 66,357,197 | 66,440,718 |
| Net loss per common share, basic and diluted | $ (0.15) | $ (0.27) | $ (0.11) | $ (0.15) |

The following outstanding shares of potentially dilutive securities have been excluded from diluted net loss per common share for the periods presented, because their inclusion would be anti-dilutive:

| | December 31, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2014 | 2015 | 2015 | 2016 |
| | | | (unaudited) | |
| Redeemable convertible preferred stock on an as-converted basis | 64,641,611 | 64,641,611 | 64,641,611 | 64,641,611 |
| Options to purchase common stock | 22,172,500 | 24,110,748 | 24,362,500 | 22,425,749 |
| Common stock subject to repurchase | 12,000,000 | 12,000,000 | 12,000,000 | 12,000,000 |
| Redeemable convertible preferred stock warrants on an as-converted basis | 240,000 | 720,000 | 720,000 | 720,000 |
| Total | 99,054,111 | 101,472,359 | 101,724,111 | 99,787,360 |

The following table sets forth the computation of the Company's unaudited pro forma basic and diluted net loss per share after giving effect to the conversions of redeemable convertible preferred stock and the conversion of the 2016 Notes into common stock using the as-if converted method into common stock as though the conversions had occurred at the beginning of the respective period, or the date of issuance, if later (In thousands, except share and per share amounts):

| | Year Ended December 31, 2015 (unaudited) | Six Months Ended June 30, 2016 (unaudited) |
|---|---|---|
| **Numerator:** | | |
| Net loss | $ (18,183) | $ |
| Less: change in fair value of convertible preferred stock warrant liability | 15 | |
| Less: change in fair value of derivative liability | — | |
| Net loss used in computing pro forma net loss per share | $ (18,198) | |
| **Denominator:** | | |
| Weighted-average common shares outstanding used to calculate net loss per common share | 66,357,720 | |
| Pro forma adjustment to reflect assumed conversion of convertible preferred stock | 64,641,611 | |
| Pro forma adjustment to reflect assumed conversion of the 2016 Notes | | |
| Weighted-average shares of common stock used in computing pro forma net loss per share | 130,999,331 | |
| Pro forma net loss per share, basic and diluted | $ (0.14) | $ |

**13. Subsequent Events**

In January 2016, the Company sold an aggregate of $5.0 million in convertible promissory notes to existing investors at a price equal to the principal amount of such notes. The notes have an annual interest rate of 5.0% and a maturity date in September 2016.

In January 2016, the Company drew down $1.5 million from the available funds under its revolving credit facility.

The Company evaluated subsequent events through May 13, 2016, the date at which the financial statements were available for issuance.

**14. Subsequent Events (Unaudited)**

In July 2016, the Company's Board of Directors and stockholders approved the Certificate of Amendment of Amended and Restated Certificate of Incorporation to increase the authorized capital stock of the Company from 243,080,000 shares, consisting of 175,000,000 shares of common stock, par value $0.0001 (the "Common Stock") and 68,080,000 shares of preferred stock, par value $0.0001 (the "Preferred Stock"), to an authorized capital stock of 281,080,000 shares consisting of 204,000,000 shares of Common Stock and 77,080,000 shares of Preferred Stock.

In August 2016, the Company entered into a Note Purchase Agreement with existing stockholders for the issuance of subordinated convertible promissory notes (the "2016 Bridge Notes") for an aggregate principal amount of $3.5 million. The 2016 Bridge Notes bear interest at 5.0% per annum and have a maturity date of September 30, 2016. In the event of an equity financing with proceeds in excess of $5.0 million ("Qualified Financing") prior to the maturity of the 2016 Bridge Notes, the outstanding principal and accrued interest convert into shares of stock issued in the Qualified Financing based on a price per share equal to the price per share paid by investors in such financing. In the event of an IPO, the outstanding principal and accrued interest convert into shares of common stock at a price per share equal to 80% of the per share price of the common stock issued in the IPO. In the event of a deemed liquidation event occurring before the maturity date, the 2016 Bridge Notes will be repaid in cash in an amount equal to three times the outstanding principal amount. The Company may not prepay the 2016 Bridge Notes without the consent of the Company and the majority holders of the outstanding balance of the promissory notes. The redemption of the 2016 Bridge Notes upon a deemed liquidation event and in the event of an IPO are contingent redemption features that are not clearly and closely related to the debt instrument and will be bifurcated and recognized as a derivative liability on the balance sheet at date of issuance and will be remeasured to fair value at each reporting date.

In August 2016, the Company entered into an amendment to the facility lease for its design facility located in Austin, Texas to increase the leased space from 5,002 square feet to 11,084 square feet and extend the lease term from September 2016 to January 2022. The aggregate amount of payments due under the amended lease is $1.1 million.

In September 2016, entered into an amendment to its January 2016 and August 2016 convertible promissory notes for $5.0 million and $3.5 million, respectively, to extend the maturity date of the notes from September 30, 2016 to December 15, 2016.

The Company evaluated subsequent events through August 16, 2016, the date these unaudited interim financial statements were available to be issued, and subsequently through September 9, 2016.

# Shares


## Common Stock

## PROSPECTUS

**Stifel** **Needham & Company**

*Co-Managers*

**Canaccord Genuity** **Craig-Hallum Capital Group**

**, 2016**

## PART II

## Information Not Required in Prospectus

*Item 13. Other Expenses of Issuance and Distribution.*

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of common stock being registered. All amounts are estimates except for the SEC registration fee, the FINRA filing fee and The Nasdaq Global Market listing fee.

| Item | Amount to be paid |
|---|---|
| SEC Registration fee | $ 4,532 |
| FINRA filing fee | 6,600 |
| The Nasdaq Global Market Listing fee | * |
| Printing and engraving expenses | * |
| Legal fees and expenses | * |
| Accounting fees and expenses | * |
| Transfer Agent fees and expenses | * |
| Miscellaneous expenses | * |
| Total | $ * |

* To be filed by amendment

*Item 14. Indemnification of Directors and Officers.*

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities, including reimbursement for expenses incurred, arising under the Securities Act. Our amended and restated certificate of incorporation to be in effect upon the completion of this offering provides for indemnification of our directors, officers, employees and other agents to the maximum extent permitted the Delaware General Corporation Law, and our amended and restated bylaws to be in effect upon the completion of this offering provide for indemnification of our directors, officers, employees and other agents to the maximum extent permitted by the Delaware General Corporation Law. In addition, we have entered into indemnification agreements with our directors, officers and some employees containing provisions that may be in some respects broader than the specific indemnification provisions contained in the Delaware General Corporation Law. The indemnification agreements may require us, among other things, to indemnify our directors against certain liabilities that may arise by reason of their status or service as directors, officers and employees and to advance their expenses incurred as a result of any proceeding against them as to which they could be indemnified.

We maintain a directors' and officers' insurance policy.

The underwriting agreement to be entered into in connection with this offering will provide that the underwriters will indemnify us, our directors and certain of our officers against liabilities resulting from information furnished by or on behalf of the underwriters specifically for use in the Registration Statement.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. Please read "Item 17. Undertakings" for more information on the SEC's position regarding such indemnification provisions.

*Item 15. Recent Sales of Unregistered Securities.*

From January 1, 2013 through August 8, 2016, we have made sales of the following unregistered securities:

- We granted stock options under our 2008 Equity Incentive Plan to purchase an aggregate of 36,011,072 shares of our common stock at a weighted average exercise price of $0.29 to a total of 113 employees, directors and consultants. Of these, stock options to purchase an aggregate of 3,983,274 shares have been cancelled without being exercised, 526,100 have been exercised and 31,501,698 remain outstanding.
- We issued and sold an aggregate of 526,100 shares of our common stock to employees, directors and consultants at a weighted average exercise price of $0.18 upon the exercise of stock options granted under our 2008 Equity Incentive Plan. Of these, none have been repurchased and all shares remain outstanding.
- In March 2013, we issued and sold $2.0 million in convertible promissory notes to 14 existing accredited investors for aggregate consideration of $2.0 million in cash.
- In July 2013, we issued units consisting of an aggregate of 51,297,840 shares of our common stock and 17,099,280 shares of our Series B convertible preferred stock to 14 existing accredited investors at a per unit price of $1.00, for aggregate consideration of $15,324,480.
- In January 2014, we issued 26,722 shares of our Series B convertible preferred stock to an accredited investor at a per share price of $0.0242, for aggregate consideration of $647.
- In February 2014, we issued a warrant exercisable for an aggregate of 160,000 shares of our Series B convertible preferred at an exercise price of $1.00 per share to an accredited investor. This warrant is exercisable until its expiration in February 2024.
- In August 2014, we issued and sold $2.0 million in convertible promissory notes to 13 existing accredited investors for aggregate consideration of $2.0 million in cash.
- In October 2014, we issued 12,000,000 shares of our common stock to an accredited investor at a per share price of $0.00001, for aggregate consideration of $120.
- In October 2014, we issued an aggregate of 7,015,609 shares of our Series B convertible preferred stock to 14 existing investors and one new accredited investor at a per share price of $1.00, for aggregate consideration of $7,015,609.
- In December 2014, we issued 5,000,000 shares of our Series B convertible preferred stock to an accredited investor for an aggregate consideration of $5.0 million.
- In June 2015, we issued a warrant exercisable for an aggregate of 480,000 shares of our Series B convertible preferred at an exercise price of $1.00 per share to an accredited investor. This warrant is exercisable until its expiration in June 2025.
- In January 2016, we issued and sold $5.0 million in convertible promissory notes to 13 existing accredited investors for aggregate consideration of $5.0 million in cash.
- In August 2016, we issued and sold $3.5 million in convertible promissory notes to 13 existing accredited investors for aggregate consideration of $3.5 million in cash.

Unless otherwise stated, the sales of the above securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were placed upon the stock certificates issued in these transactions.

*Item 16. Exhibits and Financial Statement Schedules.*

**(a) Exhibits**. See the Exhibit Index attached to this registration statement, which is incorporated by reference herein.

**(b) Financial Statement Schedules**. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the Financial Statements or notes thereto.

*Item 17. Undertakings.*

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registration has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in Chandler, Arizona, on September 9, 2016.

**Everspin Technologies, Inc.**

By: /s/ Phillip LoPresti
Phillip LoPresti
President and Chief Executive Officer

By: /s/ Jeffrey Winzeler
Jeffrey Winzeler
Chief Financial Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose individual signature appears below hereby authorizes and appoints Phillip LoPresti and Jeffrey Winzeler, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his true and lawful attorney-in-fact and agent to act in his name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this Registration Statement on Form S-1, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Name | Title | Date |
|---|---|---|
| /s/ Phillip LoPresti<br>Phillip LoPresti | President and Chief Executive Officer<br>(Principal Executive Officer) and Director | September 9, 2016 |
| /s/ Jeffrey Winzeler<br>Jeffrey Winzeler | Chief Financial Officer<br>(Principal Accounting Officer) | September 9, 2016 |
| /s/ Robert W. England<br>Robert W. England | Director | September 9, 2016 |
| /s/ Lawrence G. Finch<br>Lawrence G. Finch | Director | September 9, 2016 |
| /s/ Ronald C. Foster<br>Ronald C. Foster | Director | September 9, 2016 |

| Name | Title | Date |
|---|---|---|
| /s/ Stephen J. Socolof<br>Stephen J. Socolof | Director | September 9, 2016 |
| /s/ Peter Hébert<br>Peter Hébert | Director | September 9, 2016 |
| /s/ Geoffrey R. Tate<br>Geoffrey R. Tate | Director | September 9, 2016 |

## EXHIBIT INDEX

| Exhibit No. | Description |
|---|---|
| 1.1 | Form of Underwriting Agreement. |
| 3.1 | Amended and Restated Certificate of Incorporation as currently in effect. |
| 3.2 | Certificate of Amendment of Amended and Restated Certificate of Incorporation, dated as of December 5, 2014. |
| 3.3 | Certificate of Amendment of Amended and Restated Certificate of Incorporation, dated as of July 29, 2016. |
| 3.4 | Form of Amended and Restated Certificate of Incorporation to be effective upon closing of this offering. |
| 3.5 | Bylaws, as currently in effect. |
| 3.6 | Form of Amended and Restated Bylaws to be effective upon closing of this offering. |
| 4.1 | Form of Common Stock Certificate of the registrant. |
| 4.2 | Amended and Restated Investor Rights Agreement, dated as of October 21, 2014, by and among the registrant and certain of its stockholders. |
| 5.1* | Opinion of Cooley LLP. |
| 10.1† | Form of Indemnity Agreement between the registrant and its directors and officers. |
| 10.2† | 2008 Equity Incentive Plan, as amended, and Form of Stock Option Grant Notice, Option Agreement and Form of Notice of Exercise. |
| 10.3† | 2016 Equity Incentive Plan and Form of Stock Option Grant Notice, Option Agreement and Form of Notice of Exercise. |
| 10.4† | 2016 Employee Stock Purchase Plan. |
| 10.5 | Lease, dated as of June 5, 2008, by and between the registrant and Freescale Semiconductor, Inc. |
| 10.6 | Amendment No. 1 to Lease, dated as of February 2, 2009, by and between the registrant and Freescale Semiconductor, Inc. |
| 10.7 | Amendment No. 2 to Lease, dated as of March 1, 2010, by and between the registrant and Freescale Semiconductor, Inc. |
| 10.8 | Amendment No. 3 to Lease, dated as of July 20, 2011, by and between the registrant and Freescale Semiconductor, Inc. |
| 10.9 | Amendment No. 4 to Lease, dated as of June, 2014 by and between the registrant and Freescale Semiconductor, Inc. |
| 10.10 | Loan and Security Agreement, dated as of June 6, 2015 by and between the registrant and Ares Venture Finance, L.P. |
| 10.11 | Amendment to Loan and Security Agreement, dated as of January 29, 2016, by and between the registrant and Ares Venture Finance, L.P. |
| 10.12 | Second Amendment to Loan and Security Agreement, dated as of August 1, 2016, by and between the registrant and Ares Venture Finance, L.P. |
| 10.13† | Executive Employment Agreement, dated as of April 25, 2016, by and between registrant and Terry Hulett. |
| 10.14† | Executive Employment Agreement, dated as of April 25, 2016, by and between registrant and Phillip LoPresti. |
| 10.15† | Executive Employment Agreement, dated as of April 25, 2016, by and between registrant and Scott Sewell. |

| Exhibit No. | Description |
|---|---|
| 10.16 | Office Lease Agreement, dated as of January 7, 2011, by and between the registrant and Jutland 4141 Investments, Ltd dba Chandler Office Center. |
| 10.17 | Commercial Industrial Lease Agreement, dated as of May 18, 2012, by and between the registrant and Principal Life Insurance Company. |
| 10.18+ | STT-MRAM Joint Development Agreement, dated as of October 17, 2014, by and between registrant and GLOBALFOUNDRIES Inc. |
| 10.19+ | Amendment No. 1 to the STT-MRAM Joint Development Agreement, dated as of May 27, 2016, by and between registrant and GLOBALFOUNDRIES Inc. |
| 10.20+ | Manufacturing Agreement, dated as of October 23, 2014, by and between the registrant and GLOBALFOUNDRIES Singapore Pte. Ltd. |
| 10.21 | Restricted Stock Purchase Agreement, by and between the registrant and GLOBALFOUNDRIES Inc. |
| 10.22 | Amendment No. 1 to Commercial Industrial Lease Agreement, dated August 12, 2016, by and between the registrant and Legacy Stonelake JV-T, LLC, successor in interest to Principal Life Insurance Company. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2* | Consent of Cooley LLP. Reference is made to Exhibit 5.1. |
| 24.1 | Power of Attorney (see signature page hereto). |

* To be filed by amendment.
† Indicates a management contract or compensatory plan.
\+ Confidential Treatment Requested.

**Exhibit 1.1**

Shares

Everspin Technologies, Inc.

Common Stock

UNDERWRITING AGREEMENT

, 2016

STIFEL, NICOLAUS & COMPANY, INCORPORATED
NEEDHAM & COMPANY, LLC

As representatives of the several Underwriters named in Schedule I hereto

c/o Stifel, Nicolaus & Company, Incorporated
237 Park Ave, 8th Floor
New York, New York 10017

c/o Needham & Company, LLC
445 Park Avenue
New York, New York 10022

Ladies and Gentlemen:

Everspin Technologies, Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the several underwriters named in Schedule I hereto (the "Underwriters") for whom you are acting as representatives (the "Representatives") an aggregate of _____ shares (the "Firm Shares") of the common stock, $0.0001 par value per share, of the Company ("Common Stock"). The Company also proposes to sell to the several Underwriters, for the sole purpose of covering over-allotments in connection with the sale of the Firm Shares, at the option of the Underwriters, up to an additional _____ shares of Common Stock (the "Option Shares"). The Firm Shares and the Option Shares are hereinafter referred to collectively as the "Shares".

The Company confirms as follows its agreements with the Representatives and the several other Underwriters.

1. a) The Company represents and warrants to, and agrees with, each of the Underwriters that, as of the date hereof and as of the Closing Date and each Option Closing Date, if any:

(i) A registration statement on Form S-1 (File No. ) in respect of the Shares and one or more pre-effective amendments thereto (together, the "Initial Registration Statement") have been filed with the Securities and Exchange Commission (the "Commission"); the Initial Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered to the Representatives, have been declared effective by the Commission in such form; other than a registration statement, if any, increasing the size of the offering (a "Rule 462(b) Registration Statement"), filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the "Securities Act"), which became effective upon filing; no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued, no proceeding for that purpose has been initiated or threatened by the Commission and any request on the part of the Commission for additional information from the Company has been satisfied in all material respects; any preliminary prospectus included in the Initial Registration Statement, as originally filed or as part of any amendment thereto, or filed with the Commission pursuant to Rule 424(a) of the rules and regulations of the Commission under the Securities Act is hereinafter called a "Preliminary Prospectus"; the various parts of the Initial Registration Statement and the Rule 462(b) Registration Statement, if any, including all schedules and exhibits thereto and including the information contained in the form of final prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act and deemed by virtue of Rule 430A under the Securities Act to be part of the Initial Registration Statement at the time it was declared effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, each as amended at the time such part of the Initial Registration Statement became effective, are hereinafter collectively called the "Registration Statement"; the Preliminary Prospectus relating to the Shares that was included in the Registration Statement immediately prior to the Applicable Time (as defined in Section 1(a) (iii) hereof) is hereinafter called the "Pricing Prospectus"; such final prospectus, in the form first filed pursuant to Rule 424(b) under the Securities Act, is hereinafter called the "Prospectus"; and any "issuer free writing prospectus" as defined in Rule 433 under the Securities Act relating to the Shares is hereinafter called an "Issuer Free Writing Prospectus"; and all references to the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus, the Prospectus, any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"). From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Securities Act (an "Emerging Growth Company"). "Testing-the-Waters Communication" means any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Securities Act.

(ii)(1) at the respective times the Initial Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendments thereto became effective and at the Closing Date (as defined herein) (and, if any Option Shares are purchased, at each Option Closing Date) (as defined herein)), the Initial Registration Statement, any Rule 462(b) Registration Statement and any amendments and supplements thereto complied and will comply in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission thereunder (the "Rules and Regulations") and did not and will not contain an

untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and (2) at the time the Prospectus or any amendments or supplements thereto were issued and at the Closing Date (and, if any Option Shares are purchased, at each Option Closing Date), neither the Prospectus nor any amendment or supplement thereto included or will include an untrue statement of a material fact or omitted or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the representations and warranties in clauses (1) and (2) above shall not apply to statements in or omissions from the Registration Statement or the Prospectus made in reliance upon and in strict conformity with information furnished to the Company in writing by any Underwriter through the Representatives expressly for use in the Registration Statement or the Prospectus, it being understood and agreed that the only such information provided by any Underwriter is that described as such in Section 9(b) hereof. No order preventing or suspending the use of any Preliminary Prospectus, the Pricing Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission. No document has been prepared or delivered in reliance on Rule 434 under the Securities Act.

Each Preliminary Prospectus, Pricing Prospectus, Issuer Free Writing Prospectus and the Prospectus filed as part of the Initial Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the requirements of the Securities Act and the Rules and Regulations and each Preliminary Prospectus, Pricing Prospectus, Issuer Free Writing Prospectus and the Prospectus delivered to the Underwriters for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(iii) For the purposes of this Agreement, the "Applicable Time" is ____: ____ __.m. (Eastern time) on the date of this Agreement; the Pricing Prospectus as supplemented by the Issuer Free Writing Prospectuses and other information listed on Schedule II hereto taken together (collectively, the "Pricing Disclosure Package") as of the Applicable Time did not, and as of the Closing Date and each Option Closing Date will not, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; each Issuer Free Writing Prospectus does not conflict with the information contained in the Registration Statement or the Pricing Disclosure Package and, when taken together with the Preliminary Prospectus accompanying, or delivered prior to delivery of, such Issuer Free Writing Prospectus does not, and as of the Closing Date and each Option Closing Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; each Written Testing-the-Waters Communication (as hereinafter defined) listed on Schedule III hereto does not conflict with the information contained in the Registration Statement or the Pricing Disclosure Package and each such Written Testing-the-Waters Communication, when taken together with the Pricing Disclosure Package as of the Applicable Time, did not and as of the Closing Date and each Option Closing Date will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to

statements or omissions made in the Pricing Disclosure Package, an Issuer Free Writing Prospectus or Written Testing-the-Waters Communication in reliance upon and in strict conformity with information furnished in writing to the Company by an Underwriter through the Representatives expressly for use therein.

(iv) The Company has filed a registration statement pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to register the Common Stock, and such registration statement has been declared effective. At the time of filing the Initial Registration Statement the Company was not and is not an "ineligible issuer," as defined under Rule 405 under the Securities Act.

(v) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, with power and authority (corporate and other) to own, lease and operate its properties and conduct its business as described in the Pricing Prospectus and to enter into and perform its obligations under this Agreement, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except where the failure so to qualify or be in good standing would not have a material adverse effect on the Company.

(vi) The Company has an authorized capitalization as set forth in the Pricing Prospectus, and all of the issued and outstanding shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and conform to the descriptions thereof contained in the Pricing Prospectus; and none of the issued and outstanding shares of capital stock of the Company are subject to any preemptive or similar rights.

(vii) The Shares have been duly and validly authorized and, when issued and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be duly and validly issued and fully paid and non-assessable and will conform to the descriptions thereof contained in the Prospectus; and the issuance of such Shares is not subject to any preemptive or similar rights.

(viii) This Agreement has been duly authorized, executed and delivered by the Company.

(ix) The issue and sale of the Shares, the execution of this Agreement by the Company and the compliance by the Company with all of the provisions of this Agreement and the consummation of the transactions herein contemplated will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, nor will such action result in any violation of the provisions of the certificate or articles of incorporation or by-laws (or other organization documents) of the Company or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its properties; and no consent, approval, authorization, order, registration or qualification of or with any such court

or governmental agency or body is required for the issue and sale of the Shares or the consummation by the Company of the transactions contemplated by this Agreement, except the registration under the Securities Act of the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters.

(x) Ernst & Young LLP ( "EY"), who have certified certain financial statements of the Company are independent public accountants as required by the Securities Act and the Rules and Regulations. The financial statements, together with related schedules and notes, included in the Registration Statement and the Pricing Prospectus comply in all material respects with the requirements of the Securities Act and present fairly the consolidated financial position, results of operations and changes in financial position of the Company on the basis stated in the Registration Statement at the respective dates or for the respective periods to which they apply; such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and the selected financial data and the summary financial data included in the Pricing Prospectus present fairly the information shown therein and have been compiled on a basis consistent with that of the financial statements included in the Registration Statement. The pro forma financial statements of the Company and the related notes thereto included in the Registration Statement and the Pricing Prospectus present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. EY has not been engaged by the Company to perform any "prohibited activities" (as defined in Section 10A of the Exchange Act).

(xi) The Company has not sustained since the date of the latest audited financial statements included in the Pricing Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Pricing Prospectus, (1) there has not been any change in the capital stock or long-term debt of the Company, (2) there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company, (3) there have been no transactions entered into by, and no obligations or liabilities, contingent or otherwise, incurred by the Company, whether or not in the ordinary course of business, which are material to the Company or (4) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock, in each case, otherwise than as set forth or contemplated in the Pricing Prospectus.

(xii) The Company is not (1) in violation of its certificate or articles of incorporation or bylaws (or other organization documents) or (2) in violation of any law, ordinance, administrative or governmental rule or regulation applicable to the Company, or (3) in violation of any decree of any court or governmental agency or body having jurisdiction over the

Company, or (4) in default in the performance of any obligation, agreement or condition contained in any bond, debenture, note or any other evidence of indebtedness or in any agreement, indenture, lease or other instrument to which the Company is a party or by which its properties may be bound, except, in the case of clauses (2), (3) and (4), where any such violation or default, individually or in the aggregate, would not have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company.

(xiii) The Company has good and marketable title to all real and personal property owned by it, in each case free and clear of all liens, encumbrances and defects except such as are described in the Pricing Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company; and any real property and buildings held under lease by the Company are held under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company.

(xiv) Other than as set forth in the Pricing Prospectus, there are no legal or governmental proceedings pending to which the Company is a party or of which any property of the Company is the subject which, if determined adversely to the Company, individually or in the aggregate, would have or may reasonably be expected to have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company, or would prevent or impair the consummation of the transactions contemplated by this Agreement, or which are required to be described in the Registration Statement or the Pricing Prospectus; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others.

(xv) The Company possesses all permits, licenses, approvals, consents and other authorizations (collectively, "Permits") issued by the appropriate federal, state, local or foreign regulatory agencies or bodies necessary to conduct the businesses now operated by it; the Company is in compliance with the terms and conditions of all such Permits and all of the Permits are valid and in full force and effect, except, in each case, where the failure so to comply or where the invalidity of such Permits or the failure of such Permits to be in full force and effect, individually or in the aggregate, would not have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company; and the Company has not received any notice of proceedings relating to the revocation or material modification of any such Permits.

(xvi) The Company owns or has adequate rights to use all domain names, mask works, inventions, copyrights, technology, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks and trade names, patents and patent rights (collectively "Intellectual Property") and to the Company's knowledge has such other licenses, approvals and governmental authorizations, in each case, sufficient to conduct its businesses and planned future business as described in the Pricing Disclosure Package. The Company is not aware of any facts or circumstances that would form a reasonable basis for the belief that any of Intellectual Property of the Company would not be valid and enforceable in accordance with applicable

regulations and, to the Company's knowledge, none of the foregoing Intellectual Property rights owned or licensed by the Company is invalid or unenforceable. All Intellectual Property owned by the Company has been properly assigned to the Company by any employees, consultants or third parties, and such assignments have been properly recorded with the appropriate governmental authorities. The Company is not aware of any infringement, misappropriation or violation by others of, or conflict by others with, the Intellectual Property of the Company other than with respect to patents and patent rights. The Company is not aware of any infringement, misappropriation or violation by others of, or conflict by others with, the patents and patent rights of the Company except in each case as would not reasonably be expected to have a material adverse effect on the general affairs, current and planned future business as described in the Pricing Disclosure Package, prospects, management, financial position, shareholders' equity or results of operations of the Company. Other than official notices from patent offices in the course of patent prosecution, there are no legal or governmental proceedings pending or threatened against the Intellectual Property of the Company, and the Company has not received any notice or correspondence challenging the validity, scope or enforceability of any Intellectual Property owned by or licensed to the Company. To its knowledge, the Company has not infringed, misappropriated or violated and does not infringe, misappropriate or violate the Intellectual Property rights of any third party, where such infringement, misappropriation or violation could have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company. Other than official notices from patent offices in the course of patent prosecution, there are no legal or governmental claims or proceedings pending or threatened against the Company regarding the Intellectual Property rights of any third party, and the Company has not received any notice or correspondence relating to any alleged infringement, misappropriation or violation the Intellectual Property rights of any third party.

(xvii) No material labor dispute with the employees of the Company exists, or, to the knowledge of the Company, is imminent. The Company is not aware of any existing or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers, customers or contractors, which, individually or in the aggregate, may reasonably be expected to result in a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company.

(xviii) The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; the Company has not been refused any insurance coverage sought or applied for; and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a material adverse effect on the Company.

(xix) The Company has made and keeps books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (1) transactions are executed in accordance with management's general or specific authorizations; (2) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting

principles and to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xx) Since the date of the latest audited financial statements included in the Pricing Prospectus, (a) the Company has not been advised of: (1) any significant deficiencies in the design or operation of internal controls that could adversely affect the ability of the Company to record, process, summarize and report financial data, or any material weaknesses in internal controls or (2) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company, and (b) since that date, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(xxi) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act), which: (i) are designed to ensure that information required to be disclosed by the Company in the reports that it will file or submit under the Exchange Act is recorded, processed, summarized and reported, within the periods in which such reports are required to be prepared; (ii) provide for the periodic evaluation of the effectiveness of such disclosure controls and procedures at the end of the periods in which the periodic reports are required to be prepared; and (iii) are effective at the reasonable assurance level to perform the functions for which they were established.

(xxii) All United States federal income tax returns of the Company required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. The Company has filed all other tax returns that are required to have been filed by it pursuant to applicable foreign, state, local or other law, except insofar as the failure to file such returns, individually or in the aggregate, would not result in a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company, and has paid all taxes due pursuant to such returns or pursuant to any assessment received by the Company except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Company in respect of any income and corporation tax liability for any years not finally determined are adequate to meet any assessments or re-assessments for additional income tax for any years not finally determined.

(xxiii) There are no statutes, regulations, documents or contracts of a character required to be described in the Registration Statement or the Pricing Prospectus or to be filed as an exhibit to the Registration Statement which are not described or filed as required.

(xxiv) The Company is not in violation of any statute or any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, production, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or

toxic substances (collectively, “environmental laws”), does not own or operate any real property contaminated with any substance that is subject to any environmental laws, is not liable for any off-site disposal or contamination pursuant to any environmental laws, and is not subject to any claim relating to any environmental laws, which violation, contamination, liability or claim, individually or in the aggregate, would have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders’ equity or results of operations of the Company; and the Company is not aware of any pending investigation which might lead to such a claim.

(xxv) Each employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), that is maintained, administered or contributed to by the Company for employees or former employees of the Company and its affiliates has been maintained in compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “Code”), except to the extent that failure to so comply, individually or in the aggregate, would not have a material adverse effect on the general affairs, business, prospects, management, financial position, shareholders’ equity or results of operations of the Company. No prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code has occurred with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption. No “Reportable Event” (as defined in Section 12 of ERISA) has occurred with respect to any “Pension Plan” (as defined in ERISA) for which the Company could have any liability.

(xxvi) None of the Company, nor, to the knowledge of the Company, any director, officer, agent, employee or other person acting on behalf of the Company, has: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official, “foreign official” (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the “FCPA”) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA, U.K. Bribery Act of 2010, as amended, or any other applicable anti-bribery statute or regulation; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, foreign official or employee. The Company and, to the knowledge of the Company, the Company’s affiliates, have conducted their respective businesses in compliance with the FCPA, U.K. Bribery Act of 2010, and all other applicable anti-bribery statutes and regulations, and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to ensure, continued compliance therewith.

(xxvii) There is and has been no failure on the part of the Company to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated by the Commission and Nasdaq thereunder (collectively, the “Sarbanes-Oxley Act”). The Company has taken all necessary actions to ensure that it is in compliance with all provisions of the Sarbanes-Oxley Act that are in effect and with which the Company is required to comply (including Section 402 related to loans and Sections 302 and 906 related to certifications) and is actively taking steps to ensure that it will be in compliance with other provisions of the Sarbanes-Oxley Act not currently in effect or which

will become applicable to the Company. As of the date of the initial filing of the Registration Statement, there were no outstanding personal loans made, directly or indirectly, by the Company to any director or executive officer of the Company.

(xxviii) There are no persons with registration rights or other similar rights to have securities registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act that have not been waived with respect to the offering and sale of the Shares as contemplated herein.

(xxix) The Company is not and, after giving effect to the offering and sale of the Shares as contemplated herein and the application of the net proceeds therefrom as described in the Pricing Prospectus, will not be an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act").

(xxx) The Company has not distributed and, prior to the later to occur of the Closing Date (as defined in Section 4 hereof) and completion of distribution of the Shares, will not distribute any offering materials in connection with the offering and sale of the Shares, other than the Pricing Prospectus, the Prospectus and, subject to compliance with Section 6 hereof, any Issuer Free Writing Prospectus; and the Company has not taken and will not take, directly or indirectly, any action designed to cause or result in, or which constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares. The Company (a) has not alone engaged in any Testing-the-Waters Communication other than Testing-the-Waters Communications with the consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the Securities Act or institutions that are accredited investors within the meaning of Rule 501 under the Securities Act and (b) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. Except as listed on Schedule III hereto, the Company has not distributed any Written Testing-the-Waters Communications. "Written Testing-the-Waters Communication" means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Securities Act.

(xxxi) The statistical and market and industry-related data included in the Pricing Prospectus and the Prospectus are based on or derived from sources which the Company believes to be reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources, and the Company has obtained the written consent to the use of such data from sources to the extent required.

(xxxii) The audiovisual presentation made available to the public by the Company at [http://www.netroadshow.com/[address]] is a "bona fide electronic roadshow" for purposes of Rule 433(d)(8)(ii) of the Securities Act, and such presentation, together with the Pricing Prospectus, does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to statements in or omissions from such presentation or Pricing

Prospectus made in reliance upon and in strict conformity with information furnished to the Company in writing by any Underwriter through the Representatives expressly for use therein.

(xxxiii) Any certificate signed by any officer of the Company delivered to the Underwriters or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

(xxxiv) Neither the Company nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering of the Shares, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xxxv) Except as described in the Pricing Prospectus and the Prospectus, the Company has not sold or issued any shares of Common Stock during the six-month period preceding the date of the Prospectus, including any sales pursuant to Rule 144A under, or Regulations D or S of, the Securities Act, other than shares issued pursuant to employee benefit plans, qualified stock options plans or other employee compensation plans or pursuant to outstanding options, rights or warrants.

(xxxvi) The operations of the Company are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Anti-Money Laundering Laws is pending, or to the knowledge of the Company, threatened.

(xxxvii) Each approval, consent, order, authorization, designation, declaration or filing of, by or with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated required to be obtained or performed by the Company (except such additional actions as may be required by the Commission, The NASDAQ Global Market ("Nasdaq") or the Financial Industry Regulatory Authority, Inc. ("FINRA") or as may be necessary to qualify the Shares for public offering by the Underwriters under the state securities or Blue Sky laws) has been obtained or made and is in full force and effect.

(xxxviii) There are no affiliations with FINRA among the Company's officers, directors or, to the knowledge of the Company, any five percent or greater stockholder of the Company, except as set forth in the Registration Statement or otherwise disclosed in writing to the Representatives.

(xxxix) The Shares have been duly authorized for listing on Nasdaq, subject to official Notice of Issuance. A registration statement has been filed on Form 8-A pursuant to Section 12 of the Exchange Act, which registration statement complies in all material respects with the Exchange Act.

(xl) No transaction has occurred between or among the Company and any of its officers or directors, stockholders or any affiliate or affiliates of any such officer or director or stockholder that is required to be described in and is not described in the Registration Statement, the Pricing Prospectus and the Prospectus as required.

(xli) Each director and executive officer of the Company, each stockholder of the Company and each holder of options or warrants to acquire Company Stock has delivered to the Representatives an enforceable written "lock-up" agreement described in Section 8(k) hereof.

2. Subject to the terms and conditions herein set forth, (a) the Company agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at a purchase price per share of $_____ (the "Purchase Price"), the number of Firm Shares to be purchased by such Underwriter as set forth opposite the name of such Underwriter in Schedule I hereto, and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Option Shares as provided below, the Company agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company, at the Purchase Price, the number of Option Shares (to be adjusted by the Representatives so as to eliminate fractional shares) determined by multiplying the number of Option Shares as to which such election shall have been exercised by the fraction, the numerator of which is the number of Firm Shares to be purchased by such Underwriter as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the aggregate number of Firm Shares to be purchased by all of the Underwriters from the Company hereunder.

The Company hereby grants to the Underwriters the right to purchase at their election up to _____ Option Shares, at the Purchase Price, for the sole purpose of covering over-allotments in connection with the sale of the Firm Shares. The Underwriters may exercise their option to acquire Option Shares in whole or in part from time to time only by written notice from the Representatives to the Company, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate number of Option Shares to be purchased and the date on which such Option Shares are to be delivered, as determined by the Representatives but in no event earlier than the Closing Date or, unless the Representatives and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

3. It is understood that the several Underwriters propose to offer the Firm Shares for sale to the public upon the terms and conditions set forth in the Prospectus.

4. The Company will deliver the Firm Shares to the Representatives through the facilities of the Depository Trust Company ("DTC") for the accounts of the Underwriters, against payment of the purchase price therefor in Federal (same day) funds by wire transfer drawn to the order of the Company at the office of Needham & Company, LLC, 445 Park Avenue, New York, New York 10022, at 10:00 A.M., New York time, on _____, _____, or at such other time not later than seven full business days thereafter as the Representatives and the Company determine, such time being herein referred to as the "Closing Date". For purposes of Rule 15c6-1 under the Exchange Act, the Closing Date (if later than the otherwise applicable settlement date) shall be the settlement date for payment of funds and delivery of securities for all the Firm Shares. The certificates for the Firm Shares so to be delivered will be in definitive form, in such denominations and registered in such names as the Representatives request and will be made available for checking and packaging at the above office of Needham & Company, LLC at least 24 hours prior to the Closing Date.

Each time for the delivery of and payment for the Option Shares, being herein referred to as an "Option Closing Date", which may be the Closing Date, shall be determined by the Representatives as provided above. The Company will deliver the Option Shares being purchased on each Option Closing Date to the Representatives through the facilities of DTC for the accounts of the Underwriters, against payment of the purchase price therefor in Federal (same day) funds by wire transfer drawn to the order of the Company at the above office of Needham & Company, LLC, at 10:00 A.M., New York time on the applicable Option Closing Date. The certificates for the Option Securities so to be delivered will be in definitive form, in such denominations and registered in such names as the Representatives request and will be made available for checking and packaging at the above office of Needham & Company, LLC at least 24 hours prior to such Option Closing Date.

5. The Company covenants and agrees with each of the Underwriters as follows:

(a) The Company, subject to Section 5(b), will comply with the requirements of Rule 430A under the Securities Act, and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective, or any supplement to the Prospectus or any amended prospectus shall have been filed, to furnish the Representatives with copies thereof, and to file promptly all material required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Securities Act, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any Preliminary Prospectus, or of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes; and (v) if the Company ceases to be an Emerging Growth Company at any time prior to the later of (A) completion of the distribution of the Shares within the meaning of the Securities Act and (B) completion of the 180-day restricted period referred to in Section 5(j) hereof. The Company will promptly effect the filings necessary pursuant to Rule 424(b) under the Securities Act and will take such steps as it deems necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was

not, it will promptly file such prospectus. The Company will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) The Company will give the Representatives notice of its intention to file or prepare any amendment to the Registration Statement (including any filing under Rule 462(b) under the Securities Act), or any amendment, supplement or revision to the Prospectus, or any Issuer Free Writing Prospectus, will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) The Company will use its best efforts to qualify the Shares for offering and sale under the securities laws of such jurisdictions as the Representatives may reasonably request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, provided that nothing in this Section 5(c) shall require the Company to qualify as a foreign corporation in any jurisdiction in which it is not already so qualified, or to file a general consent to service of process in any jurisdiction.

(d) The Company has furnished or, upon your request, will deliver to the Representatives, without charge, three signed copies of the Initial Registration Statement as originally filed, any Rule 462(b) Registration Statement and of each amendment to each (including exhibits filed therewith or incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also, upon your request, deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(e) The Company has delivered to each Underwriter, without charge, as many written and electronic copies of each Preliminary Prospectus as such Underwriter reasonably requested, and the Company hereby consents to the use of such copies for purposes permitted by the Securities Act. The Company will furnish to each Underwriter, without charge, prior to 5:00 P.M. on the business day next succeeding the date of this Agreement and from time to time thereafter during the period when the Prospectus is required to be delivered in connection with sales of the Shares under the Securities Act or the Exchange Act or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act, such number of written and electronic copies of the Prospectus (as amended or supplemented) as such Underwriter may reasonably request. The Prospectus and any amendments or supplements thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(f) The Company will comply with the Securities Act and the Rules and Regulations so as to permit the completion of the distribution of the Shares as contemplated in this Agreement and in the Prospectus. If at any time when, in the opinion of counsel for the

Underwriters, a prospectus is required to be delivered in connection with sales of the Shares under the Securities Act or the Exchange Act (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act), any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act) is delivered to a purchaser, or if it shall be necessary, in the opinion of either such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the Securities Act or the Rules and Regulations, the Company will promptly prepare and file with the Commission, subject to Section 5(b), such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Company will furnish to the Underwriters such number of written and electronic copies of such amendment or supplement as the Underwriters may reasonably request. The Company will provide the Representatives with notice of the occurrence of any event during the period specified above that may give rise to the need to amend or supplement the Registration Statement or the Prospectus as provided in the preceding sentence promptly after the occurrence of such event. If at any time following the distribution of any Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such Written Testing-the-Waters Communication included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at that subsequent time, not misleading, the Company will promptly notify the Representatives and will promptly amend or supplement, at its own expense, such Written Testing-the-Waters Communication to eliminate or correct such untrue statement or omission.

(g) The Company will make generally available (within the meaning of Section 11(a) of the Securities Act) to its security holders and to the Representatives as soon as practicable, but not later than 45 days after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a period of at least twelve consecutive months beginning after the effective date of the Registration Statement.

(h) The Company will use the net proceeds received by it from the sale of the Shares in the manner specified in the Pricing Prospectus under the heading “Use of Proceeds”.

(i) The Company will use its best efforts to effect and maintain the listing of the Common Stock (including the Shares) on Nasdaq.

(j) During a period of 180 days from the date of the Prospectus, the Company shall not, without the prior written consent of the Representatives, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any Common Stock or any securities convertible into or exercisable or

exchangeable for Common Stock or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; other than: (1) the Shares to be sold hereunder; (2) Common Stock issued upon the exercise of options and other equity awards granted under the equity incentive plans of the Company outstanding on the date hereof and as described in the Pricing Disclosure Package; (3) Common Stock issued upon the conversion of securities or the exercise of warrants, which securities or warrants are outstanding on the date hereof and described in the Pricing Disclosure Package; (4) the grant by the Company of stock options, restricted stock or other equity-based compensation awards (or the issuance of Common Stock upon exercise or settlement thereof) to eligible participants pursuant to equity incentive plans of the Company described in the Pricing Disclosure Package; provided that, prior to exercise of any such stock options, restricted stock or other equity-based awards pursuant to this clause (4) that vest within such 180-day period, each recipient of such award shall have signed and delivered a lockup agreement in substantially the form attached hereto as Exhibit A; and (5) Common Stock or securities exercisable for, convertible into or exchangeable for Common Stock in connection with any acquisition, collaboration, merger, licensing or other joint venture or strategic transaction involving the Company; provided that, in the case of this clause (5), such issuances shall not exceed, in the aggregate, 5% of the total outstanding shares of Common Stock of the Company immediately following the Closing Date and each recipient of such securities shall have signed and delivered a lockup agreement in substantially the form attached hereto as Exhibit A.

(k) If the Representatives, in their sole discretion, agree to release or waive the restrictions set forth in a “lock-up” agreement described in Section 8(k) hereof for an officer or director of the Company and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Exhibit B hereto through a major news service at least two business days before the effective date of the release or waiver.

(l) The Company, during the period when the Prospectus is required to be delivered in connection with sales of the Shares under the Securities Act or the Exchange Act (or in lieu thereof, the notice referred to in Rule 173(a) under the Securities Act), will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and the rules and regulations of the Commission thereunder.

(m) The Company will file with the Commission such information on Form 10-Q or Form 10-K as may be required pursuant to Rule 463 under the Securities Act.

(n) During a period of two years from the effective date of the Registration Statement, the Company will furnish to the Representatives copies of all reports or other communications (financial or other) furnished to shareholders generally, and deliver to the Representatives (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed (other than reports available on EDGAR); and (ii)

such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and any subsidiaries are consolidated in reports furnished to its shareholders generally or to the Commission).

(o) If the Company elects to rely upon Rule 462(b) under the Securities Act, the Company will file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 P.M., Washington, D.C. time, on the date of this Agreement, and at the time of filing either to pay to the Commission the filing fee for the Rule 462(b) Registration Statement or to give irrevocable instructions for the payment of such fee pursuant to Rule 111(b) under the Securities Act.

6.

(a) The Company represents and agrees that, without the prior consent of the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act; each Underwriter represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus; any such free writing prospectus the use of which has been consented to by the Company and the Representatives is listed on Schedule II hereto;

(b) The Company has complied and will comply with the requirements of Rule 433 under the Securities Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; the Company represents that it has satisfied and agrees that it will satisfy the conditions under Rule 433 under the Securities Act to avoid a requirement to file with the Commission any electronic road show;

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus any event occurred or occurs as a result of which such Issuer Free Writing Prospectus would conflict with the information in the Registration Statement, the Pricing Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances then prevailing, not misleading, the Company will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus or other document which will correct such conflict, statement or omission; provided, however, that this representation and warranty shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in strict conformity with information furnished in writing to the Company by an Underwriter through the Representatives expressly for use therein.

7. The Company covenants and agrees with the several Underwriters that, whether or not the transactions contemplated by this Agreement are consummated, the Company will pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including (i) the fees, disbursements and expenses of the Company's counsel, accountants and other advisors; (ii) filing fees and all other expenses in connection with the preparation, printing and filing of the Registration Statement, each Preliminary Prospectus, any

Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (iii) the cost of printing or producing this Agreement, closing documents (including any compilations thereof) and such other documents as may be required in connection with the offering, purchase, sale and delivery of the Shares; (iv) all expenses in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 5(c), including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey; (v) all fees and expenses in connection with listing the Common Stock (including the Shares) on Nasdaq; (vi) the filing fees incident to, and the reasonable fees and disbursements of counsel for the Underwriters in connection with, securing any required review by FINRA of the terms of the sale of the Shares; (vii) all fees and expenses in connection with the preparation, issuance and delivery of the certificates representing the Shares to the Underwriters, including any stock or other transfer taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Shares to the Underwriters; (viii) the cost and charges of any transfer agent or registrar; (ix) the transportation and other expenses incurred by the Company in connection with presentations to prospective purchasers of Shares; and (x) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section; provided, however, that the fees and disbursements of counsel to the Underwriters in clauses (iv) and (vi) shall not exceed $30,000 in the aggregate.

8. The several obligations of the Underwriters hereunder to purchase the Shares on the Closing Date or each Option Closing Date, as the case may be, are subject to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act within the applicable time period prescribed for such filing by the Rules and Regulations and in accordance with Section 5(a); all material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433 under the Securities Act; if the Company has elected to rely upon Rule 462(b) under the Securities Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 P.M., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof or the Prospectus or any part thereof or any Issuer Free Writing Prospectus shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission or any state securities commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representatives' reasonable satisfaction.

(b) The representations and warranties of the Company contained herein are true and correct on and as of the Closing Date or the Option Closing Date, as the case may be, as if made on and as of the Closing Date or the Option Closing Date, as the case may be, and the Company shall have complied with all agreements and all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date or the Option Closing Date, as the case may be.

(c) (i) The Company shall not have sustained since the date of the latest audited financial statements included in the Pricing Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus, and (ii) since the respective dates as of which information is given in the Registration Statement and the Prospectus, (1) there shall not have been any change in the capital stock or long-term debt of the Company or (2) there shall not have been any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, business, prospects, management, financial position, shareholders' equity or results of operations of the Company, the effect of which, in any such case described in clause (i) or (ii), is in the judgment of the Representatives so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Closing Date or Option Closing Date, as the case may be, on the terms and in the manner contemplated in the Pricing Prospectus.

(d) The Representatives shall have received on and as of the Closing Date or the Option Closing Date, as the case may be a certificate, executed on behalf of the Company and not in their individual capacities, by two executive officers of the Company, at least one of whom has specific knowledge about the Company's financial matters, satisfactory to the Representatives, to the effect (1) set forth in Section 8(b) (with respect to the respective representations, warranties, agreements and conditions of the Company), (2) that none of the situations set forth in clause (i) or (ii) of Section 8(c) shall have occurred and (3) that no stop order suspending the effectiveness of the Registration Statement has been issued and to the knowledge of the Company, no proceedings for that purpose have been instituted or are pending or contemplated by the Commission.

(e) On the Closing Date or Option Closing Date, as the case may be, Cooley LLP, counsel for the Company, shall have furnished to the Representatives a written opinion, dated the Closing Date or the Option Closing Date, as the case may be, in form and substance satisfactory to counsel for the Underwriters.

(f) On the effective date of the Registration Statement and, if applicable, the effective date of the most recently filed post-effective amendment to the Registration Statement, EY shall have furnished to the Representatives a letter, dated the date of delivery thereof, in form and substance satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus.

(g) On the Closing Date or Option Closing Date, as the case may be, the Representatives shall have received from EY a letter, dated the Closing Date or such Option Closing Date, as the case may be, to the effect that they reaffirm the statements made in the letter or letters furnished pursuant to Section 8(f), except that the specified date referred to shall be a date not more than three business days prior to the Closing Date or such Option Closing Date, as the case may be.

(h) On the Closing Date or Option Closing Date, as the case may be, Pillsbury Winthrop Shaw Pittman LLP, counsel for the Underwriters, shall have furnished to the Representatives their opinion dated the Closing Date or the Option Closing Date, as the case may be, satisfactory to the Representatives.

(i) The Shares to be delivered on the Closing Date or Option Closing Date, as the case may be, shall have been approved for listing on Nasdaq, subject to official notice of issuance.

(j) FINRA shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and conditions.

(k) The Representatives shall have received a "lock-up" agreements, each substantially in the form of Exhibit A hereto, from all of the stockholders, officers and directors of the Company and such agreements shall be in full force and effect on the Closing Date or Option Closing Date, as the case may be.

(l) On or prior to the Closing Date or Option Closing Date, as the case may be, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives shall reasonably request.

(m) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or Nasdaq; (ii) a suspension or material limitation in trading in the Company's securities on the New York Stock Exchange or Nasdaq; (iii) a general moratorium on commercial banking activities declared by any of Federal, Maryland or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Closing Date or Option Closing Date, as the case may be, on the terms and in the manner contemplated in the Prospectus.

If any condition specified in this Section 8 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated, subject to the provisions of Section 12, by the Representatives by notice to the Company at any time at or prior to the Closing Date or Option Closing Date, as the case may be, and such termination shall be without liability of any party to any other party, except as provided in Section 12.

9.

(a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act against any and all losses, liabilities, claims, damages and expenses whatsoever as incurred (including without limitation, reasonable

attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Initial Registration Statement, as originally filed or any amendment thereof, the Registration Statement, or any post-effective amendment thereof, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication, or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Securities Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading and to reimburse each Underwriter and each such director, officer, employee, affiliate and controlling person for any and all expenses (including the reasonable fees and disbursements of counsel) as such expenses are reasonably incurred by such Underwriter or such director, officer, employee, affiliate or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Initial Registration Statement, as originally filed or any amendment thereof, the Registration Statement, or any post-effective amendment thereof, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, any Issuer Free Writing Prospectus, any Written Testing-the-Waters Communication or in any Blue Sky Application in reliance upon and in strict conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter is the information described as such in Section 9(b) below.

(b) Each Underwriter severally, and not jointly, agrees to indemnify and hold harmless the Company, each of the directors of the Company, each of the officers of the Company who shall have signed the Registration Statement, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20(a) of the Exchange Act, against any losses, liabilities, claims, damages and expenses whatsoever as incurred (including without limitation, reasonable attorneys' fees and any and all reasonable expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Initial Registration Statement, as originally filed or any amendment thereof, the Registration Statement, or any post-effective amendment thereof, or any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or in any supplement thereto or amendment thereof or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to

the extent, that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in strict conformity with written information furnished to the Company by or on behalf of such Underwriter through the Representatives expressly for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: the last paragraph at the bottom of the cover page concerning the timing of the offering by the Underwriters, the concession figure appearing in the sixth paragraph under the caption “Underwriting” and the information contained in the thirteenth, fourteenth, fifteenth, sixteenth and eighteenth paragraphs under the caption “Underwriting”.

(c) Promptly after receipt by an indemnified party under Section 9(a) or 9(b) of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such Section, notify each party against whom indemnification is to be sought in writing of the commencement thereof (but the failure so to notify an indemnifying party shall not relieve it from any liability which it may have under this Section 9 except to the extent that it has been materially prejudiced through forfeiture of substantive rights or defenses by such failure). In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and jointly with any other indemnifying party similarly notified, to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnified party). Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by one of the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to have charge of the defense of such action within a reasonable time after notice of commencement of the action, or (iii) such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the indemnifying parties. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, which counsel, in the event of indemnified parties under Section 9(a), shall be selected by the Representatives. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising

out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under Section 9(a) or 9(b) in respect of any losses, liabilities, claims, damages or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, liabilities, claims, damages or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Shares shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 9(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 9(d). The amount paid or payable by an indemnified party as a result of the losses, liabilities, claims, damages or expenses (or actions in respect thereof) referred to above in this Section 9(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9(d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 9(d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) The obligations of the parties to this Agreements contained in this Section 9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

10. If any Underwriter or Underwriters default in its or their obligations to purchase Shares hereunder on the Closing Date or any Option Closing Date and the aggregate number of Shares that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total number of Shares that the Underwriters are obligated to purchase on such Closing Date or Option Closing Date, as the case may be, the Representatives may make arrangements satisfactory to the Company for the purchase of such Shares by other persons, including any of the Underwriters, but if no such arrangements are made by such Closing Date or Option Closing Date, as the case may be, the non-defaulting Underwriters shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Shares that such defaulting Underwriters agreed but failed to purchase on such Closing Date or Option Closing Date, as the case may be. If any Underwriter or Underwriters so default and the aggregate number of Shares with respect to which such default or defaults occur exceeds 10% of the total number of Shares that the Underwriters are obligated to purchase on such Closing Date or Option Closing Date, as the case may be, and arrangements satisfactory to the Representatives and the Company for the purchase of such Shares by other persons are not made within 36 hours after such default, this Agreement will terminate, subject to the provisions of Section 12, without liability on the part of any non-defaulting Underwriter or the Company, except as provided in Section 12. Nothing herein will relieve a defaulting Underwriter from liability for its default.

In the event of any such default which does not result in a termination of this Agreement, either the Representatives or the Company shall have the right to postpone the Closing Date or the relevant Option Closing Date, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used in this Agreement, the term “Underwriter” includes any person substituted for an Underwriter under this Section 10.

11. Notwithstanding anything herein contained, this Agreement (or the obligations of the several Underwriters with respect to any Option Shares which have yet to be purchased) may be terminated, subject to the provisions of Section 12, in the absolute discretion of the Representatives, by notice given to the Company, if after the execution and delivery of this Agreement and prior to the Closing Date or the Option Closing Date, as the case may be, (a) trading generally on the New York Stock Exchange or on the NASDAQ Global Select Market or the NASDAQ Global Market shall have been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, FINRA or any other governmental or regulatory authority, (b) trading of any securities of or guaranteed by the Company shall have been suspended on any exchange or in any over-the-counter market, (c) a general moratorium on commercial banking activities in New York or Maryland shall have been declared by Federal, New York State or Maryland State authorities or a new restriction materially adversely affecting the distribution of the Firm Shares or the Option Shares, as the case may be, shall have become effective, or (d) there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development

involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable to market the Shares to be delivered on the Closing Date or Option Closing Date, as the case may be, or to enforce contracts for the sale of the Shares.

If this Agreement is terminated pursuant to this Section 11, such termination will be without liability of any party to any other party except as provided in Section 12 hereof.

12. The respective indemnities, agreements, representations, warranties and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter, the Company or any of their respective representatives, officers or directors or any controlling person, and will survive delivery of and payment for the Shares. If this Agreement is terminated pursuant to Section 8, 10 or 11 or if for any reason the purchase of any of the Shares by the Underwriters is not consummated, the Company shall remain responsible for the expenses to be paid or reimbursed by it pursuant to Section 7, the respective obligations of the Company and the Underwriters pursuant to Section 9 and the provisions of Sections 12, 13 and 16 shall remain in effect and, if any Shares have been purchased hereunder the representations and warranties in Section 1 and all obligations under Section 5 and Section 6 shall also remain in effect. If this Agreement shall be terminated by the Underwriters, or any of them, under Section 8 or otherwise because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement or any condition of the Underwriters' obligations cannot be fulfilled, the Company agrees to reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and expenses of its counsel) reasonably incurred by the Underwriter in connection with this Agreement or the offering contemplated hereunder; provided, however, that in no event shall the Company be required to reimburse any defaulting Underwriter as described in Section 10.

13. This Agreement shall inure to the benefit of and be binding upon the Company and the Underwriters, the officers and directors of the Company referred to herein, any controlling persons referred to herein and their respective successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. No purchaser of Shares from any Underwriter shall be deemed to be a successor or assign by reason merely of such purchase.

14. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt thereof by the recipient if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be given to the Representatives, c/o Stifel, Nicolaus & Company, Incorporated, 237 Park Avenue, 8th Floor, New York, New York 10017 and c/o Needham & Company, LLC, 445 Park Avenue, New York, New York 10022. Notices to the Company shall be given to its agent for service as such agent's address appears on the cover page of the Registration Statement.

15. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

16. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS.

17. The parties hereby submit to the jurisdiction of and venue in the federal courts located in the City of New York, New York in connection with any dispute related to this Agreement, any transaction contemplated hereby, or any other matter contemplated hereby.

18. The Company acknowledges and agrees that (i) the purchase and sale of the Shares pursuant to this Agreement, including the determination of the public offering price of the Shares and any related discounts and commissions, is an arm's-length commercial transaction between the Company on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company or its stockholders, creditors, employees or any other party, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Agreement, and (iv) the Company has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company agrees that it will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company, in connection with such transaction or the process leading thereto.

19. The Company acknowledges that the Underwriters' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriters' research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriters' investment banking divisions. The Company acknowledges that each of the Underwriters is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transaction for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

20. Notwithstanding anything herein to the contrary the Company is authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company relating to that treatment and structure, without the Underwriters

imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential ( and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, “tax structure” is limited to any facts that may be relevant to that treatment.

21. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Underwriters, or any of them, with respect to the subject matter hereof.

22. The Company and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company a counterpart hereof, whereupon this instrument will become a binding agreement among the Company and the Underwriters.

Very truly yours,

Everspin Technologies, Inc.

By: _____
Name:
Title:

Accepted as of the date hereof:

STIFEL, NICOLAUS & COMPANY,
INCORPORATED NEEDHAM & COMPANY, LLC

By: Stifel, Nicolaus & Company, Incorporated

By: _____
Title:

By: Needham & Company, LLC

By _____
Name:
Title:

For themselves and as Representatives of the
other Underwriters named in Schedule I hereto

SCHEDULE I

| Underwriter | Number of Firm Shares to be Purchased |
|---|---|
| Stifel, Nicolaus & Company, Incorporated | |
| Needham & Company, LLC | |
| Canaccord Genuity Inc. | |
| Craig-Hallum Capital Group LLC | |
| Total: | |

SCHEDULE II

Issuer Free Writing Prospectuses
Other Information

30

SCHEDULE III

Written Testing-the-Waters Communications

31

EXHIBIT A

**FORM OF LOCK-UP AGREEMENT**

**LOCK-UP AGREEMENT**

_____, 2016

EVERSPIN TECHNOLOGIES, INC.
1347 N. Alma School Road
Suite 220
Chandler, Arizona 85224

STIFEL, NICOLAUS & COMPANY, INCORPORATED
NEEDHAM & COMPANY, LLC

As Representatives of the Several Underwriters

c/o Stifel, Nicolaus & Company, Incorporated
One South Street, 15th Floor
Baltimore, Maryland 21202

c/o Needham & Company, LLC
445 Park Avenue
New York, New York 10022

Ladies and Gentlemen:

This letter agreement (the "Lock-Up Agreement") refers to the proposed Underwriting Agreement (the "Underwriting Agreement") among Everspin Technologies, Inc., a Delaware corporation (the "Company") and the several underwriters named therein (the "Underwriters"). As an inducement to the Underwriters to execute the Underwriting Agreement in connection with the proposed public offering (the "Offering") of shares of the Company's common stock, $0.0001 par value per share ("Common Stock"), pursuant to a Registration Statement on Form S-1, the undersigned hereby agrees that from the date hereof and until 180 days after the public offering date set forth on the final prospectus used to sell the Common Stock (the "Public Offering Date") pursuant to the Underwriting Agreement (such 180 day period being referred to herein as the "Lock-Up Period"), to which you are or expect to become parties, the undersigned will not (and will cause any spouse or immediate family member (as defined below) of the spouse or the undersigned living in the undersigned's household, any partnership, corporation or other entity within the undersigned's control, and any trustee of any trust that holds Common Stock or other securities of the Company (collectively, "Restricted Securities") for the benefit of the undersigned or such spouse or family member not to) offer, sell, contract to sell (including any short sale), pledge, hypothecate, assign, establish an open "put equivalent position" within the meaning of

Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended, grant any option, right or warrant for the sale of, purchase any option or contract to sell, sell any option or contract to purchase, or otherwise encumber, dispose of or transfer, or grant any rights with respect to, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for any shares of Common Stock, enter into a transaction which would have the same effect, or enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such aforementioned transaction is to be settled by delivery of the Common Stock or such other securities, in cash or otherwise, or publicly disclose the intention to make any such offer, sale, pledge or disposition, or to enter into any such transaction, swap, hedge or other arrangement, without, in each case, the prior written consent of Stifel, Nicolaus & Company, Incorporated and Needham & Company, LLC (the "Representatives"), which consent may be withheld in the Representatives' sole discretion. Any Common Stock received upon exercise of options granted to or warrants owned by the undersigned will also be subject to this Lock-Up Agreement.

The foregoing restrictions shall not apply to (i) *bona fide* gifts by the undersigned, (ii) transfers of Restricted Securities or any security convertible into or exercisable for Restricted Securities to an immediate family member or a trust for the benefit of the undersigned or an immediate family member or to any corporation, partnership, limited liability company or other entity all of the beneficial ownership interests of which are held exclusively by the undersigned and/or one or more family members of the undersigned in a transaction not involving a disposition for value, (iii) transfers of Restricted Securities or any security convertible into or exercisable for Restricted Securities upon death by will or intestate succession, (iv) the exercise of any option, warrant or other right to acquire Restricted Securities, (v) securities transferred to one or more affiliates of the undersigned and distributions of securities to partners, members or stockholders of the undersigned, (vi) transactions relating to securities acquired in open market transactions after the Public Offering Date, and (vii) the entry into any trading plan established pursuant to Rule 10b5-1 under the Exchange Act, provided that such plan does not provide for any sales or other dispositions of Restricted Securities during the Lock-Up Period and no public announcement or filing under the Exchange Act is made by or on behalf of the undersigned or the Company regarding the establishment of such plan; provided that, in the case of a transfer or distribution pursuant to the preceding clauses (i), (ii), (iii) or (v), (A) each resulting transferee or recipient, as the case may be, of the Restricted Securities executes and delivers to the Representative an agreement satisfactory to the Representative certifying that such transferee is bound by the terms of this Lock-Up Agreement and has been in compliance with the terms hereof since the date first above written as if it had been an original party hereto and to the extent any interest in the Restricted Securities is retained by the undersigned (or such spouse or family member), such securities shall remain subject to the restrictions contained in this Lock-Up Agreement and (B) no public filing under Section 13 or Section 16(a) of the Exchange Act, or other public announcement, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Lock-Up Period in connection with such transfer or distribution.

If the undersigned is an officer or director of the Company, (i) the undersigned agrees that the foregoing restrictions shall be equally applicable to any issuer-directed or "friends and family" shares of Common Stock that the undersigned may purchase in the Offering; (ii) the undersigned acknowledges that the Representatives agree that, at least three business days before

the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives will notify the Company of the impending release or waiver, and (iii) the undersigned acknowledges that the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this Lock-Up Agreement to the extent and for the duration that such terms remain in effect at the time of the transfer.

For purposes of this Lock-Up Agreement: “immediate family member” shall mean a spouse, domestic partner, child, grandchild or other lineal descendant (including by adoption), father, mother, brother or sister of the undersigned or other relationship not more remote than first cousin; and “affiliate” shall have the meaning set forth in Rule 405 of the Securities Act.

In addition, the undersigned agrees that, during the period commencing on the date hereof and ending 180 days after the Public Offering Date, without the prior written consent of the Representatives (which consent may be withheld in their sole discretion): (a) the undersigned will not request, make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock and (b) the undersigned waives any and all notice requirements and rights with respect to the registration of any such security pursuant to any agreement, understanding or otherwise to which the undersigned is a party.

In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby authorized to (a) decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Lock-Up Agreement and (b) place legends and stop transfer instructions on any such shares of Common Stock owned or beneficially owned by the undersigned.

*[rest of page left intentionally blank]*

This Lock-Up Agreement is irrevocable and shall be binding on the undersigned and the successors, heirs, personal representatives and assigns of the undersigned. This Lock-Up Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to choice of law rules. This Lock-Up Agreement shall lapse and become null and void if (i) the Representatives, on the one hand, or the Company, on the other hand, advises the other in writing, prior to the execution of the Underwriting Agreement, that it has determined not to proceed with the Offering, (ii) the Underwriting Agreement terminates, or (iii), on January 31, 2017, in the event that the Underwriting Agreement has not been executed by that date.

Very truly yours,

**IF AN INDIVIDUAL:**

By: _____

Name: _____

**IF AN ENTITY:**

Entity: _____

By: _____

Name: _____

Title: _____

EXHIBIT B

**Form of Press Release**

**Everspin Technologies, Inc.**
**[Date]**

Everspin Technologies, Inc. announced today that Stifel, Nicolaus & Company, Incorporated and Needham & Company LLC, the joint book-running managers in Everspin's recent public offering of _____ shares of common stock, are [waiving] [releasing] a lock-up restriction with respect to _____ shares of Everspin's common stock held by [certain officers or directors] [an officer or director] of Everspin. The [waiver] [release] will take effect on _____, 201_, and the shares may be sold on or after such date.

**This press release is not an offer or sale of the securities in the United States or in any other jurisdiction where such offer or sale is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.**

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
EVERSPIN TECHNOLOGIES, INC.

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Everspin Technologies, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

**DOES HEREBY CERTIFY:**

**1.** That the name of this corporation is Everspin Technologies, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on May 16, 2008 under the name Everspin Technologies, Inc.

**2.** That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of this corporation is Everspin Technologies, Inc. (the "**Corporation**").

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent. The name of its registered agent at such address is National Registered Agents, Inc.

**THIRD:** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 170,000,000 shares of Common Stock, $0.0001 par value per share ("**Common Stock**"), and (ii) 63,080,000 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

35,580,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**" and 27,500,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**" (and together with the Series A Preferred Stock, the "**Series Preferred**") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

1. Dividends.

Shares of Series Preferred shall be eligible to receive, on a pari-passu basis, dividends at the rate per annum of $0.08 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Preferred) (the "**Series Preferred Dividends**"); provided that, such Series Preferred Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Series Preferred Dividends. The Series Preferred Dividends shall be non-cumulative. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series Preferred then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series Preferred in an amount at least equal to the greater of (i) the amount of the aggregate Series Preferred Dividends then declared on such share of Series Preferred and not previously paid and (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Series Preferred as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series Preferred, in each case calculated on the record date for determination of holders entitled to receive such dividend or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Series Preferred determined by (1)

dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (2) multiplying such fraction by an amount equal to the applicable Series Preferred Original Issue Price (as defined below); provided that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Series Preferred pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Series Preferred dividend. The "**Series A Original Issue Price**" shall mean $1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The "**Series B Original Issue Price**" shall mean $1.00 per share (and together with the Series A Original Issue Price, the "**Series Preferred Original Issue Price**"), and subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Preferential Payments to Holders of Series Preferred. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Series Preferred then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, on a pari-passu basis and before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the applicable Series Preferred Original Issue Price, plus any dividends declared but unpaid thereon. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series Preferred the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series Preferred shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Series Preferred the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series Preferred and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such dissolution, liquidation or winding up of the Corporation. The aggregate amount which a holder of shares of Series Preferred is entitled to receive under Subsections 2.1 and 2.2 is hereinafter referred to as the "**Series Preferred Liquidation Amount**."

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least 60% of the outstanding shares of Series Preferred voting together as a single class elect otherwise by written notice sent to the Corporation at least 10 days prior to the effective date of any such event:

(a) a merger or consolidation in which

(i) the Corporation is a constituent party or

(ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Subsection 2.3.1, all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such merger or consolidation or upon conversion of Convertible Securities (as defined below) outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where (i) such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation or (ii) the Corporation or any subsidiary of the Corporation pledges all or substantially all of the assets of the Corporation and its subsidiaries to secure debt.

2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation

Event, then (i) the Corporation shall send a written notice to each holder of Series Preferred no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series Preferred, and (ii) if the holders of at least 60% of the then outstanding shares of Series Preferred voting together as a single class so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders and after satisfying in full or providing for adequate reserves for all other liabilities and obligations of the Corporation (the **"Available Proceeds**"), to the extent legally available therefor and in compliance with Section 170 and other applicable provisions of the General Corporation Law, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series Preferred at a price per share equal to the Series Preferred Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series Preferred, the Corporation shall redeem a pro rata portion of each holder's shares of Series Preferred to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. The provisions of Subsections 6.2 through 6.4 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series Preferred pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be the fair market value of the property, rights or securities as determined on a national securities exchange or if not applicable, in good faith by the Board of Directors of the Corporation.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Series Preferred shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series Preferred held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of shares of the Series Preferred shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect three directors of the Corporation (the "**Series A Directors**"), the holders of record of the shares of Common Stock, exclusively and as a single class, shall be entitled to elect one director of the Corporation, and the holders of record of the shares of Common Stock and Series Preferred, voting together as a single class, shall be entitled to elect the remaining directors of the Corporation. Any director elected as provided in the preceding sentence may be removed with or without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Series A Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series A Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series Preferred), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2.

3.3 Series Preferred Protective Provisions. At any time when at least 1,000,000 shares of Series Preferred (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Preferred) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least 60% of the then outstanding shares of Series Preferred, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

(b) amend, alter, repeal or waive any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series Preferred;

(c) create, or authorize the creation of, any additional class or series of capital stock unless the same ranks junior to the Series A Preferred Stock and Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Series A Preferred Stock or Series B Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior to the Series A Preferred Stock and Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(d) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Series A Preferred Stock or Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock or Series B Preferred Stock in respect of any such right, preference or privilege, or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Preferred Stock or Series B Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Series A Preferred Stock or Series B Preferred Stock in respect of any such right, preference or privilege;

(e) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Series Preferred as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock or (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at no greater than the higher of the original purchase price or the then-current fair market value thereof;

(f) create, or authorize the creation of, or issue, or authorize the issuance of any debt security, or permit any subsidiary to take any such action with respect to any debt security, if the aggregate indebtedness of the Corporation and its subsidiaries for borrowed money following such action would exceed $1,000,000 other than equipment leases or bank lines of credit;

(g) form, capitalize, create, receive, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

(h) increase or decrease the authorized number of directors constituting the Board of Directors;

(i) increase or decrease the authorized number of shares of capital stock reserved for issuance to employees, officers or directors of, or consultants or advisors to, the Corporation or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board;

(j) pay or declare any dividend on any shares of Common Stock or any series of Preferred Stock ranking junior to the Series Preferred; or

(k) file a petition under any bankruptcy or insolvency law.

4. Optional Conversion.

The holders of shares of the Series Preferred shall have conversion rights as follows (the "**Conversion Rights**"):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Series Preferred shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the respective Series Preferred Original Issue Price by the respective Series Preferred Conversion Price (as defined below) in effect at the time of conversion. The **"Series A Conversion Price"** shall initially be equal to $1.00. The **"Series B Conversion Price"** shall initially be equal to $1.00 (and together with the Series A Conversion Price, the "**Series Preferred Conversion Price**"). Such initial Series Preferred Conversion Prices, and the rate at which shares of Series Preferred may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Series Preferred pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of the Series Preferred.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series Preferred the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of shares of the Series Preferred to voluntarily convert shares of Series Preferred into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Series Preferred (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Series Preferred (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Series Preferred represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Series Preferred, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series Preferred represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Series Preferred converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Series Preferred shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series Preferred, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series Preferred; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing any applicable Series Preferred Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of such series of Series Preferred, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series Preferred Conversion Price.

4.3.3 Effect of Conversion. All shares of Series Preferred which shall have been surrendered for conversion as herein provided shall no longer be deemed to be

outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Series Preferred so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series Preferred accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Series Preferred Conversion Prices shall be made for any declared but unpaid dividends on the Series Preferred surrendered for conversion or on the Common Stock delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of the Series Preferred pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Series Preferred Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) "**Option**" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) "**Series B Original Issue Date**" shall mean the date on which the first share of Series B Preferred Stock is issued after the filing date hereof.

(c) "**Convertible Securities**" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) "**Additional Shares of Common Stock**" shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series B Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, "**Exempted Securities**"):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on the shares of Series Preferred;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation;

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation;

(vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with strategic, sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, for a consideration per share which is less than the applicable Series Preferred Conversion Price.

4.4.2 No Adjustment of Series Preferred Conversion Price. No adjustment in the Series Preferred Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least 60% of the then outstanding shares of Series Preferred agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to any applicable Series Preferred Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the applicable Series Preferred Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series Preferred Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the applicable Series Preferred Conversion Price to an amount which exceeds the lower of (i) the Series Preferred Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Series Preferred Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to any Series Preferred Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the applicable Series Preferred Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to any Series Preferred Conversion Price pursuant to the terms of Subsection 4.4.4, the applicable Series Preferred Conversion Price shall be readjusted to such Series Preferred Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the applicable Series Preferred Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the applicable Series Preferred Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to any Series Preferred Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Series Preferred Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series B Original Issue Date issue Additional Shares of Common Stock (including Additional

Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than any Series Preferred Conversion Price in effect on the date of and immediately prior to such issue, then such Series Preferred Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) "$CP_2$" shall mean the applicable Series Preferred Conversion Price in effect immediately after such issue of Additional Shares of Common Stock

(b) "$CP_1$" shall mean the applicable Series Preferred Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

(c) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the shares of Series Preferred) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to $CP_1$ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by $CP_1$); and

(e) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or

other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to a respective Series Preferred Conversion Price pursuant to the terms of Subsection 4.4.4, then, upon the final such issuance, such Series Preferred Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Common Stock, the Series Preferred Conversion Prices in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common

Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock, the Series Preferred Conversion Prices in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock for no consideration, then and in each such event the Series Preferred Conversion Prices in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Series Preferred Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Prices shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Prices shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of Series Preferred simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series Preferred had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of shares of Series Preferred shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities

or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series Preferred had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series Preferred) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series Preferred shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of such series of Series Preferred immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Series Preferred, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Series Preferred Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such Series Preferred.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Series Preferred Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 20 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of such series of Series Preferred a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the such series of Series Preferred is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of shares of such Series Preferred (but in any event not later than 20 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Series Preferred Conversion Price then in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such series of Series Preferred.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series Preferred) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Series Preferred a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Series Preferred) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series Preferred and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events. Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least $2.50 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $55,000,000 of gross proceeds to the Corporation or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of at least 60% of the then outstanding shares of Series Preferred voting together as a single class (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the "**Mandatory Conversion Time**"), (i) all outstanding shares of Series Preferred shall automatically be converted into shares of Common Stock, at the then effective conversion rate and (ii) such shares may not be reissued by the Corporation.

5.2 Procedural Requirements. All holders of record of shares of Series Preferred shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series Preferred pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series Preferred shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series Preferred converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement)

therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series Preferred, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series Preferred converted. Such converted Series Preferred shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series Preferred accordingly.

6. Redemption.

6.1 Redemption. Shares of Series Preferred shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the respective Series Preferred Original Issue Price per share, plus all declared but unpaid dividends thereon (the "**Redemption Price**"), in three annual installments commencing not more than 60 days after receipt by the Corporation at any time on or after the fifth (5th) anniversary of the Series B Original Issue Date, from the holders of at least 60% of the then outstanding shares of Series Preferred, of written notice requesting redemption of all shares of the Series Preferred. The date of each such installment shall be referred to as a "**Redemption Date**". The total amount to be paid for the Series Preferred is hereinafter referred to as the "**Aggregate Redemption Price**". On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series Preferred owned by each holder, that number of outstanding shares of Series Preferred determined by dividing (i) the total number of shares of Series Preferred outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies); provided, however, that Excluded Shares (as such term is defined in Subsection 6.2) shall not be redeemed and shall be excluded from the calculations set forth in this sentence. Notwithstanding the foregoing, no holder of shares of Series Preferred shall be able to revoke its written notice requesting redemption of all shares of Series Preferred after the first Redemption Date. If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Series Preferred to be redeemed on such Redemption Date, the Corporation shall redeem such shares of Series Preferred pro rata (based on the portion of the Aggregate Redemption Price payable to them), and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

6.2 Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the "**Redemption Notice**") to each holder of record of the Series Preferred not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(a) the number of shares of Series Preferred held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(b) the Redemption Date and the Redemption Price;

(c) the date upon which the holder's right to convert such shares terminates (as determined in accordance with Subsection 4.1); and

(d) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series Preferred to be redeemed.

If the Corporation receives, on or prior to the 20th day after the date of delivery of the Redemption Notice to a holder of Series Preferred, written notice from such holder that such holder elects to be excluded from the redemption provided in this Section 6, then the shares of Series Preferred registered on the books of the Corporation in the name of such holder at the time of the Corporation's receipt of such notice shall thereafter be "**Excluded Shares**". Excluded Shares shall not be redeemed or redeemable pursuant to this Section 6, whether on such Redemption Date or thereafter.

6.3 Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series Preferred to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series Preferred represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series Preferred shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series Preferred to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series Preferred so called for redemption shall not have been surrendered, dividends with respect to such shares of Series Preferred shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Series Preferred that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series Preferred following redemption.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series Preferred set forth herein may be waived on behalf of all holders of Series Preferred by the affirmative written consent or vote of the holders of at least 60% of the shares of Series Preferred then outstanding voting together as a single class.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Series Preferred shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

**FIFTH:** Subject to any additional vote required by the Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**SIXTH:** Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

**SEVENTH:** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

**NINTH:** To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

**TENTH:** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

**ELEVENTH**: The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director or board observer of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series Preferred or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

**TWELFTH:** In connection with repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment, neither Sections 502 and 503 of the California Corporations Code nor any other similar statute of any other jurisdiction shall apply in all or in part with respect to such repurchases.

* * *

**3.** That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

**4.** That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation of Everspin Technologies, Inc. has been executed by a duly authorized officer of this corporation on this 15th day of October, 2014.

By: /s/ Phillip LoPresti

Phillip LoPresti; Chief Executive Officer

**Exhibit 3.2**

**CERTIFICATE OF AMENDMENT OF**
**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION OF**
**EVERSPIN TECHNOLOGIES, INC.**

**EVERSPIN TECHNOLOGIES, INC.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that:

**FIRST:** The name of the Corporation is **EVERSPIN TECHNOLOGIES, INC**.

**SECOND:** The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware is May 16, 2008.

**THIRD:** The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware, adopted resolutions amending its Amended and Restated Certificate of Incorporation as follows:

The first sentence of Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation shall be amended and restated to read in its entirety as follows:

> "The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 175,000,000 shares of Common Stock, $0.0001 par value per share ("**Common Stock**"), and (ii) 68,080,000 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**")."

The first sentence of Article Fourth, Section B of the Corporation's Amended and Restated Certificate of Incorporation shall be amended and restated to read in its entirety as follows:

> "35,580,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**" and 32,500,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**" (and together with the Series A Preferred Stock, the "**Series Preferred**") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations."

**FOURTH:** Thereafter pursuant to a resolution of the Board of Directors, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

**IN WITNESS WHEREOF**, Everspin Technologies, Inc. has caused this Certificate of Amendment to be signed by its Chief Executive Officer this 5th day of December, 2014.

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Phillip LoPresti
Phillip LoPresti, Chief Executive Officer

**Exhibit 3.3**

**CERTIFICATE OF AMENDMENT OF**
**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION OF**
**EVERSPIN TECHNOLOGIES, INC.**

**EVERSPIN TECHNOLOGIES, INC.**, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), hereby certifies that:

**FIRST:** The name of the Corporation is **EVERSPIN TECHNOLOGIES, INC**.

**SECOND:** The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware is May 16, 2008.

**THIRD:** The Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware, adopted resolutions amending its Amended and Restated Certificate of Incorporation as follows:

The first sentence of Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation shall be amended and restated to read in its entirety as follows:

> "The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 204,000,000 shares of Common Stock, $0.0001 par value per share ("**Common Stock**"), and (ii) 77,080,000 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**")."

The first sentence of Article Fourth, Section B of the Corporation's Amended and Restated Certificate of Incorporation shall be amended and restated to read in its entirety as follows:

> "35,580,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**" and 41,500,000 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**" (and together with the Series A Preferred Stock, the "**Series Preferred**") with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations."

**FOURTH:** Thereafter pursuant to a resolution of the Board of Directors, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

**IN WITNESS WHEREOF**, Everspin Technologies, Inc. has caused this Certificate of Amendment to be signed by its Chief Executive Officer this 29th day of July, 2016.

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Phillip LoPresti
Phillip LoPresti, Chief Executive Officer

**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION**
**OF**
**EVERSPIN TECHNOLOGIES, INC.**

Phillip LoPresti hereby certifies that:

**ONE:** The name of this company is Everspin Technologies, Inc. and the date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was May 16, 2008 under the name Everspin Technologies, Inc.

**TWO:** He is the duly elected and acting Chief Executive Officer of Everspin Technologies, Inc. a Delaware corporation.

**THREE:** The Amended and Restated Certificate of Incorporation of this company is hereby amended and restated in its entirety to read as follows:

**I.**

The name of this corporation is Everspin Technologies, Inc., (the "***Company***").

**II.**

The address of the registered office of the Company in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover, County of Kent, Zip Code 19904 and the name of the registered agent of this Company is National Registered Agents, Inc.

**III.**

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("***DGCL***").

**IV.**

**A.** The Company is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Company is authorized to issue is 105,000,000 shares. 100,000,000 shares shall be Common Stock, each having a par value of $0.0001. 5,000,000 shares shall be Preferred Stock, each having a par value of $0.0001.

**B.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Company is hereby expressly authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

**C.** The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Company entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any Certificate of Designation filed with respect to any series of Preferred Stock.

**V.**

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

**A. BOARD OF DIRECTORS**

**1. Generally**. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

**2. Election**.

**a.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his successor is duly elected and qualified or until his earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**b.** No stockholder entitled to vote at an election for directors may cumulate votes to which such stockholder is entitled unless required by applicable law at the time of such election. During such time or times that applicable law requires cumulative voting, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder thinks fit. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

**c.** The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

**3. Removal of Directors**. Subject to any limitations imposed by applicable law, the Board of Directors or any individual director may be removed from office at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares

of capital stock of the corporation, entitled to vote generally at an election of directors or (b) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of the capital stock of the corporation entitled to vote generally at an election of directors.

**4. Vacancies**. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders and except as otherwise provided by applicable law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

**B. STOCKHOLDER ACTIONS**.

No action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner provided in the Bylaws of the Company.

**C. BYLAWS.**

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the Company by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Company; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Amended and Restated Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.

**VI.**

**A.** The liability of the directors of the Company for monetary damages shall be eliminated to the fullest extent under applicable law.

**B.** To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and other agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

**C.** Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VI in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability or indemnification.

**D.** The Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company's stockholders; (iii) any action asserting a claim against the Company arising pursuant to any provision of the DGCL, the Amended and Restated Certificate of Incorporation or the Bylaws of the Company; or (iv) any action asserting a claim against the Company governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company shall be deemed to have notice of and to have consented to the provisions of this Section VI.D.

**VII.**

**A.** The Company reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

**B.** Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Company required by law or by this Amended and Restated Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, and VII.

* * * *

**FOUR**: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this Company.

**FIVE**: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this Company in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of this Company.

[Signature Page Follows]

**IN WITNESS WHEREOF,** Everspin Technologies, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this [ ] day of [ ], 2016.

Phillip LoPresti
Chief Executive Officer

**Exhibit 3.5**

# BYLAWS

# OF

# EVERSPIN TECHNOLOGIES, INC.

# (A DELAWARE CORPORATION)

**TABLE OF CONTENTS**

**BYLAWS**

**OF**

**EVERSPIN TECHNOLOGIES, INC.**
**(A DELAWARE CORPORATION)**

## ARTICLE I

## OFFICES

**Section 1. Registered Office**. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent. (Del. Code Ann., tit. 8, § 131)

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require. (Del. Code Ann., tit. 8, § 122(8))

## ARTICLE II

## CORPORATE SEAL

**Section 3. Corporate Seal.** The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. (Del. Code Ann., tit. 8, § 122(3))

## ARTICLE III

## STOCKHOLDERS' MEETINGS

**Section 4. Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL"). (Del. Code Ann., tit. 8, § 211(a))

**Section 5. Annual Meeting**.

**(a)** The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of

stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. (Del. Code Ann., tit. 8, § 211(b)).

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act") and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i)

the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

**(c)** Notwithstanding anything in the second sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

**(d)** Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

**(e)** Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

**(f)** For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

**Section 6. Special Meetings**.

**(a)** Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

**(b)** If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**Section 7. Notice of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. (Del. Code Ann., tit. 8, §§ 222, 229, 232)

**Section 8. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and

entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series. (Del. Code Ann., tit. 8, § 216)

**Section 9. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. (Del. Code Ann., tit. 8, § 222(c))

**Section 10. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. (Del. Code Ann., tit. 8, §§ 211(e), 212(b))

**Section 11. Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest. (Del. Code Ann., tit. 8, § 217(b))

**Section 12. List of Stockholders.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law. (Del. Code Ann., tit. 8, § 219)

**Section 13. Action Without Meeting**.

**(a)** Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. (Del. Code Ann., tit. 8, § 228)

**(b)** Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation’s registered office shall be by hand or by certified or registered mail, return receipt requested. (Del. Code Ann., tit. 8, § 228)

**(c)** Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

**(d)** A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the state of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. (Del. Code Ann., tit. 8 § 228(d))

**Section 14. Organization**.

**(a)** At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

**(b)** The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on

matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

## ARTICLE IV

## DIRECTORS

**Section 15. Number and Term of Office**.

The authorized number of directors of the corporation shall be fixed by the Board of Directors from time to time. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient. (Del. Code Ann., tit. 8, §§ 141(b), 211(b), (c))

**Section 16. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. (Del. Code Ann., tit. 8, § 141(a))

**Section 17. Term of Directors.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 18. Vacancies.** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, *provided*, *however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director. (Del. Code Ann., tit. 8, § 223(a), (b)).

**Section 19. Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified. (Del. Code Ann., tit. 8, §§ 141(b), 223(d))

**Section 20. Removal.** Subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time (i) with cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors or (ii) without cause by the affirmative vote of the holders of a majority of the voting power of all then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors.

**Section 21. Meetings**

**(a) Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, including a voice-messaging system or other system designated to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for a regular meeting of the Board of Directors. (Del. Code Ann., tit. 8, § 141(g))

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any director. (Del. Code Ann., tit. 8, § 141(g))

**(c) Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. (Del. Code Ann., tit. 8, § 141(i))

**(d) Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, postage prepaid at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at

any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. (Del. Code Ann., tit. 8, § 229)

**(e) Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting. (Del. Code Ann., tit. 8, § 229)

**Section 22. Quorum and Voting**.

**(a)** Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

**(b)** At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws. (Del. Code Ann., tit. 8, § 141(b))

**Section 23. Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. (Del. Code Ann., tit. 8, § 141(f))

**Section 24. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. (Del. Code Ann., tit. 8, § 141(h))

**Section 25. Committees**.

**(a) Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation. (Del. Code Ann., tit. 8, § 141(c))

**(b) Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws. (Del. Code Ann., tit. 8, § 141(c))

**(c) Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. (Del. Code Ann., tit. 8, §141(c))

**(d) Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of

the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. (Del. Code Ann., tit. 8, §§ 141(c), 229)

**Section 26. Organization.** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

## ARTICLE V

## OFFICERS

**Section 27. Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. (Del. Code Ann., tit. 8, §§ 122(5), 142(a), (b))

**Section 28. Tenure and Duties of Officers**.

**(a) General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. (Del. Code Ann., tit. 8, § 141(b), (e))

**(b) Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28. (Del. Code Ann., tit. 8, § 142(a))

**(c) Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the

corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**(d) Duties of Vice Presidents.** The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**(f) Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**Section 29. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 30. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation

shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer. (Del. Code Ann., tit. 8, § 142(b))

**Section 31. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

## EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 32. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158).

**Section 33. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President. (Del. Code Ann., tit. 8, § 123)

## ARTICLE VII

## SHARES OF STOCK

**Section 34. Form and Execution of Certificates.** Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the

President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. (Del. Code Ann., tit. 8, § 158)

**Section 35. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed. (Del. Code Ann., tit. 8, § 167)

**Section 36. Transfers**.

**(a)** Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. (Del. Code Ann., tit. 8, § 201, tit. 6, § 8- 401(1))

**(b)** The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL. (Del. Code Ann., tit. 8, § 160 (a))

**Section 37. Fixing Record Dates**.

**(a)** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however,* that the Board of Directors may fix a new record date for the adjourned meeting.

**(b)** In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

**(c)** In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. (Del. Code Ann., tit. 8, § 213)

**Section 38. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive

dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware. (Del. Code Ann., tit. 8, §§ 213(a), 219)

## ARTICLE VIII

## OTHER SECURITIES OF THE CORPORATION

**Section 39. Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

## DIVIDENDS

**Section 40. Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law. (Del. Code Ann., tit. 8, §§ 170, 173)

**Section 41. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. (Del. Code Ann., tit. 8, § 171)

## ARTICLE X

## FISCAL YEAR

**Section 42. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

## INDEMNIFICATION

**Section 43. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents**.

**(a) Directors and Officers.** The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

**(b) Other Officers, Employees and Other Agents**. The corporation shall have power to indemnify its officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

**(c) Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 43 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

**(f) Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**(g) Insurance.** To the fullest extent permitted by the DGCL, or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

**(h) Amendments.** Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**(i) Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law. If this Section 43 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under applicable law.

**(j) Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

**(1)** The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**(2)** The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

**(3)** The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

**(4)** References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**(5)** References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.

## ARTICLE XII

## NOTICES

**Section 44. Notices**.

**(a) Notice to Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means. (Del. Code Ann., tit. 8, §§ 222, 232)

**(b) Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), or as provided for in Section 21 of these Bylaws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

**(c) Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained. (Del. Code Ann., tit. 8, § 222)

**(d) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(e) Notice to Person with Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or

Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(f) Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

## ARTICLE XIII

## AMENDMENTS

**Section 45. Amendments.** The Board of Directors is expressly empowered to adopt, amend or repeal Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall requite the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE XIV

## RIGHT OF FIRST REFUSAL

**Section 46. Right of First Refusal.** No stockholder shall sell, assign, pledge, or in any manner transfer any of the shares of stock, of the corporation or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this bylaw:

**(a)** If the stockholder desires to sell or otherwise transfer any of his shares of stock, then the stockholder shall first give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares to be transferred, the proposed consideration, and all other terms and conditions of the proposed transfer.

**(b)** For thirty (30) days following receipt of such notice, the corporation shall have the option to purchase all (but not less than all) of the shares specified in the notice at the price

and upon the terms set forth in such notice; *provided, however,* that, with the consent of the stockholder, the corporation shall have the option to purchase a lesser portion of the shares specified in said notice at the price and upon the terms set forth therein. In the event of a gift, property settlement or other transfer in which the proposed transferee is not paying the full price for the shares, and that is not otherwise exempted from the provisions of this Section 46, the price shall be deemed to be the fair market value of the stock at such time as determined in good faith by the Board of Directors. In the event the corporation elects to purchase all of the shares or, with consent of the stockholder, a lesser portion of the shares, it shall give written notice to the transferring stockholder of its election and settlement for said shares shall be made as provided below in paragraph (d).

**(c)** The corporation may assign its rights hereunder.

**(d)** In the event the corporation and/or its assignee(s) elect to acquire any of the shares of the transferring stockholder as specified in said transferring stockholder's notice, the Secretary of the corporation shall so notify the transferring stockholder and settlement thereof shall be made in cash within thirty (30) days after the Secretary of the corporation receives said transferring stockholder's notice; provided that if the terms of payment set forth in said transferring stockholder's notice were other than cash against delivery, the corporation and/or its assignee(s) shall pay for said shares on the same terms and conditions set forth in said transferring stockholder's notice.

**(e)** In the event the corporation and/or its assignees(s) do not elect to acquire all of the shares specified in the transferring stockholder's notice, said transferring stockholder may, within the sixty-day period following the expiration of the option rights granted to the corporation and/or its assignees(s) herein, transfer the shares specified in said transferring stockholder's notice which were not acquired by the corporation and/or its assignees(s) as specified in said transferring stockholder's notice. All shares so sold by said transferring stockholder shall continue to be subject to the provisions of this bylaw in the same manner as before said transfer.

**(f)** Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this bylaw:

**(1)** A stockholder's transfer of any or all shares held either during such stockholder's lifetime or on death by will or intestacy to such stockholder's immediate family or to any custodian or trustee for the account of such stockholder or such stockholder's immediate family or to any limited partnership of which the stockholder, members of such stockholder's immediate family or any trust for the account of such stockholder or such stockholder's immediate family will be the general of limited partner(s) of such partnership. "Immediate family" as used herein shall mean spouse, lineal descendant, father, mother, brother, or sister of the stockholder making such transfer.

**(2)** A stockholder's bona fide pledge or mortgage of any shares with a commercial lending institution, provided that any subsequent transfer of said shares by said institution shall be conducted in the manner set forth in this bylaw.

**(3)** A stockholder's transfer of any or all of such stockholder's shares to the corporation or to any other stockholder of the corporation.

**(4)** A stockholder's transfer of any or all of such stockholder's shares to a person who, at the time of such transfer, is an officer or director of the corporation.

**(5)** A corporate stockholder's transfer of any or all of its shares pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder.

**(6)** A corporate stockholder's transfer of any or all of its shares to any or all of its stockholders.

**(7)** A transfer by a stockholder which is a limited or general partnership to any or all of its partners or former partners.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this bylaw, and there shall be no further transfer of such stock except in accord with this bylaw.

**(g)** The provisions of this bylaw may be waived with respect to any transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be transferred by the transferring stockholder). This bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation.

**(h)** Any sale or transfer, or purported sale or transfer, of securities of the corporation shall be null and void unless the terms, conditions, and provisions of this bylaw are strictly observed and followed.

**(i)** The foregoing right of first refusal shall terminate on either of the following dates, whichever shall first occur:

**(1)** On May 30, 2018; or

**(2)** Upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the United States Securities and Exchange Commission under the Securities Act of 1933, as amended.

**(j)** The certificates representing shares of stock of the corporation shall bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE CORPORATION AND/OR ITS ASSIGNEE(S), AS PROVIDED IN THE BYLAWS OF THE CORPORATION."

## ARTICLE XV

## LOANS TO OFFICERS

**Section 47. Loans to Officers.** Except as otherwise prohibited under applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute. (Del. Code Ann., tit. 8, §143)

# AMENDED & RESTATED BYLAWS

# OF

# EVERSPIN TECHNOLOGIES, INC.
# (A DELAWARE CORPORATION)

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**AMENDED AND RESTATED BYLAWS**

**OF**

**EVERSPIN TECHNOLOGIES, INC.**
**(A DELAWARE CORPORATION)**

## ARTICLE I

## OFFICES

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

## ARTICLE II

## CORPORATE SEAL

**Section 3. Corporate Seal.** The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE III

## STOCKHOLDERS' MEETINGS

**Section 4. Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("***DGCL***").

**Section 5. Annual Meetings.**

**(a)** The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal

of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in the Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "***1934 Act***")) before an annual meeting of stockholders.

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in clause (iii) of the last sentence of this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act and Rule 14a-4(d) thereunder (including such

person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

**(c)** Notwithstanding anything in the third sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth ($10^{th}$) day following the day on which such public announcement is first made by the corporation.

**(d)** Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

**(e)** Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 5. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

**(f)** For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

**Section 6. Special Meetings.**

**(a)** Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

**(b)** The Board of Directors shall determine the time and place of such special meeting. Upon determination of the time and place of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**(c)** Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 5 of these Bylaws. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 5(b) of these Bylaws shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth ($120^{th}$) day prior to such special meeting and not later than the close of business on the later of the ninetieth ($90^{th}$) day prior to such meeting or the tenth ($10^{th}$) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

**(d)** Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

**Section 7. Notice Of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 8. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

**Section 9. Adjournment And Notice Of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 10. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**Section 11. Joint Owners Of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**Section 12. List Of Stockholders.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

**Section 13. Action Without Meeting.** No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

**Section 14. Organization.**

**(a)** At every meeting of stockholders, the Chairman of the Board of Directors or officer of the corporation designated by the Chairman, or, if a Chairman has not been appointed or is absent, the Lead Independent Director or officer of the corporation designated by the Lead Independent Director, or, if the Lead Independent Director has not been appointed or is absent, the Chief Executive Officer or officer of the corporation designated by the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President or officer of the corporation designated by the President, or, if each of the Chairman, the Lead Independent Director, the Chief Executive Officer and the President are absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, or such other person as shall be directed to do so by the chairman of the meeting, shall act as secretary of the meeting.

**(b)** The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

## ARTICLE IV

## DIRECTORS

**Section 15. Number And Term Of Office.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation.

**Section 16. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 17. Board of Directors**.

**(a)** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders to serve until the next annual meeting of stockholders. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 18. Vacancies.**

**(a)** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided*, *however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

**Section 19. Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**Section 20. Removal.**

The Board of Directors or any individual director may be removed from office at any time (a) with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors or (b) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of the capital stock of the corporation entitled to vote generally at an election of directors.

**Section 21. Meetings.**

**(a) Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer or by any two (2) directors.

**(c) Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

**(d) Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**(e) Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 22. Quorum And Voting.**

**(a)** Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 44 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

**(b)** At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**Section 23. Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 24. Fees And Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 25. Committees.**

**(a) Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of two (2) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

**(b) Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

**(c) Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**(d) Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 26. Lead Independent Director.** The Chairman of the Board of Directors, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("Lead Independent Director"). The Lead Independent Director will, with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as

chairman of Board of Directors meetings in the absence of the Chairman of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and coordinate the activities of the other independent directors and perform such other duties as may be established or delegated by the Chairman of the Board of Directors.

**Section 27. Organization.** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer or director or other person directed to do so by the Chairman of the Board, the Lead Independent Director or the President, shall act as secretary of the meeting.

## ARTICLE V

## OFFICERS

**Section 28. Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

**Section 29. Tenure And Duties Of Officers.**

**(a) General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

**(b) Duties of Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the stockholders (subject to Section 14) and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present or the Lead Independent Director is present. Unless another officer has been appointed

Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(c) Duties of President.** The President shall preside at all meetings of the stockholders (subject to Section 14) and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

**(e) Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**(f) Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation, and shall be the Treasurer of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time

to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**Section 30. Delegation Of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 31. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**Section 32. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

## EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 33. Execution Of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 34. Voting Of Securities Owned By The Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

## SHARES OF STOCK

**Section 35. Form And Execution Of Certificates.** The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

**Section 36. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**Section 37. Transfers.**

**(a)** Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

**(b)** The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**Section 38. Fixing Record Dates.**

**(a)** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided*, *however*, that the Board of Directors may fix a new record date for the adjourned meeting.

**(b)** In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 39. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VIII

## OTHER SECURITIES OF THE CORPORATION

**Section 40. Execution Of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided*, *however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate

security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

## DIVIDENDS

**Section 41. Declaration Of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

**Section 42. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

## FISCAL YEAR

**Section 43. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

## INDEMNIFICATION

**Section 44. Indemnification Of Directors, Executive Officers, Other Officers, Employees And Other Agents.**

**(a) Directors and Executive Officers.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, “executive officers” shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation

may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

**(b) Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

**(c) Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 44 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 44, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Section 44 to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

**(f) Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**(g) Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 44.

**(h) Amendments.** Any repeal or modification of this Section 44 shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**(i) Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable

portion of this Section 44 that shall not have been invalidated, or by any other applicable law. If this Section 44 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

**(j) Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

**(1)** The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

**(2)** The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

**(3)** The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 44 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

**(4)** References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**(5)** References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section 44.

## ARTICLE XII

## NOTICES

**Section 45. Notices.**

**(a) Notice To Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

**(b) Notice To Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

**(c) Affidavit Of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

**(d) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(e) Notice To Person With Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(f) Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of

Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

## ARTICLE XIII

## AMENDMENTS

**Section 46.** Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE XIV

## LOANS TO OFFICERS

**Section 47. Loans To Officers.** Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

ZQ|CERT#|COY|CLS|RGSTRY|ACCT#|TRANSTYPE|RUN#|TRANS#

EVERSPIN TECHNOLOGIES
The MRAM Company™

PO BOX 43004, Providence, RI 02940-3004

MR A SAMPLE
DESIGNATION (IF ANY)
ADD 1
ADD 2
ADD 3
ADD 4

CUSIP XXXXXX XX X
Holder ID XXXXXXXXXX
Insurance Value 1,000,000.00
Number of Shares 123456
DTC 12345678 12345678901234567

| Certificate Numbers | Num/No. | Denom. | Total |
|---|---|---|---|
| 12345678901234567890 | 1 | 1 | 1 |
| 12345678901234567890 | 2 | 2 | 2 |
| 12345678901234567890 | 3 | 3 | 3 |
| 12345678901234567890 | 4 | 4 | 4 |
| 12345678901234567890 | 5 | 5 | 5 |
| 12345678901234567890 | 6 | 6 | 6 |
| Total Transaction | | | 7 |

**COMMON STOCK**

PAR VALUE $0.0001

**COMMON STOCK**

THIS CERTIFICATE IS TRANSFERABLE IN CANTON, MA, JERSEY CITY, NJ AND COLLEGE STATION, TX

EVERSPIN TECHNOLOGIES
The MRAM Company™

**Certificate Number**
ZQ00000000

**Shares**

## EVERSPIN TECHNOLOGIES, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS CERTIFIES THAT

MR. SAMPLE & MRS. SAMPLE & MR. SAMPLE & MRS. SAMPLE

CUSIP XXXXXX XX X

SEE REVERSE FOR CERTAIN DEFINITIONS

is the owner of

***ZERO HUNDRED THOUSAND ZERO HUNDRED AND ZERO***

FULLY-PAID AND NON-ASSESSABLE SHARES OF COMMON STOCK OF

**Everspin Technologies, Inc., (hereinafter called the "Company")**, transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

**Witness** the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

DATED DD-MMM-YYYY

**FACSIMILE SIGNATURE TO COME**

President

**FACSIMILE SIGNATURE TO COME**

Secretary

EVERSPIN TECHNOLOGIES, INC. SEAL MAY 16, 2008 DELAWARE

COUNTERSIGNED AND REGISTERED:
**COMPUTERSHARE TRUST COMPANY, N.A.**
TRANSFER AGENT AND REGISTRAR,

By _____
AUTHORIZED SIGNATURE

SECURITY INSTRUCTIONS ON REVERSE

1234567

EVERSPIN TECHNOLOGIES, INC.

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

| | | | |
|---|---|---|---|
| TEN COM | - as tenants in common | UNIF GIFT MIN ACT | -_____Custodian _____ (Cust) (Minor) under Uniform Gifts to Minors Act_____ (State) |
| TEN ENT | - as tenants by the entireties | | |
| JT TEN | - as joint tenants with right of survivorship and not as tenants in common | UNIF TRF MIN ACT | -_____Custodian (until age _____) (Cust) _____under Uniform Transfers to Minors Act_____ (Minor) (State) |

Additional abbreviations may also be used though not in the above list.

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

For value received, _____ hereby sell, assign and transfer unto

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares

of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said stock on the books of the within named Company with full power of substitution in the premises.

Dated: _____ 20 _____

Signature: _____

Signature: _____

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.

SECURITY INSTRUCTIONS

THIS IS WATERMARKED PAPER. DO NOT ACCEPT WITHOUT NOTING WATERMARK. HOLD TO LIGHT TO VERIFY WATERMARK.



The IRS requires that the named transfer agent ("we") report the cost basis of certain shares or units acquired after January 1, 2011. If your shares or units are covered by the legislation, and you requested to sell or transfer the shares or units using a specific cost basis calculation method, then we have processed as you requested. If you did not specify a cost basis calculation method, then we have defaulted to the first in, first out (FIFO) method. Please consult your tax advisor if you need additional information about cost basis.

**If you do not keep in contact with the issuer or do not have any activity in your account for the time period specified by state law, your property may become subject to state unclaimed property laws and transferred to the appropriate state.**

153267

**Exhibit 4.2**

**EVERSPIN TECHNOLOGIES, INC.**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

TABLE OF CONTENTS

**EVERSPIN TECHNOLOGIES, INC.**

**AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (the "**Agreement**") is made as of this 21st day October, 2014, by and among Everspin Technologies, Inc., a Delaware corporation (the "**Company**"), the individuals and entities listed on Schedule A hereto (each, an "**Investor**," and collectively, the "**Investors**"), Freescale Semiconductor, Inc. (the "**Key Holder**"), and any Additional Purchaser (as defined in the Purchase Agreement) that becomes a party to this Agreement in accordance with Section 6.9 hereof.

**RECITALS**

**WHEREAS**, certain of the Investors are purchasing shares of the Company's Series B Preferred Stock (the "**Series B Stock**"), pursuant to that certain Series B Preferred Stock Purchase Agreement (the "**Purchase Agreement**") of even date herewith (the "**Financing**");

**WHEREAS**, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement;

**WHEREAS,** certain of the Investors (the "**Prior Investors**") are holders of the Company's Series A Preferred Stock (the "**Series A Stock**") and shares of the Company's Series B Stock;

**WHEREAS,** the Prior Investors and the Company are parties to an Investor Rights Agreement dated July 17, 2013 (the "**Prior Agreement**");

**WHEREAS**, the parties to the Prior Agreement desire to amend and restate the Prior Agreement and accept the rights and covenants hereof in lieu of their rights and covenants under the Prior Agreement; and

**WHEREAS**, in connection with the consummation of the Financing, the Company and the Investors have agreed to the registration rights, information rights, and other rights as set forth below.

**NOW, THEREFORE**, the parties hereby agree as follows:

1. General

1.1 Amendment and Restatement of Prior Agreement. The Prior Agreement is hereby amended in its entirety and restated herein. Such amendment and restatement is effective upon the execution of this Agreement by the Company and the parties required for an amendment pursuant to Section 6.6 of the Prior Agreement. Upon such execution, all provisions of, rights granted and covenants made in the Prior Agreement are hereby waived, released and superseded in their entirety and shall have no further force or effect, including, without limitation, all rights of first refusal and any notice period associated therewith otherwise applicable to the transactions contemplated by the Purchase Agreement.

1.2 Definitions. For purposes of this Agreement:

(a) "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including without limitation any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

(b) "**Certificate of Incorporation**" means the Company's Amended and Restated Certificate of Incorporation as such may be amended from time to time.

(c) "**Common Stock**" means shares of the Company's common stock, par value $0.0001 per share.

(d) "**Damages**" means any loss, damage, or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, or liability (or any action in respect thereof) arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

(e) "**Derivative Securities**" means any securities or rights convertible into, or exercisable or exchangeable for (in each case, directly or indirectly)**,** Common Stock, including options and warrants.

(f) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(g) "**Excluded Registration**" means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; (iii) a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities; (iv) a registration related to an IPO; or (v) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

(h) "**Form S-1**" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

(i) "**Form S-3**" means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(j) "**GAAP**" means generally accepted accounting principles in the United States.

(k) "**Holder**" means any holder of Registrable Securities, including the Key Holder, who is a party to this Agreement or any assignee of the rights granted in this Agreement pursuant to Section 6.1 herein.

(l) "**Immediate Family Member**" means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, of a natural person referred to herein.

(m) "**Initiating Holders**" means, collectively, Holders who properly initiate a registration request under this Agreement.

(n) "**IPO**" means the Company's first firm commitment underwritten public offering of its Common Stock under the Securities Act.

(o) "**Key Holder Registrable Securities**" means (i) the 14,500,000 shares of Common Stock held by the Key Holder, and (ii) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend, stock split, combination, other recapitalization or other distribution with respect to, or in exchange for or in replacement of such shares.

(p) "**Major Investor**" means any Investor that, individually or together with such Investor's Affiliates, holds at least 1,000,000 shares of Registrable Securities (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof).

(q) "**New Securities**" means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

(r) "**Person**" means any natural person, corporation, partnership, trust, limited liability company, association or other entity.

(s) "**Preferred Stock**" means shares of the Company's Series A Stock and Series B Stock.

(t) "**Registrable Securities**" means (i) the Common Stock issuable or issued upon conversion of the Shares; (ii) shares of Common Stock issued as part of the Units (as defined in that certain Preferred Stock Unit Purchase Agreement, dated July 17, 2013 by and among the Company and certain of the Prior Investors); (iii) any Common Stock, or any Common Stock issued or issuable (directly or indirectly) upon conversion and/or exercise of any other securities of the Company, acquired by the Investors after the date hereof; (iv) the Key Holder Registrable Securities, provided, however, that such Key Holder Registrable Securities shall not be deemed Registrable Securities and the Key Holders shall not be deemed Holders for the purposes of Sections 2.1(a), 2.1(b), 2.10 and 6.6 and; and (v) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right, or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares referenced in clauses (i) and (iii) above; excluding in all cases, however, (i) any Registrable Securities sold by a Person in a transaction in which the applicable rights under this Agreement are not assigned pursuant to Section 6.1 and (ii) any shares which may be sold under SEC Rule 144 without limitation as to amount; and excluding for purposes of Section 2 any shares for which registration rights have terminated pursuant to Section 2.13 of this Agreement.

(u) "**Registrable Securities then outstanding**" means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

(v) "**Restricted Securities**" means the securities of the Company required to bear the legend set forth in Section 2.12(b) hereof.

(w) "**SEC**" means the Securities and Exchange Commission.

(x) "**SEC Rule 144**" means Rule 144 promulgated by the SEC under the Securities Act.

(y) "**SEC Rule 145**" means Rule 145 promulgated by the SEC under the Securities Act.

(z) "**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(aa) "**Selling Expenses**" means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Section 2.6.

(bb) "**Series A Director**" means any director of the Company that the holders of record of the Series A Stock are entitled to elect pursuant to the Company's Certificate of Incorporation.

(cc) "**Shares**" means shares of the Company's Preferred Stock held from time to time by the Investors listed on Schedule A attached hereto.

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand Registration.

(a) Form S-1 Demand. If at any time after the IPO, the Company receives a request from Holders of seventy-five percent (75%) of the Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to at least forty percent (40%) of the Registrable Securities then outstanding (or a lesser percent if the anticipated aggregate offering price, net of Selling Expenses, would exceed $15 million), then the Company shall (i) within ten (10) days after the date such request is given, give notice thereof (the "**Demand Notice**") to all Holders, other than the Initiating Holders, and the Key Holder; and (ii) as soon as practicable, and in any event within sixty (60) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders and the Key Holder, as specified by notice given by each such Holder or Key Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(b) Form S-3 Demand. If at any time when it is eligible to use a Form S-3 registration statement, the Company receives a request from Holders of at least ten percent (10%) of the Registrable Securities then outstanding that the Company file a Form S-3 registration statement with respect to outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least $10 million, then the Company shall (i) within ten (10) days after the date such request is given, give a Demand Notice to all Holders, other than the Initiating Holders, and the Key Holder; and (ii) as soon as practicable, and in any event within forty-five (45) days after the date such request is given by the Initiating Holders, file a Form S-3 registration statement under the Securities Act covering all Registrable Securities requested to be included in such registration by any other Holders and the Key Holder, as specified by notice given by each such Holder or Key Holder to the Company within twenty (20) days of the date the Demand Notice is given, and in each case, subject to the limitations of Section 2.1(c) and Section 2.3.

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Section 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act or other applicable federal or state laws, or rules and regulations promulgated thereunder, that regulate the business and affairs of the Company, then the Company shall have

the right to defer taking action with respect to such filing, and any time periods with respect to filing thereof shall be tolled correspondingly, for a period of not more than one hundred twenty (120) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not initiate the registration of any securities for its own account or that of any other stockholder during such one hundred twenty (120) day period other than an Excluded Registration.

(d) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(a) (i) during the period that is sixty (60) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred eighty (180) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; (ii) after the Company has effected two registrations pursuant to Section 2.1(a); or (iii) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.1(b). The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Section 2.1(b) (i) during the period that is forty-five (45) days before the Company's good faith estimate of the date of filing of, and ending on a date that is one hundred twenty (120) days after the effective date of, a Company-initiated registration, provided, that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective; or (ii) if the Company has effected two registrations pursuant to Section 2.1(b) within the twelve (12) month period immediately preceding the date of such request. A registration shall not be counted as "effected" for purposes of this Section 2.1(d) until such time as the applicable registration statement has been declared effective by the SEC, unless the Initiating Holders withdraw their request for such registration, elect not to pay the registration and related fees and expenses therefor, and forfeit their right to one demand registration statement pursuant to Section 2.6, in which case such withdrawn registration statement shall be counted as "effected" for purposes of this Section 2.1(d).

2.2 Company Registration. At any time after the consummation of an IPO, if the Company determines to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock or other securities under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder notice of such registration. Upon the request of each Holder given within twenty (20) days after such notice is given by the Company, the Company shall, subject to the provisions of Section 2.3, cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Section 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Section 2.1, the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to Section 2.1, and the Company shall include such information in the Demand Notice. The underwriter(s) will be selected by the Company and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.4(e)) enter into an underwriting agreement in customary form with the underwriter(s) selected for such underwriting. Notwithstanding any other provision of this Section 2.3, if the underwriter(s) advise(s) the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities owned by each Holder or in such other proportion as shall mutually be agreed to by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

(b) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Section 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold (other than by the Company) that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) the number of Registrable Securities owned by each selling Holder or in such other proportions as shall mutually be agreed to by all such selling Holders. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares. For purposes of the provision in this Section 2.3(b) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the

foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended, if necessary, to keep the registration statement effective until all such Registrable Securities are sold, provided that SEC Rule 415, or any successor rule under the Securities Act, permits an offering on a continuous or delayed basis, and provided further that applicable rules under the Securities Act governing the obligation to file a post-effective amendment permit, in lieu of filing a post-effective amendment which (I) includes any prospectus required by Section 10(a)(3) of the Securities Act or (II) reflects facts or events representing a material or fundamental change in the information set forth in the registration statement, the incorporation by reference of information required to be included in (I) and (II) above to be contained in periodic reports filed pursuant to Section 13 or 15(d) of the Exchange Act in the registration statement;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

(d) use its commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(f) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on a national securities exchange or trading system and each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(g) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) promptly make available for inspection by the selling Holders, any underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(i) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed; and

(j) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

2.5 Furnish Information.

(a) It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

(b) The Company shall have no obligation with respect to any registration requested pursuant to Section 2.1 if, due to the operation of subsection 2.5(a), the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in subsection 2.1(a) or subsection 2.1(b), whichever is applicable.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2,

including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company in its capacity as counsel to selling Holders hereunder, provided that if Company counsel does not make itself available for this purpose, the Company will pay the reasonable fees and disbursements, not to exceed $25,000, of one counsel for the selling Holders selected by them ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b), as the case may be; provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information, then the Holders shall not be required to pay any of such expenses and shall not forfeit their right to one registration pursuant to Section 2.1(a) or Section 2.1(b). All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a registration statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the registration statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Sections 2.8(b) and 2.8(d) exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of fraud or willful misconduct by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action. The failure to give notice to the indemnifying party within a reasonable time of the commencement of any such action shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.8, to the extent that such failure materially prejudices the indemnifying party's ability to defend such action. The failure to give notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.8.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Section 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Section 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be

required on the part of any party hereto for which indemnification is provided under this Section 2.8, then, and in each such case, such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case, (x) no Holder will be required to contribute any amount in excess of the public offering price of all such Registrable Securities offered and sold by such Holder pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Section 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Section 2.8(b), exceed the proceeds from the offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Section 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Company for the IPO;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company has become subject to such reporting requirements);

(c) take such action, including the voluntary registration of its Common Stock under Section 12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of the Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Company for the offering of its securities to the general public is declared effective; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144 (at any time after ninety (90) days after the effective date of the registration statement filed by the Company for the IPO), the Securities Act, and the Exchange Act (at any time after the Company has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company; and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration (at any time after the Company has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least 75% of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (i) to include such securities in any registration unless, under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the number of the Registrable Securities of the Holders that are included; provided that this limitation shall not apply to any additional Investor who becomes a party to this Agreement in accordance with Section 6.9.

2.11 "Market Stand-off" Agreement. Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the first sale to the public pursuant to the final prospectus relating to the registration by the Company of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days in the case of the IPO, which period may be extended upon the request of the managing underwriter, to the extent required by any FINRA rules, for an additional period of up to fifteen (15) days if the Company issues or proposes to issue an earnings or other public release within fifteen (15) days of the expiration of the 180-day lockup period), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock (whether such shares or any such securities are then owned by the Holder or are thereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in

part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 2.11 shall apply only to the IPO, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall be applicable to the Holders only if the Company's officers and directors are subject to the same restrictions. The underwriters in connection with such registration are intended third-party beneficiaries of this Section 2.11 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 2.11 or that are necessary to give further effect thereto.

2.12 Restrictions on Transfer.

(a) The Registrable Securities shall not be sold, pledged, or otherwise transferred, and the Company shall not recognize and shall issue stop-transfer instructions to its transfer agent with respect to any such sale, pledge, or transfer, except upon the conditions specified in this Agreement, which conditions are intended to ensure compliance with the provisions of the Securities Act. A transferring Holder will cause any proposed purchaser, pledgee, or transferee of the Registrable Securities held by such Holder to agree to take and hold such securities subject to the provisions and upon the conditions specified in this Agreement.

(b) Each certificate or instrument representing (i) the Registrable Securities, and (ii) any other securities issued in respect of the securities referenced in clause (i), upon any stock split, stock dividend, recapitalization, merger, consolidation, or similar event, shall (unless otherwise permitted by the provisions of Section 2.12(c)) be stamped or otherwise imprinted with a legend substantially in the following form(s):

> THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.
>
> THE SECURITIES REPRESENTED HEREBY MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

The Holders consent to the Company making a notation in its records and giving instructions to any transfer agent of the Restricted Securities in order to implement the restrictions on transfer set forth in this Section 2.12.

(c) The holder of each certificate representing Restricted Securities, by acceptance thereof, agrees to comply in all respects with the provisions of this Section 2. Before any proposed sale, pledge, or transfer of any Restricted Securities, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Holder thereof shall give notice to the Company of such Holder's intention to effect such sale, pledge, or transfer. Each such notice shall describe the manner and circumstances of the proposed sale, pledge, or transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Holder's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act; (ii) a "no action" letter from the SEC to the effect that the proposed sale, pledge, or transfer of such Restricted Securities without registration will not result in a recommendation by the staff of the SEC that action be taken with respect thereto; or (iii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed sale, pledge, or transfer of the Restricted Securities may be effected without registration under the Securities Act, whereupon the Holder of such Restricted Securities shall be entitled to sell, pledge, or transfer such Restricted Securities in accordance with the terms of the notice given by the Holder to the Company. The Company will not require such a legal opinion or "no action" letter (x) in any transaction in compliance with SEC Rule 144 or (y) in any transaction in which such Holder distributes Restricted Securities to an Affiliate of such Holder for no consideration; provided that each transferee agrees in writing to be subject to the terms of this Section 2.12. Each certificate or instrument evidencing the Restricted Securities transferred as above provided shall bear, except if such transfer is made pursuant to SEC Rule 144, the appropriate restrictive legend set forth in Section 2.12(b), except that such certificate shall not bear such restrictive legend if, in the opinion of counsel for such Holder and the Company, such legend is not required in order to establish compliance with any provisions of the Securities Act.

2.13 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Section 2.1 or Section 2.2 shall terminate upon the earliest to occur of:

(a) the closing of a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation;

(b) when all of such Holder's Registrable Securities could be sold without restriction under SEC Rule 144; and

(c) the third anniversary of the date of the IPO.

3. Information and Observer Rights.

3.1 Delivery of Financial Statements. The Company shall deliver to each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a competitor of the Company; provided that GLOBALFOUNDRIES Inc. shall not be deemed a competitor of the Company for purposes of this Section) and the Key Holder:

(a) as soon as practicable, but in any event within ninety (90) days after the end of each fiscal year of the Company, (i) a balance sheet as of the end of such year, (ii) statements of income and of cash flows for such year, and (iii) a statement of stockholders' equity as of the end of such year, all prepared in accordance with GAAP consistently applied and certified by independent public accountants of nationally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of each fiscal year of the Company, unaudited statements of income and of cash flows for such fiscal quarter, and an unaudited balance sheet as of the end of such fiscal quarter, all prepared in accordance with GAAP (except that such financial statements may (i) be subject to normal year-end audit adjustments and (ii) not contain all notes thereto that may be required in accordance with GAAP);

(c) as soon as practicable, but in any event within thirty (30) days after the end of each of the first three (3) quarters of each fiscal year of the Company, a statement showing the number of shares of each class and series of capital stock and securities convertible into or exercisable for shares of capital stock outstanding at the end of the period, the Common Stock issuable upon conversion or exercise of any outstanding securities convertible or exercisable for Common Stock and the exchange ratio or exercise price applicable thereto, and the number of shares of issued stock options and stock options not yet issued but reserved for issuance, if any, all in sufficient detail as to permit the Major Investors and the Key Holder to calculate their respective percentage equity ownership in the Company, and certified by the chief financial officer or chief executive officer of the Company as being true, complete, and correct; and

(d) as soon as practicable, but in any event forty-five (45) days before the end of each fiscal year, a budget and business plan for the next fiscal year (collectively, the "**Budget**"), prepared on a monthly basis, including balance sheets, income statements, and statements of cash flow for such months and, promptly after prepared, any other budgets or revised budgets prepared by the Company.

If, for any period, the Company has any subsidiary whose accounts are consolidated with those of the Company, then in respect of such period the financial statements delivered pursuant to the foregoing sections shall be the consolidated and consolidating financial statements of the Company and all such consolidated subsidiaries.

Notwithstanding anything else in this Section 3.1 to the contrary, the Company may cease providing the information set forth in this Section 3.1 during the period starting with the date sixty (60) days before the Company's good-faith estimate of the date of filing of a registration statement if it reasonably concludes it must do so to comply with the SEC rules applicable to such registration statement and related offering; provided that the Company's covenants under this Section 3.1 shall be reinstated at such time as the Company is no longer actively employing its commercially reasonable efforts to cause such registration statement to become effective.

3.2 Inspection. The Company shall permit (i) each Major Investor (provided that the Board of Directors has not reasonably determined that such Major Investor is a

competitor of the Company), at such Major Investor's expense, to visit and inspect the Company's properties; examine its books of account and records; and discuss the Company's affairs, finances, and accounts with its officers, during normal business hours of the Company as may be reasonably requested by the Major Investor with reasonable advance notice and (ii) the Key Holder, at such Key Holder's expense, to examine the Company's books of account and records, during normal business hours of the Company as may be reasonably requested by the Key Holder with reasonable advance notice; provided, however, that the Company shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or confidential information (unless covered by an enforceable confidentiality agreement, which at such time has either been agreed to previously or is in a form reasonably acceptable to the Company) or the disclosure of which would adversely affect the attorney-client privilege between the Company and its counsel; provided, further, with regard to the Key Holder's rights to inspect the Company's books of account and records under this Section 3.2, that the Company may redact any non-public and competitive information from such materials.

3.3 Observer Rights. As long as (i) a Major Investor (other than GLOBALFOUNDRIES Inc.) or Key Holder owns not less than five percent (5%) of the shares of the then outstanding Common Stock of the Company (including shares of Common Stock issuable, directly or indirectly, upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then outstanding), and (ii) GLOBALFOUNDRIES Inc. owns not less than 3,500,000 shares of Common Stock of the Company (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof) (including shares of Common Stock issuable, directly or indirectly, upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then outstanding), the Company shall invite a representative of such Major Investor, Key Holder or GLOBALFOUNDRIES Inc., as applicable, to attend all meetings of its Board of Directors in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its directors at the same time it provides such information to the directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Company and its counsel or result in disclosure of trade secrets or a conflict of interest, or if such Investor or Key Holder, as applicable, or their representative is a competitor of the Company; provided further, that the board observer of the Key Holder may be recused from any discussion in which the Key Holder's interests as a stockholder may be in conflict with its strategic interests as a customer, manufacturing partner, or sales channel.

3.4 Termination of Information and Observer Rights. The covenants set forth in Section 3.1, Section 3.2, and Section 3.3 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act, or (iii) upon a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, whichever event occurs first.

3.5 Confidentiality. Each Investor agrees that such Investor will keep confidential and will not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company) any confidential information obtained from the Company pursuant to the terms of this Agreement (including notice of the Company's intention to file a registration statement), unless such confidential information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 3.5 by such Investor), (b) is or has been independently developed or conceived by the Investor without use of the Company's confidential information, or (c) is or has been made known or disclosed to the Investor by a third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that an Investor may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective purchaser of any Registrable Securities from such Investor, if such prospective purchaser agrees to be bound by the provisions of this Section 3.5; (iii) to any Affiliate, partner, member, stockholder, or wholly owned subsidiary of such Investor in the ordinary course of business, provided that such Investor informs such Person that such information is confidential and directs such Person to maintain the confidentiality of such information; or (iv) as may otherwise be required by law, provided that the Investor promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

4. Rights to Future Stock Issuances.

4.1 Right of First Offer. Subject to the terms and conditions of this Section 4.1 and applicable securities laws, if the Company proposes to offer or sell any New Securities, the Company shall first offer such New Securities to each Major Investor and the Key Holder. Each Major Investor and the Key Holder shall be entitled to apportion the right of first offer hereby granted to it among itself and its Affiliates in such proportions as it deems appropriate.

(a) The Company shall give notice (the "**Offer Notice**") to each Major Investor and the Key Holder, stating (i) its bona fide intention to offer such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Company within twenty (20) days after the Offer Notice is given, each Major Investor and the Key Holder may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the shares of Common Stock issued and held, or shares of Common Stock issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by such Major Investor or Key Holder, as applicable, bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Preferred Stock and other Derivative Securities). At the expiration of such twenty (20) day period, the Company shall promptly notify each Major Investor and the Key Holder that elects to purchase or acquire all the shares available to it (each, a "**Fully Exercising Investor**") of any other Major Investor's or the Key Holder's failure to do likewise. During the ten (10) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares

specified above, up to its pro rata portion of the New Securities for which Major Investors and the Key Holder were entitled to subscribe but that were not subscribed for by the Major Investors or Key Holder, as applicable, which pro rata portion is equal to the proportion that the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of Preferred Stock and any other Derivative Securities then held, by such Fully Exercising Investor bears to the Common Stock issued and held, or issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Preferred Stock and any other Derivative Securities then held, by all Fully Exercising Investors who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Section 4.1(b) shall occur within the later of one hundred and twenty (120) days of the date that the Offer Notice is given and the date of initial sale of New Securities pursuant to Section 4.1(c).

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Section 4.1(b), the Company may, during the thirty (30) day period following the expiration of the periods provided in Section 4.1(b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Major Investors and the Key Holder in accordance with this Section 4.1.

(d) The right of first offer in this Section 4.1 shall not be applicable to (i) Exempted Securities (as defined in the Company's Certificate of Incorporation); (ii) shares of Common Stock issued in the IPO; and (iii) the issuance of shares of Series B Stock to Additional Purchasers pursuant to Section 1.3 of the Purchase Agreement.

(e) Notwithstanding any provision hereof to the contrary, in lieu of complying with the provisions of this Section 4.1, the Company may elect to give notice to the Major Investors within thirty (30) days after the issuance of New Securities. Such notice shall describe the type, price, and terms of the New Securities. Each Major Investor shall have twenty (20) days from the date notice is given to elect to purchase up to the number of New Securities that would, if purchased by such Major Investor, maintain such Major Investor's percentage-ownership position, calculated as set forth in Section 4.1(b) before giving effect to the issuance of such New Securities. The closing of such sale shall occur within sixty (60) days of the date notice is given to the Major Investors.

4.2 Termination. The covenants set forth in Section 4.1 shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act or (iii) upon a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, whichever event occurs first.

5. Additional Covenants.

5.1 Insurance. The Company shall use its commercially reasonable efforts to obtain, within ninety (90) days of the date hereof, from financially sound and reputable insurers Directors and Officers liability insurance, in an amount and on terms and conditions satisfactory to the Board of Directors, and will use commercially reasonable efforts to cause such insurance policy to be maintained until such time as the Board of Directors determines that such insurance should be discontinued. The Directors and Officers liability insurance policy shall not be cancelable by the Company without prior approval by the Board of Directors.

5.2 Employee Agreements. The Company will causeeach person now or hereafter employed by it or by any subsidiary (or engaged by the Company or any subsidiary as a consultant/independent contractor) with access to confidential information and/or trade secrets to enter into a nondisclosure and proprietary rights assignment agreement. In addition, the Company shall not amend, modify, terminate, waive, or otherwise alter, in whole or in part, any of the above-referenced agreements or any restricted stock agreement between the Company and any employee, without the consent of the Board of Directors.

5.3 Employee Stock. Unless otherwise approved by the Board of Directors, including at least one Series A Director, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (i) vesting of shares over a four (4) year period, with the first twenty-five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty-six (36) months, and (ii) a market stand-off provision substantially similar to that in Section 2.11. In addition, unless otherwise approved by the Board of Directors, including at least one Series A Director, the Company shall retain a "right of first refusal" on employee transfers until the Company's IPO and shall have the right to repurchase unvested shares at cost upon termination of employment of a holder of restricted stock.

5.4 Matters Requiring Investor Director Approval. So long as the holders of Series A Stock are entitled to elect a Series A Director, the Company hereby covenants and agrees with each of the Investors that it shall not after the date hereof, without approval of the Board of Directors, which approval must include the affirmative vote of a majority of the Series A Directors:

(a) grant a security interest to any third party to secure any indebtedness or other obligations of Company;

(b) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(c) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

(d) make any investment other than investments in prime commercial paper, money market funds, certificates of deposit in any United States bank having a net worth in excess of $100,000,000 or obligations issued or guaranteed by the United States of America, in each case having a maturity not in excess of one year;

(e) otherwise enter into or be a party to any transaction, including loans, with any director, officer, or employee of the Company or any "associate" (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such Person, except for transactions set forth in or contemplated by this Agreement, the Purchase Agreement or transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company's business and upon fair and reasonable terms that are approved by a majority of the Board of Directors;

(f) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;

(g) change the principal business of the Company, enter new lines of business, or exit the current line of business;

(h) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business.

5.5 Matters Requiring Key Holder Approval. So long as the Key Holder holds at least 10,000,000 shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock (as adjusted for any stock split, stock dividend, combination, or other recapitalization or reclassification effected after the date hereof), the Company hereby covenants and agrees with the Key Holder that it shall not (whether by merger, sale, consolidation or otherwise), without approval of the Key Holder:

(a) alter or change the rights, preferences or privileges of any series or class of capital stock held by the Key Holder in a discriminatory way relative to other classes of stock not held by the Key Holder;

(b) amend or waive any provision of the Certificate of Incorporation or Bylaws that affects any class or series of capital stock held by the Key Holder in a discriminatory way relative to other classes of stock not held by the Key Holder;

(c) form or capitalize any subsidiary, except for a wholly-owned subsidiary, or a strategic joint venture without the unanimous approval of the independent members of the Board of Directors; or

(d) enter into any transactions (or series of transactions), including loans, with, or make any payment to, or enter into any agreement which would obligate the Company to make any payment or grant any benefit to, any officer, director, shareholder or other affiliate of the Company, or of any Investor or any of the foregoing that would represent a conflict of interest without the unanimous approval of the independent members of the Board of Directors.

5.6 Board Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least monthly in accordance with

an agreed-upon schedule. The Company shall reimburse the directors and board observers invited pursuant to Section 3.3 for all reasonable out-of-pocket travel expenses incurred (consistent with the Company's travel policy) in connection with attending meetings of the Board of Directors. Each committee of the Board of Directors, if any, shall include at least one Series A Director.

5.7 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

5.8 Initial Balance Sheet. The Company shall use its commercially reasonable efforts, within sixty (60) days of the date hereof, to prepare and deliver to each Investor and the Key Holder, an opening balance sheet dated as of the date hereof.

5.9 Cash Management Policy. The Company shall establish a cash management policy acceptable to the Board of Directors, including at least one Series A Director, within 45 days of the date hereof.

5.10 Compliance with SBA/SBIC Requirements. The Company shall cooperate with the Investors to make timely filing of any reports required by the U.S. Small Business Administration (the "**SBA**"), including such financial statements, plans of operation (including intended use of financing proceeds), cash flow analysis and projections as are necessary to support the Investors' investment decisions, provided that the Investors shall take all commercially reasonable actions as shall be permissible or available to maintain the confidentiality of such information. Company shall accommodate the Investors in conducting a reasonable post-closing review to confirm that Company's use of proceeds is in accordance with the transactions contemplated hereby within 90 days of the closing. The Company covenants that the proceeds of the transaction contemplated hereby will not be diverted from their reported uses in any material diversion and shall constitute a violation of this covenant under this Agreement, giving the Investors the right to demand immediate rescission of the investment made hereby. The Company shall deliver to the Investors at the request of the Investors completed (as to information to be provided by Company) forms required by the SBA including (a) SBA Form 480 Size Status Declaration, (b) SBA Form 652 Assurance of Compliance for Nondiscrimination, and (c) SBA Form 1031 Portfolio Financing Report.

5.11 SBA/SBIC Inspection. The Company shall permit each Investor which is a licensed Small Business Investment Company (an "**SBIC Investor**") and the SBA, with proper notification from such parties, at such parties' expense, to visit and inspect Company's properties, to examine its books of account and records and to discuss Company's affairs, finance and accounts with its officers, all at such reasonable times as may be requested by such parties; provided, however, that Company shall not be obligated pursuant to this paragraph to provide access to any information which the Company considers to be a trade secret or confidential information.

5.12 Termination of Covenants. The covenants set forth in this Section 5, except for Section 5.7, shall terminate and be of no further force or effect (i) immediately before the consummation of the IPO, (ii) when the Company first becomes subject to the periodic reporting requirements of Section 12(g) or 15(d) of the Exchange Act or (iii) upon a Deemed Liquidation Event, as such term is defined in the Company's Certificate of Incorporation, whichever event occurs first.

6. Miscellaneous.

6.1 Successors and Assigns. The rights under this Agreement may be assigned (but only with all related obligations) by a Holder to a transferee of Registrable Securities that (i) is an Affiliate of a Holder; or (ii) is a Holder's Immediate Family Member or trust for the benefit of an individual Holder or one or more of such Holder's Immediate Family Members; provided, however, that (x) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee and the Registrable Securities with respect to which such rights are being transferred; and (y) such transferee agrees in a written instrument delivered to the Company to be bound by and subject to the terms and conditions of this Agreement, including the provisions of Section 2.11. For the purposes of determining the number of shares of Registrable Securities held by a transferee, the holdings of a transferee (1) that is an Affiliate or stockholder of a Holder; (2) who is a Holder's Immediate Family Member; or (3) that is a trust for the benefit of an individual Holder or such Holder's Immediate Family Member shall be aggregated together and with those of the transferring Holder; provided further that all transferees who would not qualify individually for assignment of rights shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices, or taking any action under this Agreement. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assignees of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assignees any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

6.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

6.3 Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.4 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (i) personal delivery to the party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their addresses as set forth on Schedule A hereto, or to the principal office of the Company and to the attention of the Chief Executive Officer, in the case of the Company, or to such email address, facsimile number, or address as subsequently modified by written notice given in accordance with this Section 6.5. If notice is given to the Company, a copy shall also be sent to Cooley LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto, CA 94306, Attn: Matthew B. Hemington.

6.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and the holders of at least 75% of the Registrable Securities then outstanding; provided that the Company may in its sole discretion waive compliance with Section 2.12(c) (and the Company's failure to object in writing within 10 days after notification of a proposed assignment allegedly in violation of Section 2.12(c) shall be deemed to be a waiver); and provided further that any provision hereof may be waived by any waiving party on such party's own behalf, without the consent of any other party. Notwithstanding the foregoing, this Agreement may not be amended or terminated and the observance of any term hereof may not be waived with respect to any Investor without the written consent of such Investor, unless such amendment, termination, or waiver applies to all Investors in the same fashion (it being agreed that a waiver of the provisions of Section 4 with respect to a particular transaction shall be deemed to apply to all Investors in the same fashion if such waiver does so by its terms, notwithstanding the fact that certain Investors may nonetheless, by agreement with the Company, purchase securities in such transaction). Further, this Agreement may not be amended, and no provision hereof may be waived, in each case, in any way which would adversely affect the rights of the Key Holder hereunder in a manner disproportionate to any adverse effect such amendment or waiver would have on the rights of the Investors hereunder, without also the written consent of the Key Holder. The Company shall give prompt notice of any amendment or termination hereof or waiver hereunder to any party hereto that did not consent in writing to such amendment, termination, or waiver. Any amendment, termination, or waiver effected in accordance with this Section 6.6 shall be binding on all parties hereto, regardless of whether any such party has consented thereto. No waivers of or exceptions to any term, condition, or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

6.7 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

6.8 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

6.9 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Series B Stock after the date hereof, whether pursuant to the Purchase Agreement or otherwise, any purchaser of such shares of Series B Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement, and thereafter shall be deemed an "Investor" for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by such additional Investor, so long as such additional Investor has agreed in writing to be bound by all of the obligations as an "Investor" hereunder.

6.10 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

6.11 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located within the geographic boundaries of the State of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the federal and state courts located within the geographic boundaries of the State of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. The prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled. Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in any court of the State of Delaware having subject matter jurisdiction.

6.12 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**COMPANY:**

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Phillip LoPresti
Name: Phillip LoPresti
Title: Chief Executive Officer

Address: 1347 N. Alma School Road
Suite 220
Chandler, Arizona 85224

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTORS:**

**NV PARTNERS IV LP**

By: NVPG IV LLC, its general partner

By: /s/ Stephen Socolof
Name: Stephen Socolof
Title: Managing Member

**NV PARTNERS IV-C LP**

By: NVPG IV LLC, its general partner

By: /s/ Stephen Socolof
Name: Stephen Socolof
Title: Managing Member

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTORS:**

**SIGMA PARTNERS 8, L.P.**

By: Sigma Management 8, L.L.C.
Its: General Partner

By: /s/ Gregory C. Gretsch
Its: Managing Director

**SIGMA ASSOCIATES 8, L.P.**

By: Sigma Management 8, L.L.C.
Its: General Partner

By: /s/ Gregory C. Gretsch
Its: Managing Director

**SIGMA INVESTORS 8, L.P.**

By: Sigma Management 8, L.L.C.
Its: General Partner

By: /s/ Gregory C. Gretsch
Its: Managing Director

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTORS:**

**LUX VENTURES II, L.P.**

By: Lux Venture Partners II, L.P.
*its General Partner*

By: Lux Venture Associates II, LLC
*its General Partner*

By: Lux Capital Management, LLC
*its Sole Member*

By: /s/ Peter Hebert
Name: Peter Hebert
Title: Managing Director

**LUX VENTURES II SIDECAR, L.P.**

By: Lux Venture Partners II, L.P.
*its General Partner*

By: Lux Venture Associates II, LLC
*its General Partner*

By: Lux Capital Management, LLC
*its Sole Member*

By: /s/ Peter Hebert
Name: Peter Hebert
Title: Managing Director

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTORS:**

**DRAPER FISHER JURVETSON FUND IX, L.P.**

By: /s/ John Fisher
Name: John Fisher
Title: Managing Director

**DRAPER FISHER JURVETSON PARTNERS IX, LLC**

By: /s/ John Fisher
Name: John Fisher
Title: Managing Member

**DRAPER ASSOCIATES, L.P.**

By: /s/ Timothy C. Draper
Name: Timothy C. Draper
Title: General Partner

**DRAPER ASSOCIATES RISKMASTERS FUND II, LLC**

By: /s/ Timothy C. Draper
Name: Timothy C. Draper
Title: Managing Member

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

**EPIC IV, LLC**

By: /s/ Kent Madsen
Name: Kent Madsen
Title: Managing Director

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

By: /s/ Lawrence G. Finch

**LAWRENCE G. FINCH**

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

**RUBIN FAMILY CHARITABLE TRUST**

By: /s/ Aryeh Rubin
**ARYEH RUBIN**
Trustee

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

**GORONKIN FAMILY TRUST**

By: /s/ Pamela Goronkin
**PAMELA GORONKIN**
Trustor

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

**THE TATE FAMILY TRUST DATED 9/30/98**

By: /s/ Geoffrey Tate
**GEOFFREY TATE**
Trustee

By: /s/ Colleen Tate
**COLLEEN TATE**
Trustee

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**KEY HOLDER:**

**FREESCALE SEMICONDUCTOR, INC.**

By: /s/ Lisa Su
Name: Lisa Su
Title: Senior VP and Chief Technology Officer

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**INVESTOR:**

**GLOBALFOUNDRIES INC.**

By: /s/ Authorized Signatory
Name:
Title:

**[SIGNATURE PAGE TO THE AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]**

**SCHEDULE A**

| NAME |
| --- |
| **NV Partners IV LP** |
| **NV Partners IV-C LP** |
| **Sigma Partners 8, L.P.** |
| **Sigma Associates 8, L.P.** |
| **Sigma Investors 8, L.P.** |
| **Lux Ventures II, L.P.** |
| **Lux Ventures II Sidecar, L.P.** |
| **Draper Fisher Jurvetson Fund IX, L.P.** |
| **Draper Fisher Jurvetson Partners IX, LLC** |
| **Draper Associates, L.P.** |
| **EPIC IV, LLC** |
| **Lawrence G. Finch** |
| **Rubin Family Charitable Trust** |
| **Goronkin Family Trust** |
| **The Tate Family Trust dated 9/30/98** |
| **GLOBALFOUNDRIES Inc.** |

# INDEMNITY AGREEMENT

**THIS INDEMNITY AGREEMENT** (the "***Agreement***") is made and entered into as of _____, 2016, between Everspin Technologies, Inc., a Delaware corporation (the "***Company***"), and _____ ("***Indemnitee***").

## RECITALS

**A.** Highly competent persons have become more reluctant to serve corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

**B.** Although the furnishing of such insurance to protect persons serving a corporation and its subsidiaries from certain liabilities has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws and Certificate of Incorporation of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("***DGCL***"). The Bylaws, Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

**C.** The uncertainties relating to such liability insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

**D.** The Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

**E.** It is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

**F.** This Agreement is a supplement to and in furtherance of the Bylaws and Certificate of Incorporation of the Company and any resolutions adopted pursuant thereto and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

**G.** Indemnitee does not regard the protection available under the Company's Bylaws and Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified; and

**H.** Indemnitee may have certain rights to indemnification and/or insurance provided by other entities and/or organizations which Indemnitee and such other entities and/or organizations intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board.

**I.** This Agreement supersedes and replaces in its entirety any previous Indemnification Agreement entered into between the Company and the Indemnitee.

**NOW, THEREFORE**, in consideration of Indemnitee's agreement to serve as an officer or a director from and after the date hereof, the parties hereto agree as follows:

**1. Indemnity of Indemnitee**. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time pursuant to, and in accordance with, the terms of this Agreement. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

**(a) Proceedings Other Than Proceedings by or in the Right of the Company**. Indemnitee shall be entitled to the rights of indemnification provided in this Section l(a) if, by reason of his or her Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

**(b) Proceedings by or in the Right of the Company**. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Company; *provided*, *however*, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

**(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful**. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

**2. Additional Indemnity**. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf if, by reason of his or her Corporate Status, he or she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, any and all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

**3. Contribution**.

**(a)** Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee. The Company shall not settle any action or claim in a manner that would impose any penalty or admission of guilt or liability on Indemnitee without Indemnitee's written consent.

**(b)** Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their respective conduct is active or passive.

**(c)** The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

**(d)** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

**4. Indemnification for Expenses of a Witness**. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

**5. Advancement of Expenses**. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within 30 days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee. Indemnitee hereby undertakes to repay such Expenses advanced only if, and to the extent that, it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company under the other provisions of this Agreement. Indemnitee shall qualify for advances upon the execution and delivery of this Agreement, which shall constitute the requisite undertaking with respect to repayment of advances made hereunder and no other form of undertaking shall be required to qualify for advances made hereunder other than the execution of this Agreement.

**6. Procedures and Presumptions for Determination of Entitlement to Indemnification**. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

**(a)** To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

**(b)** Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (i) unless a Change in Control has occurred: (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company; and (ii) if a Change in Control has occurred, then by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee. For purposes hereof, Disinterested Directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

**(c)** If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "***Independent Counsel***" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act

as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed. In no event shall Indemnitee be liable for fees and expenses incurred by such Independent Counsel, subject to the limitations on indemnification set forth herein.

**(d)** In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its Board or Independent Counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its Board or Independent Counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

**(e)** Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

**(f)** If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within 60 days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made, and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact or an omission of a material fact necessary to make Indemnitee's statement not materially misleading in connection with the request for indemnification or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60 day period may be extended for a reasonable time, not to exceed an additional 30 days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within 15 days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within 75 days

after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within 15 days after such receipt for the purpose of making such determination, such meeting is held for such purpose within 60 days after having been so called and such determination is made thereat.

**(g)** Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification), and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

**(h)** The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

**(i)** The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

**7. Remedies of Indemnitee**.

**(a)** In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within 90 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 1 year following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

**(b)** In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

**(c)** If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification or (ii) a prohibition of such indemnification under applicable law.

**(d)** In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his or her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his or her behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him or her in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

**(e)** The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within 10 days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

**(f)** Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

**8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation**.

**(a)** The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of Board or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy all greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

**(b)** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, the Company shall procure such insurance policy or policies under which the Indemnitee shall be covered in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the

commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

**(c)** The Company hereby acknowledges that Indemnitee has or may have in the future certain rights to indemnification, advancement of expenses and/or insurance provided by other entities and/or organizations (collectively, the "***Secondary Indemnitors***"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Secondary Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Certificate of Incorporation or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Secondary Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Secondary Indemnitors from any and all claims against the Secondary Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Secondary Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Secondary Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Secondary Indemnitors are express third party beneficiaries of the terms of this Section 8(c).

**(d)** Except as provided in paragraph (c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Secondary Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

**(e)** Except as provided in paragraph (c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

**(f)** Except as provided in paragraph (c) above, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

**9. Exceptions to Right of Indemnification**. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

**(a)** for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision, provided, that the foregoing shall not affect the rights of Indemnitee or the Secondary Indemnitors set forth in Section 8(c) above;

**(b)** for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act, or similar provisions of state statutory law or common law;

**(c)** in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law;

**(d)** with respect to remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in the last paragraph of this Section 9 below);

**(e)** a final judgment or other final adjudication is made that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination);

**(f)** in connection with any claim for reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act, or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement); or

**(g)** on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled.

For purposes of this Section 9, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act, or in any registration statement filed with the SEC under the Securities Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K promulgated under the Securities Act currently generally requires the Company to undertake, in connection with any registration statement filed under the Securities Act, to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Securities Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

**10. Duration of Agreement**. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his or her Corporate Status, whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

**11. Security**. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

**12. Enforcement**.

**(a)** The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

**(b)** Other than as provided herein, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

**13. Injunctive Relief**. The Company and the Indemnitee agree herein that a monetary remedy for breach of this Agreement, at some later date, may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause the Indemnitee and the Company irreparable harm. Accordingly, the parties hereto agree that the parties may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm and that by seeking injunctive relief and/or specific performance, they shall not be precluded from seeking or obtaining any other relief to which they may be entitled. The Company and the Indemnitee further agree that they shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company and the Indemnitee acknowledge that in the absence of a waiver, a bond or undertaking may be required by the Chancery Court of the State of Delaware, and they hereby waive any such requirement of such a bond or undertaking.

**14. Definitions**. For purposes of this Agreement:

**(a)** "***Beneficial Owner***" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

**(b)** "***Board***" means the Board of Directors of the Company.

**(c)** "***Change in Control***" means the earliest to occur after the date of this Agreement of any of the following events:

**(i) Acquisition of Stock by Third Party**. Any Person is or becomes the Beneficial Owner (as defined above), directly or indirectly, of securities of the Company representing 25% or more of the combined voting power of the Company's then outstanding securities;

**(ii) Change in Board**. During any period of 2 consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in clause (i), (ii) or (iv) of

this definition of Change in control) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a least a majority of the members of the Board;

**(iii) Corporate Transactions**. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the Board or other governing body of such surviving entity;

**(iv) Liquidation**. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

**(v) Other Events**. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement.

**(d)** "***Corporate Status***" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

**(e)** "***Disinterested Director***" means a non-executive director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

**(f)** "***Enterprise***" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

**(g)** "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

**(h)** "***Expenses***" shall include all documented and reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

**(i)** "***Independent Counsel***" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not

include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

**(j)** "***Person***" for purposes of the definition of Beneficial Owner and Change in Control set forth above, shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

**(k)** "***Proceeding***" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was an officer or director of the Company, by reason of any action taken by him or her or of any inaction on his or her part while acting as an officer or director of the Company, or by reason of the fact that he or she is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other Enterprise; in each case whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his or her rights under this Agreement.

**(l)** "***Sarbanes-Oxley Act***" shall mean the Sarbanes-Oxley Act of 2002, as amended.

**(m)** "***SEC***" shall mean the Securities and Exchange Commission.

**(n)** "***Securities Act***" shall mean the Securities Act of 1933, as amended.

**15. Severability**. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to the Indemnitee shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

**16. Modification and Waiver**. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

**17. Notice By Indemnitee**. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

**18. Notices**. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

**(a)** To Indemnitee at the address set forth below Indemnitee's signature hereto.

**(b)** To the Company at:

Everspin Technologies, Inc.
1347 N. Alma School Road
Suite 220
Chandler, AZ 85224
Attention: Chief Financial Officer

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

**19. Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature, electronic mail (including .pdf or any electronic signature complying with the U.S. Federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**20. Headings**. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

**21. Governing Law and Consent to Jurisdiction.** This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "***Delaware Court***"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably Corporation Service Company as its agent in the State of Delaware for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

***[SIGNATURE PAGE TO FOLLOW]***

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on and as of the day and year first above written.

**EVERSPIN TECHNOLOGIES, INC.**

By: _____
Name: Phill LoPresti
Title: Chief Executive Officer

**INDEMNITEE**

_____
Name:

Address:

_____

_____

_____

# EVERSPIN TECHNOLOGIES, INC.

## 2008 EQUITY INCENTIVE PLAN

**ADOPTED BY THE BOARD OF DIRECTORS: JULY 22, 2008**
**APPROVED BY THE STOCKHOLDERS: OCTOBER 1, 2008**
**AMENDED BY THE BOARD OF DIRECTORS: JULY 14, 2009**
**AMENDMENT APPROVED BY THE STOCKHOLDERS: JULY 30, 2009**
**AMENDED BY THE BOARD OF DIRECTORS: JUNE 15, 2010**
**AMENDMENT APPROVED BY THE STOCKHOLDERS: JULY 30, 2010**
**AMENDED BY THE BOARD OF DIRECTORS: JULY 11, 2013**
**AMENDMENT APPROVED BY THE STOCKHOLDERS: JULY 16, 2013**
**AMENDED BY THE BOARD OF DIRECTORS: MAY 13, 2014**
**AMENDED BY THE BOARD OF DIRECTORS: AUGUST 4, 2015**
**AMENDMENT APPROVED BY THE STOCKHOLDERS: SEPTEMBER 29, 2015**
**AMENDED BY THE BOARD OF DIRECTORS: APRIL 25, 2016**
**AMENDMENT APPROVED BY THE STOCKHOLDERS: JULY 29, 2016**
**TERMINATION DATE: JULY 22, 2018**

### 1. GENERAL.

**(a) Eligible Stock Award Recipients.** The persons eligible to receive Stock Awards are Employees, Directors and Consultants.

**(b) Available Stock Awards.** The Plan provides for the grant of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Restricted Stock Awards, (iv) Restricted Stock Unit Awards, and (v) Stock Appreciation Rights.

**(c) Purpose.** The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Stock Awards as set forth in Section 1(a), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Stock Awards.

### 2. ADMINISTRATION.

**(a) Administration by Board.** The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee, as provided in Section 2(c).

**(b) Powers of Board.** The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)** To determine from time to time (A) which of the persons eligible under the Plan shall be granted Stock Awards; (B) when and how each Stock Award shall be granted; (C) what type or combination of types of Stock Award shall be granted; (D) the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

**(ii)** To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Stock Award fully effective.

**(iii)** To settle all controversies regarding the Plan and Stock Awards granted under it.

**(iv)** To accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

**(v)** To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

**(vi)** To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Stock Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, to the extent required by applicable law, stockholder approval shall be required for any amendment of the Plan that either (i) materially increases the number of shares of Common Stock available for issuance under the Plan, (ii) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (iii) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (iv) materially extends the term of the Plan, or (v) expands the types of Stock Awards available for issuance under the Plan. Except as provided above, rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing.

**(vii)** To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 422 of the Code regarding Incentive Stock Options.

**(viii)** To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however*, that, the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant

consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, and without the affected Participant's consent, the Board may amend the terms of any one or more Stock Awards if necessary to maintain the qualified status of the Stock Award as an Incentive Stock Option or to bring the Stock Award into compliance with Section 409A of the Code and the related guidance thereunder.

**(ix)** Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

**(x)** To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

**(xi)** To effect, at any time and from time to time, with the consent of any adversely affected Optionholder, (1) the reduction of the exercise price of any outstanding Option under the Plan, (2) the cancellation of any outstanding Option under the Plan and the grant in substitution therefor of (A) a new Option under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (B) a Restricted Stock Award, (C) a Stock Appreciation Right, (D) Restricted Stock Unit, (E) cash and/or (F) other valuable consideration (as determined by the Board, in its sole discretion), or (3) any other action that is treated as a repricing under generally accepted accounting principles; *provided*, *however*, that no such reduction or cancellation may be effected if it is determined, in the Company's sole discretion, that such reduction or cancellation would result in any such outstanding Option becoming subject to the requirements of Section 409A of the Code.

**(c) Delegation to Committee.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

**(d) Delegation to an Officer.** The Board may delegate to one or more Officers the authority to do one or both of the following: (i) designate Employees who are not Officers to be recipients of Options (and, to the extent permitted by applicable law, other Stock Awards) and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided, however,* that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding the foregoing, the Board may not delegate authority to an Officer to determine the Fair Market Value of the Common Stock pursuant to Section 13(t) below.

**(e) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

**3. SHARES SUBJECT TO THE PLAN.**

**(a)** Subject to Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock of the Company that may be issued pursuant to Stock Awards after the Effective Date shall not exceed 35,188,096 shares. For clarity, the limitation in this Section 3(a) is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a). Furthermore, if a Stock Award (i) expires or otherwise terminates without having been exercised in full or (ii) is settled in cash (*i.e.*, the holder of the Stock Award receives cash rather than stock), such expiration, termination or settlement shall not reduce (or otherwise offset) the number of shares of Common Stock that may be issued pursuant to the Plan.

**(b)** If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares which are forfeited shall revert to and again become available for issuance under the Plan. Also, any shares reacquired by the Company pursuant to Section 8(g) or as consideration for the exercise of an Option shall again become available for issuance under the Plan. Notwithstanding the provisions of this Section 3(b), any such shares shall not be subsequently issued pursuant to the exercise of Incentive Stock Options.

**(c) Incentive Stock Option Limit.** Notwithstanding anything to the contrary in this Section 3(c), subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be two (2) times (70,376,192) the number of shares reserved under Section 3(a) above.

**(d) Source of Shares.** The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

**(e) Share Reserve Limitation.** In the event of a specifically applicable state law, regulation, rule or public policy ("Specific Inventions Law"), to the extent required by such Specific Inventions Law, the total number of shares of Common Stock issuable upon exercise of all outstanding Options and the total number of shares of Common Stock provided for under any stock bonus or similar plan of the Company shall not exceed the applicable percentage as calculated in accordance with the conditions and exclusions of such Specific Inventions Law, based on the shares of Common Stock of the Company that are outstanding at the time the calculation is made. Examples of a Specific Inventions Law include Article 4 of Title 10 of the California Code of Regulations (e.g., Section 260.140 through Section 260.140.139).

**4. ELIGIBILITY.**

**(a) Eligibility for Specific Stock Awards**. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

**(b) Ten Percent Stockholders.**

**(i)** A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

**(ii)** A Ten Percent Stockholder shall not be granted a Restricted Stock Award or Stock Appreciation Right (if such award could be settled in shares of Common Stock) unless the purchase price of the restricted stock is at least (i) one hundred percent (100%) of the Fair Market Value of the Common Stock on the date of grant or (ii) such lower percentage of the Fair Market Value of the Common Stock on the date of grant as is permitted by a Specific Inventions Law at the time of the grant of the award.

**(c) Consultants.** A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or the sale of the Company's securities to such Consultant is not exempt under Rule 701 of the Securities Act ("***Rule 701***") because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

**5. OPTION PROVISIONS.**

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options need not be identical; *provided, however*, that each Option Agreement shall include (through incorporation of provisions hereof by reference in the Option Agreement or otherwise) the substance of each of the following provisions:

**(a) Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Option Agreement.

**(b) Exercise Price.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise price of each Option shall be not less than one hundred percent

(100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Section 424(a) of the Code (whether or not such options are Incentive Stock Options).

**(c) Consideration.** The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The permitted methods of payment are as follows:

**(i)** by cash, check, bank draft or money order payable to the Company;

**(ii)** pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

**(iii)** by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

**(iv)** by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however,* that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided, further,* that shares of Common Stock will no longer be outstanding under an Option and will not be exercisable thereafter to the extent that (A) shares are used to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

**(v)** in any other form of legal consideration that may be acceptable to the Board.

**(d) Transferability of Options.** The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options shall apply:

**(i) Restrictions on Transfer.** An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option to such extent as permitted by a Specific Inventions Law at the time of the grant of the Option and in a manner consistent with applicable tax and securities laws upon the Optionholder's request.

**(ii) Domestic Relations Orders.** Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order, *provided*, *however*, that an Incentive Stock Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**(iii) Beneficiary Designation.** Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be the beneficiary of an Option with the right to exercise the Option and receive the Common Stock or other consideration resulting from the Option exercise.

**(e) Vesting of Options Generally.** The total number of shares of Common Stock subject to an Option may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of performance goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary. The provisions of this Section 5(e) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

**(f) Minimum Vesting.** Notwithstanding the foregoing Section 5(e), to the extent that the following restrictions on vesting are required by a Specific Inventions Law at the time of the grant of the Option, then:

**(i)** Options granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock at a rate of at least twenty percent (20%) per year over five (5) years from the date the Option was granted, subject to reasonable conditions such as continued employment; and

**(ii)** Options granted to Officers, Directors or Consultants may be made fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Board.

**(g) Termination of Continuous Service.** Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that an Optionholder's Continuous Service terminates (other than for Cause or upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than thirty (30) days unless such termination is for Cause), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

**(h) Extension of Termination Date.** Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than for Cause or upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

**(i) Disability of Optionholder.** Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

**(j) Death of Optionholder.** Except as otherwise provided in the applicable Option Agreement or other agreement between the Optionholder and the Company, in the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death, or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated as the beneficiary of the Option upon the Optionholder's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement, which period shall not be less than six (6) months), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate. If the Optionholder designates a third party beneficiary of the Option in accordance with Section 5(d)(iii), then upon the death of the Optionholder such designated beneficiary shall have the sole right to exercise the Option and receive the Common Stock or other consideration resulting from the Option exercise.

**(k) Termination for Cause.** Except as explicitly provided otherwise in an Optionholder's Option Agreement, in the event that an Optionholder's Continuous Service is terminated for Cause, the Option shall terminate upon the termination date of such Optionholder's Continuous Service, and the Optionholder shall be prohibited from exercising his or her Option from and after the time of such termination of Continuous Service.

**(l) Non-Exempt Employees**. No Option granted to an Employee that is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay.

**(m) Early Exercise.** The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Subject to the "Repurchase Limitation" in Section 8(l), any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate. Provided that the "Repurchase Limitation" in Section 8(l) is not violated, the Company shall not be required to exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option Agreement.

**(n) Right of Repurchase**. Subject to the "Repurchase Limitation" in Section 8(l), the Option may include a provision whereby the Company may elect to repurchase all or any part of the vested shares of Common Stock acquired by the Optionholder pursuant to the exercise of the Option. Provided that the "Repurchase Limitation" in Section 8(l) is not violated, the Company shall not be required to exercise its repurchase option until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless otherwise specifically provided in the Option Agreement.

**(o) Right of First Refusal**. The Option may include a provision whereby the Company may elect to exercise a right of first refusal following receipt of notice from the Optionholder of the intent to transfer all or any part of the shares of Common Stock received upon the exercise of the Option. Except as expressly provided in this Section 5(o) or in the Stock Award Agreement for the Option, such right of first refusal shall otherwise comply with any applicable provisions of the Bylaws of the Company. The Company will not exercise its right of first refusal until at least six (6) months (or such longer or shorter period of time necessary to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless otherwise specifically provided in the Option Agreement.

**6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.**

**(a) Restricted Stock Awards.** Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and

conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical; *provided*, *however*, that each Restricted Stock Award Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Restricted Stock Award may be awarded in consideration for (A) past services actually rendered to the Company or an Affiliate, or (B) any other form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, any price to be paid by the Participant for each share subject to the Restricted Stock Award shall not be less than eighty-five percent (85%) of the Common Stock's Fair Market Value on the date such Stock Award is made or at the time the purchase is consummated.

**(ii) Vesting.** Subject to the "Repurchase Limitation" in Section 8(l), shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Participant's Continuous Service.** In the event a Participant's Continuous Service terminates, the Company may receive via a forfeiture condition, any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

**(b) Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical, *provided, however,* that each Restricted Stock Unit Award Agreement shall include (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

**(ii) Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

**(iii) Minimum Vesting**. Notwithstanding the foregoing Section 6(b)(ii), to the extent that the following restrictions on vesting are required by a Specific Inventions Law at the time of the grant of the Restricted Stock Unit Award, then:

**(1)** Restricted Stock Unit Awards granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock covered by the Restricted Stock Unit Award at a rate of at least twenty percent (20%) per year over five (5) years from the date the Restricted Stock Unit Award was granted, subject to reasonable conditions such as continued employment; and

**(2)** Restricted Stock Unit Awards granted to Officers, Directors or Consultants may vest at any time established by the Board.

**(iv) Payment**. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

**(v) Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

**(vi) Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

**(vii) Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

**(viii) Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Restricted Stock Unit Award will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award. For example, such restrictions may include, without limitation, a requirement that any Common Stock that is to be issued in a year following the year in which the Restricted Stock Unit Award vests must be issued in accordance with a fixed pre-determined schedule.

**(c) Stock Appreciation Rights.** Each Stock Appreciation Right Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. Stock Appreciation Rights may be granted as stand-alone Stock Awards or in tandem with other Stock Awards. The terms and conditions of Stock Appreciation Right Agreements may change from time to time, and the terms and conditions of separate Stock Appreciation Right Agreements need not be identical; *provided, however*, that each Stock Appreciation Right Agreement shall include (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Stock Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of grant or such shorter period specified in the Stock Appreciation Right Agreement.

**(ii) Strike Price.** Each Stock Appreciation Right will be denominated in shares of Common Stock equivalents. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the strike price of each Stock Appreciation Right granted as a stand-alone or tandem Stock Award shall not be less than one hundred percent (100%) of the Fair Market Value of the Common Stock equivalents subject to the Stock Appreciation Right on the date of grant.

**(iii) Calculation of Appreciation.** The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of share of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board on the date of grant.

**(iv) Vesting.** At the time of the grant of a Stock Appreciation Right, the Board may impose such restrictions or conditions to the vesting of such Stock Appreciation Right as it, in its sole discretion, deems appropriate.

**(v) Minimum Vesting**. Notwithstanding the foregoing Section 6(c)(iv), to the extent that the following restrictions on vesting are required by a Specific Inventions Law at the time of the grant of the Stock Appreciation Right, then:

**(1)** Stock Appreciation Rights granted to an Employee who is not an Officer, Director or Consultant shall provide for vesting of the total number of shares of Common Stock at a rate of at least twenty percent (20%) per year over five (5) years from the date the Stock Appreciation Right was granted, subject to reasonable conditions such as continued employment; and

**(2)** Stock Appreciation Rights granted to Officers, Directors or Consultants may be made fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Company.

**(vi) Exercise.** To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

**(vii) Non-Exempt Employees**. No Stock Appreciation Right granted to an Employee that is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Stock Appreciation Right. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise of a Stock Appreciation Right will be exempt from his or her regular rate of pay.

**(viii) Payment**. The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

**(ix) Termination of Continuous Service.** Except as otherwise provided in the applicable Stock Appreciation Right Agreement or other agreement between the Participant and the Company, in the event that a Participant's Continuous Service terminates (other than for Cause or upon the Participant's death or Disability), the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (A) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than thirty (30) days unless such termination is for Cause), or (B) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

**(x) Disability of Participant**. Except as otherwise provided in the applicable Stock Appreciation Right Agreement or other agreement between the Participant and the Company, in the event that a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (A) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than six (6) months), or (B) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

**(xi) Death of Participant**. Except as otherwise provided in the applicable Stock Appreciation Right Agreement or other agreement between the Participant and the Company, in the event that (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Stock Appreciation Right Agreement after the termination of the Participant's Continuous Service for a reason other than death, then the Stock Appreciation Right may be exercised (to the extent the Participant was entitled to exercise such Stock Appreciation Right as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Stock Appreciation Right by bequest or inheritance or by a person designated as the beneficiary of the Stock Appreciation Right upon the Participant's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Stock Appreciation Right Agreement, which period shall not be less than six (6) months), or (ii) the expiration of the term of such Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after the Participant's death, the Stock Appreciation Right is not exercised within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

**(xii) Termination for Cause.** Except as explicitly provided otherwise in an Participant's Stock Appreciation Right Agreement, in the event that a Participant's Continuous Service is terminated for Cause, the Stock Appreciation Right shall terminate upon the termination date of such Participant's Continuous Service, and the Participant shall be prohibited from exercising his or her Stock Appreciation Right from and after the time of such termination of Continuous Service.

**(xiii) Compliance with Section 409A of the Code.** Notwithstanding anything to the contrary set forth herein, any Stock Appreciation Rights granted under the Plan that are not exempt from the requirements of Section 409A of the Code shall contain such provisions so that such Stock Appreciation Rights will comply with the requirements of Section 409A of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right. For example, such restrictions may include, without limitation, a requirement that a Stock Appreciation Right that is to be paid wholly or partly in cash must be exercised and paid in accordance with a fixed pre-determined schedule.

**7. COVENANTS OF THE COMPANY.**

**(a) Availability of Shares.** During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

**(b) Securities Law Compliance.** The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking shall not require the Company to

register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

**(c) No Obligation to Notify.** The Company shall have no duty or obligation to any holder of a Stock Award to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

**8. MISCELLANEOUS.**

**(a) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

**(b) Corporate Action Constituting Grant of Stock Awards.** Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

**(c) Stockholder Rights.** No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms and the Participant shall not be deemed to be a stockholder of record until the issuance of the Common Stock pursuant to such exercise has been entered into the books and records of the Company.

**(d) No Employment or Other Service Rights.** Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Stock Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

**(e) Incentive Stock Option $100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any

calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(f) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (x) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (y) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(g) Withholding Obligations.** To the extent provided by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided*, *however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding payment from any amounts otherwise payable to the Participant; (iv) withholding cash from a Stock Award settled in cash; or (v) by such other method as may be set forth in the Stock Award Agreement.

**(h) Electronic Delivery**. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

**(i) Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an

employee. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of employment or retirement, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(j) Compliance with Section 409A.** To the extent that the Board determines that any Stock Award granted hereunder is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued or amended after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Board determines that any Stock Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Board may adopt such amendments to the Plan and the applicable Stock Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Board determines are necessary or appropriate to (1) exempt the Stock Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Stock Award, or (2) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

**(k) Information Obligation.** To the extent required by a Specific Inventions Law, the Company shall deliver financial statements to Participants at least annually. This Section 8(k) shall not apply to key Employees whose duties in connection with the Company assure them access to equivalent information.

**(l) Repurchase Limitation.** The terms of any repurchase option shall be specified in the Stock Award, and the repurchase price may be either the Fair Market Value of the shares of Common Stock on the date of termination of Continuous Service or the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price. To the extent required by a Specific Inventions Law at the time a Stock Award is made, any repurchase option contained in a Stock Award granted to a person who is not an Officer, Director or Consultant shall be upon the terms described below:

**(i) Fair Market Value.** If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of Continuous Service at not less than the Fair Market Value of the shares of Common Stock to be purchased on the date of termination of Continuous Service, then (i) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Stock Awards after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock") and (ii) the right terminates when the shares of Common Stock become publicly traded.

**(ii) Original Purchase Price.** If the repurchase option gives the Company the right to repurchase the shares of Common Stock upon termination of Continuous Service at the lower of (i) the Fair Market Value of the shares of Common Stock on the date of repurchase or (ii) their original purchase price, then (x) the right to repurchase at the original purchase price shall lapse at the rate of at least twenty percent (20%) of the shares of Common Stock per year over five (5) years from the date the Stock Award is granted (without respect to the date the Stock Award was exercised or became exercisable) and (y) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares of Common Stock within ninety (90) days of termination of Continuous Service (or in the case of shares of Common Stock issued upon exercise of Options after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Participant (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code regarding "qualified small business stock").

**9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments**. In the event of a Capitalization Adjustment, the Board shall proportionately and appropriately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

**(b) Dissolution or Liquidation**. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase option may be repurchased by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. Except as otherwise stated in the Stock Award Agreement, in the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, each Stock Award shall terminate and be cancelled to the extent not vested or exercised prior to the effective

time of the Corporate Transaction unless the Board elects to take one or more of the following actions with respect to such Stock Award:

**(i)** arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

**(ii)** arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

**(iii)** accelerate the vesting of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

**(iv)** arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award; and

**(v)** make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise; provided that if the Board elects to make the payment described in this clause (v), the entire Stock Award (both vested and unvested portions) shall be terminated and cancelled in consideration of such payment.

The Board need not take the same action with respect to all Stock Awards or with respect to all Participants.

**(d) Change in Control.** A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

**10. TERMINATION OR SUSPENSION OF THE PLAN.**

**(a) Plan Term.** The Board may suspend or terminate the Plan at any time. Unless sooner terminated by the Board pursuant to Section 2, the Plan shall automatically terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**(b) No Impairment of Rights.** Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

**11. EFFECTIVE DATE OF PLAN.**

This Plan shall become effective on the Effective Date.

**12. CHOICE OF LAW.**

The law of the State of Arizona shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

**13. DEFINITIONS.** As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

**(a)** "***Affiliate***" means, at the time of determination, any "parent" or "majority-owned subsidiary" of the Company, as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "majority-owned subsidiary" status is determined within the foregoing definition.

**(b)** "***Board***" means the Board of Directors of the Company.

**(c)** "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without the receipt of consideration" by the Company.

**(d)** "***Cause***" means with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated by reason of dismissal without Cause for the purposes of outstanding Stock Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

**(e)** "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

**(ii)** there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

**(iii)** the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation; or

**(iv)** there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition.

The term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of this Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however,* that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

**(f)** "***Code***" means the Internal Revenue Code of 1986, as amended.

**(g)** "***Committee***" means a committee of two (2) or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

**(h)** "***Common Stock***" means the common stock of the Company.

**(i)** "***Company***" means Everspin Technologies, Inc., a Delaware company.

**(j)** "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

**(k)** "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director, or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; *provided*, *however*, if the Entity for which a Participant is rendering service ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an employee of the Company to a consultant of an Affiliate or to a Director shall not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

**(l)** "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** the consummation of a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

**(ii)** the consummation of a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

**(iii)** the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

**(iv)** the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

**(m)** "***Director***" means a member of the Board.

**(n)** "***Disability***" means the inability of a Participant to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

**(o)** "***Effective Date***" means the effective date of this Plan, which is the earlier of (i) the date that this Plan is first approved by the Company's stockholders, or (ii) the date this Plan is adopted by the Board.

**(p)** "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

**(q)** "***Entity***" means a corporation, partnership, limited liability company or other entity.

**(r)** "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

**(s)** "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date of the Plan as set forth in Section 13, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities.

**(t)** "***Fair Market Value***" means, as of any date, the value of the Common Stock determined by the Board (i) in a manner consistent with a Specific Inventions Law and (ii) in compliance with Section 409A of the Code or, in the case of an Incentive Stock Option, in compliance with Section 422 of the Code.

**(u)** "***Incentive Stock Option***" means an Option that qualifies as an "incentive stock option" within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

**(v)** "***Nonstatutory Stock Option***" means an Option that does not qualify as an Incentive Stock Option.

**(w)** "***Officer***" means any person designated by the Company as an officer.

**(x)** "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

**(y)** "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

**(z)** "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

**(aa)** "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**(bb)** "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

**(cc)** "***Plan***" means this Everspin Technologies, Inc. 2008 Equity Incentive Plan.

**(dd)** "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

**(ee)** "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

**(ff)** "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

**(gg)** "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.

**(hh)** "***Securities Act***" means the Securities Act of 1933, as amended.

**(ii)** "***Stock Appreciation Right***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 6(c).

**(jj)** "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

**(kk)** "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, or a Stock Appreciation Right.

**(ll)** "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

**(mm)** "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

**(nn)** "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

**EVERSPIN TECHNOLOGIES, INC.**
**STOCK OPTION GRANT NOTICE**
**(2008 EQUITY INCENTIVE PLAN)**

**Everspin Technologies, Inc.** (the "***Company***"), pursuant to its **2008 Equity Incentive Plan** (the "***Plan***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, the Plan, and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

| | |
|---|---|
| Optionholder: | _____ |
| Date of Grant: | _____ |
| Vesting Commencement Date: | _____ |
| Number of Shares Subject to Option: | _____ |
| Exercise Price (Per Share): | _____ |
| Total Exercise Price: | _____ |
| Expiration Date: | _____ |

**Type of Grant:** ☐ Incentive Stock Option ☐ Nonstatutory Stock Option

**Exercise Schedule:** ☐ Same as Vesting Schedule ☐ Early Exercise Permitted

**Vesting Schedule:** **[Describe vesting schedule]**

**Payment:** By one or a combination of the following items (described in the Option Agreement):

☑ By cash or check
☐ By net exercise

**Additional Terms/Acknowledgements:** The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of: (i) options previously granted and delivered to Optionholder under the Plan, (ii) stock previously purchased by Optionholder, and (iii) the following agreements, if any:

**OTHER AGREEMENTS:** _____

_____

**EVERSPIN TECHNOLOGIES, INC.**

By: _____

Name: _____

Title: _____

Date: _____

**OPTIONHOLDER:**

_____
Signature

_____

_____
Print Name

Date: _____

**ATTACHMENTS**: Stock Option Agreement, 2008 Equity Incentive Plan and Notice of Exercise

**ATTACHMENT I**

**STOCK OPTION AGREEMENT**

**EVERSPIN TECHNOLOGIES, INC.**
**OPTION AGREEMENT**
**(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)**

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, Everspin Technologies, Inc. (the "***Company***") has granted you an option under its 2008 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

**1. VESTING.** Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

**2. NUMBER OF SHARES AND EXERCISE PRICE.** The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

**3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES.** In the event that you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (*i.e.*, a "***Non-Exempt Employee***"), you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant specified in your Grant Notice, notwithstanding any other provision of your option.

**4. EXERCISE PRIOR TO VESTING ("EARLY EXERCISE").** If permitted in your Grant Notice (*i.e.*, the "Exercise Schedule" indicates "Early Exercise Permitted") and subject to the provisions of your option, you may elect at any time that is both (i) during the period of your Continuous Service and (ii) during the term of your option, to exercise all or part of your option, including the nonvested portion of your option; *provided, however,* that:

**(a)** a partial exercise of your option shall be deemed to cover first vested shares of Common Stock and then the earliest vesting installment of unvested shares of Common Stock;

**(b)** any shares of Common Stock so purchased from installments that have not vested as of the date of exercise shall be subject to the purchase option in favor of the Company as described in the Company's form of Early Exercise Stock Purchase Agreement;

**(c)** you shall enter into the Company's form of Early Exercise Stock Purchase Agreement with a vesting schedule that will result in the same vesting as if no early exercise had occurred; and

**(d)** if your option is an Incentive Stock Option, then, to the extent that the aggregate Fair Market Value (determined at the time of grant) of the shares of Common Stock

with respect to which your option plus all other Incentive Stock Options you hold are exercisable for the first time by you during any calendar year (under all plans of the Company and its Affiliates) exceeds one hundred thousand dollars ($100,000), your option(s) or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

**5. METHOD OF PAYMENT.** Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any other manner ***permitted by your Grant Notice***, which may include one or more of the following:

**(a)** Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

**(b)** Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

**6. WHOLE SHARES.** You may exercise your option only for whole shares of Common Stock.

**7. SECURITIES LAW COMPLIANCE.** Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

**8. TERM.** You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

**(a)** immediately upon the termination of your Continuous Service for Cause;

**(b)** three (3) months after the termination of your Continuous Service for any reason other than Cause, your Disability or death, provided that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service;

**(c)** twelve (12) months after the termination of your Continuous Service due to your Disability;

**(d)** eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates;

**(e)** in certain circumstances upon the effective date of a Corporate Transaction as set forth in the Plan;

**(f)** the Expiration Date indicated in your Grant Notice; or

**(g)** the day before the tenth (10th) anniversary of the Date of Grant.

"***Cause***" means the occurrence of any one or more of the following: (i) your commission of any crime involving fraud, dishonesty or moral turpitude; (ii) your attempted commission of or participation in a fraud or act of dishonesty against the Company that results in (or might have reasonably resulted in) material harm to the business of the Company; (iii) your intentional, material violation of any contract or agreement between you and the Company or any statutory duty you owe to the Company; or (iv) your conduct that constitutes gross insubordination, incompetence or habitual neglect of duties and that results in (or might have reasonably resulted in) material harm to the business of the Company; *provided, however*, that the action or conduct described in clauses (iii) and (iv) above will constitute "Cause" only if such action or conduct continues after the Company has provided you with written notice thereof and thirty (30) days to cure the same.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

**9. EXERCISE.**

**(a)** You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

**(b)** By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (1) the exercise of your option, (2) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (3) the disposition of shares of Common Stock acquired upon such exercise.

**(c)** If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

**(d)** By exercising your option you agree that you shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as necessary to permit compliance with FINRA Rule 2711 and similar or successor regulatory rules and regulations (the "***Lock-Up Period***"); *provided*, *however*, that nothing contained in this section shall prevent the exercise of a repurchase option, if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company and/or the underwriter(s) that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. The underwriters of the Company's stock are intended third party beneficiaries of this Section 9(d) and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

**10. TRANSFERABILITY.** Your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option. In addition, if permitted by the Company you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust, provided that you and the trustee enter into a transfer and other agreements required by the Company.

**11. RIGHT OF FIRST REFUSAL.** Shares of Common Stock that you acquire upon exercise of your option are subject to any right of first refusal that may be described in the Company's bylaws in effect at such time the Company elects to exercise its right; *provided*, *however,* that if your option is an Incentive Stock Option and the right of first refusal described in the Company's bylaws in effect at the time the Company elects to exercise its right is more beneficial to you than the right of first refusal described in the Company's bylaws on the Date of Grant, then the right of first refusal described in the Company's bylaws on the Date of Grant shall apply. The Company's right of first refusal shall expire on the first date upon which any security of the Company is listed (or approved for listing) upon notice of issuance on a national securities exchange or quotation system.

**12. RIGHT OF REPURCHASE.** To the extent provided in the Company's bylaws in effect at such time the Company elects to exercise its right, the Company shall have the right to repurchase all or any part of the shares of Common Stock you acquire pursuant to the exercise of your option.

**13. OPTION NOT A SERVICE CONTRACT.** Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

**14. WITHHOLDING OBLIGATIONS.**

**(a)** At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

**(b)** Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

**(c)** You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein unless such obligations are satisfied.

**15. TAX CONSEQUENCES.** You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option. Because the Common Stock is not traded on an established securities market, the Fair Market Value is determined by the Board, perhaps in consultation with an independent valuation firm retained by the Company. You acknowledge that there is no guarantee that the Internal Revenue Service will agree with the valuation as determined by the Board, and you shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that the valuation determined by the Board is less than the "fair market value" as subsequently determined by the Internal Revenue Service.

**16. NOTICES.** Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**17. GOVERNING PLAN DOCUMENT.** Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

* * *

**ATTACHMENT II**

**2008 EQUITY INCENTIVE PLAN**

**ATTACHMENT III**

**NOTICE OF EXERCISE**

**NOTICE OF EXERCISE**

**Everspin Technologies, Inc.**
1347 N. Alma School Road
Suite 220
Chandler, AZ 85224

Date of Exercise: _____

Ladies and Gentlemen:

This constitutes notice under my stock option that I elect to purchase the number of shares for the price set forth below.

| | | |
|---|---|---|
| Type of option (check one): | Incentive ☐ | Nonstatutory ☐ |
| Stock option dated: | _____ | |
| Number of shares as to which option is exercised: | _____ | |
| Certificates to be issued in name of: | _____ | |
| Total exercise price: | $ _____ | |
| Cash payment delivered herewith: | $ _____ | |

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the Everspin Technologies, Inc. 2008 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an incentive stock option, to notify you in writing within fifteen (15) days after the date of any disposition of any of the shares of Common Stock issued upon exercise of this option that occurs within two (2) years after the date of grant of this option or within one (1) year after such shares of Common Stock are issued upon exercise of this option.

I hereby make the following certifications and representations with respect to the number of shares of Common Stock of the Company listed above (the "Shares"), which are being acquired by me for my own account upon exercise of the Option as set forth above:

I acknowledge that the Shares have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and are deemed to constitute "restricted securities" under Rule 701 and "control securities" under Rule 144 promulgated under the Securities Act. I warrant and represent to the Company that I have no present intention of distributing or selling said Shares, except as permitted under the Securities Act and any applicable state securities laws.

I further acknowledge that I will not be able to resell the Shares for at least ninety days (90) after the stock of the Company becomes publicly traded (*i.e.*, subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934) under Rule 701 and that more restrictive conditions apply to affiliates of the Company under Rule 144.

I further acknowledge that all certificates representing any of the Shares subject to the provisions of the Option shall have endorsed thereon appropriate legends reflecting the foregoing limitations, as well as any legends reflecting restrictions pursuant to the Company's Articles of Incorporation, Bylaws and/or applicable securities laws.

I further agree that, if required by the Company (or a representative of the underwriters) in connection with the first underwritten registration of the offering of any securities of the Company under the Securities Act, I will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any shares of Common Stock or other securities of the Company for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as necessary to permit compliance with NASD Rule 2711 or NYSE Member Rule 472 and similar rules and regulations (the "***Lock-Up Period***"). I further agree to execute and deliver such other agreements as may be reasonably requested by the Company and/or the underwriter(s) that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such period.

Very truly yours,

_____

_____

Print Name

Address: _____

_____

**EVERSPIN TECHNOLOGIES, INC.**

**2016 EQUITY INCENTIVE PLAN**

**ADOPTED BY THE BOARD OF DIRECTORS: APRIL 25, 2016**
**APPROVED BY THE STOCKHOLDERS: [ ]**
**IPO DATE: [ ]**

## 1. GENERAL.

**(a) Purpose.** The Plan, through the grant of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

**(b) Eligible Award Recipients.** Employees, Directors and Consultants are eligible to receive Awards.

**(c) Available Awards.** The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards, (vi) Performance Stock Awards, (vii) Performance Cash Awards, and (viii) Other Stock Awards.

## 2. ADMINISTRATION.

**(a) Administration by Board.** The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

**(b) Powers of Board.** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)** To determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

**(ii)** To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

**(iii)** To settle all controversies regarding the Plan and Awards granted under it.

**(iv)** To accelerate, in whole or in part, the time at which an Award may be exercised or vest (or the time at which cash or shares of Common Stock may be issued in settlement thereof).

**(v)** To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or an Award Agreement, suspension or termination of the Plan will not materially impair a Participant's rights under the Participant's then-outstanding Award without the Participant's written consent, except as provided in subsection (viii) below.

**(vi)** To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or bringing the Plan or Awards granted under the Plan into compliance with the requirements for Incentive Stock Options or ensuring that they are exempt from, or compliant with, the requirements for nonqualified deferred compensation under Section 409A of the Code, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements, and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (E) materially extends the term of the Plan, or (F) materially expands the types of Awards available for issuance under the Plan. Except as otherwise provided in the Plan or an Award Agreement, no amendment of the Plan will materially impair a Participant's rights under an outstanding Award without the Participant's written consent.

**(vii)** To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding "incentive stock options" or (C) Rule 16b-3.

**(viii)** To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided, however,* that a Participant's rights under any Award will not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, (1) a Participant's rights will not be deemed to have been impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant's rights, and (2) subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant's consent (A) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (B) to change the terms of an Incentive Stock Option, if such change results in impairment of the Award solely because it impairs the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (C) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code; or (D) to comply with other applicable laws or listing requirements.

**(ix)** Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

**(x)** To adopt such rules, procedures and sub-plans related to the operation and administration of the Plan as are necessary or appropriate under local laws and regulations to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement that are made to ensure or facilitate compliance with the laws or regulations of the relevant foreign jurisdiction).

**(xi)** To effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

**(c) Delegation to Committee.**

**(i) General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

**(ii) Section 162(m) and Rule 16b-3 Compliance.** The Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3.

**(d) Delegation to an Officer.** The Board may delegate to one (1) or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such Awards, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided*, *however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value pursuant to Section 13(w)(iii) below.

**(e) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

**3. SHARES SUBJECT TO THE PLAN.**

**(a) Share Reserve.** Subject to Section 9(a) relating to Capitalization Adjustments, and the following sentence regarding the annual increase, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards will not exceed 13,000,000 shares (the "***Share Reserve***").

In addition, the Share Reserve will automatically increase on the first day of each fiscal year, for a period of not more than ten years from the date the Plan is approved by the stockholders of the Company, commencing on January 1 in the calendar year following the calendar year in which the IPO Date occurs and ending on (and including) January 1, 2026, in an amount equal to 3% of the total number of shares of Capital Stock outstanding on the last day of the calendar month prior to the date of such automatic increase. Notwithstanding the foregoing, the Board may act prior to the first day of a given fiscal year to provide that there will be no increase in the Share Reserve for such fiscal year or that the increase in the Share Reserve for such year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. For clarity, the Share Reserve in this Section 3(a) is a limitation on the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a). Shares may be issued in connection with a merger or acquisition as permitted by NASDAQ Listing Rule 5635(c) or, if applicable, NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

**(b) Reversion of Shares to the Share Reserve.** If a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

**(c) Incentive Stock Option Limit.** Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 13,000,000 shares of Common Stock.

**(d) Section 162(m) Limitations**. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code, the following limitations shall apply.

**(i)** A maximum of 3,000,000 (5,000,000 in the year of hire) shares of Common Stock subject to Options, SARs and Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the Fair Market Value on the date the Stock Award is granted may be granted to any one Participant during any one calendar year. Notwithstanding the foregoing, if any additional Options, SARs or Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the Fair Market Value on the date the Stock Award are granted to any Participant during any calendar year, compensation attributable to the exercise of such additional Stock Awards will not satisfy the requirements to be considered "qualified performance-based compensation" under Section 162(m) of the Code unless such additional Stock Award is approved by the Company's stockholders.

**(ii)** A maximum of 3,000,000 (5,000,000 in the year of hire) shares of Common Stock subject to Performance Stock Awards may be granted to any one Participant during any one calendar year (whether the grant, vesting or exercise is contingent upon the attainment during the Performance Period of the Performance Goals).

**(iii)** A maximum of US$3,000,000 may be granted as a Performance Cash Award to any one Participant during any one calendar year.

**(e) Limitation on Grants to Non-Employee Directors.** The maximum number of shares of Common Stock subject to Stock Awards granted under the Plan or otherwise during any one calendar year to any Non-Employee Director, taken together with any cash fees paid by the Company to such Non-Employee Director during such calendar year for service on the Board, will not exceed $3,000,000 in total value (calculating the value of any such Stock Awards based on the grant date fair value of such Stock Awards for financial reporting purposes), or, with respect to the calendar year in which a Non-Employee Director is first appointed or elected to the Board, $5,000,000. The Board may make exceptions to the applicable limit in this Section 3(e) for individual Non-Employee Directors in extraordinary circumstances (for example, to compensate such individual for interim service in the capacity of an officer of the Company), as Board may determine in its discretion, provided that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation.

**(f) Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

**4. ELIGIBILITY.**

**(a) Eligibility for Specific Stock Awards**. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or a "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405 of the Securities Act, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

**(b) Ten Percent Stockholders.** A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

**5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.**

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided, however*, that each Award Agreement will conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

**(a) Term.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of its grant or such shorter period specified in the Award Agreement.

**(b) Exercise Price.** Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

**(c) Purchase Price for Options.** The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. The permitted methods of payment are as follows:

**(i)** by cash, check, bank draft or money order payable to the Company;

**(ii)** pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

**(iii)** by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

**(iv)** if an Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are used to pay the exercise price pursuant to the “net exercise,” (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

**(v)** in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

**(d) Exercise and Payment of a SAR.** To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of

the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Award Agreement evidencing such SAR.

**(e) Transferability of Options and SARs.** The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

**(i) Restrictions on Transfer.** An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

**(ii) Domestic Relations Orders.** Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2) or comparable local law. If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**(iii) Beneficiary Designation.** Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company (or a third party designated by the Company, each a "***Company Designee***"), in a form approved by the Company (or a Company Designee), designate a third party who, on the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, upon the death of the Participant, the executor or administrator of the Participant's estate or the Participant's legal heirs will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

**(f) Vesting Generally.** The total number of shares of Common Stock subject to an Option or SAR may vest and become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

**(g) Termination of Continuous Service.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date 3 months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR (as applicable) within the applicable time frame, the Option or SAR will terminate.

**(h) Extension of Termination Date.** If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of time (that need not be consecutive) equal to the applicable post termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received on exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of a period of months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

**(i) Disability of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

**(j) Death of Participant.** Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service for a reason other than death, then the Option or SAR may be exercised (x) in its entirety including shares that the Participant was not otherwise entitled to exercise as of the date of termination of Continuous Service in the event of a termination under (i) above, or (y) to the extent the Participant was entitled to exercise such Option or SAR as of the date of death in the event of a termination under (ii) above by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date 18 months following the date of death (or such longer or shorter period specified in the Award Agreement), and (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR (as applicable) will terminate.

**(k) Termination for Cause.** Except as explicitly provided otherwise in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon such Participant's termination of Continuous Service, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date of such termination of Continuous Service.

**(l) Non-Exempt Employees**. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the U.S. Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option or SAR (although the Award may vest prior to such date). Consistent with the provisions of the U.S. Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the U.S. Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements.

**6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.**

**(a) Restricted Stock Awards.** Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

**(iii) Termination of Participant's Continuous Service.** If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

**(iv) Transferability.** Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

**(v) Dividends.** A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

**(b) Restricted Stock Unit Awards.** Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

**(i) Consideration.** At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

**(ii) Vesting.** At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

**(iii) Payment**. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

**(iv) Additional Restrictions.** At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

**(v) Dividend Equivalents.** Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

**(vi) Termination of Participant's Continuous Service.** Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

**(c) Performance Awards**.

**(i) Performance Stock Awards**. A Performance Stock Award is a Stock Award (covering a number of shares not in excess of that set forth in Section 3(d) above) that is payable (including that may be granted, may vest or may be exercised) contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not,

require the Participant's completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m) of the Code, the Board), in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

**(ii) Performance Cash Awards**. A Performance Cash Award is a cash award (for a dollar value not in excess of that set forth in Section 3(d) above) that is payable contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m) of the Code, the Board), in its sole discretion. The Board may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

**(iii) Board Discretion**. The Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for a Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

**(iv) Section 162(m) Compliance**. Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as "performance-based compensation" thereunder, the Committee will establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (a) the date 90 days after the commencement of the applicable Performance Period, and (b) the date on which 25% of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee will certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such Performance Goals relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of, or completion of any Performance Goals, the number of shares of Common Stock, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, will determine.

**(d) Other Stock Awards**. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

**7. COVENANTS OF THE COMPANY.**

**(a) Availability of Shares.** The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Awards.

**(b) Compliance with Law.** The Company will seek to obtain from each regulatory commission or agency, as necessary, such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Stock Awards; *provided, however*, that this undertaking will not require the Company to register under the Securities Act or other securities or applicable laws, the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable law.

**(c) No Obligation to Notify or Minimize Taxes.** The Company will have no duty or obligation to any Participant to advise such holder as to the tax treatment of such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

**8. MISCELLANEOUS.**

**(a) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

**(b) Corporate Action Constituting Grant of Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

**(c) Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

**(d) No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state or foreign jurisdiction in which the Company or the Affiliate is domiciled or incorporated, as the case may be.

**(e) Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

**(f) Incentive Stock Option Limitations.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds US$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(g) Investment Assurances.** The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that such Participant is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

**(h) Withholding Obligations.** Unless prohibited by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means through the Company or a Company Designee: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; *provided, however,* that no shares of Common Stock are withheld with a value exceeding such amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

**(i) Electronic Delivery**. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.sec.gov (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

**(j) Deferrals.** To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

**(k) Compliance with Section 409A of the Code.** Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

**(l) Clawback/Recovery**. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of an event constituting Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company.

**9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments**. In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Sections 3(d), and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

**(b) Dissolution or Liquidation**. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; *provided*, *however*, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions will apply to Stock Awards in the event of a Transaction unless otherwise provided in the Stock Award Agreement or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. Except as otherwise stated in the Stock Award Agreement, in the event of a Transaction, then, notwithstanding any other provision of the Plan, each Stock Award shall terminate and be cancelled to the extent not vested or exercised prior to the effective time of the Transaction unless the Board elects to take one or more of the following actions with respect to such Stock Award:

**(i)** arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Transaction);

**(ii)** arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

**(iii)** accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five (5) days prior to the effective date of the Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Transaction; *provided*, *however*, that the Board may require Participants to complete and deliver to the Company a notice of exercise before the effective date of a Transaction, which exercise is contingent upon the effectiveness of such Transaction;

**(iv)** arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

**(v)** cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Transaction, and pay such cash consideration or no consideration as the Board, in its sole discretion, may consider appropriate; and

**(vi)** make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Transaction, over (B) any exercise price payable by such holder in connection with such exercise. For clarity, this payment may be zero (US$0) if the value of the property is equal to or less than the exercise price. Payments under this provision may be delayed to the same extent that payment of consideration to the holders of Common Stock in connection with the Transaction is delayed as a result of escrows, earn outs, holdbacks or any other contingencies.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

**(d) Change in Control.** A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

**10. PLAN TERM; EARLIER TERMINATION OR SUSPENSION OF THE PLAN.**

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of (i) the date the Plan is adopted by the Board (the "***Adoption Date***"), or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

**11. EXISTENCE OF THE PLAN; TIMING OF FIRST GRANT OR EXERCISE.**

The Plan will come into existence on the Adoption Date; *provided, however*, that no Award may be granted prior to the IPO Date. In addition, no Stock Award will be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award, Performance Stock Award, or Other Stock Award, no Stock Award will be granted) and no Performance Cash Award will be settled unless and until the Plan has been approved by the stockholders of the Company, which approval will be within 12 months after the date the Plan is adopted by the Board.

**12. CHOICE OF LAW.**

The law of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

**13. DEFINITIONS.** As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

**(a)** "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

**(b)** "***Award***" means a Stock Award or a Performance Cash Award.

**(c)** "***Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

**(d)** "***Board***" means the Board of Directors of the Company.

**(e)** "***Capital Stock***" means each and every class of common stock of the Company, regardless of the number of votes per share.

**(f)** "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

**(g)** "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States, any state thereof, or any applicable foreign jurisdiction; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company or any Affiliate; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or any Affiliate or of any statutory duty owed to the Company or any Affiliate; (iv) such Participant's unauthorized use or disclosure of the Company's or any Affiliate's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

**(h)** "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, (C) on account of the acquisition of securities of the Company by any individual who is, on the IPO Date, either an executive officer or a Director (either, an "***IPO Investor***") and/or any entity in which an IPO Investor has a direct or indirect interest (whether in the form of voting rights or participation in profits or capital contributions) of more than 50% (collectively, the "***IPO Entities***") or on account of the IPO Entities continuing to hold shares that come to represent more than 50% of the combined voting power of the Company's then outstanding securities as a result of the conversion of any class of the Company's

securities into another class of the Company's securities having a different number of votes per share pursuant to the conversion provisions set forth in the Company's Amended and Restated Certificate of Incorporation; or (D) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

**(ii)** there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction; *provided*, *however*, that a merger, consolidation or similar transaction will not constitute a Change in Control under this prong of the definition if the outstanding voting securities representing more than 50% of the combined voting power of the surviving Entity or its parent are owned by the IPO Entities;

**(iii)** there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; *provided*, *however*, that a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries will not constitute a Change in Control under this prong of the definition if the outstanding voting securities representing more than 50% of the combined voting power of the acquiring Entity or its parent are owned by the IPO Entities; or

**(iv)** the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company will otherwise occur, except for a liquidation into a parent corporation.

Notwithstanding the foregoing definition or any other provision of the Plan, the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company and the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Awards subject to such agreement; *provided*, *however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply.

**(i)** "***Code***" means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

**(j)** "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

**(k)** "***Common Stock***" means, as of the IPO Date, the common stock of the Company, having one vote per share.

**(l)** "***Company***" means Everspin Technologies, Inc., a Delaware corporation.

**(m)** "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

**(n)** "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided*, *however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

**(o)** "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

**(ii)** a sale or other disposition of at least 50% of the outstanding securities of the Company;

**(iii)** a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

**(iv)** a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

**(p)** "***Covered Employee***" will have the meaning provided in Section 162(m)(3) of the Code.

**(q)** "***Director***" means a member of the Board.

**(r)** "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

**(s)** "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

**(t)** "***Entity***" means a corporation, partnership, limited liability company or other entity.

**(u)** "***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

**(v)** "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the IPO Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

**(w)** "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

**(i)** If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be, unless otherwise determined by the Board, the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

**(ii)** Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

**(iii)** In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

**(x)** "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

**(y)** "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

**(z)** "***Non-Employee Director***" means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("***Regulation S-K***")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

**(aa)** "***Nonstatutory Stock Option***" means any Option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

**(bb)** "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

**(cc)** "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

**(dd)** "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

**(ee)** "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

**(ff)** "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

**(gg)** "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(hh)** "***Outside Director***" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

**(ii)** "***Own,***" "***Owned,***" "***Owner,***" "***Ownership***" means a person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

**(jj)** "***Participant***" means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

**(kk)** "***Performance Cash Award***" means an award of cash granted pursuant to the terms and conditions of Section 6(c)(ii).

**(ll)** "***Performance Criteria***" means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) earnings before interest, taxes, depreciation, amortization and legal settlements; (v) earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense); (vi) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation; (vii) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation and changes in deferred revenue; (viii) total stockholder return; (ix) return on equity or average stockholder's equity; (x) return on assets, investment, or capital employed; (xi) stock price; (xii) margin (including gross margin); (xiii) income (before or after taxes); (xiv) operating income; (xv) operating income after taxes; (xvi) pre-tax profit; (xvii) operating cash flow; (xviii) sales or revenue targets; (xix) increases in revenue or product revenue; (xx) expenses and cost reduction goals; (xxi) improvement in or attainment of working capital levels; (xxii) economic value added (or an equivalent metric); (xxiii) market share; (xxiv) cash flow; (xxv) cash flow per share; (xxvi) share price performance; (xxvii) debt reduction; (xxviii) implementation or completion of projects or processes (including, without limitation, clinical trial initiation, clinical trial enrollment, clinical trial results, new and supplemental indications for existing products, regulatory filing submissions, regulatory filing acceptances, regulatory or advisory committee interactions, regulatory approvals, and product supply); (xxix) stockholders' equity; (xxx) capital expenditures; (xxxi) debt levels; (xxxii) operating profit or net operating profit; (xxxiii) workforce diversity; (xxxiv) growth of net income or operating income; (xxxv) billings; (xxxvi) bookings; (xxxvii) employee retention; (xxxviii) user satisfaction; (xxxix) the number of users, including but not limited to unique users; (xl) budget management; (xli) partner satisfaction; (xlii) entry into or completion of strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property; and (xliii) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

**(mm)** "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted

accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of any items that are "unusual" in nature or occur "infrequently" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles; (12) to exclude the effects of any other item of unusual, non-recurring gain or loss; and (13) to exclude the effects of entering into or achieving milestones involved in licensing arrangements. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

**(nn)** "***Performance Period***" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

**(oo)** "***Performance Stock Award***" means a Stock Award granted under the terms and conditions of Section 6(c)(i).

**(pp)** "***Plan***" means this Everspin Technologies, Inc. 2016 Equity Incentive Plan.

**(qq)** "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

**(rr)** "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(ss)** "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

**(tt)** "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

**(uu)** "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

**(vv)** "***Securities Act***" means the U.S. Securities Act of 1933, as amended.

**(ww)** "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

**(xx)** "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

**(yy)** "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

**(zz)** "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

**(aaa)** "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

**(bbb)** "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

**(ccc)** "***Transaction***" means a Corporate Transaction or a Change in Control.

**EVERSPIN TECHNOLOGIES, INC.**
**2016 EQUITY INCENTIVE PLAN**

**STOCK OPTION GRANT NOTICE**

Everspin Technologies, Inc. (the "***Company***"), pursuant to its 2016 Equity Incentive Plan (the "***Plan***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth in this notice, in the Option Agreement, including any special terms and conditions for your country set forth in the appendix attached to the Option Agreement as Exhibit A (the "***Appendix***"), the Plan and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Option Agreement will have the same definitions as in the Plan or the Option Agreement. If there is any conflict between the terms in this notice and the Plan, the terms of the Plan will control.

| | |
|---|---|
| Optionholder: | _____ |
| Date of Grant: | _____ |
| Vesting Commencement Date: | _____ |
| Number of Shares Subject to Option: | _____ |
| Exercise Price (Per Share): | _____ |
| Total Exercise Price: | _____ |
| Expiration Date: | _____ |

| | | |
|---|---|---|
| **Type of Grant:** | ☐ **Incentive Stock Option**[1] | ☐ **Nonstatutory Stock Option** |
| **Exercise Schedule:** | | **Same as Vesting Schedule** |
| **Vesting Schedule:** | | **[_____]** |

**Payment:** By one or a combination of the following items (described in the Option Agreement):

☒ By cash, check, bank draft or money order payable to the Company or to a Company Designee
☒ Pursuant to a Regulation T Program if the shares are publicly traded
☐ By delivery of already-owned shares if the shares are publicly traded, [subject to the Company's consent at the time of exercise to the extent this option is a Nonstatutory Stock Option]

1 If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first *exercisable* for more than US $100,000 in value (measured by exercise price) in any calendar year. Any excess over US $100,000 is a Nonstatutory Stock Option.

☐ If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company's consent at the time of exercise, by a "net exercise" arrangement

**Additional Terms/Acknowledgements:** Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement (including the Appendix) and the Plan. Optionholder acknowledges and agrees that this Stock Option Grant Notice and the Option Agreement (including the Appendix) may not be modified, amended or revised except as provided in the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement (including the Appendix), and the Plan set forth the entire understanding between Optionholder and the Company regarding this option award and supersede all prior oral and written agreements, promises and/or representations on that subject with the exception of (i) options previously granted and delivered to Optionholder, (ii) any compensation recovery policy that is adopted by the Company or is otherwise required by applicable law and (iii) any written employment or severance arrangement that would provide for vesting acceleration of this option upon the terms and conditions set forth therein.

By accepting this option, Optionholder consents to receive such documents by electronic delivery and to participate in the Plan through an online or electronic system established and maintained by the Company or to a Company Designee.

**EVERSPIN TECHNOLOGIES, INC.**

By: _____
Signature

Title: _____

Date: _____

**OPTIONHOLDER:**

_____
Signature

Date: _____

**ATTACHMENTS**: Option Agreement, 2016 Equity Incentive Plan and Notice of Exercise

**ATTACHMENT I**

**OPTION AGREEMENT**

**EVERSPIN TECHNOLOGIES, INC.**
**2016 EQUITY INCENTIVE PLAN**

**OPTION AGREEMENT**
**(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)**

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, Everspin Technologies, Inc. (the "***Company***") has granted you an option under its 2016 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. The option is granted to you effective as of the date of grant set forth in the Grant Notice (the "***Date of Grant***"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

**1. VESTING.** Subject to the provisions contained herein, your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

**2. NUMBER OF SHARES AND EXERCISE PRICE.** The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

**3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES.** If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "***Non-Exempt Employee***"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six (6) months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six (6) month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

**4. METHOD OF PAYMENT.** You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price in cash or by check, bank draft or money order payable to the Company or in any other manner permitted by your Grant Notice, which may include one or more of the following:

**a.** Pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

**b.** By delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

**c.** If this option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

**5. WHOLE SHARES.** You may exercise your option only for whole shares of Common Stock.

**6. SECURITIES LAW COMPLIANCE.** In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

**7. TERM.** You may not exercise your option before the Date of Grant or after the expiration of the option's term. The term of your option expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

**a.** immediately upon the date on which the event giving rise to your termination of Continuous Service for Cause occurs (or, if required by law, the date of termination of Continuous Service for Cause);

**b.** three (3) months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 7(d) below); *provided*, *however*, that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; *provided further,* if during any part of such three (3) month period, the sale of any Common Stock received upon exercise of your option would violate the Company's insider trading policy, then your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service during which the sale of the Common Stock received upon exercise of your option would not be in violation of the Company's insider trading policy. Notwithstanding the foregoing, if (i) you are a Non-Exempt Employee, (ii) your Continuous Service

terminates within six (6) months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant, and (B) the date that is three (3) months after the termination of your Continuous Service, and (y) the Expiration Date;

**c.** twelve (12) months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 7(d)) below;

**d.** eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

**e.** in certain circumstances upon the effective date of a Transaction as set forth in the Plan;

**f.** the Expiration Date indicated in your Grant Notice; or

**g.** the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the Date of Grant and ending on the day three (3) months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

**8. EXERCISE.**

**a.** You may exercise the vested portion of your option during its term by (i) delivering a Notice of Exercise (in a form designated by the Company) or completing such other documents and/or procedures designated by the Company for exercise and (ii) paying the exercise price and any applicable withholding taxes to the Company's Secretary, stock plan administrator, or such other person as the Company may designate, together with such additional documents as the Company may then require.

**b.** By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

**c.** If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the Date of Grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

**9. TRANSFERABILITY.** Except as otherwise provided in this Section 9, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

**a. Certain Trusts.** Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

**b. Domestic Relations Orders.** Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2) that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

**c. Beneficiary Designation.** Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

**10. OPTION NOT A SERVICE CONTRACT.** Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective stockholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

**11. WITHHOLDING OBLIGATIONS.**

**a.** At the time you exercise your option, in whole or in part, and at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "same day sale" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

**b.** If this option is a Nonstatutory Stock Option, then upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax

required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

**c.** You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company will have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein, if applicable, unless such obligations are satisfied.

**12. TAX CONSEQUENCES**. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

**13. NOTICES.** Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

**14. GOVERNING PLAN DOCUMENT.** Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control. In addition, your option (and any compensation paid or shares issued under your option) is subject to recoupment in accordance with The Dodd–Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company and any compensation recovery policy otherwise required by applicable law.

**15. OTHER DOCUMENTS**. You hereby acknowledge receipt of and the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Plan prospectus. In addition, you acknowledge receipt of the Company's policy permitting certain individuals to sell shares only during certain "window" periods and the Company's insider trading policy, in effect from time to time.

**16. EFFECT ON OTHER EMPLOYEE BENEFIT PLANS**. The value of this option will not be included as compensation, earnings, salaries, or other similar terms used when calculating your benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

**17. VOTING RIGHTS**. You will not have voting or any other rights as a stockholder of the Company with respect to the shares to be issued pursuant to this option until such shares are issued to you. Upon such issuance, you will obtain full voting and other rights as a stockholder of the Company. Nothing contained in this option, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between you and the Company or any other person.

**18. SEVERABILITY**. If all or any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

**19. MISCELLANEOUS**.

**a.** The rights and obligations of the Company under your option will be transferable to any one or more persons or entities, and all covenants and agreements hereunder will inure to the benefit of, and be enforceable by the Company's successors and assigns.

**b.** You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your option.

**c.** You acknowledge and agree that you have reviewed your option in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your option, and fully understand all provisions of your option.

**d.** This Option Agreement will be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

**e.** All obligations of the Company under the Plan and this Option Agreement will be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

* * *

This Option Agreement will be deemed to be signed by you upon the signing by you of the Grant Notice to which it is attached.

**ATTACHMENT II**

**2016 EQUITY INCENTIVE PLAN**

**ATTACHMENT III**

**NOTICE OF EXERCISE**

**NOTICE OF EXERCISE**

Everspin Technologies, Inc.
Attention: Stock Plan Administrator
1347 N. Alma School Road, Suite #220,
Chandler, AZ, 85224-5900 USA

Date of Exercise:

This constitutes notice to Everspin Technologies, Inc. (the "***Company***") under my stock option that I elect to purchase the below number of shares of Common Stock of the Company (the "***Shares***") for the price set forth below.

| | | |
|---|---|---|
| Type of option (check one): | Incentive ☐ | Nonstatutory ☐ |
| Stock option dated: | _____ | _____ |
| Number of Shares asto which option isexercised: | _____ | _____ |
| Certificates to beissued in name of: | _____ | _____ |
| Total exercise price: | US$_____ | US$_____ |
| Cash payment deliveredherewith: | US$_____ | US$_____ |
| Value of Shares delivered herewith: | US$_____ | US$_____ |
| Regulation T Program (cashless exercise): | US$_____ | US$_____ |

By this exercise, I agree (i) to provide such additional documents as you may require pursuant to the terms of the Everspin Technologies, Inc. 2016 Equity Incentive Plan, (ii) to provide for the payment by me to you (in the manner designated by you) of your withholding obligation, if any, relating to the exercise of this option, and (iii) if this exercise relates to an Incentive Stock option, to notify you in writing within fifteen (15) days after the date of any disposition of any of the Shares issued upon exercise of this option that occurs within two (2)

years after the date of grant of this option or within one (1) year after such Shares are issued upon exercise of this option.

Very truly yours,

Signature

Print Name

**EVERSPIN TECHNOLOGIES, INC.**
**2016 EMPLOYEE STOCK PURCHASE PLAN**
**ADOPTED BY THE BOARD OF DIRECTORS: APRIL 25, 2016**
**APPROVED BY THE STOCKHOLDERS: [ ]**
**IPO DATE/EFFECTIVE DATE: [ ]**

## 1. GENERAL; PURPOSE.

**(a)** The Plan provides a means by which Eligible Employees of the Company and certain Designated Companies may be given an opportunity to purchase shares of Common Stock. The Plan permits the Company to grant a series of Purchase Rights to Eligible Employees under an Employee Stock Purchase Plan.

**(b)** The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations and Affiliates.

**(c)** The Plan includes two components: a 423 Component and a Non-423 Component. The Company intends (but makes no undertaking or representation to maintain) the 423 Component to qualify as an Employee Stock Purchase Plan. The provisions of the 423 Component, accordingly, will be construed in a manner that is consistent with the requirements of Section 423 of the Code. In addition, this Plan authorizes grants of Purchase Rights under the Non-423 Component that do not meet the requirements of an Employee Stock Purchase Plan. Except as otherwise provided in the Plan or determined by the Board, the Non-423 Component will operate and be administered in the same manner as the 423 Component. In addition, the Company may make separate Offerings which vary in terms (provided that such terms are not inconsistent with the provisions of the Plan or the requirements of an Employee Stock Purchase Plan), and the Company will designate which Designated Company is participating in each separate Offering.

## 2. ADMINISTRATION.

**(a)** The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

**(b)** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)** To determine how and when Purchase Rights will be granted and the provisions of each Offering (which need not be identical).

**(ii)** To designate from time to time which Related Corporations of the Company will be eligible to participate in the Plan as Designated 423 Corporations or as Designated Non-423 Corporations, which Affiliates may be excluded from participation in the Plan, and which Designated Companies will participate in each separate Offering (to the extent that the Company makes separate Offerings).

**(iii)** To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it deems necessary or expedient to make the Plan fully effective.

**(iv)** To settle all controversies regarding the Plan and Purchase Rights granted under the Plan.

**(v)** To suspend or terminate the Plan at any time as provided in Section 12.

**(vi)** To amend the Plan at any time as provided in Section 12.

**(vii)** Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company, its Related Corporations, and Affiliates and to carry out the intent that the 423 Component be treated as an Employee Stock Purchase Plan.

**(viii)** To adopt such rules, procedures and sub-plans relating to the operation and administration of the Plan as are necessary or appropriate under applicable local laws, regulations and procedures to permit or facilitate participation in the Plan by Employees who are foreign nationals or employed or located outside the United States. Without limiting the generality of, but consistent with, the foregoing, the Board specifically is authorized to adopt rules, procedures, and sub-plans, which, for purposes of the Non-423 Component, may be beyond the scope of Section 423 of the Code, regarding, without limitation, eligibility to participate in the Plan, handling and making of Contributions, establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of share issuances, any of which may vary according to applicable requirements.

**(c)** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated. Whether or not the Board has delegated administration of the Plan to a Committee, the Board will have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

**(d)** All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

**3. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.**

**(a)** Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, the maximum number of shares of Common Stock that may be issued under the Plan will not exceed 2,500,000 shares of Common Stock, plus the number of shares of Common Stock that are automatically added commencing on January 1 of each year for a period of up to ten years, commencing on January 1 in the calendar year following the calendar year in which the IPO Date occurs and ending on (and including)

January 1, 2026, in an amount equal to the lesser of (i) 1% of the total number of shares of Capital Stock outstanding on the last day of the calendar month prior to the date of such automatic increase. Notwithstanding the foregoing, the Board may act prior to the first day of any fiscal year to provide that there will be no January 1st increase in the share reserve for such fiscal year or that the increase in the share reserve for such fiscal year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence.

**(b)** If any Purchase Right granted under the Plan terminates without having been exercised in full, the shares of Common Stock not purchased under such Purchase Right will again become available for issuance under the Plan.

**(c)** The stock purchasable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

## 4. GRANT OF PURCHASE RIGHTS; OFFERING.

**(a)** The Board may from time to time grant or provide for the grant of Purchase Rights to Eligible Employees under an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering will be in such form and will contain such terms and conditions as the Board will deem appropriate, and, with respect to the 423 Component, will comply with the requirement of Section 423(b)(5) of the Code that all Employees granted Purchase Rights will have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering will include (through incorporation of the provisions of this Plan by reference in the Offering Document or otherwise) the period during which the Offering will be effective, which period will not exceed 27 months beginning with the Offering Date, and the substance of the provisions contained in Sections 5 through 8, inclusive.

**(b)** If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in forms delivered to the Company: (i) each form will apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) will be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) will be exercised.

**(c)** The Board will have the discretion to structure an Offering so that if the Fair Market Value of a share of Common Stock on the first Trading Day of a new Purchase Period within that Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then (i) that Offering will terminate immediately as of that first Trading Day, and (ii) the Participants in such terminated Offering will be automatically enrolled in a new Offering beginning on the first Trading Day of such new Purchase Period.

## 5. ELIGIBILITY.

**(a)** Purchase Rights may be granted only to Employees of the Company or, as the Board may designate in accordance with Section 2(b), to Employees of a Related Corporation or an Affiliate. Except as provided in Section 5(b), an Employee will not be eligible to be granted Purchase Rights unless, on the Offering Date, the Employee has been in the employ of the Company, a Related Corporation, or an Affiliate, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event will the required period of continuous employment be equal to or greater than two years. In addition, the Board may provide that no Employee will be eligible to be granted Purchase

Rights under the Plan unless, on the Offering Date, such Employee's customary employment with the Company, the Related Corporation, or the Affiliate, as applicable, is more than 20 hours per week and more than five months per calendar year or such other criteria as the Board may determine consistent with Section 423 of the Code.

**(b)** The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee will, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right will thereafter be deemed to be a part of that Offering. Such Purchase Right will have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

**(i)** the date on which such Purchase Right is granted will be the "Offering Date" of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

**(ii)** the period of the Offering with respect to such Purchase Right will begin on its Offering Date and end coincident with the end of such Offering; and

**(iii)** the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she will not receive any Purchase Right under that Offering.

**(c)** No Employee will be eligible for the grant of any Purchase Rights if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing five percent or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 5(c), the rules of Section 424(d) of the Code will apply in determining the stock ownership of any Employee, and stock which such Employee may purchase under all outstanding Purchase Rights and options will be treated as stock owned by such Employee.

**(d)** As specified by Section 423(b)(8) of the Code, an Eligible Employee may be granted Purchase Rights only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations or Affiliates, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation or Affiliates to accrue at a rate which, when aggregated, exceeds US$25,000 of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, will be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

**(e)** Officers of the Company and any Designated Company, if they are otherwise Eligible Employees, will be eligible to participate in Offerings under the Plan. Notwithstanding the foregoing, the Board may provide in an Offering that Employees who are highly compensated Employees within the meaning of Section 423(b)(4)(D) of the Code will not be eligible to participate.

**6. PURCHASE RIGHTS; PURCHASE PRICE.**

**(a)** On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, will be granted a Purchase Right to purchase up to that number of shares of Common Stock (rounded down to the nearest whole share) purchasable either with a percentage or with a maximum dollar amount, as designated by the Board, but in either case not exceeding 30% of such Employee's earnings (as defined by the Board in each Offering) during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date will be no later than the end of the Offering.

**(b)** The Board will establish one or more Purchase Dates during an Offering on which Purchase Rights granted for that Offering will be exercised and shares of Common Stock will be purchased in accordance with such Offering.

**(c)** In connection with each Offering made under the Plan, the Board may specify (i) a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering, (ii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering and/or (iii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata (based on each Participant's accumulated Contributions) allocation of the shares of Common Stock (rounded down to the nearest whole share) available will be made in as nearly a uniform manner as will be practicable and equitable.

**(d)** The purchase price of shares of Common Stock acquired pursuant to Purchase Rights will be not less than the lesser of:

**(i)** an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the Offering Date; or

**(ii)** an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

**7. PARTICIPATION; WITHDRAWAL; TERMINATION.**

**(a)** An Eligible Employee may elect to authorize payroll deductions as the means of making Contributions by completing and delivering to the Company, within the time specified in the Offering, an enrollment form provided by the Company or any third party designated by the Company (each, a "***Company Designee***"). The enrollment form will specify the amount of Contributions not to exceed the maximum amount specified by the Board. Each Participant's Contributions will be credited to a bookkeeping account for such Participant under the Plan and will be deposited with the general funds of the Company except where applicable laws or regulations require that Contributions be deposited with a Company Designee or otherwise be segregated. If permitted in the Offering, a Participant may begin such Contributions with the first payroll occurring on or after the Offering Date (or, in the case of a payroll date that occurs after the end of the prior Offering but before the Offering Date of the next new Offering, Contributions from such payroll will be included in the new Offering). If permitted in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. If required under applicable laws or regulations or if specifically provided in the Offering, in addition to or instead of making Contributions by payroll deductions, a Participant may make Contributions through a payment by cash, check, or wire transfer prior to a Purchase Date, in a manner directed by the Company or a Company Designee.

**(b)** During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company or a Company Designee a withdrawal form provided by the Company. The Company may impose a deadline before a Purchase Date for withdrawing. Upon such withdrawal, such Participant's Purchase Right in that Offering will immediately terminate and the Company will distribute as soon as practicable to such Participant all of his or her accumulated but

unused Contributions and such Participant's Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from that Offering will have no effect upon his or her eligibility to participate in any other Offerings under the Plan, but such Participant will be required to deliver a new enrollment form to participate in subsequent Offerings.

**(c)** Purchase Rights granted pursuant to any Offering under the Plan will terminate immediately if the Participant either (i) is no longer an Employee for any reason or for no reason or (ii) is otherwise no longer eligible to participate. The Company will distribute as soon as practicable to such individual all of his or her accumulated but unused Contributions.

**(d)** During a Participant's lifetime, Purchase Rights will be exercisable only by such Participant. Purchase Rights are not transferable by a Participant, except by will, by the laws of descent and distribution, or, if permitted by the Company, by a beneficiary designation as described in Section 10.

**(e)** Unless otherwise specified in the Offering, the Company will have no obligation to pay interest on Contributions.

**8. EXERCISE OF PURCHASE RIGHTS.**

**(a)** On each Purchase Date, each Participant's accumulated Contributions will be applied to the purchase of shares of Common Stock (rounded down to the nearest whole share), up to the maximum number of shares of Common Stock permitted by the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares will be issued unless specifically provided for in the Offering.

**(b)** Unless otherwise provided in the Offering, if any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock on a Purchase Date in an Offering, then such remaining amount will be distributed to such Participant as soon as practicable after the applicable Purchase Date, without interest.

**(c)** No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all applicable U.S. federal and state, foreign and other securities, exchange control and other laws applicable to the Plan. If on a Purchase Date the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights will be exercised on such Purchase Date, and the Purchase Date will be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in material compliance, except that the Purchase Date will in no event be more than 6 months from the Offering Date. If, on the Purchase Date, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in material compliance with all applicable laws or regulations, as determined by the Company in its sole discretion, no Purchase Rights will be exercised and all accumulated but unused Contributions will be distributed as soon as practicable to the Participants without interest.

**9. COVENANTS OF THE COMPANY.**

The Company will seek to obtain from each U.S. federal or state, foreign or other regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Purchase Rights and issue and sell shares of Common Stock thereunder unless the Company determines, in its sole discretion, that doing so would cause the Company to incur costs that are unreasonable. If, after commercially reasonable efforts, the Company is unable to obtain the authority that counsel for the

Company deems necessary for the grant of Purchase Rights or the lawful issuance and sale of Common Stock under the Plan, and at a commercially reasonable cost, the Company will be relieved from any liability for failure to grant Purchase Rights and/or to issue and sell Common Stock upon exercise of such Purchase Rights.

**10. DESIGNATION OF BENEFICIARY.**

**(a)** The Company may, but is not obligated to, permit a Participant to submit a form designating a beneficiary who will receive any shares of Common Stock and/or Contributions from the Participant's account under the Plan if the Participant dies before such shares and/or Contributions are delivered to the Participant. The Company may, but is not obligated to, permit the Participant to change such designation of beneficiary. Any such designation and/or change must be on a form approved by the Company or as approved by the Company for use by a Company Designee.

**(b)** If a Participant dies, in the absence of a valid beneficiary designation, the Company will deliver any shares of Common Stock and/or Contributions to the executor or administrator of the estate of the Participant. If no executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or Contributions, without interest, to the Participant's spouse, dependents or relatives, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

**11. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.**

**(a)** In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities subject to, and the purchase price applicable to outstanding Offerings and Purchase Rights, and (iv) the class(es) and number of securities that are the subject of the purchase limits under each ongoing Offering. The Board will make these adjustments, and its determination will be final, binding and conclusive.

**(b)** In the event of a Corporate Transaction, then: (i) any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue outstanding Purchase Rights or may substitute similar rights (including a right to acquire the same consideration paid to the stockholders in the Corporate Transaction) for outstanding Purchase Rights, or (ii) if any surviving or acquiring corporation (or its parent company) does not assume or continue such Purchase Rights or does not substitute similar rights for such Purchase Rights, then the Participants' accumulated Contributions will be used to purchase shares of Common Stock (rounded down to the nearest whole share) within ten business days prior to the Corporate Transaction under the outstanding Purchase Rights, and the Purchase Rights will terminate immediately after such purchase.

**12. AMENDMENT, TERMINATION OR SUSPENSION OF THE PLAN.**

**(a)** The Board may amend the Plan at any time in any respect the Board deems necessary or advisable. However, except as provided in Section 11(a) relating to Capitalization Adjustments, stockholder approval will be required for any amendment of the Plan for which stockholder approval is required by applicable laws, regulations or listing requirements, including any amendment that either (i) materially increases the number of shares of Common Stock available for issuance under the Plan, (ii) materially expands the class of individuals eligible to become Participants and receive Purchase Rights, (iii) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be purchased under the Plan, (iv) materially extends the term of the Plan, or (v) expands the types of awards available for issuance under the Plan, but in each of (i) through (v) above only to the extent stockholder approval is required by applicable laws, regulations, or listing requirements.

**(b)** The Board may suspend or terminate the Plan at any time. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

**(c)** Any benefits, privileges, entitlements and obligations under any outstanding Purchase Rights granted before an amendment, suspension or termination of the Plan will not be materially impaired by any such amendment, suspension or termination except (i) with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to comply with any laws, listing requirements, or governmental regulations (including, without limitation, the provisions of Section 423 of the Code and the regulations and other interpretive guidance issued thereunder relating to Employee Stock Purchase Plans) including without limitation any such regulations or other guidance that may be issued or amended after the date the Plan is adopted by the Board, or (iii) as necessary to obtain or maintain any special tax, listing, or regulatory treatment. To be clear, the Board may amend outstanding Purchase Rights without a Participant's consent if such amendment is necessary to ensure that the Purchase Right and/or the 423 Component complies with the requirements of Section 423 of the Code.

**13. SECTION 409A OF THE CODE; TAX QUALIFICATION.**

**(a)** Purchase Rights granted under the 423 Component are intended to be exempt from the application of Section 409A of the Code under U.S. Treasury Regulation Section 1.409A-1(b)(5)(ii). Purchase Rights granted under the Non-423 Component to U.S. taxpayers are intended to be exempt from the application of Section 409A of the Code under the short-term deferral exception and any ambiguities will be construed and interpreted in accordance with such intent. Subject to Section 13(b) below, Purchase Rights granted to U.S. taxpayers under the Non-423 Component will be subject to such terms and conditions that will permit such Purchase Rights to satisfy the requirements of the short-term deferral exception available under Section 409A of the Code, including the requirement that the shares subject to a Purchase Right be delivered within the short-term deferral period. Subject to Section 13(b) below, in the case of a Participant who would otherwise be subject to Section 409A of the Code, to the extent the Board determines that a Purchase Right or the exercise, payment, settlement or deferral thereof is subject to Section 409A of the Code, the Purchase Right will be granted, exercised, paid, settled or deferred in a manner that will comply with Section 409A of the Code, including U.S. Department of Treasury regulations and other interpretive guidance issued thereunder, including, without limitation, any such regulations or other guidance that may be issued after the adoption of the Plan. Notwithstanding the foregoing, the Company will have no liability to a Participant or any other party if the Purchase Right that is intended to be exempt from or compliant with Section 409A of the Code is not so exempt or compliant or for any action taken by the Board with respect thereto.

**(b)** Although the Company may endeavor to (i) qualify a Purchase Right for special tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (*e.g.*, under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain special or to avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan, including Section 13(a) above. The Company will be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants under the Plan.

**14. EFFECTIVE DATE OF PLAN.**

The Plan will become effective immediately prior to and contingent upon the IPO Date. No Purchase Rights will be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval must be within 12 months before or after the date the Plan is adopted (or if required under Section 12(a) above, materially amended) by the Board.

**15. MISCELLANEOUS PROVISIONS.**

**(a)** Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights will constitute general funds of the Company.

**(b)** A Participant will not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent).

**(c)** The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering will in any way alter the at-will nature of a Participant's employment, if applicable, or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company, a Related Corporation, or an Affiliate, or on the part of the Company, a Related Corporation, or an Affiliate to continue the employment of a Participant.

**(d)** The provisions of the Plan will be governed by the laws of the State of Delaware without resort to that state's conflicts of laws rules.

**(e)** If any particular provision of the Plan is found to be invalid or otherwise unenforceable, such provision will not affect the other provisions of the Plan, but the Plan will be construed in all respects as if such invalid provision were omitted.

**(f)** If any provision of the Plan does not comply with applicable law or regulations, such provision shall be construed in such a manner as to comply with applicable law or regulations.

**16. DEFINITIONS.**

As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

**(a)** "***423 Component***" means the part of the Plan, which excludes the Non-423 Component, pursuant to which Purchase Rights that satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

**(b)** "***Affiliate***" means any entity, other than a Related Corporation, in which the Company has an equity or other ownership interest or that is directly or indirectly controlled by, controls, or is under common control with the Company, in all cases, as determined by the Board, whether now or hereafter existing.

**(c)** "***Board***" means the Board of Directors of the Company.

**(d)** "***Capital Stock***" means each and every class of common stock of the Company, regardless of the number of votes per share.

**(e)** "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Purchase Right after the date the Plan is adopted by the Board without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

**(f)** "***Code***" means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

**(g)** "***Committee***" means a committee of one or more members of the Board to whom authority has been delegated by the Board in accordance with Section 2(c).

**(h)** "***Common Stock***" means, as of the IPO Date, the Common Stock of the Company, having one vote per share.

**(i)** "***Company***" means Everspin Technologies, Inc., a Delaware corporation.

**(j)** ***"Contributions***" means the payroll deductions and/or other payments specifically provided for in the Offering that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make additional payments into his or her account if specifically provided for in the Offering, and then only if the Participant has not already contributed the maximum permitted amount of payroll deductions and/or other payments during the Offering.

**(k)** "***Corporate Transaction***" means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

**(i)** a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

**(ii)** a sale or other disposition of at least 50% of the outstanding securities of the Company;

**(iii)** a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

**(iv)** a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

**(l)** "***Designated 423 Corporation***" means any Related Corporation selected by the Board as participating in the 423 Component.

**(m)** "***Designated Company***" means any Designated Non-423 Corporation or Designated 423 Corporation, provided, however, that at any given time, a Related Corporation participating in the 423 Component shall not be a Related Corporation participating in the Non-423 Component.

**(n)** "***Designated Non-423 Corporation***" means any Related Corporation or Affiliate selected by the Board as participating in the Non-423 Component.

**(o)** "***Director***" means a member of the Board.

**(p)** "***Eligible Employee***" means an Employee who meets the requirements set forth in the document(s) governing the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

**(q)** "***Employee***" means any person, including an Officer or Director, who is treated as an employee in the records of the Company or a Related Corporation (including an Affiliate). However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

**(r)** "***Employee Stock Purchase Plan***" means a plan that grants Purchase Rights intended to be options issued under an "employee stock purchase plan," as that term is defined in Section 423(b) of the Code.

**(s)** "***Exchange Act***" means the U.S. Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

**(t)** "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

**(i)** If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be the **closing sales price** for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) **on the date of determination**, as reported in such source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing sales price on the last preceding date for which such quotation exists.

**(ii)** In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith in compliance with applicable laws and regulations and in a manner that complies with Sections 409A of the Code.

**(iii)** Notwithstanding the foregoing, for any Offering that commences on the IPO Date, the Fair Market Value of the shares of Common Stock on the Offering Date will be the price per share at which shares are first sold to the public in the Company's initial public offering as specified in the final prospectus for that initial public offering.

**(u)** "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

**(v)** "***Non-423 Component***" means the part of the Plan, which excludes the 423 Component, pursuant to which Purchase Rights that are not intended to satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

**(w)** "***Offering***" means the grant to Eligible Employees of Purchase Rights, with the exercise of those Purchase Rights automatically occurring at the end of one or more Purchase Periods. The terms and conditions of an Offering will generally be set forth in the "***Offering Document***" approved by the Board for that Offering.

**(x)** "***Offering Date***" means a date selected by the Board for an Offering to commence.

**(y)** "***Officer***" means a person who is an officer of the Company or a Related Corporation or Affiliate within the meaning of Section 16 of the Exchange Act.

**(z)** "***Participant***" means an Eligible Employee who holds an outstanding Purchase Right.

**(aa)** "***Plan***" means this Everspin Technologies, Inc. 2016 Employee Stock Purchase Plan, including both the 423 Component and the Non-423 Component, as amended from time to time.

**(bb)** "***Purchase Date***" means one or more dates during an Offering selected by the Board on which Purchase Rights will be exercised and on which purchases of shares of Common Stock will be carried out in accordance with such Offering.

**(cc)** "***Purchase Period***" means a period of time specified within an Offering, generally beginning on the Offering Date or on the first Trading Day following a Purchase Date, and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

**(dd)** "***Purchase Right***" means an option to purchase shares of Common Stock granted pursuant to the Plan.

**(ee)** "***Related Corporation***" means any "parent corporation" or "subsidiary corporation" of the Company whether now or subsequently established, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

**(ff)** "***Securities Act***" means the U.S. Securities Act of 1933, as amended.

**(gg)** "***Trading Day***" means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including but not limited to the NYSE, Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or any successors thereto, is open for trading.

**Exhibit 10.5**

**LEASE**

BY AND BETWEEN

**FREESCALE SEMICONDUCTOR, INC**., a Delaware corporation, as Landlord

and

**EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation, as Tenant

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List of Exhibits

**LEASE**

THIS LEASE ("**Lease**") is made and entered into June 6, 2008 (the "**Effective Date**") between **FREESCALE SEMICONDUCTOR, INC.**, a Delaware corporation, having an address at 6501 William Cannon Drive West, Austin, Texas 78735 ("**Landlord**") and **EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation, having an office at 1300 North Alma School Road, Chandler, Arizona 85224 (herein called "**Tenant**").

**1. Premises**.

A. For and in consideration of the covenants and agreements on the part of Tenant contained herein, and under and subject to the terms and conditions hereof, Landlord hereby leases and demises unto Tenant those certain premises in portions of the buildings known as A Building, B Building, M Building and N Building (individually, a "**Building**" and collectively with all other buildings located in the Project, the "**Buildings**") which are part of that certain project owned by Landlord known as "Chandler" (herein the "**Project**") located at 1300 North Alma School Road, Chandler, Arizona 85224 as illustrated on **Exhibit A** attached hereto and hereby made a part hereof, containing 6,038 square feet of office space in M Building (of which 450 square feet consists of a conference room) (said 6,038 square feet of space is herein referred to as the "**Office Space**"), 7,130 square feet of fabrication space in M Building and N Building (herein the "**Fab Space**"), and 2,856 square feet of lab space in B Building (herein the "**Lab Space**") totaling 16,024 square feet of floor area (hereinafter called the "**Premises**") as illustrated on the floor plans contained in **Exhibit C** attached hereto and made a part hereof, together with the right to use certain facilities that are located on the real property legally described in **Exhibit D** attached hereto and made a part hereof (herein the "**Property**") that are provided by Landlord in common to Tenant, Landlord's employees and other third parties such as vendors and suppliers designated by Landlord and are defined below as Common Areas. In addition to the Premises, Landlord hereby grants to Tenant, during the Term of this Lease, at no additional charge, the non-exclusive right to use the space (the "**TSO Space**") designated on **Exhibit C** as the TSO Lab, subject to procedures adopted by Landlord governing such access by Tenant. Tenant may locate certain of Tenant's Property (as herein defined) in the TSO Space as previously approved by Landlord.

B. Landlord hereby grants to Tenant, during the Term of this Lease, at no additional charge, the non-exclusive use for Tenant's employees, invitees, visitors and agents of parking spaces and areas in the Project. There is currently no reserved parking at the Project, but if Landlord elects to provide reserved parking during the Term of this Lease, Landlord shall provide, at no additional charge to Tenant, a pro rata share (based on the relative areas of the Premises and the Buildings) of any reserved parking spaces to Tenant which Tenant can allocate to its employees, invitees, visitors and agents as it desires. Landlord shall not be responsible for any loss, theft or damage to any vehicles. Tenant's employees shall have the right to use the cafeteria. Tenant's employees shall have the right of access to the fitness facility and the credit union at the Project for the purpose of using the services offered by the third party operators of the credit union and the fitness facility upon the terms and conditions negotiated by Tenant with such third party operators. Both the credit union and the fitness facility are leased by third party operators and Landlord shall not be liable to Tenant for any failure by those third party operators to provide services to Tenant's employees or for any breach by a third party operator of its obligations to Tenant or Tenant's employees.

C. Tenant acknowledges that it has inspected the Premises prior to the Effective Date and that it is familiar with the Premises and all of the systems and facilities located on and servicing the Premises. Tenant acknowledges and agrees that (i) Tenant shall take possession of the Premises in their "as-is" condition on the Commencement Date (as hereinafter defined); (ii) Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in good order and satisfactory condition and repair on the Commencement Date; and (iii) there is no agreement of Landlord to alter, remodel, decorate, clean or improve the Premises (or to provide Tenant with a credit or allowance for the same).

D. Landlord has certain furniture and equipment located in the Premises and TSO Space ("**Landlord Personal Property**"), which Landlord Personal Property is more particularly described in **Exhibit I** attached hereto and made a part hereof for all purposes, as such Exhibit may be modified from time to time to reflect any additions or retirements of said Landlord Personal Property. Tenant shall have the right to use the Landlord Personal Property subject to such rules and regulations as Landlord adopts with respect thereto. Tenant shall be responsible for repairing and replacing any Landlord Personal Property that is damaged by any actions or omissions of Tenant or any of Tenant's agents, employees, contractors, suppliers, licensees or invitees. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Landlord Personal Property to Landlord in the condition as existed as of the Effective Date, ordinary wear and tear and casualty excepted.

E. Landlord shall have the right, at its option and from time to time but no more than once during the Term with respect to any Relocated Premises (as herein defined), to relocate Tenant from all or any portion of the Premises as follows. Landlord shall provide Tenant with not less than sixty (60) days' prior written notice of relocation of all or any portion of the Office Space and not less than one hundred twenty (120) days' prior written notice of relocation of all or any portion of the Fab Space or Lab Space. Landlord shall substitute for the relocated portion of the Premises (the "**Relocated Premises**") comparable space in the Project containing at least as much space as the original Relocated Premises. The Rent for the Relocated Premises shall be no higher than the Rent for the original Premises. In addition, Landlord shall (a) install improvements in the substituted Premises which are reasonably equivalent to the tenant improvements in the Relocated Premises prior to Tenant's move to the substituted Premises; (b) Landlord shall pay for the reasonable costs of moving Tenant's furniture, equipment, personal property and telephone and data systems from the Relocated Premises to the substituted Premises; and (c) Tenant shall not be obligated to pay Rent and other charges for both the Relocated Premises and the substituted Premises at the same time.

F. **Contraction Option**.

(i) Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to request to terminate the Lease as to any portion of the Premises of 1,000 square feet or more (the "**Contraction Space**") by giving Landlord prior written notice (the "**Contraction Notice**") of its election to do so at least sixty (60) days for any Contraction Space in the Office Space and at least one hundred twenty (120) days for any

Contraction Space in the Fab Space or Lab Space. The Contraction Notice shall state the date on which Tenant will surrender the Contraction Space (the "**Contraction Date**"), which shall in no event be earlier than the required period of prior written notice set forth in the preceding sentence.

(ii) Landlord shall have the right to reject Tenant's Contraction Notice if the Contraction Space, in Landlord's reasonable opinion, is not in a configuration marketable to other tenants or not subject to reasonable separation from the Remaining Premises. Within ten (10) business days after the Contraction Notice, Landlord will provide Tenant with notice of whether or not Landlord will accept the surrender of the Contraction Space. If Landlord accepts such surrender, Landlord at the same time shall provide Tenant with an estimate (a "**Separation Estimate**") of the cost of the work necessary to separate the Contraction Space from the balance of the Premises (the "**Remaining Premises**"), including, without limitation, the properly distributed HVAC, sprinkler, telephone and cabling of the Contraction Space. Tenant shall have ten (10) business days after receipt of the Separation Estimate to confirm in writing whether or not Tenant wishes to proceed with the surrender of the Contraction Space. Tenant's failure to timely provide such written confirmation that it wishes to proceed with the surrender of the Contraction Space shall be deemed Tenant's election to waive surrender of the Contraction Space and to continue leasing such Contraction Space pursuant to the terms of this Lease.

(iii) If Tenant agrees to proceed with the surrender of the Contraction Space, Tenant shall (a) surrender the Contraction Space to Landlord on the Contraction Date in the condition required pursuant to this Lease, and (b) pay Landlord the reasonable cost of separating the Contraction Space from the Remaining Premises as set forth in the Separation Estimate within ten (10) days before the Contraction Date.

(iv) Landlord shall prepare a lease amendment confirming: (a) the Contraction Date; (b) the Remaining Premises; (c) the Fixed Rent; (d) the cost paid by Tenant pursuant to the Separation Estimate; and (e) any other matter that varies with the size of the Premises. The Fixed Rent will be a pro rata share of the Fixed Rent, reduced by that proportion that the Contraction Space bears to the Premises. Landlord and Tenant will execute the amendment prior to the Contraction Date.

**2. Term**.

The term of this Lease shall be for a period of two (2) years (the "**Initial Term**"), which Initial Term shall commence on June 6, 2008 (the "**Commencement Date**") and end on June 6, 2010, subject to extensions pursuant to agreement of the parties or any option hereinafter set forth. All references in this Lease to the "**Term**" shall be deemed to include the Initial Term, as the same may be extended for the Renewal Term (as defined in Section 27 below).

**3. Fixed Rent**.

Landlord and Tenant expressly acknowledge that, as to the components included in the definition of "**Fixed Rent**" (as defined below) this Lease shall be a "gross lease" and that except as expressly set forth in this Lease, no additional charges for the components that are part of the Fixed Rent shall be assessed or charged against Tenant. The Fixed Rent includes the following components: (1) base rent for the use of the Premises only; (2) the Services (as defined below) to be provided as part of the Fixed Rent; (3) Landlord's costs to repair and maintain the Common Areas and the Premises as specified in Sections 12, 13 and 14 below except to the extent that this Lease expressly provides that Tenant is responsible for such costs; and (4) real estate taxes assessed against the Property except the Rental Taxes (as defined below).

A. **Fixed Rent – Initial Term**.

During the Initial Term of the Lease, Tenant will pay Fixed Rent to Landlord in the manner set forth in Section 4 below in monthly installments in advance on the first day of each calendar month in the amounts set forth on the schedule attached hereto as **Exhibit E**.

B. **Fixed Rent –Renewal Term**.

If Tenant elects to exercise its renewal option pursuant to Section 27 below, Tenant will pay Fixed Rent and Additional Rent (as defined below) to Landlord at pursuant to the terms and conditions of this Lease. The Fixed Rent for the Renewal Term (as herein defined) shall be increased by four percent (4%) as set forth in **Exhibit F**.

**4. Additional Rent; Payment Addresses; Definition of Rent; Late Charge**.

A. In addition to the Fixed Rent required to be paid by Tenant under Section 3, Tenant shall pay to Landlord when it pays the Fixed Rent, as Additional Rent, the following: (i) the Chandler City real property sales taxes and Maricopa County real property rental sales taxes assessed against the Rent paid by Tenant to Landlord or the Property (but to the extent such are assessed against the Property, Tenant shall be required to pay Landlord Tenant's pro rata share of such taxes based on the Rent paid by Tenant to Landlord, which Tenant acknowledges is 100% as of the Effective Date) (collectively, the "**Rental Taxes**") in equal monthly installments, which amount will be adjusted if the Fixed Rent is adjusted pursuant to this Lease or if the tax rate is modified during the Term; and (ii) all sums for excess use by Tenant of Services (including Utility Services and Other Services) or other items which Landlord provides under this Lease that are not included in the Fixed Rent, which are either requested by Tenant or provided by Landlord pursuant to the terms of this Lease (but excluding the Services to be provided by Landlord pursuant to the terms of this Lease, the cost of which is included in Fixed Rent pursuant to Section 3 above).

B. Landlord shall deliver all invoices for sums owed by Tenant to Landlord as Additional Rent other than Rental Taxes in accordance with Section 33 of this Lease. Tenant shall be responsible for paying any such invoices for sums that are owed to Landlord as Additional Rent or otherwise within thirty (30) days after Landlord delivers same to Tenant. All payments owed by Tenant to Landlord hereunder for Fixed Rent, Additional Rent, or other sums owed hereunder shall be submitted in accordance with the information below for preferred payment and secondary payment unless Landlord notifies Tenant in writing of a change in such instructions:

| | |
|---|---|
| Freescale Headquarters: | Freescale Semiconductor, Inc.<br>6501 William Cannon Drive West<br>Austin, TX 78735 |
| A/R Contact | Mary Mullen |
| Preferred Payment Method | EFT<br>Routing<br>Acct.<br>Swift number is |
| Secondary Payment Info. | **Remit Address for hard copy checks:**<br>Freescale Semiconductor Inc.<br>File #:<br>PO Box 7247-6477<br>Philadelphia, PA 19170-6477<br><br>**For checks sent by courier:**<br>Freescale Semiconductor Inc.<br>File #:<br>c/o CITIBANK DELAWARE<br>1615 Brett Road<br>New Castle, DE 19720 |

C. In addition to the charge set forth in Section 44, Tenant shall pay to Landlord a late charge equal to two percent (2%) of any installment of monthly Rent and any other amount payable under this Lease that is paid late as liquidated damages to compensate Landlord for costs and inconveniences of special handling and disruption of cash flow.

D. The terms Fixed Rent and Additional Rent are sometimes collectively referred to herein as "**rent**" or "**Rent**" and shall include any and all sums due from Tenant to Landlord under the terms of this Lease. All Rent shall be due and payable without notice, demand, offset, or right of recoupment. If the Term commences on a day other than the first day of a calendar month or terminates on a day other than the last day of a calendar month, all Rent shall be prorated accordingly.

**5. Use**.

A. Tenant shall have the right to use the Premises as follows and for no other purposes: (i) the Fab Space may be used for manufacturing related to the operation of Tenant's Magnetoresistive Random Access Memory ("**MRAM**") business, including the manufacturing of MRAM products, such as standalone memory, embedded memory-based products and other products leveraging MRAM technology such as magnetic sensors (collectively, the "**MRAM Business**"); (ii) the Office Space may be used for offices related to the MRAM Business; and (iii) the Lab Space may be used for labs related to the MRAM Business. Tenant may not change

the use of any part of the Premises from the uses designated in the preceding sentence and **Exhibit C** without Landlord's prior written consent. If a proposed change in use increases the cost to Landlord of providing the Services and other costs that are included in Fixed Rent, Landlord may condition its consent to Tenant's change in use on Tenant's agreement to increase the Fixed Rent by the amount of Landlord's increased costs and Tenant's agreement to pay for any modifications to the site Infrastructure required for such change. If Landlord gives such consent, the Rent shall be adjusted accordingly. Tenant, in its use and occupancy of the Premises, shall not commit waste, shall not cause the insurance carried by Landlord pursuant to Section 22 to be canceled, shall not cause a material disruption or impediment to Landlord's use of the balance of the Project, nor overload the floors or structure, nor subject the Premises to any use which would tend to damage any portion thereof. In addition, Landlord grants Tenant the right to make use of the Common Areas (as defined below) at the Property in support of Tenant's use of the Premises. In using the Common Areas, Tenant and its employees, agents, suppliers, shippers, customers, licensees and invitees shall comply with Landlord's customary operating and security rules and regulations. Landlord shall require Tenant and its employees, agents, suppliers, shippers, customers, licensees and invitees to wear appropriate security identification while on the Premises or the Common Areas. The Premises and Common Areas may only be used by Tenant and its employees, agents, suppliers, shippers, customers, licensees and invitees who are necessary for Tenant's permitted use of the Premises and/or to perform Tenant's obligations under this Lease. Landlord and Tenant shall each cooperate and use reasonable efforts to assure that each of Landlord and Tenant may enjoy and use the Common Areas for their intended purposes.

B. Landlord shall at all times retain all other rights with respect to the Common Areas, and shall have the right to reconfigure, restructure, and close, in whole or in part, for repair and maintenance such areas. Except for emergencies, Landlord will give Tenant reasonable notice (which may be oral) prior to commencing any material repair or maintenance of the Common Areas, and shall use commercially reasonable efforts to finish such repair and maintenance promptly and to prevent the same from causing undue interference with Tenant's operations or access to the Premises.

C. Landlord and Tenant acknowledge and agree that their joint cooperation is necessary to promote the safe and effective utilization of the Premises and joint occupancy of the Common Areas by Tenant and the balance of the Property by Landlord. Accordingly, Landlord and Tenant agree that in connection with their respective use, occupancy and operations at the Property and the exercise of their rights and performance of their obligations under this Lease, each of them shall:

(i) conduct its activities in a safe and prudent manner consistent with sound industry practices;

(ii) comply, at its sole expense, with (a) all Legal Requirements (as defined in Section 7), (b) Landlord's environmental safety and health protocols for the Project; (c) Landlord's construction protocols; and (d) any other Project-wide specifications and protocols applicable to such party (the items specified in (b), (c) and (d) are collectively referred to herein as "**Project-Wide Protocols**"); provided, however, that, except as explicitly set forth in this Lease, Tenant shall have no right to make any repairs to the

Infrastructure or capital improvements or replacements with respect to the Property, the Premises or the Common Areas. Certain Project-Wide Protocols are attached hereto as **Exhibit B**. Tenant shall be required to comply only with (i) the Project-Wide Protocols attached hereto, (ii) any Project-Wide Protocols delivered to Tenant no later than sixty (60) days following the Effective Date, and (iii) any other Project-Wide Protocols adopted by Landlord and delivered to Tenant after the Effective Date if such Project-Wide Protocols are adopted by Landlord for the purpose of complying with any Legal Requirements. Landlord reserves the right to revise, supplement, replace and otherwise modify the Project-Wide Protocols; provided, however, that Tenant shall not be required to comply with such revisions, supplements, replacements or other modifications until Landlord delivers the same in writing to Tenant; and

(iii) use reasonable efforts not to interfere with the enjoyment of the use and occupancy of the Property by the other as permitted by this Lease.

D. For purposes of this Lease, the term "**Common Areas**" shall mean the stairways and halls providing ingress and egress between the Premises and the other areas defined as Common Areas herein and the exterior doorways of the Buildings designated by Landlord from time to time as those which Tenant may use, restrooms in the Buildings and the areas listed in this definition, the loading docks in each Building, Project parking areas and lots which are not designated for the specific use of Landlord or another user of the Project, the cafeteria, lobbies which are not restricted in use, the site mailroom and shipping and receiving areas as shown on **Exhibit A** and sidewalks and private streets within the Project. The fitness facility and the credit union shall not be defined as Common Areas. The Common Areas shall not include any areas of the Project that Landlord designates from time to time as excluded from Common Areas. Tenant shall not have the right to use the roof, the telephone closets, any of the Infrastructure or portions of the Project which are for Landlord's exclusive use or which are for the exclusive use of third parties designated by Landlord, including, without limitation, other tenants in the Project or other vendors or suppliers, unless Landlord gives its prior written consent to such use and such use complies with Landlord's Project-Wide Protocols.

**6. Roof Equipment**.

Tenant shall not have any right to use the roof of the Buildings for any purpose without the prior written consent of Landlord, which shall not be unreasonably withheld as long as (i) Tenant's use of the roof is non-exclusive and does not interfere with any other party's right to use the roof as granted by Landlord in its sole discretion; (ii) Tenant is solely responsible for all costs and expenses for repairs and maintenance of the roof which result from Tenant's use of the roof; (iii) upon the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove any equipment placed by Tenant on the roof in accordance with Landlord's Project-Wide Protocols for such removal and reimburse Landlord for the costs of the repair of any damage caused by such removal and restoration of the roof and any other affected portions of the applicable Building to the condition they were in prior to the installation of Tenant's equipment on the roof; and (iv) any such installation must comply with all applicable Legal Requirements and the terms of any applicable roof warranty.

**7. Compliance with Legal Requirements**.

As used herein, the term "**Legal Requirements**" shall mean the requirements of (a) all applicable laws, statutes, ordinances, codes, rules, orders and regulations of all federal, state, county, and municipal governments, and any and all of their departments, bureaus and agencies now in force or that may hereinafter be enacted, including, without limitation, the ADA (as hereinafter defined), and (b) all rules, orders, regulations, standards and requirements of the Project insurance underwriter and applicable fire codes (collectively, "**Fire Code Requirements**"). In addition to the provisions of Section 49 hereof relating to ADA compliance and Sections 31 and 54 relating to "Environmental Laws" (defined in 31A below), Tenant shall, during the Term of this Lease comply with all applicable Legal Requirements insofar as they pertain to Tenant's use and occupancy of the Premises and the Common Areas, provided, however, that Landlord shall be responsible for performing any alterations or improvements to the Project and Buildings, including the Premises and Common Areas, to cause the same to comply with Legal Requirements to the extent that (i) such alterations or improvements are required by Legal Requirements, (ii) the condition causing such alteration or improvement to be required by Legal Requirements existed as of the Commencement Date, and (iii) such requirement is not related to Tenant's use and occupancy of the Premises, any alterations performed by Tenant or any other actions taken or omissions by Tenant or its employees, consultants, vendors, invitees, agents or licensees (any alterations that Landlord is required to perform pursuant to this sentence are herein referred to as "**Landlord Required Alterations**"). In no event shall Tenant be obligated to pay for any costs incurred by Landlord in connection with upgrading the Project, the Building, the Common Areas, the Project or the Premises to comply with any violations of Legal Requirements, which violations exist on the Commencement Date.

**8. No Waste or Damage; Condition of Premises Upon Surrender**.

A. Tenant shall not commit any waste of or any damage to the Premises.

B. Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Office Space, together with all improvements thereon, to Landlord, broom swept, in the same configuration as existed as of the Commencement Date unless the Office Space has been altered in accordance with Section 9 hereof and in as good condition and repair as existed on the Commencement Date of this Lease, reasonable wear and tear, damage or destruction from a Casualty (as defined below) for which Tenant is not obligated in this Lease to repair or restore and/or the taking of, damage to, or reduction in the size of the Office Space by eminent domain excepted. As used in this paragraph, the term, "**improvements**" shall include, without limitation, all plumbing, lighting, electrical, heating, cooling and ventilating fixtures and equipment, and all Alterations made to the Office Space after the Commencement Date. All Alterations, temporary or permanent, made in or upon the Office Space by Tenant shall become Landlord's property and shall remain in the Office Space upon any such termination without compensation, allowance or credit to Tenant; provided, however, that Landlord shall have the right to require Tenant to pay Landlord's cost (the "**Removal Cost**") to remove any Alterations made without Landlord's consent or as to which Landlord notifies Tenant that Tenant must remove and to repair any damage occasioned by such

removal and restoration. If Landlord requires removal of any Alterations, Tenant shall cause the same to be removed by contractors approved by Landlord to work at the site and Tenant shall pay the Removal Cost as Additional Rent in accordance with the procedures set forth in Section 9B below. This Section shall survive termination of this Lease.

C. Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Premises, Tenant shall, at its sole cost and expense, be responsible for restoring the Lab Space and the Fab Space to the lateral condition compliant with the De-facilitization and Decontamination Protocols included in the Project-Wide Protocols (collectively, the "**De-facilitization and Decontamination Protocols**"), as the same Landlord may modify from time to time and provide in writing to Tenant, reasonable wear and tear, damage or destruction from a Casualty (as defined below) for which Tenant is not obligated in this Lease to repair or restore and/or the taking of, damage to, or reduction in the size of the Lab Space or Fab Space, as the case may be, by eminent domain excepted. Any references in the De-facilitization and Decontamination Protocols to Responsible Department or Equipment Owner shall be deemed to refer to Tenant for purposes of the Premises and all references therein to EHS shall mean Landlord's EHS department and to "Facilities" shall mean "Landlord's Facilities" organization. The De-facilitization and Decontamination Protocols are subject to such written changes as Landlord shall determine are necessary to comply with any changes in applicable Legal Requirements, including, without limitation, Environmental Laws, and Tenant shall be bound to comply with such written modifications provided by Landlord. When Tenant is prepared to begin the process of restoring the Lab Space and the Fab Space to the condition required under this subparagraph C, Tenant shall notify Landlord in writing in accordance with the procedures set forth in Section 9B below and Landlord shall work with Tenant to have third party consultants perform the necessary work in accordance with Section 9B. If the restoration of the Fab Space and/or the Lab Space is not completed in accordance with the De-facilitization and Decontamination Protocols when the Lease terminates, Tenant's obligation to pay Rent as to the Lab Space and Fab Space which has not been properly restored shall continue pursuant to Section 29 hereof until the restoration is completed. This Section shall survive termination of this Lease.

**9. Changes, Alterations and Additions**.

A. No changes, alterations or additions shall be made to the Premises by Tenant and no new process or Infrastructure equipment may be placed in the Premises or removed from the Premises ("**Alterations**") without the prior written approval of Landlord. Without limiting the generality of the foregoing, if the proposed Alterations will necessitate modifications to the Project Infrastructure, require Landlord to provide additional Services or otherwise increase the cost to Landlord to perform any other obligation of Landlord under this Lease, the cost of which is already included in Fixed Rent, Landlord can either refuse to give its approval or condition such approval on Tenant's agreement to pay Landlord for such increased costs. Prior to making any Alterations, Tenant shall notify Landlord in writing of the details of the proposed Alterations. Anything in this Lease to the contrary notwithstanding, if Tenant proposes any Alteration which is defined as a "Change" under Section 31, then Tenant shall be obligated to follow the "Management of Change Procedure" (defined in Section 33 below) with respect to all aspects of such Alteration.

B. If Landlord approves any such Alteration pursuant to Section 9A above or if any Change (as defined below) requires any Alteration under the Management of Change Procedure (defined in Section 31 below), or if the removal of Tenant's Property under Section 9C necessitates any repairs or restoration of the Premises, Tenant shall deliver a service request to Landlord together with specifications for the proposed Alteration which describes the Alteration in sufficient detail to allow Landlord to prepare proposals to submit to approved third parties to obtain bids (the "**Bids**") from such third parties for any necessary services, such as design, engineering and construction services, or materials that will be required to perform the Alteration. Any work in connection with the Alterations can be performed only by Landlord or third parties who are on Landlord's approved contractor/consultant list for the Project. Once Landlord obtains the Bids, it shall submit such Bids to Tenant and if Tenant approves such Bids, Tenant shall issue a purchase order authorizing the party that submitted the Bid to perform the work described in the Bid, at Tenant's sole cost and expense. Tenant shall be responsible for approving the work under each Bid as it is performed and Landlord shall not be liable for any defect in the services, work or materials provided by third parties pursuant to said Bids. Landlord agrees to act as the construction manager for the authorized work at no additional charge to Tenant and, at Tenant's cost, will apply for and endeavor to obtain any necessary construction permits for such Alterations. Any permanent additions to or alterations of the Premises shall be removed in accordance with Section 8.Notwithstanding any contrary provision of this Lease, Tenant shall be responsible at its sole cost for removing all Tenant's data and communications cabling from the Premises and between the Premises and the applicable IDF closet and Tenant shall repair any damage to and restore any portion of the Project affected by such removal to their condition immediately prior to the date of the removal.

C. Tenant's trade fixtures, furniture, inventory, signs, goods, equipment, materials and other personal property used in Tenant's business (collectively, "**Tenant's Property**") shall at all times remain personal property and, except for any of Tenant's Property the removal of which is governed by De-facilitization and Decontamination Protocols or is considered to be a Change under Section 31, may be removed from time to time by Tenant; provided, however, that Tenant shall be responsible for the cost and expense incurred by Landlord under Section 9B to (i) repair any physical injury to the Project and Premises caused by the removal of any such property and (ii) return the Project and Premises to the condition prior to the installation of any of Tenant's Property, reasonable wear and tear and casualty damage excepted. All removal of Tenant's Property from the Premises which is hard-wired to the Buildings or would impact the Project Infrastructure must be done in accordance with Landlord's then applicable Project-Wide Protocols and with Landlord's consent. The removal of any of Tenant's Property which constitutes a Change under Section 31 must comply with the requirements of Section 8 and Section 9 above.

**10. Ingress and Egress**.

The Landlord grants to Tenant the nonexclusive right of ingress and egress to the Premises between (a) the existing streets and highways adjoining the Project; and (b) the Premises over the existing drives and parking areas located on the Project. Tenant shall not have access to other areas of the Project unless agreed to in writing by Landlord. As long as Tenant complies with the security, confidentiality and other applicable provisions of this Lease, Tenant shall have full and unimpaired access to the Premises at all times except during emergency situations and planned shutdowns which Tenant is required to participate in as set forth in Section 54A of the Lease, if precluded by Legal Requirements, or as otherwise provided in this Lease.

**11. Abandonment**.

Tenant shall continuously occupy the Premises and not vacate or abandon the Premises at any time during the Term or any extension thereof for more than thirty (30) consecutive days unless required to do so by Legal Requirements.

**12. Repairs and Maintenance**.

A. Except as otherwise set forth in this Lease, Landlord, during the Term of this Lease, shall repair and maintain in good condition, and if necessary, replace all structural portions of the Premises, including, but not limited to, the exterior walls, roof and foundations, pipes and conduits, and utility installations, and all repairs and replacements necessary to put and maintain the exterior of the Premises and parking area (including, but not limited to, filling holes and resealing as necessary, but subject to normal wear and tear), including all improvements now or hereafter constructed thereon by Landlord, and all appurtenances thereto (including sewer and sewer connections, water and gas pipes) in substantially the same condition, order and repair as existed on the Commencement Date (subsequent normal wear and tear and casualty loss excepted); provided, however, that if any said repairs and/or maintenance are necessitated by the negligence or willful misconduct of Tenant, its employees, agents, contractors, licensees or invitees, Tenant shall immediately reimburse Landlord upon Landlord's delivery of an invoice for the reasonable and actual cost thereof, and no portion of such invoiced amounts shall be included in Fixed Rent. In addition, but except as otherwise provided in this Lease, Landlord shall repair and maintain the interior of the Premises, including, without limitation, windows, repairs and maintenance of those portions of the Premises that are of a structural nature or which are caused by structural failures or movement, repairs to the interior of the Premises made necessary by leakage of the roof, or by leakage of any utility installation and also including, without limitation, repairs and maintenance to ordinary utilities, line plumbing, light fixtures and bulb replacement and interior glass; provided, however, that if any repairs and/or maintenance are necessitated by the acts or omissions of Tenant, its employees, agents, contractors, licensees or invitees, Tenant shall immediately reimburse Landlord upon Landlord's delivery of an invoice for the cost thereof; and no portion of such invoiced amounts shall be included in Fixed Rent. Notwithstanding the foregoing, Landlord shall not, except as provided in Section 7 of this Lease, be required to repair, alter or make any improvements to the Premises and/or improvements forming a part of the Premises or any of the Facilities to cause the Premises, the Facilities and/or such improvements to comply with Legal Requirements, Environmental Laws, or Project-Wide Protocols nor shall Landlord be required to repair, alter or make any improvements to the Premises or the Project which a third party supplier of services to the Premises is obligated to make under any separate written agreement with Tenant.

B. Landlord, at Landlord's expense, during the Term shall maintain in good condition and make all repairs and replacements of the Project Infrastructure which serves other areas of the Project in addition to the Premises and will maintain jointly used Infrastructure in good condition and repair. As used herein, the term "**Infrastructure**" means electrical,

mechanical, vertical transportation, sprinkler, fire and life safety, structural, security, heating, ventilation and air conditioning systems serving the Buildings and Project, including pipes, wiring, cabling, ducts and conduits forming an integral part of such systems. Tenant shall be responsible, at its sole cost and expense, to repair and maintain any supplemental air conditioning units, hot water heaters, plumbing and Infrastructure that exclusively serves only Tenant's Facilities and the Premises and all of its tools, equipment and other property located in the Premises, including, but not limited to, its Facilities, equipment, tools and lifts. When Tenant believes that any of the HEPA filters in the Premises or servicing Tenant's operations in the Premises (even if located outside the Premises) need to be replaced, Tenant shall so notify Landlord in writing and shall provide Landlord with all necessary information and specifications that Landlord or the third party or parties that actually perform the replacement will need to perform the work (the "**Other Information**"). Landlord shall prepare a specification for the replacement of the filter specified in the notice based on the HVAC Specifications and the Other Information which Tenant shall approve. Upon such approval, Landlord shall obtain a written bid from a third party contractor approved by Landlord to do work at the Project for the cost that such third party will charge for the proposed work. Landlord shall submit such bid to Tenant and if Tenant finds such bid acceptable, Tenant will prepare and issue its purchase order for the work to be done. If Tenant issues its purchase order, Landlord shall act as the construction manager for such work and shall submit the invoice issued by the contractor upon completion of the work described in such purchase order to Tenant who shall pay such sum as Additional Rent to Landlord. In no event shall Landlord be liable for the cost to perform the work to replace the HEPA filters or for any defective work performed by the third party contractor.

C. During the Term of this Lease, Landlord, at its expense, shall provide proper, periodic and normal maintenance, repair and inspection for such heating and air conditioning equipment as exists upon the Premises in order to provide for the HVAC Specifications, the intent of which is to maintain the HVAC system in good condition and repair. If the HVAC equipment requires repairs or replacement of parts, or both, of a major or substantial nature (i.e., in excess of proper, periodic and normal maintenance and inspection), these repairs or replacements, or both, shall be made by Landlord at its expense, unless Tenant's misuse or abuse of same or any change in the HVAC Specifications necessitates the repair or replacement, or both. Examples of "parts of a major or substantial nature" are compressors, boilers and fan units.

D. Notwithstanding anything contained in this Section 12, if Landlord and Tenant have entered into a separate written agreement with respect to Landlord's use of some of Tenant's equipment located in the Premises as specified in that separate agreement, the terms and conditions of that separate agreement shall control with respect to Landlord's and Tenant's rights and obligations with respect to such equipment.

**13. Temperature Maintenance**.

Landlord agrees to maintain (i) temperature in the Office Space and the Common Areas to site standards for the Project, which shall be comparable to habitable temperatures maintained in office space in comparable buildings in Chandler, Arizona, and (ii) temperatures in the Lab Space and Fab Space in accordance with the specifications attached hereto as **Exhibit K** (collectively, the "**HVAC Specifications**"). Notwithstanding the foregoing, Landlord may be required to impose energy conservation measures during energy emergency situations that require deviations from the HVAC Specifications, and Landlord shall not be in breach of the Lease for implementing such conservation measures.

**14. Utilities and Services**.

A. Except as provided in this Lease, Landlord shall provide or have third parties provide to the Premises for use by Tenant the utility services (the "**Utility Services**") which are provided to the Premises as of the Commencement Date, which are hot and cold running water, sewer services, heat, ventilation and air conditioning as stated in Section 13, natural gas and electricity. The cost of said Utility Services are included as part of the Fixed Rent. Landlord may provide or have third parties provide Utility Services to the Premises in excess of those being provided as of the Commencement Date if Tenant desires such change as long as Tenant notifies Landlord of such change, and Tenant pays the increased cost of such Utility Services as Additional Rent. The term "Utility Services" expressly excludes, and Landlord shall have no obligation under this Lease to provide, telephone, telecommunication, network and desktop services, any IT services, and specialty gases all of which are to be provided to Tenant pursuant to separate agreements with Landlord or direct contracts between Tenant and third party providers.

B. As part of the consideration for payment of Fixed Rent above specified, the Landlord, at its own expense, shall furnish, supply and properly maintain for the Tenant, the following services (the "**Other Services**"):

(i) Care in good condition and appearance of landscaping existing on the Project as of the Commencement Date which shall mean basic outside landscaping services to include watering, fertilizing and grass cutting during the growing season;

(ii) Janitorial services to the Office Space in accordance with **Exhibit H** and expressly excluding such services for the Fab Space and the Lab Space;

(iii) Parking lot lighting from dusk until dawn – seven days per week;

(iv) Passenger (at all times) and freight (subject to scheduling) elevator service;

(v) Shipping, receiving and mail room services daily Monday through Friday; provided that these services do not include the cost to mail or ship Tenant's property; Landlord reserves the right to contract with a third party vendor to run the mail room and shipping and receiving operations at the Project;

(vi) Access cards programmed by Landlord for each employee or other person that Tenant notifies Landlord has been permanently assigned by Tenant to the Premises; Tenant will be responsible for providing security identification badges for employees which will be honored by Landlord;

(vii) restroom facilities; and

(viii) operation, maintenance, repair, cleaning (including janitorial services in accordance with Project wide specifications for all Common Areas of the Project) and supply of the Common Areas in good condition.

C. Except as provided herein, Tenant shall be responsible for procuring its own supplies and services in connection with its operations at, and use and occupancy of, the Premises. Tenant shall provide its own janitorial services for the Fab Space and the Lab Space. Tenant shall be responsible for reimbursing Landlord as Additional Rent for any mailing, shipping or receiving charges payable to ship or mail Tenant's property.

D. Landlord shall provide the Other Services and the Utility Services (collectively, the "**Services**") hereunder to substantially the extent, quantity and quality that such services are provided as of the Commencement Date. Landlord shall not be required to provide any Services to the extent such Services would require Landlord to violate any Legal Requirements.

**15. Landlord's Right of Entry**.

A. Landlord has the right to enter the Premises at any reasonable time upon (i) twenty-four (24) hours' prior notice to Tenant (provided that no notice shall be required in the event of an emergency), for the purpose of performing maintenance, repairs and replacements to the Premises as are permitted or required under this Lease, and (ii) without notice for entry for the purpose of performing routine services which Landlord is required to provide under this Lease, including, but not limited to, routine security services, to exercise Landlord's rights under this Lease, to inspect the Premises and to ensure that Tenant is complying with the terms and conditions of this Lease. Tenant shall provide Landlord with keys and access cards to the interior and exterior doors of the Premises for such purposes.

B. Upon reasonable notice to Tenant, Landlord may, during the Term, show the Premises to prospective purchasers, mortgagees and tenants.

C. In exercising its rights under this Section, Landlord shall, except in emergencies, use reasonable efforts to enter upon the Premises in a manner that does not unreasonably interfere with Tenant's operations therein nor materially interfere with or disrupt the normal operation of Tenant's business.

**16. Damage or Destruction of Premises**.

A. In the event of damage ("**Minor Damage**") to the Premises by fire, other casualty, acts of God or any other insurable event (a "**Casualty**") which renders the Premises untenantable in part but Tenant is able in its judgment or Landlord's judgment to conduct its business therein, and Tenant continues to occupy them in part, the Rent and any other charges shall be apportioned and reduced from the date the damage occurs in the proportion that the unoccupied portion of the Premises bears to the entire Premises until the damage has been repaired. If either Tenant or Landlord determine that Tenant cannot conduct its business in any part of the Premises, then either Tenant or Landlord may elect to terminate the Lease by written notice to the other party within thirty (30) days after the date of the Casualty. If either party fails to give such notice, the Premises shall be repaired in accordance with Section 16C below.

B. In the event of substantial damage or destruction ("**Substantial Damage**") to the Premises by a Casualty which in Landlord's or Tenant's reasonable judgment cannot be restored within two hundred seventy (270) days from the date of the Casualty, then either Landlord or Tenant may terminate this Lease by written notice given to the other party within thirty (30) days after the date of the Casualty. If either party fails to give such notice, the Premises shall be repaired in accordance with Section 16C below and the Rent shall wholly abate from the date the damage occurs until Landlord has repaired the Premises to the condition described in Section 16C below unless the Tenant or a party controlled by Tenant caused the Casualty in which event there shall be no Rent abatement.

C. In the event of either Minor Damage or Substantial Damage, unless this Lease is terminated as provided in Sections 16A, B or D hereof, Landlord shall commence within a reasonable time after Landlord receives the insurance proceeds for the Casualty to repair the Premises to substantially the condition in which they were immediately prior to such damage save and except the capital improvements and any other improvements constructed after the Commencement Date. If the damage is not repaired within a reasonable time or in any event within one hundred twenty (120) days from the date commenced in the case of Minor Damage and one hundred eighty (180) days from the date commenced in the case of Substantial Damage, Tenant, as its sole remedy, shall have the right to terminate this Lease by giving Landlord written notice of termination (served no later than thirty (30) days after such right to cancel and terminate arises).

D. Notwithstanding the foregoing, Landlord may elect not to perform restoration work, and instead terminate this Lease by notifying Tenant in writing of such termination within one hundred twenty (120) days after the date the damage occurred (such notice to include a termination date giving Tenant at least sixty (60) days to vacate the Premises), but Landlord may so elect only if the Project is damaged by fire or other casualty (whether or not the Premises are affected) such that: (a) in Landlord's estimation, restoration cannot reasonably be completed within one hundred twenty (120) days after being commenced without the payment of overtime or other premiums; (b) the holder of any mortgage on the Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt in whole or in part; (c) the damage to the Project exceeds 50% of the replacement cost thereof, as estimated by Landlord; (d) such damage occurs during the last year of the Term; (e) regardless of the extent of damage to the Premises, Landlord makes a good faith determination that restoring the Project would be uneconomical; or (f) the damage is not fully covered by Landlord's insurance policies. Tenant hereby waives any rights it may have under any applicable law to terminate the Lease by reason of damage to the Premises or the Project or to any abatement of Rent except as specifically set forth herein.

E. Notwithstanding anything to the contrary in this Section 16, Landlord shall not be required to expend an amount in excess of the net insurance proceeds recovered by Landlord in connection with the restoration of the Premises pursuant to this Section 16.

**17. Condemnation**.

A. If the whole or any substantial part of the Premises shall be taken or condemned by any competent authority for any public use or purpose, the Term of this Lease shall end upon, and not before, the date when the possession of the part so taken shall actually be required for such use or purpose. Current Rent shall thereupon be apportioned as of the date of such termination.

B. If a taking or condemnation occurs but there is no material interference with the use of the Premises for the purposes for which it is then being used, then this Lease shall not be terminated. The Rent payable hereunder shall be diminished by an amount based on the square footage and type of the portion of the Premises which was so taken or sold and Landlord shall, if the condemnation proceeds are made available to Landlord, at Landlord's sole expense, restore and reconstruct the Premises to substantially their former condition to the extent that the same may be feasible, but Landlord shall in no event be required to spend for such work an amount in excess of the amount received by Landlord as compensation or damages (over and above amounts therefrom paid to the mortgagee, if any, of the Property taken) for the portion of the Premises so taken. Tenant shall not be entitled to and expressly waives all claim to any such compensation, damage or award, but Tenant may file a separate claim for the taking of any fixtures or improvements owned by Tenant and for moving expenses.

**18. Landlord's Liability**.

Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, licensees, customers or any other person in or about the Premises, the Buildings or the Property, whether such damage or injury is caused by or results from: (a) fire, steam, explosion, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Premises, the Buildings or the Property for which Landlord is not expressly obligated otherwise in this Lease; or (d) other tenants of the Property. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 18 shall not, however, exempt Landlord from liability for Landlord's negligence or willful misconduct. In no event shall Landlord be liable to Tenant under this Lease for special, incidental, treble, punitive or consequential damages. **NOTWITHSTANDING ANYTHING IN THIS LEASE OR ANY APPLICABLE LAW TO THE CONTRARY, THE LIABILITY OF LANDLORD HEREUNDER (INCLUDING ANY SUCCESSOR LANDLORD HEREUNDER) AND ANY RECOURSE BY TENANT AGAINST LANDLORD SHALL BE LIMITED SOLELY TO THE INTEREST OF LANDLORD IN THE PROPERTY, AND NEITHER LANDLORD, NOR ANY OF ITS CONSTITUENT MEMBERS, NOR ANY OF THEIR RESPECTIVE AFFILIATES, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SHAREHOLDERS SHALL HAVE ANY PERSONAL LIABILITY THEREFOR, AND TENANT, FOR ITSELF AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER TENANT, EXPRESSLY WAIVES AND RELEASES LANDLORD AND SUCH RELATED PERSONS AND ENTITIES FROM ANY AND ALL PERSONAL LIABILITY.**

**19. Default**.

A. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant;

(i) The failure by Tenant to make any payment of Fixed Rent, Additional Rent or any other payment required to be made by Tenant hereunder (a "**Non-Payment Default**") within five (5) days of notice from Landlord that such payment is due; provided, however, that Landlord shall not be required to deliver notice of a Non-Payment Default, and any such Non-Payment Default shall automatically be a material default and breach of this Lease by Tenant, if Landlord has delivered notice to Tenant of any Non-Payment Default within six (6) months prior to the date of any subsequent Non-Payment Default. Any notice delivered by Landlord notifying Tenant that such amounts are due shall constitute the notice to pay rent or quit, or other notice, required to terminate a leasehold tenancy under Arizona law;

(ii) The failure by Tenant to observe or perform, any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in subsection A(i) above, where such failure shall continue for a period of thirty (30) days after receipt of written notice thereof from Landlord to Tenant; provided that if the default cannot be cured within such thirty (30) day period, it shall not be considered a default if Tenant commences to cure such default within such thirty (30) day period and thereafter proceeds diligently and continuously to complete such cure provided in no event shall such cure period exceed sixty (60) days. Such notice shall constitute the notice to pay rent or quit, or other notice, required to terminate a leasehold tenancy under Arizona law; and

(iii) (a) the making by Tenant of any general assignment for the benefit of creditors; (b) Tenant becoming a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or (c) the appointing of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days.

B. At any time after default or breach hereof by Tenant, with or without notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach, Landlord may:

(i) Terminate this Lease and recover from Tenant upon demand therefor, as liquidated and agreed upon final damages for Tenant's default, an amount equal to the sum of the following: (i) the cost of recovering the Premises, including, without limitation, reasonable attorneys' fees; (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the Default Rate; (iii) the difference between (1) Rent and other sums which would be payable under this Lease for the remainder of the Term, discounted to present worth at the rate of five percent (5%) per annum, and (2) the then fair market rental value of the Premises as reasonably determined by Landlord for the same period, discounted to present worth at the same rate; (iv) costs of reletting and

refurbishing the Premises, including, without limitation, reasonable legal fees, brokerage commissions, the costs of alterations and the value of other concessions or allowances granted to a new tenant, and (v) any other sum of money and damages owed by Tenant to Landlord.;

(ii) Terminate Tenant's right of possession and re-enter and repossess the Premises or any part thereof by summary proceedings, ejectment, forcible entry and detainer, forcible detainer or otherwise, and Landlord shall have the right to remove all persons and property therefrom and change the locks, without judicial process. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease or to accept a surrender thereof unless a written notice of such intention is given by Landlord to Tenant or unless the termination of this Lease is decreed by a court of competent jurisdiction. Landlord may, but has no obligation to, at its option relet all or any part of the Premises for the account of Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its sole discretion, may determine, and Landlord may collect and receive any rents payable by reason of such releting; and apply the same on account of Rent due and to become due hereunder. Landlord shall not be required to accept any tenant offered by Tenant or observe any instruction given by Tenant about such releting, or do any act or exercise any care or diligence with respect to such releting. For the purpose of such releting, Landlord may decorate or make repairs, changes, alterations or additions in or to the Premises or any part thereof to the extent deemed by Landlord desirable or convenient, and the reasonable cost of such decoration, repairs, changes, alterations or additions shall be charged to and be payable by Tenant as Rent hereunder, as well as any reasonable brokerage and legal fees expended by Landlord. Landlord reserves the right to terminate this Lease at any time after taking possession of the Premises as aforesaid. Neither termination nor repossession and releting shall relieve Tenant of its obligations hereunder, all of which shall survive such termination, repossession or releting. Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this Section 19 from time to time and that no suit or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. If Landlord terminates Tenant's possession of the Premises under this Section 19, Landlord shall have no obligation to post any notice and Landlord shall have no obligation whatsoever to tender to Tenant a key for new locks installed in the Premises;

(iii) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Arizona; and

(iv) Do or cause to be done any act or thing that Tenant failed to perform after expiration of the applicable grace period. Any monies paid in connection with the performance of such act or thing shall constitute Additional Rent hereunder and shall be due and payable by Tenant immediately upon notice given by Landlord to Tenant of the nature and amount thereof.

C. Landlord shall not be in default hereunder unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event until at least thirty (30) days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are reasonably required to cure such default, then Landlord shall not be deemed to be in default if Landlord shall have commenced the cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

D. No delay or omission of either party in exercising any right accruing upon any default of the other party shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by either of the parties of a breach or a default under any of the terms and conditions of this Lease by the other party shall not be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by either of the parties of a breach or a default under any of the terms and conditions of this Lease by the other party shall not be construed to be a waiver of any subsequent breach or default or of any other term or condition of this Lease. No remedy provided in this Lease shall be exclusive, but each shall be cumulative with all other remedies provided in this Lease and at law or in equity.

E. In the event of a dispute between the parties which requires a party hereto to seek redress through an action at law or in equity (or to seek redress through a form of Alternative Dispute Resolution in accordance with Section 30 of this Lease) the losing party shall pay, upon demand, all of the prevailing party's costs, charges and expenses, including reasonable attorneys' fees, incurred by such prevailing party in connection with the resolution of such dispute. For purposes of this Section, the term "losing party" shall mean the party which obtains substantially less relief than originally sought by such party in the legal or equitable action (or Alternative Dispute Resolution forum) and the term "prevailing party" shall mean the party which obtained substantially the relief sought by such party in the legal or equitable action (or Alternative Dispute Resolution forum).

**20. Bankruptcy**.

In the event the estate created hereby shall be taken in execution or by other process of law, or if Tenant shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy law, or if a receiver or trustee of the property of Tenant shall be appointed by reason of Tenant's insolvency or inability to pay its debts, or if any assignment shall be made of Tenant's property for the benefit of creditors, then and in any of such events, Landlord may terminate this Lease by written notice to Tenant.

**21. Indemnification**.

Tenant shall indemnify and hold Landlord, its directors, officers, employees, agents, stockholders, successors and assigns (the "**Landlord Indemnified Parties**") harmless from all loss, damage, cost, expense or liability (including reasonable attorneys' fees, expenses and costs) incurred by said Landlord Indemnified Parties arising out of or in connection with (i) any injury to, or death of, any person, or damage to, or destruction of, property of third parties occurring in, on, or about the Premises, or (ii) any acts or omissions of Tenant or Tenant's employees, agents,

contractors, subcontractors, invitees, licensees or other authorized representatives, except to the extent caused by the acts or omissions of Landlord or Landlord's employees, agents, contractors, subcontractors, invitees, licensees or other authorized representatives. Tenant's obligation under subsection (i) of this Section to indemnify and hold the Landlord Indemnified Parties harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by Landlord. The indemnification set forth in this Section 21 shall survive the termination or expiration of this Lease.

**22. Insurance**.

A. Landlord shall keep in effect, during the Term of this Lease:

(i) Insurance against damage to the Buildings by fire and other risks now or hereafter embraced in extended coverage, in amounts sufficient to prevent Landlord from becoming a co-insurer.

(ii) Commercial General Liability insurance in the amount of at least Two Million Dollars ($2,000,000) in any one occurrence upon or in connection with the use or occupancy of the Premises resulting in bodily injury or death.

B. Tenant shall, at its expense, keep in effect during the Term of this Lease or any extension thereof, the following insurance in standard form policies, with an insurance company authorized to do business in the State in which the Premises are situated, and acceptable to Landlord, with an A.M. Best rating of at least A-, VII.

(i) Commercial general liability insurance in the amount of at least Two Million Dollars ($2,000,000) in any one occurrence upon or in connection with the use or occupancy of the Premises resulting in bodily injury or death.

(ii) Comprehensive property damage insurance covering liability or damage in any one occurrence occurring upon or in connection with the use or occupancy of the Premises to all property in at least the sum of Two Million Dollars ($2,000,000).

(iii) All risk contents coverage on Tenant's personal property, equipment, furnishings, fixtures and other chattels located or to be located in the Premises.

(iv) The required statutory amount of workers' compensation insurance.

C. All property policies of insurance required to be maintained by Landlord and Tenant pursuant to this Lease shall name the other party as an additional insured as their respective interests may appear (and if requested by Landlord shall bear appropriate endorsements to protect Landlord's mortgagee). Tenant's liability insurance shall name Landlord as additional insured.

D. The insurance required to be carried by Tenant shall be effective only from and after the Commencement Date. Tenant shall furnish Landlord within ten (10) days after the Commencement Date and thereafter, upon Landlord's written request, a certificate or certificates of insurance evidencing the existence of the required coverage.

E. The parties release each other, and their respective authorized representatives, from any claims for damage to the Premises and the Buildings and other improvements in which the Premises are located, and to the fixtures, personal property, Tenant's improvements, and alterations of either Landlord or Tenant in or on the Premises and the Buildings and other improvements in which the Premises are located that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage, including any damage caused by the other parties negligence.

F. Each party shall cause each workers' compensation and property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against (or required to be insured against) under any insurance policy required by this Lease.

**23. Mechanic's Liens**.

All work performed, materials furnished, or obligations incurred by or at the request of Tenant shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any mechanic's liens to be filed against the Premises, the Building or the Property in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Tenant shall, within ten (10) days after Tenant obtains knowledge thereof (or such earlier time period as may be necessary to prevent the forfeiture of the Premises, the Property or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (i) pay the amount of the lien and cause the lien to be released of record, or (ii) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, then Landlord may pay the lien claim, and any amounts so paid, including reasonable expenses and interest, shall be paid by Tenant to Landlord within ten (10) days after Landlord has invoiced Tenant therefore together with interest at the Default Rate. Tenant shall defend, indemnify and hold harmless the Landlord Indemnified Parties from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by Tenant to pay for any work performed, materials furnished, or obligations incurred by or at the request of Tenant. This indemnity provision shall survive termination or expiration of this Lease. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor," "owner-agent" or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Premises, the Building or the Property or Landlord's interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work.

**24. Assignment or Subletting**.

A. Tenant shall not have the right to assign or encumber this Lease or sublet or license any part of the Premises without the prior written consent of Landlord. If Tenant desires to take any such action, Tenant shall submit to Landlord, in writing, the name of the proposed assignee, licensee, encumbrance holder or subtenant and the nature, financial condition, and character of the business of such entity. An assignment or other transfer of Tenant's interest under the Lease or Tenant's right to use the Premises shall not operate to release Tenant from its obligations under this Lease and Tenant shall continue to be responsible for such obligations from and after the date of the assignment or other transfer. Landlord's consent to any assignment, sublease or other transfer shall not constitute consent to any other assignment, sublease or transfer.

B. Without limiting the other instances in which it may be reasonable for Landlord to withhold its consent to an assignment or subletting, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold its consent in the following instances:

(i) if, in Landlord's reasonable judgment, the character, reputation, or business of the proposed assignee or sublessee is not consistent with the quality of the other tenants in the Project;

(ii) the assignee or sublessee intends to use the space being transferred for a use which is not permitted under this Lease or is not suitable for the Premises;

(iii) the assignee or sublessee intends to use the space or the Building in a manner that would materially increase the pedestrian or vehicular traffic to the Premises or the Building or would adversely affect the mechanical systems or structural components of the Building; or

(iv) the assignee or sublessee offers services or goods similar to Landlord or is otherwise a competitor of Landlord, as determined by Landlord.

**25. Delays**.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any of their or its respective provisions anywhere herein contained, by reason of (i) the destruction, in whole or in part, of any Building or improvement forming a part of the entire Premises, (ii) strikes, (iii) lockouts, (iv) labor troubles, (v) war, whether declared or undeclared, (vi) riot, (vii) Act of God, (viii) embargoes, (ix) delays in transportation, (x) inability to procure materials and/or labor, (xi) failure of power, (xii) restrictive governmental laws or regulations, whether valid or not, (xiii) insurrection, (xiv) acts of terrorism or (xv) any other reason other than financial, beyond the reasonable control of such party, and not the fault of the party so delayed or hindered in or prevented from performing work or doing acts otherwise required under this Lease, then performance of such work or doing of such acts shall be excused for the period of the delay, and the period for the performance of such work or doing such acts shall be extended for a period equivalent to the period of such delay; provided, however, that the provisions of this Section shall not operate so as to excuse or release Tenant from the prompt payment of Rent or other sums required to be paid by Tenant to Landlord or to other payees anywhere hereunder.

**26. Successors and Assigns**.

Subject to the provisions of Section 24 hereof, this Lease is intended to and does bind the successors and assigns of Landlord and Tenant, respectively.

**27. Option to Renew**.

Tenant is hereby granted one (1) option to renew this Lease for a period of one (1) year following the initial Term (the "**Renewal Term**") on the following terms and conditions:

A. At the time of Tenant's exercise of the option to renew and at the time of said renewal, Tenant shall not be in default beyond any applicable cure period under the terms and provisions of this Lease, and Tenant shall be in possession of one hundred percent (100%) of the Premises pursuant to this Lease.

B. Tenant shall deliver written notice of the exercise of the option (the "**Renewal Notice**") no later than June 6, 2009.

C. All of the terms and conditions of this Lease shall apply during the Renewal Term except that the Fixed Rent shall be adjusted as set forth in **Exhibit F**; provided, however, in no event shall the Term extend beyond the third anniversary of the Commencement Date unless Landlord and Tenant modify this Lease or enter into a new lease of all or part of the Premises which grants Tenant additional renewal options or the right to occupy the Premises after the expiration of the Term. Additional Rent will be charged during the Renewal Term as provided in Section 4 of this Lease.

D. Landlord shall notify Tenant on or before December 6, 2009 whether Landlord intends to enter into an amendment to this Lease or enter into a new lease, either extending the Term beyond the third anniversary of the Commencement Date; provided, however, Landlord's failure to do so shall not be considered a default by Landlord, entitle Tenant to holdover in the Premises, allow Tenant to exercise any rights or remedies under this Lease, or constitute an implied promise by Landlord that Tenant shall have the right to renew or extended the Term of this Lease.

**28. Subordination**.

This Lease shall be subject and subordinated at all times to the liens of any mortgages or deeds of trust in any amount or amounts whatsoever now existing or hereafter encumbering the Premises, without the necessity of having further instruments executed by Tenant to effect such subordination. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver upon reasonable written demand such further instruments evidencing such subordination of this Lease to such liens of mortgages or deeds of trust as may be reasonably requested by Landlord, provided that Landlord shall use commercially reasonable efforts to obtain from the holder of any mortgage or deed of trust a non-disturbance and attornment agreement that will provide that as long as Tenant shall pay the Rent reserved and comply with, abide by and

discharge the terms, conditions, covenants and obligations on its part, to be kept and performed herein and shall attorn to any successor in title, such holder will agree not to disturb the peaceable possession of the Tenant in and to the Premises for the Term of this Lease upon the terms and conditions agreed to in such agreement, in the event of the foreclosure of any such mortgage or deed of trust, by the purchaser at such foreclosure sale or such purchaser's successor in title.

**29. Holdover**.

If Tenant fails to vacate the Premises at the expiration or earlier termination of the Term, then Tenant shall be a tenant at sufferance as to such space and, in addition to all other damages and remedies to which Landlord may be entitled for such holding over, Tenant shall pay, in addition to the other Rent, holdover rent for the Premises equal to (i) for the first month of any such holdover, 150% of the Fixed Rent payable during the last month of the Term, (ii) for the second month of any such holdover, 175% of the Fixed Rent payable during the last month of the Term, and (iii) for any month after the first and second month of any such holdover, 200% of the Fixed Rent payable during the last month of the Term. The provisions of this Section 29 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law or a consent by Landlord to any holding over by Tenant and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises upon the expiration of the Term or upon the earlier termination hereof and to assert any remedy at law or in equity to evict Tenant and/or collect damages in connection with such holding over. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold the Landlord Indemnified Parties harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any lost profits to Landlord resulting therefrom.

**30. Alternative Dispute Resolution**.

Landlord and Tenant shall attempt to settle any claim or controversy arising out of this Lease through consultation and negotiation in the spirit of mutual friendship and cooperation. If such attempts fail, then the dispute shall first be submitted to a mutually acceptable neutral advisor for mediation, fact-finding or other form of alternate dispute resolution. Neither of the parties may unreasonably withhold acceptance of such an advisor, and their selection will be made within 30 days after notice by the other party demanding such mediation. Cost of such mediation or any other alternate dispute resolution agreed upon by the parties shall be shared equally by Landlord and Tenant. Any dispute which cannot be so resolved between the parties within ninety (90) days of the date of the initial demand by either party for such mediation shall be finally determined by the courts. The use of such a procedure shall not be construed to affect adversely the rights of either party under the doctrines of laches, waiver or estoppel. Nothing in this Paragraph shall prevent either party from pursuing judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.

**31. Environmental, Health and Safety**.

A. For the purposes of this Section 31 and Section 54 of this Lease, the terms listed below shall be defined as follows:

**"Change"** means the Tenant doing, or causing or allowing to be done, any of the following after the Commencement Date: (i) modify or add to the type, quantity, or location of Chemicals (as defined below) used or stored by or for Tenant; (ii) relocate the Facilities in the Project, within the Premises or outside the Premises, if the result of such relocation would have a potential adverse environmental, safety or health impact to Landlord's or Tenant's operations, including impact to Landlord's or Tenant's ability to comply with Environmental Law; (iii) increase the "**Hourly Capacity**" (as hereinafter defined) of the Facilities; (iv) increase the production from the Facilities in any consecutive twelve-month period; (v) modify the equipment, processes, methods, procedures, or intensity of operation associated with the Facilities, if such modification has the potential to increase the quantity emitted, in any one-hour period or in any consecutive twelve-month period, of any air pollutant regulated under any "**Environmental Law**" (as hereinafter defined) relating to the Facilities; or (vi) modify the equipment, processes, methods, procedures, or intensity of operation associated with the Facilities, if such modification as identified in (vi) has the potential either to (a) increase the quantity, concentration, toxicity, hazard or risk associated with any solid waste, hazardous waste, wastewater, storm water, or any other instrumentality regulated by any Environmental Law relating to the Facilities, or (b) require additional control measures to address electrical, physical, radiation, mechanical, fire or explosion, ventilation, or chemical hazards.

**"Chemical"** means any element, compound, or mixture of elements and/or compounds that are regulated under applicable Environmental Law or under those site procedures and policies.

**"Entirely Remove"** and **"Entire Removal"** mean that the concentrations remaining in place in environmental media after remediation do not exceed the concentrations established or identified under applicable Environmental Laws promulgated, published or adopted by the State of Arizona, Maricopa County, or any other regulatory authority having jurisdiction over a remediation to be performed under this Lease at the time the remediation is being performed so long as such concentrations do not adversely impact Landlord's operations, including Landlord's ability to transfer title to its property free of any environmental encumbrances, including, but not limited to, deed restrictions restricting the use of the Property or requiring ongoing environmental controls or monitoring.

**"Environmental Law"** means any federal, state, or local law, statute, ordinance, regulation, permit, registration, exemption, or order pertaining to health, industrial hygiene, or the environmental conditions, including, without limitation, the following: (i) the Occupational Health & Safety Act, now or hereafter amended (29 U.S.C. §§ 655, 657); (ii) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 *et seq*.); (iii) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, as now or hereafter amended (42 U.S.C. § 9601 *et seq*.); (iv) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251 *et seq*.); (v) the Toxic Substances Control Act, as now or hereafter amended (25 U.S.C. § 2601 *et seq*.); (vi) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401 *et*

*seq*.); (vii) Arizona Revised Statutes Title 49 *et seq.;* (viii) Department of Transportation regulations under C.F.R. Title 49; (ix) all regulations promulgated under any of the foregoing; (x) the Fire Code Requirements; (xi) those recognized consensus standards, for example voluntary standards issued by the National Institute of Occupational Safety and Health, that are adopted by Landlord and communicated to Tenant; and (xii) any other federal, state, or local law, statute, regulation, or ordinance, regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into the environment of any substance, pollutant, infectious agent, virus or other biological material or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.

**"Environmental Liabilities"** shall mean any and all claims, obligations, suits, costs (including, but not limited to, environmental remediation costs), damages, settlements, charges, assessments, liens, penalties, fines, pre-judgment and post-judgment interest, attorneys' fees and other legal fees (collectively, "**Claims**") regardless of the form of the Claim whether at common law, strict liability, negligence, nuisance, or under any statute of regulation, incurred: (a) pursuant to any requirement, responsibility, or directive (including requirements, responsibilities or directives embodied in Environmental Laws), agreement (including settlements), notice, order, injunction, judgment or similar document arising out of or in connection with any Environmental Law, or (b) pursuant to any third party or governmental entity claim for personal injury, property damage, damage to natural resources, remediation, or similar injury, costs or expenses incurred or asserted pursuant to any Environmental Law.

**"Facility"** means each and every discrete or identifiable structure, device, item, equipment, area, or enclosure, including appurtenances, the ownership or operational control of which, whichever the case may be, is held by Tenant. "**Facilities**" means each and every Facility or all of the Facilities except Tenant's furniture which Tenant shall be entitled to remove from the Premises as long as it complies with Section 54C of this Lease.

**"Hazardous Substance"** means any substance, product, matter, material, waste, solid, liquid, gas, Chemical, pollutant, contaminant, or agent located in or about or coming from the Facilities, the generation, storage, transportation, disposal, handling, recycling, "**Release**" (as hereinafter defined), threatened Release, or treatment of which is regulated, controlled, prohibited, or limited under any Environmental Law, including, without limitation, the following: (i) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum hydrocarbons, including any additives or other by-products associated therewith; (ii) asbestos and asbestos-containing materials in any form; (iii) polychlorinated biphenyls; (iv) isopropyl alcohol; (v) ethylene glycol; (vi) radioactive materials; and (vii) any substance that (A) requires reporting or remediation under any Environmental Law, (B) causes or threatens to cause a nuisance in the Premises or in adjacent space or poses or threatens to pose a hazard to health or safety of persons in the Premises or in adjacent space, or (C) which, if it emanated or migrated from the Premises or from adjacent space could constitute a trespass, nuisance or health or safety hazard to persons on the Property outside the Premises.

**"Hourly Capacity"** means the production capability of the Facilities in any one-hour period.

**"Indemnitee"** means the person seeking the benefit of an indemnity provided in Sections 31H through 31J herein below.

**"Indemnitor"** means the person with the obligation to indemnify the Indemnitee under Sections 31H through 31J herein below.

**"Management of Change Procedure"** means the procedure described in Section 31D below.

**"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Substance, including, without limitation, the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance.

B. To the extent permitted by applicable Environmental Laws, Tenant shall maintain all environmental, health and safety permits, registrations, and licenses required by its operations and shall perform all obligations with respect to any materials defined as "Hazardous Wastes" under applicable Environmental Laws and Hazardous Substances generated, stored, shipped, transported, disposed, in or from the Premises as required under applicable Environmental Laws. Tenant shall also maintain any and all environmental, health and safety permits, registrations, licenses and shall perform all obligations with respect to Tenant's personal property required by the Arizona Radiation Regulatory Agency and under any other applicable Environmental Laws. To the extent permitted by applicable Environmental Laws, Landlord shall maintain all other environmental, health and safety permits, registrations and licenses needed by the Tenant to operate the Facilities as permitted by applicable Environmental Laws.

C. Tenant shall be responsible for, and does hereby represent and warrant that it shall, at its sole cost, comply with, all Environmental Laws applicable to the Facilities or the operation thereof, and that this obligation shall apply regardless of who obtains or maintains any permits, exemptions, or registrations. In addition, Tenant will comply with Landlord's Project Wide Protocols that are implemented by Landlord to maintain its existing ISO 14001 certification ("**EMS Procedures**") (as Landlord may hereafter amend, supplement, replace or otherwise modify the same in writing and deliver the same to Tenant). Landlord will provide Tenant with any relevant EMS procedures including any newly developed or revised EMS procedures in connection with its existing ISO 14001 certification. Landlord will notify Tenant either by written or electronic means of any procedures that will impact Tenant's day-to-day operations in the Premises. Nothing in this paragraph is intended to limit Tenant's ability to voluntarily adopt or comply with requirements that do not otherwise apply to its operations for the reasons set forth herein.

D. If at any time Tenant desires to make any Change affecting its Facilities, Tenant shall first obtain Landlord's prior written approval of the Change in accordance with the management of change procedure described in this Paragraph D (the "**Management of Change Procedure**"), as follows:

(i) Tenant shall submit to Landlord a written detailed description of the Change desired by Tenant including the timing of any such Change, as well as such supplemental information as Landlord requests to facilitate Landlord's review of the proposed Change.

(ii) Within thirty (30) calendar days after the date of receipt by Landlord of any Change request or any supplemental information requested by Landlord pursuant to Section 31(D)(i), whichever is later, Landlord shall notify Tenant in writing of Landlord's approval, disapproval, or conditional approval of the Change proposed by Tenant. Provided that Tenant has received and retained a receipt signed by Landlord acknowledging that Landlord has actually received the Change request or supplemental information to be delivered to Landlord under this Section 31(D)(ii), absence of response by Landlord within the time frame specified in this Section 31(D)(ii) shall be deemed approval by Landlord.

(iii) Landlord shall not unreasonably withhold approval, but Landlord may nevertheless disapprove or approve with conditions any Change which: (A) Landlord reasonably believes has the potential to increase the burden or cost of (i) providing any of the Services or (ii) performing any of the other obligations of Landlord under this Lease; or (B) Landlord reasonably believes has the potential to affect adversely Landlord's property, facilities, or operations, the safety of any of its employees or contractors, the protection of public health or the environment, or compliance under any statute or regulation applicable to Landlord's or Tenant's property, facilities, or operations on or in the vicinity of the Project.

(iv) Conditions of approval may include, but will not necessarily be limited to, Tenant's agreement that Landlord shall perform its obligations under the Lease or provide the Services as a result of the Change and/or that Tenant shall pay any increased costs that Landlord will incur to perform said obligations and provide said Services.

(v) Any approved Change shall be performed by Landlord or a third party contractor in accordance with the requirements of Section 9 of this Lease.

E. Tenant represents and warrants that it shall not cause or permit any Chemicals or gases to be brought into or onto the Premises, the Common Areas, or the Property except with the knowledge and approval of the Landlord. Tenant must obtain approval from Landlord's EHS department in accordance with Section 54D prior to ordering any Chemicals or Chemical samples. Landlord's approval of any Chemical or gas does not constitute operational control of Tenant's operations and shall not release Tenant from any of its obligations set forth herein.

F. Tenant represents and warrants that it shall not cause or permit any Hazardous Substance to be brought onto or Released into or onto the Premises, the Common Areas, or the Property (including the soil or ground water thereunder and the sewer and drainage systems therein) except in accordance with all applicable Environmental Laws. Tenant shall immediately notify Landlord if any unauthorized or un-permitted Release occurs. As to any Release that has been caused or permitted by Tenant, subject to the provisions of Section 31H, below, Landlord will immediately commence to Entirely Remove such Released Hazardous Substance at Tenant's sole expense. Entire Removal shall be completed in a manner fully in compliance with all applicable Environmental Laws. Following completion of the activities specified in the preceding sentence, Tenant shall, upon Landlord's demand and at Tenant's sole expense, reimburse and pay to Landlord all costs and expenses incurred by Landlord to Entirely Remove such Release in compliance with applicable Environmental Law.

G. Subject to the provisions of Section 31H, TENANT SHALL INDEMNIFY LANDLORD FOR ALL ENVIRONMENTAL LIABILITIES ARISING FROM TENANT'S RELEASE, EXCEPT TO THE EXTENT SUCH RELEASE ARISES FROM OR IS RELATED TO THE NEGLIGENT OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORDS' AGENTS, CONTRACTORS OR EMPLOYEES.

H. If at any time it appears to a reasonable certainty that a Release caused or permitted by Tenant has commingled with a Release caused or permitted by Landlord ("**Commingled Release**"), Landlord shall have the responsibility to remediate the Commingled Release. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TENANT SHALL INDEMNIFY LANDLORD FOR TENANT'S PORTION OF THE ENVIRONMENTAL LIABILITIES ARISING FROM A COMMINGLED RELEASE. AS USED HEREIN, "**TENANT'S PORTION OF THE ENVIRONMENTAL LIABILITIES ARISING FROM A COMMINGLED RELEASE**" SHALL BE EQUAL TO THE TOTAL ENVIRONMENTAL LIABILITIES BORNE BY LANDLORD ARISING FROM A COMMINGLED RELEASE MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE ENVIRONMENTAL LIABILITIES BORNE BY LANDLORD ARISING FROM THAT PORTION OF THE RELEASE CAUSED OR PERMITTED BY TENANT AS DETERMINED BY LANDLORD, AND THE DENOMINATOR OF WHICH IS THE TOTAL ENVIRONMENTAL LIABILITIES BORNE BY LANDLORD ARISING FROM THE COMMINGLED RELEASE.

I. In addition to the indemnification provided in Section 21 hereof, TENANT SHALL INDEMNIFY, DEFEND, AND HOLD LANDLORD AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, STOCKHOLDERS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST: (I) ANY AND ALL ENVIRONMENTAL LIABILITIES TO THE EXTENT THAT SUCH ENVIRONMENTAL LIABILITIES RESULT FROM ANY ACTS OR OMISSIONS OF TENANT, ITS AGENTS, CONTRACTORS, OR EMPLOYEES; (II) ANY AND ALL ENVIRONMENTAL LIABILITIES TO THE EXTENT THAT SUCH ENVIRONMENTAL LIABILITIES RESULT FROM OWNERSHIP OR OPERATIONAL CONTROL OF THE FACILITIES BY TENANT; AND (III) ANY AND ALL EXPENSES OR COSTS THAT RESULT FROM ANY BREACH BY TENANT OF ANY OBLIGATION IMPOSED ON TENANT UNDER THIS LEASE OR BREACH OF ANY REPRESENTATION OR WARRANTY OF TENANT STATED IN THIS SECTION 31.

J. In addition to the indemnification provided in Section 21 hereof, LANDLORD SHALL INDEMNIFY, DEFEND, AND HOLD TENANT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, STOCKHOLDERS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST: (I) ANY AND ALL ENVIRONMENTAL LIABILITIES TO THE EXTENT THAT SUCH ENVIRONMENTAL LIABILITIES RESULT FROM ANY ACTS OR OMISSIONS OF LANDLORD, ITS AGENTS, CONTRACTORS OR EMPLOYEES; (II) ANY AND ALL ENVIRONMENTAL LIABILITIES TO THE EXTENT THAT SUCH ENVIRONMENTAL LIABILITIES RESULT FROM OWNERSHIP OR OPERATIONAL

CONTROL OF THE LANDLORD'S CO-LOCATED FACILITIES BY LANDLORD; AND (III) ANY AND ALL EXPENSES OR COSTS THAT RESULT FROM ANY BREACH BY LANDLORD OF ANY OBLIGATION IMPOSED ON LANDLORD BY, OR REPRESENTATION OR WARRANTY OF LANDLORD STATED IN THIS SECTION 31.

K. Notwithstanding any provision in this Lease to the contrary, the indemnities provided in Sections 31G through 31J of this Lease shall survive the date of termination of this Lease without limitation. Notwithstanding any provision in this Lease to the contrary, the Indemnitor's obligation to indemnify the Indemnitee under Sections 31G through 31J of this Lease shall be unlimited as to dollar amount.

L. The Indemnitee shall give the Indemnitor prompt written notice after any Environmental Liability, with respect to which indemnification is to be claimed, comes to the attention of Indemnitee. Notwithstanding the prior sentence, Indemnitor shall not be relieved of its obligations under this Lease if Indemnitee's failure to notify Indemnitor of an Environmental Liability does not prejudice Indemnitor's rights or materially increase its liabilities and obligations hereunder.

M. The indemnities provided in Sections 31G through 31J of this Lease shall provide the sole and exclusive remedy for either party with respect to the matters covered in this Section 31.

**32. Brokers**.

The parties agree and represent to each other that there was no real estate broker who brought about this Lease. Tenant represents and warrants that Tenant did not negotiate with respect to the leasing of the Premises through any broker and that no broker was instrumental in bringing about this Lease. Tenant shall indemnify Landlord against any and all claims of any brokers with whom Tenant has had any dealings, and shall hold Landlord harmless from all losses and expenses in connection therewith, including reasonable legal expenses. Landlord represents and warrants that Landlord did not negotiate with respect to leasing the Premises through any broker and that no broker was instrumental in bringing about this Lease (excluding any employee of Landlord who holds a real estate brokerage license). Landlord shall indemnify Tenant against any and all claims of any brokers with whom Landlord has had any dealings, and shall hold Tenant harmless from all losses and expenses in connection therewith, including reasonable legal expenses.

**33. Notices**.

All notices, approvals or requests in connection with this Lease shall be sent by overnight carrier with delivery charges prepaid or with delivery not conditioned upon payment of charges, or by facsimile with a copy additionally sent by regular mail, except notices concerning repairs and replacements which may be given orally or by any other means which might reasonably be expected to give the other party notice; provided, however, that no notice other than by overnight carrier shall constitute a notice of default.

Notices to the Landlord shall be addressed to the Landlord as follows:

Freescale Semiconductor, Inc.
Corporate Real Estate Department
6501 William Cannon Drive West, MD: OE333
Austin, TX 78735
Attention: Kathy Carr

A copy of all notices made pursuant to Sections 31 and 54 shall also be sent to:

Freescale Semiconductor, Inc.
Arizona Regional EHS Manager
Attention: Amy Belger MD EL-642
2100 E. Elliot Road
Tempe, AZ 85284

Notices to the Tenant shall be addressed to Tenant as follows:

Everspin Technologies, Inc.
1300 North Alma School Road
Chandler, Arizona 85224
Attn: General Counsel

With a copy to:

Cooley Godward Kronish LLP
Five Palo Alto Square, 3000 El Camino Real
Palo Alto, CA 94306
Attn: Robert J. Brigham

Either party may at any time designate by written notice to the other a change of address.

**34. Waiver**.

Failure or delay on the part of Landlord or Tenant to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver thereof. A waiver, to be effective, must be in writing and must be signed by the party making the waiver. A written waiver of a default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

**35. Amendments**.

No revision of this Lease shall be valid unless made in writing and signed by duly authorized representatives of both parties.

**36. Quiet Enjoyment**.

If Tenant performs the terms of this Lease, Landlord will warrant and defend Tenant in the quiet and peaceful enjoyment and possession of the Premises during the Term hereof and any extension without interruption by Landlord or any third party claiming under Landlord as a result of a right granted by Landlord to such third party.

**37. Conveyance by Landlord**.

The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title of the Premises or the lessees under ground leases of the land or master leases of the Building, if any. In the event of any transfer, assignment or other conveyance of any such title, Landlord herein named (and in case of any subsequent transfer or conveyance, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability for the performance of any covenant or obligation on the part of Landlord contained in this Lease thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any term or condition of this Lease.

**38. Construction of Language**.

The terms Lease, lease agreement or agreement shall be inclusive of each other, and include renewals, extensions or modifications of the Lease. Words of any gender used in this Lease shall be held to include any other gender, and words in the singular shall be held to include the plural and the plural to include the singular, when the sense requires. Section headings and titles are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

**39. Marginal Headings**.

The headings in this Lease are used only for convenience in finding the subject matters, and are not to be taken as part of this Lease, or to be used in determining the intent of the parties.

**40. Entire Agreement**.

This Lease constitutes the final expression of the agreement of the parties; it is intended as a complete and exclusive statement of their agreement, and it supersedes all prior and concurrent promises, representations, negotiations, discussions and agreements that may have been made with respect to the subject matter hereof.

**41. Severability**.

If any provision of this Lease, or the application thereof to any person or circumstance, shall be held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease or the application of such provisions to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**42. Estoppel Certificate**.

Tenant shall, from time to time upon not less than ten (10) business days' prior written request by Landlord, deliver to Landlord and any third party requested by Landlord, a statement in writing stating upon the party's knowledge and belief: (a) that this Lease is unmodified and in full force and effect, or that there have been modifications and that the Lease as modified is in full force and effect; (b) the dates to which Rent and other charges have been paid; (c) that Landlord or Tenant are not in default under any provision of this Lease or, if in default, a detailed description thereof; and (d) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the Landlord and any other person, firm or corporation to whom the same may be exhibited or delivered and the contents of such certificate shall be binding on Tenant. If any such estoppel is not executed within such ten (10) business day period, then, in addition to any other right or remedy which Landlord may have, at Landlord's option, Landlord may execute any such estoppel on behalf of Tenant as Tenant's attorney-in-fact, and Tenant hereby appoints Landlord its attorney-in-fact for such purpose. Such appointment and agency are coupled with an interest and are irrevocable.

**43. Signs**.

Tenant shall not exhibit, inscribe, paint or affix any sign on the exterior or interior of the Buildings or the Property or in any window of the Premises without Landlord's prior written consent.

**44. Late Payments**.

If Tenant fails to make a payment to Landlord when due under the terms of this Lease, interest shall be added to the payment at an annual rate equal to the lesser of (i) ten percent (10%) or (ii) the maximum lawful rate permitted (the "**Default Rate**"). In any case where payment is required under this Lease and a specific time period is not set forth for making such payment, the payment shall be due within thirty (30) days of the date a bill is rendered for such payment, or for situations where a bill is not rendered (e.g., a refund of any overpayment) the payment will be due thirty (30) days from (a) the date that the precise amount of the payment can reasonably be determined and (b) the party obligated to make the payments becomes aware of the obligation to make the payment.

**45. Miscellaneous Other Services**.

From time to time, Tenant may request some miscellaneous facility services from Landlord such as maintenance of Tenant's equipment, relocation of cubicles or similar types of services. Landlord will provide Tenant with an estimate of the cost of such services prior to Tenant authorizing the work to be performed by Landlord. Landlord will invoice Tenant on a monthly basis for the actual cost of such services (or an agreed upon rate in the case of building or equipment maintenance for tenant-owned equipment) and Tenant will pay to Landlord the cost of such services as Additional Rent hereunder. Landlord and Tenant have agreed as of the Commencement Date that, subject to the terms of this Lease, Landlord will provide those certain facility services listed on **Exhibit J** attached hereto, which Landlord will provide to Tenant pursuant to the terms and at the rates set forth in **Exhibit J**.

**46. Interruption of Services**.

Landlord shall not be liable to Tenant for any damages from, nor shall Tenant be entitled to any abatement of Rent due to, any interruption of Services; provided, however, Landlord shall use commercially reasonable efforts to restore any such Service which is interrupted.

**47. Governing Law**.

This Lease shall be governed by and construed in accordance with the internal laws of the State of Arizona applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

**48. No Warranty**.

**BOTH PARTIES ACKNOWLEDGE AND AGREE THAT LANDLORD HAS AGREED TO PROVIDE THE PREMISES HEREUNDER AS AN ACCOMMODATION TO TENANT AND THAT LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PREMISES OR THE SERVICES TO BE PROVIDED HEREUNDER EXCEPT AS SPECIFICALLY PROVIDED HEREIN. TENANT AGREES THAT IT IS NOT RELYING ON ANY WARRANTY OR REPRESENTATION MADE BY LANDLORD, LANDLORD'S AGENTS, OR ANY BROKER CONCERNING THE USE OR CONDITION OF THE PREMISES, COMMON AREAS OR THE PROPERTY. TENANT ACKNOWLEDGES AND AGREES THAT IT HAS INSPECTED THE PREMISES AND THAT IT ACCEPTS THE PREMISES IN THEIR PRESENT "AS-IS, WHERE IS" PHYSICAL CONDITION, WITHOUT ANY OBLIGATION BY LANDLORD TO PAINT, REDECORATE, OR PERFORM ANY OTHER WORK IN, ON OR ABOUT THE PREMISES AT ANY TIME, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS LEASE. LANDLORD HAS NOT MADE, AND WILL NOT MAKE, ANY WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PREMISES, THE BUILDINGS, COMMON AREAS OR ANY OTHER PORTION OF THE PROJECT, AND LANDLORD EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF SUITABILITY, HABITABILITY OR MERCHANTABILITY WITH RESPECT TO THE SAME.**

**49. Intentionally Omitted**.

**50. Certain Rights Reserved by Landlord**.

Landlord shall have the following rights, exercisable without notice and without liability to Tenant for damage or injury to property, persons, or business of Tenant or any other person and without creating any right of Tenant to terminate this Lease prior to the expiration of the Term, or interfering with Tenant's use of or operations in the Premises, or giving rise to any claim for setoff against, or abatement of, Rent, Additional Rent, or any other amounts owing or to become owing by Tenant hereunder:

(i) To have and retain paramount title to and ownership of the Premises, free and clear of any act or right of Tenant purporting to burden to encumber Landlord's interest in the Premises.

(ii) To grant to anyone the exclusive right to conduct any specific type of business or render any specific type of service in or to the Buildings not inconsistent with this Lease.

(iii) To approve the weight, size, and location of heavy equipment and articles in and about the Premises and to require all such items (excluding furniture which is governed by Section 55C) and similar items to be moved into and out of the Buildings and the Premises only at such reasonable times and in such manner as Landlord may approve using movers which have been approved to provide such services at the Project. Movement of the foregoing shall be at Tenant's sole risk and expense, as between Landlord and Tenant.

(iv) To take all such reasonable measures as Landlord may deem advisable for the security of the Buildings and its occupants, including without limitation, the evacuation of the Buildings for cause, suspected cause, or for drill purposes, and subject to the provisions of Section 10, the closing of the Buildings after regular working hours.

**51. No Party To Be Deemed Drafter**.

Landlord and Tenant have both had the opportunity to have counsel examine this Lease and to propose changes to clarify any ambiguities. Accordingly, in any interpretation of this Lease, an ambiguity shall not be resolved by interpreting the Lease against the drafter. The language of this Lease shall be interpreted according to the fair meaning and not for or against either party.

**52. No Intended Third Party Beneficiary**.

Landlord and Tenant may each, separately, deal with other persons in connection with the Premises or with other matters that may also relate to or be the subject of this Lease. Landlord and Tenant do not intend to make any such third person with whom each of them may deal an intended third party beneficiary under this Lease. There is no third person who is an intended third party beneficiary under this Lease. No incidental beneficiary (whatever relationship such person may have with Landlord or Tenant) shall have any right to bring an action or suit, or to assert any claim against Landlord or Tenant under this Lease.

**53. Confidentiality, Nondisclosure, and Security**.

Tenant and Landlord have executed that certain Intellectual Property Agreement dated June 6, 2008 (the "**IPA**"). The terms of the IPA governing Confidential Information (as defined in the IPA) are incorporated herein by reference (the "**IPA Confidential Terms**"). In accordance with the preceding sentence, Tenant agrees that it shall comply with the IPA Confidential Terms in connection with any Confidential Information. Without limiting the information defined in Section 1.9 of the IPA as Confidential Information (and subject to the exclusions thereto set forth in Section 4.2 of the IPA), the following information shall also constitute Confidential Information of the disclosing party: information that either Tenant or Landlord, as the receiving party, gathers, observes, or comes into contact with at the Project regarding the operations and business practices of either Landlord or Tenant as the disclosing party. Notwithstanding the foregoing, any breach of the IPA Confidential Terms or breach of

this Section 53, shall be deemed a breach of the IPA and not a breach of this Lease. In addition, (i) the employees of Tenant shall execute individual computer access agreements in substantially the form attached hereto as **Exhibit L**; (ii) anyone who enters the Premises must comply with the instructions of Landlord's security personnel as to areas of the Premises that require escorted access, present satisfactory identification and sign Landlord's security logs as visitors; (iii) Landlord shall have the right to restrict the right of Tenant and anyone entering the Project to access certain areas of the Project designated by Landlord as "high security" areas, and (iv) Landlord may implement written procedures regulating entry to any high security area to which Tenant has a right to enter under this Lease. Landlord shall not be required to perform routine security patrols of the Premises, the Buildings or the Project.

**54. Site Environmental Services**. Landlord and Tenant agree that site environmental services shall be handled as follows:

A. Tenant shall handle and dispose of any Hazardous Wastes generated at the Premises in accordance with all applicable Environmental Laws and Landlord's site procedures and policies as communicated to Tenant. Tenant will maintain separate Hazardous Waste accumulation space within the Premises for its Hazardous Wastes. Tenant shall maintain a separate generator number and separate manifests related to any such Hazardous Waste. Tenant shall store its Hazardous Wastes in an area designated for such use by Landlord, as such area may be changed by Landlord from time to time. All of Tenant's Hazardous Wastes shall be transported by a hazardous waste transporter previously approved by Landlord.

B. Landlord shall be responsible for maintaining industrial waste water and air emission permits and waste water discharge facilities for the entire Project and Tenant shall not take any action which would cause there to be a violation of such permits. Tenant, at its sole cost and expense, shall abide by such permits.

C. Tenant shall be responsible for its own occupational health resources and maintain its own OSHA 300 log.

D. Tenant shall make available to Landlord its material safety data sheets for inspection during regular business hours and as required by Environmental Law. Landlord shall establish a procedure and provide Tenant with an electronic or a written copy of such procedure that Landlord shall use to approve any Chemicals used by Tenant at the site to ensure that such Chemicals meet the site permit requirements, the site procedures and policies and Environmental Laws. Tenant's designated representative will be responsible for purchasing and having any approved Chemicals delivered to the Premises. Tenant may store any Chemicals that are not provided to Tenant by its supplier on an "as needed" basis in the chemical storage area designated by Landlord from time to time, provided that Landlord shall be in charge of designating where such Chemicals can be stored and the procedure for moving them from that area to the Premises. Tenant must present and obtain approval from Landlord prior to (i) implementing changes to processes, equipment and/or quantities of Chemicals used; or (ii) bringing any new Chemicals or Chemical samples onto the Project or the Premises.

E. Landlord and Tenant acknowledge that if Landlord has emergency nursing services on site, Tenant may utilize such nursing services available in the case of a Tenant emergency without liability to Landlord; provided, however, that such nursing services may not be available on any days when Landlord's operations in the Project are shutdown. Tenant shall be responsible for any industrial injuries arising out of or related to its use of the Premises.

F. Landlord and Tenant acknowledge that Landlord's emergency response team ("**ERT**") for the Project will stay in place for all occupants of the Project to the extent required to comply with applicable Legal Requirements. As of the Commencement Date, one (1) of Tenant's employees will serve on the ERT and Tenant shall continue to provide the same number of employees as part of the ERT during the Term.

G. Tenant shall coordinate with Landlord the receiving and deliveries of all Chemicals and gases to the Premises which must be performed in accordance with all applicable Environmental Laws, site procedures and policies and in such a manner that will allow Landlord to perform all tracking requirements imposed by applicable Environmental Laws for the Project.

H. Landlord will oversee the Toxic Gas Monitoring ("**TGM**") annunciation systems wired to the Premises and shall contact Tenant's on-call representative (24/7) to respond to take care of any problem within a reasonable (not more than 30 minutes response) time. Tenant will have a representative on call (24/7) to assist with any issues within its Premises. Landlord may take action, including, without limitation, calling Tenant's contracted for basic TGM maintenance or other assistance as required, if Tenant does not so respond within a reasonable (not more than 30 minutes response) time. Tenant agrees to pay Landlord all costs incurred by Landlord for any such response as Additional Rent.

I. Landlord, at Tenant's cost, will oversee safety compliance on the installation process of any new equipment in the Premises that has been approved by Landlord as required by this Lease and any facility upgrades in the Premises. Tenant shall have a qualified representative available to assist Landlord in performing this task.

J. Tenant will provide periodic testing for toxic chemicals for Tenant's employees as required by applicable regulations and shall provide proof to Landlord that Tenant has complied with this requirement at Landlord's request.

K. Landlord will set the rules for TGM and Tenant will be responsible for maintaining the TGM systems in the Premises and outside the Premises to the extent the systems service only Tenant's Facilities.

L. Tenant must keep records on any non-infrastructure related refrigerants subject to regulation and convey those records to Landlord upon request. Only qualified EPA certified refrigerant personnel may recover or charge units with regulated refrigerants.

M. Tenant will notify Landlord in writing of any equipment having Ionizing and Non-ionizing radiation and lasers arriving or leaving the Project.

N. Tenant acknowledges that Landlord, its agents, consultants and any governmental agencies have the right to access the Premises for the purposes of performing inspection of areas, records and systems in the interest of ensuring compliance with all Environmental Laws, Legal Requirements, the requirements of Landlord's industrial risk insurer and Landlord's Project specifications.

O. Tenant shall comply with all applicable Environmental Laws as well as Landlord's site procedures and policies and Landlord's specific EHS requirements. This includes, but is not limited to, tool install/de-install inspections, hot work permits, confined space entry permits, inspection, testing and participation in the site's Crisis Management Plan and the Site Emergency Plan, and compliance with the De-facilitization and Decontamination Protocols. In addition, Tenant agrees that it will comply with those requirements of Landlord's industrial risk insurance that Landlord has expressly adopted and implemented for its operations.

**55. Miscellaneous**.

A. **Planned Shutdowns**.

Landlord and Tenant agree that Tenant will not be required to participate in any planned business shutdowns of the Project as has been the custom of Landlord for its business in previous years; provided, however that Tenant shall be required to participate in such planned shutdown if Landlord needs to shut down the Project in order to comply with its obligations under this Lease with respect to repair and maintenance of the Premises and/or the Common Areas or to provide the Services specified herein as to comply with Legal Requirements or Environmental Laws. If Landlord's business requires a planned shutdown at any time and Tenant is not required to participate in the shutdown, Tenant will have access to its Premises and Landlord will continue to provide the Services to the Premises that Landlord normally provides after business hours and on holidays only.

B. **Shared Conference Rooms**.

Landlord and Tenant agree that one (1) conference room (which is currently known as Sedona) is part of the Premises and Tenant shall have exclusive use of said conference room. In addition, Tenant shall have the right to use other conference rooms in the Buildings in which the Premises are located; provided, however, that if Landlord needs the use of any such conference room, Landlord shall be entitled to use such conference room even if Tenant received the conference room first.

C. **Furniture**.

Tenant shall have the right to remove from the Premises any and all furniture owned by Tenant at any time that is owned by Tenant as long as Tenant repairs any damage caused by such removal and Tenant complies with any applicable Project-Wide Protocols and procedures for such removal.

D. **Contractor Safety Awareness**.

Any new employees, contractors, licensees, invitees, suppliers and agents who enter the Premises for any purpose other than visiting the Premises for a short period of time must take (or have previously taken) Landlord's contractor safety awareness programs (the "**Contractor Safety Awareness Programs**") before entering the Premises. Landlord reserves the right to

modify the Contractor Safety Awareness Programs at any time during the Term and Tenant shall be responsible for ensuring that its employees, contractors, licensees, invitees and suppliers comply with any new training procedures set forth in the revised Contractor Safety Awareness Programs.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the dates set forth below, to be effective as of the Effective Date.

**LANDLORD:**

**FREESCALE SEMICONDUCTOR, INC.**
a Delaware corporation

By: */s/ Lisa Su*
Print Name: Lisa Su
Its: Senior VP & Chief Technology Officer

Date: 6/6/08

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.,**
a Delaware corporation

By: */s/ Saied Tehrani*
Print Name: Saied Tehrani
Its: _____

Date: _____

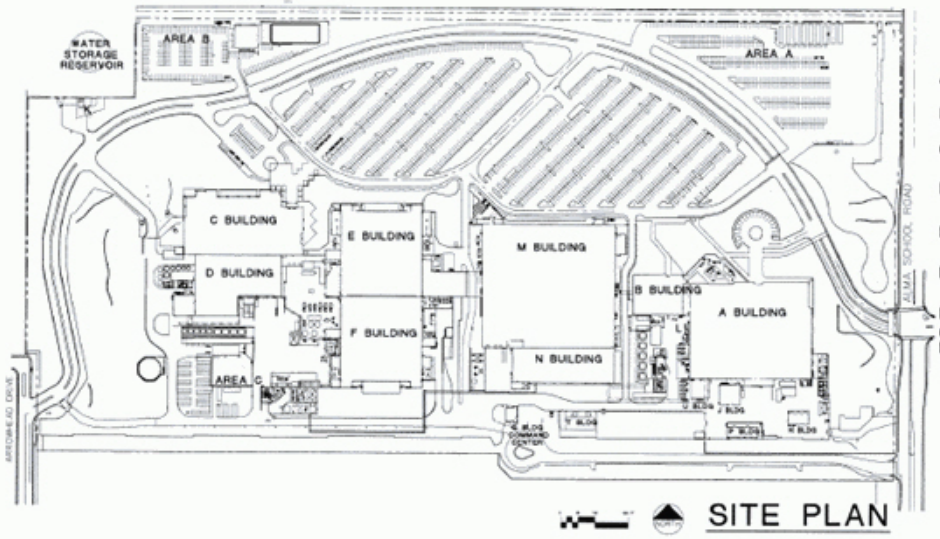
**[SIGNATURE PAGE TO LEASE AGREEMENT]**

**EXHIBIT A**

**Description of Project**

[Attached]

# Chandler - Freescale - Site Map




A Bldg - Multi-purpose

B Bldg - Multi-purpose

C Bldg - Multi-Purpose

D Bldg - Multi-purpose

E Bldg - Chandler FAB

F Bldg - Chandler FAB

M Bldg – Chandler Fab/ Office

N Bldg - Shell Space

M. Aguirre
Freescale Real Estate & Space Mgmt

January 24, 2008

**EXHIBIT B**

**Project-Wide Protocols**

[Attached]

Title: Equipment Decommissioning Plan

| Number: **12MAZ00153B001** | Issue: **B** |
|---|---|
| Date: **08** Nov **07** | Page **1** of **3** |

**DEPARTMENT:** _____

**EQUIPMENT OWNER:** _____

Phone Number: _____ Location Name: _____

Pager Number: _____

**EQUIPMENT TYPE**: _____

**ASSET TAG #:** _____ **EQUIPMENT NUMBER/ID:** _____

**LIST TOOL COMPONENTS:**

Equipment Components: _____

**FINAL EQUIPMENT DISPOSITION:**

Equipment Destination: _____

Final/Next Location Contact:

Company: _____

Name: _____ Phone: _____

Address: _____

**ESTIMATED DATE OF EQUIPMENT REMOVAL:** _____

**CHEMICALS CONTAINED, STORED, OR USED IN EQUIPMENT:**

Gaseous Chemicals: _____

Liquid Chemicals: _____

Solid Chemicals: _____

Lubricants/Oil: _____

Coolants/Refrigerants: _____

By-products/residue: _____

Others: _____

**OTHER HAZARDS:**

Radiation Sources: (laser, x-ray, radioactive source, RF, microwave, etc.)

Stored Capacitive Energy:

Others, please specify:

**REQUIRED PERSONAL PROTECTIVE EQUIPMENT (PPE) FOR DECONTAMINATION:**

Head Protection: _____

Eye/Face Protection: _____

Hand Protection: _____

Foot Protection: _____

Protective Clothing: _____

Respiratory Protection: _____

**CONTROL OF HAZRDOUS ENERGY (LOTO):**

List equipment specific LOTO procedures identifying all energy sources that could potentially be hazardous including electrical, chemical, mechanical, hydraulic, pneumatic, residual etc.

| Energy source | Location of energy isolation device: | Method of verifying isolation: |
|---|---|---|

**DECONTAMINATION PROCEDURES:**

| | General Procedures | Equipment-Specific Procedures |
|---|---|---|
| **Gases** | Process Gas Lines Evacuated And Purged | |
| **N/A** | Process Gas Line Shutoff Valves Closed | |
| | Process Gas Lines Capped | |
| **Liquid Chemicals** | Drain All Lines And Reservoirs | |
| **N/A** | Purge All Lines And Reservoirs (Indicate where rinse waters or solvents are drained to) | |
| | Cap And Secure. All Lines | |
| **Miscellaneous** | Drain All Pump Oils/Lubricants | |
| **N/A** | Drain All Coolants | |
| | Wipe Clean All Accessible Surfaces To Remove Any Chemical Residues | |
| | Remove any chemical residues in piping (Forelines) | |
| | Identify disposition of Hazardous Materials/Waste removed from equipment; Call EHS for assistance | |
| | Cap MI Inlet And Exhaust Ports (Sec Environmental Department (Radio 1B) | |

***ELECTRONIC*** *VERSONS ARE UNCONTROLLED EXCEPT WHEN ACCESSED DIRECTLY FROM COMPASS SERVER.*
***PRINTED*** *VERSIONS ARE UNCONTROLLED EXCEPT WHEN STAMPED "CONTROLLED COPY" IN* ***RED****.*

Meet with EHS to determine and identify any testing requirements for decontamination verification. Check box and list testing requirements if a need for verification has been determined.

| |
|---|
| |

**SPECIAL CASES:**

Further decontamination is required once the equipment is removed from its existing location.

Prior to removal of the equipment from its existing location, wipe accessible surfaces of the equipment to remove any chemical residue, and appropriately seal and cap all facility services and connections.

Location of equipment's final decontamination: _____

Personnel performing the decontamination: _____

Chemical removal is not possible or desirable by the next receiver's need and/or potential harm to the equipment could result from the removal of chemicals.

Provide a list of chemicals/gases remaining in the equipment after decontamination:

| |
|---|
| |

Identify if equipment parts that are routinely replaced or removed such as filters, o-rings, or oil traps are replaced with clean parts prior to equipment transfer, or identify if any such parts arc removed but not replaced:

| |
|---|
| |

**APPROVALS:**

The Equipment Decontamination Plan must be approved BEFORE any decommissioning activity takes place.

| **APPROVALS** | **PRINT NAME** | **DATE** |
|---|---|---|
| PROJECT MANAGER | | |
| EQUIPMENT/ENGINEER/OWNER | | |
| CHEMICAL DELIVERY REPRESENTATIVE | | |
| ENVIRONMENTAL PROFESSIONAL | | |
| SAFETY PROFESSIONAL | | |

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Title: Equipment Decommissioning Plan

| Number: **12MAZ00153B002** | Issue: **C** |
|---|---|
| Date: **05** May **08** | Page **1** of **2** |

***The Checklist is to remain with the equipment until decommissioning/decontamination is complete***

Equipment #/ID: Asset Tag #:

Equipment Type: Location Name:

Equipment Location:

Equipment Owner (Include phone/pager):

Project Manager/Coordinator (Include phone/pager):

Is further decontamination is required once the equipment is removed from its existing/operating location?

For equipment that does not contain, come in contact with, or use chemicals, skip items 2-5.

Place 'N/A' in any section that does not apply.

STEP #1 PRINT AND SIGN NAME: DATE:

1 Gas Chemical Shutdown/Purge Complete:

2 Liquid Chemical Shutdown/Purge Complete:

3 Equipment Decontamination Verification*:

a. Equipment Owner:

b. EHS Approval (if liquid hazardous chemical only)

4 Equipment Process Shut Down:

**Go on to Step #2 only after Step #1 is complete**

STEP #2 PRINT AND SIGN NAME: DATE:

3 TGM/Fire Alarm Disconnect Complete:

4 Electrical Disconnect Complete:

5 Piping Disconnect Complete:

6 HVAC Disconnect Complete:

7 Ionizing/ Non-Ionizing Radiation Program Owner Approval:

8 Refrigerant Mgm't. Program Owner Approval:

9 EHS Final Approval:

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10 EHS inspection Results (completed by EHS): Yes No N/A

a. Areafluids removed (including lubricating oils)?

b. Are electrical sources disconnected?

c. Are all gas sources disconnected and capped?

d. Are exhaust and drain sources disconnected?

e. Is the equipment clean?

f. Is the equipment free of any visible stains or discolorations?

g. Are all equipment connections sealed and capped appropriately?

h. If equipment needs further decontamination, has it been inspected and read for final disposition?

EHS Comments: If you answered “no” to any questions in 16, please explain below:

| |
|---|
| |

* Note: The Equipment Engineer/Owner provides the verifying signature that the EHS approved Equipment Decontamination Plan has been followed and the decontamination procedures are completed.

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Title: Equipment Decommissioning Plan

| Number: **12MAZ00153B002** | Issue: **C** |
|---|---|
| Date: **02** Aug **2007** | Page **1** of **13** |

This document is intended to provide the Freescale Environmental, Health and Safety (EHS) Department with the minimum information required to allow a new chemical to be used for evaluation purposes. This information will be used for evaluation of personal protective equipment, personal and ambient air monitoring, required regulatory reporting, waste handling, material compatibility, and other EHS functions. Completion of this document is required for any chemical to be used at Freescale Chandler site and for which the MSDS does not provide CAS numbers for all constituents, component concentration information, and/or TSCA status.

Please indicate the chemical name according to the MSDS:

1. Does the chemical contain any of the constituents listed in Table 1 below (continued on next pages)? If so, please list constituent and weight percent.

**Table 1: Freescale Restricted Substances List**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000050-18-0 | Cyclophosphamide | 000076-13-1 | Freon 113 | 000354-21-2 | 1,1,2,-Trichloro-2,2-difluoroethane |
| 000054-62-6 | Aminopterin | 000076-14-2 | CFC-114 | 000354-23-4 | 1,2-Dichloro-1,1,2-trifluoroethane |
| 000056-23-5 | Carbon tetrachloride | 000076-14-2 | Dichlorotetrafluoroethane | 000354-23-4 | HCFC-123a |
| 000056-53-1 | Diethylstilbestrol | 000076-15-3 | CFC-115 | 000354-25-6 | 1-Chloro-1,1,2,2-tetrafluoroethane |
| 000056-55-3 | 1,2-Benzanthracene | 000076-15-3 | Monochloropentafluoroettrape | 000354-25-6 | HCFC-124a |
| 000056-55-3 | Benz[a]anthracene | 000091-59-8 | beta-Naphthylamine | 000354-56-3 | Pentachlorofluoroethane |
| 000062-38-4 | Phenylmercuric acetate | 000106-99-0 | 1,3-Butadiene | 000376-14-7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(hepta |
| 000062-38-4 | Phenylmercury acetate | 000107-30-2 | Chloromethyl methyl ether | 000383-07-3 | 2-Propenoic acid, 2-(butyl[(heptadecafluo |
| 000071-43-2 | Benzene | 000107-30-2 | Methane, chloromethoxy- | 000399-95-1 | 4-amino-3-fluorophenol |
| 000071-55-6 | Methyl chloroform | 000109-86-4 | 2-Methoxyethanol | 000422-56-0 | 3,3-Dichloro-1,1,1,2,2-pentafluoropropane |
| 000071-55-6 | 1,1,1-Trichloroethane | 000110-49-6 | 2-methoxyethyl acetate | 000422-56-0 | I-ICFC-225ca |
| 000075-01-4 | Ethene, chloro- | 000110-80-5 | Ethanol, 2-ethoxy- | 000423-50-7 | 1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5 |
| 000075-01-4 | Vinyl chloride | 000110-80-5 | 2-Ethoxyethanol | 000423-82-5 | 2-Propenoic acid, 2-[ethyl[(heptadecafluoro |
| 000075-07-0 | Acetaldehyde | 000111-15-9 | 2-ethoxyethyl acetate | 000502-39-6 | Methylmercuric dicyanamide |
| 000075-21-8 | Ethylene oxide | 000111-96-6 | Diethylene gylcol dimethyl ether | 000505-60-2 | Ethane, 1,1'-thiobis[2-chloro |
| 000075-21-8 | Oxirane | 000124-73-2 | Dibromotetrafluoroethane | 000505-60-2 | Mustard gas |
| 000075-43-4 | Dichlorofluoromethane | 000124-73-2 | Halon 2402 | 000507-55-1 | 1,3-Dichloro-1,1,2,2,3-pentafluoropropane |
| 00007543-4 | HCFC-21 | 000124-87-8 | Picrotoxin | 000507-55-1 | HCFC-225cb |
| 000075-45-6 | Chlorodifluoromethane | 000148-82-3 | Melphalan | 000542-88-1 | Bis(chloromethyl) ether |
| 000075-45-6 | HCFC-22 | 000151-38-2 | Methoxyethylmercuric acetate | 000542-88-1 | Chloromethyl ether |
| 000075-63-8 | Bromotnfluoromethane | 000305-03-3 | Chlorambucil | 000542-88-1 | Dichloromethyl ether |
| 000075-63-8 | Halon 1301 | 000306-83-2 | 2,2-Dichloro-1,1,1-trifluoroethane | 000542-88-1 | Methane, oxybis[chloro |
| 000075-68-3 | 1-Chloro-1,1-difluoroethane | 000306-83-2 | HCFC-123 | 000542-90-5 | Ethylthiocyanate |
| 000075-68-3 | HCFC-142b | 000307-35-7 | 1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5 | 000543-90-8 | Cadmium acetate |
| 000075-69-4 | CFC-11 | 000307-51-7 | 1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5 | 000592-04-1 | Mercuric cyanide |
| 000075-69-4 | Trichlorofluoromethane | 000335-05-7 | Methanesulfonyl fluoride, trifluoro- | 000592-85-8 | Mercuric thiocyanate |
| 000075-69-4 | Trichloromonofluoromethane | 000335-24-0 | Cyclohexanesulfonic acid, 1,2,2,3,3,4,5 | 000593-70-4 | Chlorofluoromethane |
| 000075-71-8 | CFC-12 | 000335-71-7 | 1-Heptanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5 | 000593-70-4 | HCFC 31 |
| 000075-71-8 | Dichlorodifluoromethane | 000335-77-3 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5, | 000628-86-4 | Mercury fulminate |
| 000075-72-9 | CFC-13 | 000335-97-7 | 1-Pentanesulfonamide, 1,1,2,2,3,3,4,4,5 | 000662-01-1 | CFC 216 |
| 000075-72-9 | Chlorotrifluoromethane | 000353-59-3 | Bromochlorodifluoromethane | 000662-01-1 | 1,3-Dichloro-1,1,2,2,3,3-hexafluoropropane |
| 000075-88-7 | 2-Chloro-1,1,1-trifluoroethane | 000353-59-3 | Halon 1211 | 000679-85-6 | HCFC 244 |
| 000075-88-7 | HCFC-133a | 000354-14-3 | HCFC-121 | 000754-91-6 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5 |
| 000076-12-0 | 1,1,2,2,-Tetrachloro-1,2-difluoroethane | 000354-14-3 | 1,1,2,2-Tetrachloro-1-fluoroethane | 000812-04-4 | 1,1-Dichloro-1,2,2-trifluoroethane |

**Table 1: Freescale Restricted Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000814-49-3 | Diethyl chlorophosphate | 0134237-31-3 | Pentachlorotrifluoropropane | 068958-61-2 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[ |
| 001306-19-0 | Cadmium oxide | 0134237-32-4 | HCFC 121 | 073772-32-4 | 1-Propanesulfonic acid, 3-[[3-(dimethyla |
| 001314-20-1 | Thorium dioxide | 0134237-34-6 | HCFC 131 | 077536-66-4 | Asbestos compounds |
| 001332-21-4 | Asbestos (friable) | 0134237-35-7 | HCFC 221 | 077536-67-5 | Asbestos compounds |
| 001336-36-3 | PCBs | 0134237-36-8 | HCFC 222 | 077536-68-6 | Asbestos compounds |
| 001336-36-3 | Polychlorinated biphenyls | 0134237-37-9 | HCFC 223 | 081190-38-7 | 1-Propanaminium, N-(2-hydroxyethyl)-3- |
| 001600-27-7 | Mercuric acetate | 0134237-38-0 | HCFC 224 | 091081-99-1 | Sulfonamides, C4-8-alkane, perfluoro, N- |
| 001649-08-7 | 1,2-Dichloro-1,1-difluoroethane | 0134237-39-1 | HCFC 232 | 094133-90-1 | 1-Propanesulfonic acid, 3-[13-(dimethyla |
| 001649-08-7 | HCFC-132b | 0134237-40-4 | HCFC 233 | 098999-57-6 | Sulfonamides, C7-8-alkane, perfluoro, N- |
| 001652-63-7 | 1-Propanaminium, 3-[[(heptadecafluoroo | 0134237-41-5 | HCFC 235 | 117806-54-9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 |
| 001689-84-5 | Bromoxynil | 0134237-42-6 | HCFC 242 | 127133-66-8 | 2-Propenoic acid, 2-methyl-, polymers wit |
| 001689-99-2 | Bromoxynil octanoate | 0134237-43-7 | HCFC 243 | 129813-71-4 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 001691-99-2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3.3,4 | 0134237-44-8 | HCFC 253 | 132207-32-0 | Asbestos compounds |
| 001717-00-6 | 1,1-Dichloro-1-fluoroethane | 0134237-45-9 | HCFC 261 | 132207-33-1 | Asbestos compounds |
| 001717-00-6 | HCFC-141b | 0134308-72-8 | HCFC 226 | 148240-78-2 | Fatty acids, C18-unsatd., timers, 2-[[(hep |
| 001746-01-6 | 2,3,7,8-Tetrachlorodibenzo-p-dioxin | 0134452-44-1 | CFC 212 | 148240-80-6 | Fatty acids, C18-unsatd., trimers, 2-[meth |
| 001763-23-1 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6 | 0134452-44-1 | Hexachlorodifluoropropane | 148240-82-8 | Fatty acids, C18-unsatd., trimers, 2-[meth |
| 001937-37-7 | C.I. Direct Black 38 | 0135401-87-5 | CFC 211 | 148684-79-1 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 002223-93-0 | Cadmium stearate | 0135401-87-5 | Heptachlorofluoropropane | 160901-25-7 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 002250-98-8 | 1-Octanesulfonamide, N,N',N"-[phosphinyl | 014650-24-9 | 2-Propenoic acid, 2-methyl-, 2-[[(heptade | 178094-69-4 | 1-Octanesulfonamide, N-[3-(climethyloxid |
| 002439-01-2 | Chinomethionat | 017202-41-4 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 | 178535-22-3 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 002602-46-2 | Cl. Direct Blue 6 | 017804-35-2 | Benomyl | 182700-90-9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6 |
| 002795-39-3 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6 | 021908-53-2 | Mercuric oxide | 192662-29-6 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 002837-89-0 | 2-Chloro-1,1,1,2-tetrafluoroethane | 024448-09-7 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6 | 251099-16-8 | 1-Decanaminium, N-decyl-N,N-dimethyl- |
| 002837-89-0 | HCFC-124 | 025268-77-3 | 2-Propenoic acid, 2-[[(heptadecafluoro | 306973-46-6 | Fatty acids, linseed-oil, dimers, 2-[[(hepta |
| 002991-51-7 | Glycine, N-ethyl-N-[(heptadecafluoroocty | 029081-56-9 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 | 306973-47-7 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 004151-50-2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4 | 029117-08-6 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl | 306974-19-6 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 004259-43-2 | CFC 215 | 029255-31-0 | CFC 214 | 306974-28-7 | Siloxanes and Silicones, di-Me, mono(3 |
| 004259-43-2 | Trichloropentafluoropropane | 029255-31-0 | Tetrachlortetrafluoropropane | 306974-45-8 | Sulfonic acids, C6-8-alkane, perfluoro, c |
| 007439-97-6 | Mercury | 029457-72-5 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 | 306974-63-0 | Fatty acids, C18-unsatd., dimers, 2- [meth |
| 007440-41-7 | Beryllium | 030381-98-7 | 1-Octanesulfonamide, N,N'-[phosphinico | 306975-56-4 | Propanoic acid, 3-hydroxy-2-(hydroxymet |
| 007440-43-9 | Cadmium | 031506-32-8 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6 | 306975-57-5 | Propanoic acid, 3-hydroxy-2-(hydroxymet |
| 007487-94-7 | Mercuric chloride | 033089-61-1 | Amitraz | 306975-62-2 | 2-Propenoic acid, 2-methyl-, dodecyl est |
| 007782-86-7 | Mercurous nitrate | 038006-74-5 | 1-Propanaminium, 3-[[(heptadecafluoro | 306975-84-8 | Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.o |
| 007783-35-9 | Mercuric sulfate | 038850-58-7 | 1-Propanaminium, N-(2-hydroxyethyl)-N,N | 306975-85-9 | 2-Propenoic acid, 2-methyl-, dodecyl est |
| 007789-06-2 | Strontium chromate | 040630-65-7 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-non | 306976-25-0 | 1-Hexadecanaminium, N,N-dimethyl-N-[2 |
| 007789-42-6 | Cadmium bromide | 053404-19-6 | Bromacil, lithium salt | 306976-55-6 | 2-Propenoic acid, 2-methyl-, 2-methylpro |
| 007790-79-6 | Cadmium fluoride | 053469-21-9 | Aroclor 1242 | 306977-10-6 | 2-Propenoic acid, 2-methyl-, 2-(dimethyla |
| 008001-58-9 | Creosote | 055120-77-9 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6, | 306977-58-2 | 2-Propenoic acid, 2-methyl-, 3-(trimethox |
| 010045-94-0 | Mercuric nitrate | 057589-85-2 | Benzoic acid, 2,3,4,5-tetrachloro-6 | 306978-04-1 | 2-Propenoic acid, butyl ester, polymers w |
| 010108-64-2 | Cadmium chloride | 059071-10-2 | 2-Propenoic acid, 2-[ethyl[(pentadecafluo | 306978-65-4 | Hexane, 1,6-diisocyanato-, homopolymer |
| 010124-36-4 | Cadmium sulphate | 060207-90-1 | Propiconazole | 306979-40-8 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methy |
| 010415-75-5 | Mercurous nitrate | 061660-12-6 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4 | 306980-27-8 | Sulfonamides, C4-8-alkane, perfluoro, N |
| 011096-82-5 | Aroclor 1260 | 067584-42-3 | Cyclohexanesulfonic acid, decafluoro(pe | N/A | Cadmium Compounds |
| 011097-69-1 | Aroclor 1254 | 067906-42-7 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 | N/A | CFC 12/1-IFC 152a, 73.8/26.2 wt % |
| 011104-28-2 | Aroclor 1221 | 067969-69-1 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4 | N/A | CFC 12/HCFC 22, 25.0/75.0 wt % |
| 011141-16-5 | Aroclor 1232 | 068156-01-4 | Cyclohexanesulfonic acid, nonafluorobis | N/A | HCFC 22/CFC 115, 48.8/51.2 wt % |
| 012172-73-5 | Asbestos compounds | 068298-62-4 | 2-Propenoic acid, 2-[butyl[(heptadecafluo | N/A | CFC 13/HCFC 23, 59.9/40.1 wt % |
| 0125426-39-3 | CFC 217 | 068329-56-6 | 2-Propenoic acid, eicosyl ester, polymer | N/A | HFC 32/CFC 115, 48.2/51.8 wt % |
| 0125426-39-3 | Chloropentafluoropropane | 068541-80-0 | 2-Propenoic acid, polymer with 2-[ethyl[(h | N/A | Glycol Ethers |
| 012672-29-6 | Aroclor 1248 | 068555-90-8 | 2-Propenoic acid, butyl ester, polymer w | N/A | Mercury Compounds |
| 012674-11-2 | Aroclor 1016 | 068555-91-9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(hept | N/A | Polybrominated Biphenyls (PBBs) |
| 0127564-83-4 | HCFC 234 | 068555-92-0 | 2-Propenoic acid, 2-methyl-, 2-[[(heptad | | |
| 0134190-48-0 | HCFC 231 | 068586-14-1 | 2-Propenoic acid, 2-[[(heptadecafluoroo | | |
| 0134190-49-1 | HCFC 241 | 068608-14-0 | Sulfonamides, C4-8-alkane, perfluoro, N | | |
| 0134190-51-5 | HCFC 251 | 068649-26-3 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3 | | |
| 0134190-52-6 | HCFC 252 | 068867-60-7 | 2-Propenoic acid, 2-[[(heptadecafluoroo | | |

| | | | |
|---|---|---|---|
| 0134190-53-7 | HCFC 262 | 068867-62-9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(hep |
| 0134190-54-8 | HCFC 271 | 068891-96-3 | Chromium, diaquatetrachloro[.mu.-[N |
| 0134237-31-3 | CFC 213 | 068909-15-9 | 2-Propenoic acid, eicosyl ester, polymer |

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2. Does the chemical contain any of the constituents listed in Table 2 below (continued on next pages)? If so, please list constituent and weight percent.

**Table 2: Freescale Banned Substances List**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000056-23-5 | Carbon tetrachloride | 000124-73-2 | Halon 2402 | 000630-10-4 | Selenourea |
| 000057-12-5 | Cyanides (soluble salts and complexes) | 000124-87-8 | Picrotoxin | 000632-79-1 | Tetrabromophthalic anhydride (TBPA) |
| 000058-36-6 | Phenoxarsine, 10,10'-oxydi- | 000143-33-9 | Sodium cyanide (Na(CN)) | 000639-58-7 | Triphenyltin chloride |
| 000062-38-4 | Phenylmercuric acetate | 000151-38-2 | Methoxyethylmercuric acetate | 000662-01-1 | CFC 216 |
| 000062-38-4 | Phenylmercury acetate | 000151-50-8 | Potassium cyanide | 000675-14-9 | Cyanuric fluoride |
| 000071-55-6 | Methyl chloroform | 000156-62-7 | Calcium cyanamide | 000679-85-6 | HCFC 244 |
| 000071-55-6 | 1,1,1-Trichloroethane | 000301-04-2 | Lead acetate | 000692-42-2 | Diethylarsine |
| 000074-90-8 | Hydrocyanic acid | 000306-83-2 | 2,2-Dichloro-1,1,1-trifluoroethane | 000696-28-6 | Dichlorophenylarsine |
| 000074-90-8 | Hydrogen cyanide | 000306-83-2 | HCFC-123 | 000696-28-6 | Phenyl dichloroarsine |
| 000075-43-4 | Dichlorofluoromethane | 000353-59-3 | Bromochlorodifluoromethane | 000812-04-4 | 1,1-Dichloro-1,2,2-trifluoroethane |
| 000075-43-4 | HCFC-21 | 000353-59-3 | Halon 1211 | 000812-04-4 | HCFC-123b |
| 000075-45-6 | Chlorodifluoromethane | 000354-14-3 | HCFC-121 | 000900-95-8 | Stannane, acetoxytriphenyl- |
| 000075-45-6 | HCFC-22 | 000354-14-3 | 1,1,2,2-Tetrachloro-1-fluoroethane | 001066-30-4 | Chromic acetate |
| 000075-63-8 | Bromotrifluoromethane | 000354-21-2 | HCFC 122 | 001066-45-1 | Trimethyltin chloride |
| 000075-63-8 | Halon 1301 | 000354-21-2 | 1,1,2,-Trichloro-2,2-difluoroethane | 001072-35-1 | Lead stearate |
| 000075-68-3 | 1-Chloro-1,1-difluoroethane | 000354-23-4 | 1,2-Dichloro-1,1,2-trifluoroethane | 001163-19-5 | Decabromodiphenyl oxide |
| 000075-68-3 | HCFC-142b | 000354-23-4 | HCFC-123a | 001303-28-2 | Arsenic pentoxide |
| 000075-69-4 | CFC-11 | 000354-25-6 | 1-Chloro-1,1,2,2-tetrafluoroethane | 001303-32-8 | Arsenic disulfide |
| 000075-69-4 | Trichlorofluoromethane | 000354-25-6 | HCFC-124a | 001303-33-9 | Arsenic trisulfide |
| 000075-69-4 | Trichloromonofluoromethane | 000354-56-3 | Pentachlorofluoroethane | 001306-19-0 | Cadmium oxide |
| 000075-71-8 | CFC-12 | 000422-56-0 | 3,3-Dichloro-1,1,1,2,2-pentafluoropropane | 001309-64-4 | Antimony trioxide |
| 000075-71-8 | Dichlorodifluoromethane | 000422-56-0 | HCFC-225ca | 001314-32-5 | Thallic oxide |
| 000075-72-9 | CFC-13 | 000460-19-5 | Cyanogen | 001314-87-0 | Lead sulfide |
| 000075-72-9 | Chlorotrifluoromethane | 000502-39-6 | Methylmercuric dicyanamide | 001327-52-2 | Arsenic acid |
| 000075-74-1 | Plumbane, tetramethyl- | 000506-61-6 | Potassium silver cyanide | 001327-53-3 | Arsenic trioxide |
| 000075-74-1 | Tetramethyllead | 000506-64-9 | Silver cyanide | 001327-53-3 | Arsenous oxide |
| 000075-88-7 | 2-Chloro-1,1,1-trifluoroethane | 000506-68-3 | Cyanogen bromide | 001332-21-4 | Asbestos (friable) |
| 000075-88-7 | HCFC-133a | 000506-77-4 | Cyanogen chloride | 001335-32-6 | Lead subacetate |
| 000076-12-0 | 1,1,2,2,-Tetrachloro-1,2-difluoroethane | 000506-77-4 | Cyanogen chloride ((CN)CI) | 001336-36-3 | PCBs |
| 000076-13-1 | Ethane, 1,1,2-trichloro-1,2,2,-trifluoro- | 000506-78-5 | Cyanogen iodide | 001336-36-3 | Polychlorinated biphenyls |
| 000076-13-1 | Freon 113 | 000507-55-1 | 1,3-Dichloro-1,1,2,2,3-pentafluoropropane | 001600-27-7 | Mercuric acetate |
| 000076-14-2 | CFC-114 | 000507-55-1 | HCFC-225cb | 001649-08-7 | 1,2-Dichloro-1,1-difluoroethane |
| 000076-14-2 | Dichlorotetrafluoroethane | 000542-62-1 | Barium cyanide | 001649-08-7 | HCFC-132b |
| 000076-15-3 | CFC-115 | 000543-90-8 | Cadmium acetate | 001717-00-6 | 1,1-Dichloro-1-fluoroethane |
| 000076-15-3 | Monochloropentafluoroethane | 000544-92-3 | Copper cyanide | 001717-00-6 | HCFC-141b |
| 000078-00-2 | Tetraethyl lead | 000557-19-7 | Nickel cyanide | 001762-95-4 | Ammonium thiocyanate |
| 000079-94-7 | Tetrabromobisphenol A (TBBA) | 000557-21-1 | Zinc cyanide | 001983-10-4 | Tributyltin fluoride |
| 000085-22-3 | Pentabromoethylbenzene (5BEB) | 000563-68-8 | Thallium(I) acetate | 002155-70-6 | Tributyltin methacrylate |
| 000098-05-5 | Benzenearsonic acid | 000592-01-8 | Calcium cyanide | 002223-93-0 | Cadmium stearate |
| 000109-86-4 | 2-Methoxyethanol | 000592-04-1 | Mercuric cyanide | 002636-26-2 | Cyanophos |
| 000110-49-6 | 2-methoxyethyl acetate | 000592-85-8 | Mercuric thiocyanate | 002757-18-8 | Thallous malonate |
| 000110-80-5 | Ethanol, 2-ethoxy- | 000592-87-0 | Lead thiocyanate | 002837-89-0 | 2-Chloro-1,1,1,2-tetrafluoroethane |
| 000110-80-5 | 2-Ethoxyethanol | 000593-60-2 | Vinyl bromide | 002837-89-0 | HCFC-124 |
| 000111-15-9 | 2-ethoxyethyl acetate | 000593-70-4 | Chlorofluoromethane | 003194-55-6 | Hexabromocyclododecane (HBCD) |
| 000111-96-6 | Diethylene gylcol dimethyl ether | 000593-70-4 | HCFC 31 | 003278-89-5 | tribromophenyl ally' ether (TBP-AE) |
| 000118-79-6 | 2,4,6-Tribromophenol | 000597-64-8 | Tetraethyltin | 003296-90-0 | Dibromoneopentyl glycol (DBNPG) |
| 000124-73-2 | D bromotetrafluoroethane | 000628-86-4 | Mercury fulminate | 003322-93-8 | Dibromoethyldibromocyclohexane |

**Table 2: Freescale Banned Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 003322-93-8 | Dibromoethyldibromocyclohexane | 007787-49-7 | Beryllium fluoride | 0134190-53-7 | HCFC 262 |
| 004162-45-2 | TBBA-bis(2-hydroxyethyl ether) | 007787-55-5 | Beryllium nitrate | 0134190-54-8 | HCFC 271 |
| 004259-43-2 | CFC 215 | 007788-98-9 | Ammonium chromate | 0134237-31-3 | CFC 213 |
| 004259-43-2 | Trichloropentafluoropropane | 007789-00-6 | Potassium chromate | 0134237-31-3 | Pentachlorotrifluoropropane |
| 0052740-16-6 | Calcium arsenite | 007789-06-2 | Strontium chromate | 0134237-32-4 | HCFC 121 |
| 006533-73-9 | Thallium(l) carbonate | 007789-09-5 | Ammonium bichromate | 0134237-34-6 | HCFC 131 |
| 006533-73-9 | Thallous carbonate | 007789-42-6 | Cadmium bromide | 0134237-35-7 | HCFC 221 |
| 007428-48-0 | Lead stearate | 007789-61-9 | Antimony tribromide | 0134237-36-8 | HCFC 222 |
| 007439-92-1 | Lead | 007790-79-6 | Cadmium fluoride | 0134237-37-9 | HCFC 223 |
| 007439-97-6 | Mercury | 007791-12-0 | Thallium chloride TICI | 0134237-38-0 | HCFC 224 |
| 007440-02-0 | Nickel | 007791-12-0 | Thallous chloride | 0134237-39-1 | HCFC 232 |
| 007440-28-0 | Thallium | 007791-23-3 | Selenium oxychloride | 0134237-40-4 | HCFC 233 |
| 007440-36-0 | Antimony | 010025-73-7 | Chromic chloride | 0134237-41-5 | HCFC 235 |
| 007440-38-2 | Arsenic | 010025-91-9 | Antimony trichloride | 0134237-42-6 | HCFC 242 |
| 007440-41-7 | Beryllium | 010031-59-1 | Thallium sulfate | 0134237-43-7 | HCFC 243 |
| 007440-43-9 | Cadmium | 010045-94-0 | Mercuric nitrate | 0134237-44-8 | HCFC 253 |
| 007440-47-3 | Chromium | 010049-05-5 | Chromous chloride | 0134237-45-9 | HCFC 261 |
| 007446-08-4 | Selenium dioxide | 010099-74-8 | Lead nitrate | 0134308-72-8 | HCFC 226 |
| 007446-14-2 | Lead sulfate | 010101-53-8 | Chromic sulfate | 0134452-44-1 | CFC 212 |
| 007446-18-6 | Thallium(I) sulfate | 010101-63-0 | Lead iodide | 0134452-44-1 | Hexachlorodifluoropropane |
| 007446-18-6 | Thallous sulfate | 010102-18-8 | Sodium selenite | 013463-39-3 | Nickel carbonyl |
| 007446-27-7 | Lead phosphate | 010102-20-2 | Sodium tellurite | 0135401-87-5 | CFC 211 |
| 007487-94-7 | Mercuric chloride | 010102-45-1 | Thallium(I) nitrate | 0135401-87-5 | Heptachlorofluoropropane |
| 007488-56-4 | Selenium sulfide | 010102-48-4 | Lead arsenate | 013597-99-4 | Beryllium nitrate |
| 007631-89-2 | Sodium arsenate | 010108-64-2 | Cadmium chloride | 013654-09-6 | Decabromobiphenyl (DBB) |
| 007645-25-2 | Lead arsenate | 010124-36-4 | Cadmium sulphate | 013765-19-0 | Calcium chromate |
| 007647-18-9 | Antimony pentachloride | 010124-50-2 | Potassium arsenite | 013814-96-5 | Lead fluoborate |
| 007718-54-9 | Nickel chloride | 010415-75-5 | Mercurous nitrate | 014216-75-2 | Nickel nitrate |
| 007738-94-5 | Chromic acid | 010588-01-9 | Sodium bichromate | 014307-35-8 | Lithium chromate |
| 007758-95-4 | Lead chloride | 011096-82-5 | Aroclor 1260 | 015245-44-0 | Lead 2,4,6-trinitroresorcinoxide, |
| 007758-97-6 | Lead chromate | 011097-69-1 | Aroclor 1254 | 015699-18-0 | Nickel ammonium sulfate |
| 007775-11-3 | Sodium chromate | 011104-28-2 | Aroclor 1221 | 015739-80-7 | Lead sulfate |
| 007778-39-4 | Arsenic acid | 011115-74-5 | Chromic acid | 020566-35-2 | Tetrabromophthalic acid diol/ diester |
| 007778-44-1 | Calcium arsenate | 011141-16-5 | Aroclor 1232 | 021850-44-2 | TBBA-bis(2,3-dibromopropyl ether) |
| 007778-50-9 | Potassium bichromate | 012002-03-8 | Cupric acetoarsenite | 021908-53-2 | Mercuric oxide |
| 007782-49-2 | Selenium | 012002-03-8 | Paris green | 025327-89-3 | TBBA-bis(allyl ether) |
| 007782-82-3 | Sodium selenite | 012039-52-0 | Selenious acid, dithallium(1+) salt | 025357-79-3 | Disodium salt of tetrabromophthalate |
| 007782-86-7 | Mercurous nitrate | 012054-48-7 | Nickel hydroxide | 025637-99-4 | Hexabromocyclododecane |
| 007783-00-8 | Selenious acid | 012124-97-9 | Ammonium bromide | 026762-91-4 | Tribromophenyl allyl ether (TBP-AE) |
| 007783-07-5 | Hydrogen selenide | 012172-73-5 | Asbestos compounds | 028300-74-5 | Antimony potassium tartrate |
| 007783-35-9 | Mercuric sulfate | 0125426-39-3 | CFC 217 | 029255-31-0 | CFC 214 |
| 007783-46-2 | Lead fluoride | 0125426-39-3 | Chloropentafluoropropane | 029255-31-0 | Tetrachlortetrafluoropropane |
| 007783-56-4 | Antimony trifluoride | 012672-29-6 | Aroclor 1248 | 032534-81-9 | Pentabromodiphenyl oxide (PBDPO) |
| 007783-70-2 | Antimony pentafluoride | 012674-11-2 | Aroclor 1016 | 032536-52-0 | Octabromodiphenyl oxide (OBDPO) |
| 007783-80-4 | Tellurium hexafluoride | 0127564-83-4 | HCFC 234 | 032588-76-4 | N,N'-ethylene bis(tetratbromophthalimide) |
| 007784-34-1 | Arsenous trichloride | 013356-08-6 | Fenbutatin oxide | 032844-27-2 | TBBA carbonate oligomer |
| 007784-40-9 | Lead arsenate | 013356-08-6 | Hexakis(2-methyl-2-phenylpropyl)di | 036483-57-5 | Tribromoneopentyl alcohol (TBNPA) |
| 007784-41-0 | Potassium arsenate | 013410-01-0 | Sodium selenate | 037211-05-5 | Nickel chloride |
| 007784-42-1 | Arsine | 0134190-48-0 | HCFC 231 | 037853-59-1 | Bis(tribromophenoxy)ethane (HBPE) |
| 007784-46-5 | Sodium arsenite | 0134190-49-1 | HCFC 241 | 041291-34-3 | Ethylene bis(dibromonorboranedicarboxim |
| 007786-81-4 | Nickel sulfate | 0134190-51-5 | HCFC 251 | 052652-59-2 | Lead stearate |

**Table 2: Freescale Banned Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 056189-09-4 | Lead stearate | N/A | Cadmium Compounds | N/A | Arsenic Compounds |
| 057137-10-7 | Poly-tribromostyrene | N/A | CFC 12/HFC 152a, 73.8/26.2 wt % | N/A | Beryllium Compounds |
| 058965-66-5 | Tetradecabromodiphenoxybenzene | N/A | CFC 12/HCFC 22, 25.0/75.0 wt % | N/A | Chromium Compounds |
| 059447-55-1 | Poly(pentabromobenzyl acrylate) | N/A | HCFC 22/CFC 115, 48.8/51.2 wt % | N/A | Inorganic Cyanide Compounds |
| 059447-57-3 | Poly(pentabromobenzyl acrylate) | N/A | CFC 13/HCFC 23, 59.9/40.1 wt % | N/A | Lead Compounds |
| 066741-65-9 | Tribromopheynyl ally’ ether | N/A | HFC 32/CFC 115, 48.2/51.8 wt % | N/A | Nickel Compounds |
| 069882-11-7 | Poly(dibromophenylene oxide) | N/A | Glycol Ethers | N/A | Selenium Compounds |
| 071342-77-3 | TBBA carbonate oligomer | N/A | Mercury Compounds | N/A | Thallium Compounds |
| P-88-2106 | TBBA-diglycidyl ether (epoxy oligomer) | N/A | Polybrominated Biphenyls (PBBs) | | |

3 Does the chemical contain any of the constituents listed in Table 3 below (continued on next pages)? If so, please list constituent and weight percent.

**Table 3: Freescale Alert Substances List**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000050-00-0 | Formaldehyde | 000060-29-7 | Ethane, 1,1’-oxybis- | 000075-02-5 | Vinyl fluoride |
| 000050-00-0 | Formaldehyde (solution) | 000060-29-7 | Ethyl ether | 000075-07-0 | Acetaldehyde |
| 000050-29-3 | DDT | 000060-51-5 | Dimethoate | 000075-09-2 | Dichloromethane |
| 000050-32-8 | Benzo[a]pyrene | 000061-82-5 | Amitrole | 000075-09-2 | Methylene chloride |
| 000050-55-5 | Reserpine | 000062-44-2 | Phenacetin | 000075-12-7 | Formamide |
| 000051-21-8 | Fluorouracil | 000062-50-0 | Ethyl methanesulfonate | 000075-15-0 | Carbon disulfide |
| 000051-75-2 | Nitrogen mustard | 000062-53-3 | Aniline | 000075-26-3 | 2-Bromopropane |
| 000051-79-6 | Carbamic acid, ethyl ester | 000062-55-5 | Thioacetamide | 000075-27-4 | Dichlorobromomethane |
| 000051-79-6 | Ethyl carbamate | 000062-56-6 | Thiourea | 000075-55-8 | Aziridine, 2-methyl |
| 000051-79-6 | Urethane | 000062-74-8 | Sodium fluoroacetate | 000075-55-8 | Propyleneimine |
| 000053-70-3 | Dibenz[a,h]anthracene | 000062-75-9 | Methanamine, N-methyl-N-nitroso- | 000075-56-9 | Oxirane, methyl- |
| 000053-96-3 | 2-Acetylaminofluorene | 000062-75-9 | N-Nitrosodimethylamine | 000075-56-9 | Propylene oxide |
| 000054-11-5 | Nicotine | 000062-75-9 | Nitrosodimethylamine | 000075-74-1 | Plumbane, tetramethyl- |
| 000055-18-5 | N-Nitrosodiethylamine | 000063-25-2 | Carbaryl | 000075-74-1 | Tetramethyllead |
| 000057-12-5 | Cyanides (soluble salts and complexes) | 000064-67-5 | Diethyl sulfate | 000077-78-1 | Dimethyl sulfate |
| 000057-14-7 | 1,1-Dimethyl hydrazine | 000064-75-5 | Tetracycline hydrochloride | 000078-00-2 | Tetraethyl lead |
| 000057-14-7 | Dimethylhydrazine | 000064-86-8 | Colchicine | 000078-79-5 | 1,3-Butadiene, 2-methyl- |
| 000057-14-7 | Hydrazine, 1,1-dimethyl- | 000066-75-1 | Uracil mustard | 000078-79-5 | Isoprene |
| 000057-33-0 | Pentobarbital sodium | 000066-81-9 | Cycloheximide | 000079-01-6 | Trichloroethylene |
| 000057-41-0 | Phenytoin | 000067-64-1 | Acetone | 000079-06-1 | Acrylamide |
| 000057-57-8 | beta-Propiolactone | 000067-66-3 | Chloroform | 000079-16-3 | N-methylacetamide |
| 000058-36-6 | Phenoxarsine, 10,10’-oxydi- | 000067-72-1 | Hexachloroethane | 000079-44-7 | Dimethylcarbamyl chloride |
| 000058-89-9 | Cyclohexane, 1,2,3,4,5,6 hexachloro, gamma- | 000068-12-2 | Dimethylformamide | 000079-46-9 | 2-Nitropropane |
| 000058-89-9 | Hexachlorocyclohexane (gamma isomer) | 000068-12-2 | N,N-Dimethylformamide | 000079-94-7 | Tetrabromobisphenol A (TBBA) |
| 000058-89-9 | Lindane | 000070-25-7 | Guanidine, N-methyl-N’-nitro-N-nitroso- | 000081-81-2 | Warfarin |
| 000059-88-1 | Phenylhydrazine hydrochloride | 000072-20-8 | Endrin | 000081-81-2 | Warfarin, & salts, conc.>0.3% |
| 000059-89-2 | N-Nitrosomorpholine | 000074-83-9 | Methyl bromide | 000082-28-0 | 1-Amino-2-methylanthraquinone |
| 000060-09-3 | 4-Aminoazobenzene | 000074-90-8 | Hydrocyanic acid | 000084-74-2 | n-Butyl phthalate |
| 000060-11-7 | 4-Dimethylaminoazobenzene | 000074-90-8 | Hydrogen cyanide | 000084-74-2 | Dibutyl phthalate |
| 000060-11-7 | Dimethylaminoazobenzene | 000075-02-5 | Ethene, fluoro- | 000085-22-3 | Pentabromoethylbenzene (5BEB) |

**Table 3: Freescale Alert Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000088-06-2 | 2,4,6-Trichlorophenol | 000106-47-8 | p-Chloroaniline | 000135-20-6 | Benzeneamine, N-hydroxy-N-nitroso, amm |
| 000088-85-7 | Dinitrobutyl phenol | 000106-89-8 | Epichlorohydrin | 000135-20-6 | Cupferron |
| 000088-85-7 | Dinoseb | 000106-89-8 | Oxirane, (chloromethyl)- | 000137-17-7 | 2,4,5-trimethylaniline |
| 000088-89-1 | Picric acid | 000106-93-4 | 1,2-Dibromoethane | 000137-42-8 | Metham sodium |
| 000090-04-0 | o-Anisidine | 000106-93-4 | Ethylene dibromide | 000138-93-2 | Disodium cyanodithioimidocarbonate |
| 000090-94-8 | Michler's ketone | 000107-02-8 | Acrolein | 000139-13-9 | Nitrilotriacetic acid |
| 000091-23-6 | 2-nitroanisole | 000107-06-2 | 1,2-Dichloroethane | 000139-65-1 | 4,4'-Thiodianiline |
| 000091-66-7 | N,N-Diethylaniline | 000107-06-2 | Ethylene dichloride | 000142-59-6 | Nabam |
| 000091-94-1 | 3,3'-Dichlorobenzidine | 000107-13-1 | Acrylonitrile | 000143-33-9 | Sodium cyanide (Na(CN)) |
| 000092-67-1 | 4-Aminobiphenyl | 000107-13-1 | 2-Propenenitrile | 000143-50-0 | Kepone |
| 000092-87-5 | Benzidine | 000107-16-4 | Formaldehyde cyanohydrin | 000151-50-8 | Potassium cyanide |
| 000092-93-3 | 4-Nitrobiphenyl | 000108-88-3 | Toluene | 000151-56-4 | Aziridine |
| 000094-59-7 | Safrole | 000108-93-0 | Cyclohexanol | 000151-56-4 | Ethyleneimine |
| 000095-06-7 | sutfallate (ISO); 2-chlorallyl diethyldithioc | 000108-95-2 | Phenol | 000156-62-7 | Calcium cyanamide |
| 000095-50-1 | o-Dichlorobenzene | 000110-00-9 | Furan | 000189-55-9 | Benzo(rst)pentaphene |
| 000095-53-4 | o-Toluidine | 000115-28-6 | Chlorendic acid | 000189-55-9 | Dibenz[a,i]pyrene |
| 000095-69-2 | p-Chloro-o-toluidine | 000116-14-3 | Ethene, tetrafluoro- | 000189-64-0 | Dibenzo(a,h)pyrene |
| 000095-80-7 | 2,4-Diaminotoluene | 000116-14-3 | Tetrafluoroethylene | 000191-30-0 | Dibenzo(a,l)pyrene |
| 000096-09-3 | Styrene oxide | 000117-79-3 | 2-Aminoanthraquinone | 000192-65-4 | Dibenzo(a,e)pyrene |
| 000096-12-8 | DBCP | 000117-81-7 | Bis(2-ethylhexyl)phthalate | 000192-97-2 | Benzo[e]pyrene |
| 000096-12-8 | 1,2-Dibromo-3-chloropropane | 000117-81-7 | DEHP | 000193-39-5 | Indeno(1,2,3-cd)pyrene |
| 000096-13-9 | 2,3-dibromopropan-1-ol; 2,3-dibromo-1-pr | 000117-81-7 | Di(2-ethylhexyl) phthalate | 000205-82-3 | Benzo(j)fluoranthene |
| 000096-18-4 | 1,2,3-Trichloropropane | 000117-82-8 | bis(2-Methoxyethyl) phthalate | 000205-99-2 | Benzo[b]fluoranthene |
| 000096-23-1 | 1,3-dichloro-2-propanol | 000118-74-1 | Hexachlorobenzene | 000207-08-9 | Benzo(k)fluoranthene |
| 000096-45-7 | Ethylene thiourea | 000118-79-6 | 2,4,6-Tribromophenol | 000218-01-9 | Benzo(a)phenanthrene |
| 000096-48-0 | Butyrolactone | 000119-90-4 | 3,3'-Dimethoxybenzidine | 000224-42-0 | Dibenz(a,j)acridine |
| 000096-48-0 | Gamma-Butyrolactone | 000119-93-7 | 3,3'-Dimethylbenzidine | 000226-36-8 | Dibenz(a,h)acridine |
| 000097-23-4 | Dichlorophene | 000119-93-7 | o-Tolidine | 000298-00-0 | Methyl parathion |
| 000097-56-3 | C.I. Solvent Yellow 3 | 000120-36-5 | 2,4-DP | 000301-04-2 | Lead acetate |
| 000098-05-5 | Benzenearsonic acid | 000120-71-8 | p-Cresidine | 000301-12-2 | Oxydemeton methyl |
| 000098-07-7 | Benzoic trichloride | 000121-14-2 | 2,4-Dinitrotoluene | 000302-01-2 | Hydrazine |
| 000098-07-7 | Benzotrichloride | 000122-60-1 | Phenyl glycidyl ether | 000309-00-2 | Aldrin |
| 000099-65-0 | m-Dinitrobenzene | 000122-66-7 | 1,2-Diphenylhydrazine | 000319-84-6 | alpha-Hexachlorocyclohexane |
| 000100-25-4 | p-Dinitrobenzene | 000122-66-7 | Hydrazine, 1,2-diphenyl- | 000319-85-7 | beta-BHC |
| 000100-42-5 | Styrene | 000122-66-7 | Hydrazobenzene | 000330-55-2 | Linuron |
| 000100-44-7 | Benzyl chloride | 000123-39-7 | N-methylformamide | 000333-41-5 | Diazinon |
| 000100-63-0 | Phenylhydrazine | 000123-91-1 | 1,4-Dioxane | 000334-88-3 | Diazomethane |
| 000100-75-4 | N-Nitrosopiperidine | 000126-72-7 | Tris(2,3-dibromopropyl) phosphate | 000354-87-0 | Ethanesulfonyl fluoride, pentafluoro- |
| 000101-14-4 | MBOCA | 000126-99-8 | Chloroprene | 000355-03-3 | Cyclohexanesulfonyl fluoride, undecafluoro |
| 000101-14-4 | 4,4'-Methylenebis(2-chloroaniline) | 000127-18-4 | Perchloroethylene | 000355-46-4 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5, |
| 000101-61-1 | 4,4'-Methylenebis(N,N-dimethyl)benzena | 000127-18-4 | Tetrachloroethylene | 000358-23-6 | Methanesulfonic acid, trifluoro-, anhydride |
| 000101-77-9 | 4,4'-Methylenedianiline | 000127-19-5 | Dimethylacetamide | 000375-72-4 | 1-Butanesulfonyl fluoride, 1,1,2,2,3,3,4,4,4 |
| 000101-80-4 | 4,4'-Diaminodiphenyl ether | 000128-03-0 | Potassium dimethyldithiocarbamate | 000375-73-5 | 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4-no |
| 000101-90-6 | Diglycidyl resorcinol ether | 000128-04-1 | Sodium dimethyldithiocarbamate | 000375-81-5 | 1-Pentanesulfonyl fluoride, 1,1,2,2,3,3,4,4, |
| 000103-33-3 | Azobenzene | 000134-29-2 | o-Anisidine hydrochloride | 000375-92-8 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5 |
| 000106-46-7 | 1,4-Dichlorobenzene | 000134-32-7 | alpha-Naphthylamine | 000379-79-3 | Ergotamine tartrate |

**Table 3: Freescale Alert Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 000423-86-9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4, | 000639-58-7 | Triphenyltin chloride | 001589-47-5 | 2-Methoxypropanol |
| 000428-76-2 | Methane, bis[(trifluoromethyl)sulfonyl] | 000675-14-9 | Cyanuric fluoride | 001762-95-4 | Ammonium thiocyanate |
| 000460-19-5 | Cyanogen | 000677-67-8 | Acetyl fluoride, difluoro(fluorosulfonyl)- | 001836-75-5 | Benzene, 2,4-dichloro-1-(4-nitropher |
| 000485-31-4 | Binapacryl | 000680-31-9 | Hexamethylphosphoramide | 001836-75-5 | Nitrofen |
| 000506-61-6 | Potassium silver cyanide | 000684-93-5 | N-Nitroso-N-methylurea | 001869-77-8 | Glycine, N-ethyl-N-[(heptadecafluoro |
| 000506-64-9 | Silver cyanide | 000692-42-2 | Diethylarsine | 001893-52-3 | 2-Propenoic acid, 2-[ethyl[(tridecafluo |
| 000506-68-3 | Cyanogen bromide | 000696-28-6 | Dichlorophenylarsine | 001912-24-9 | Atrazine |
| 000506-77-4 | Cyanogen chloride | 000696-28-6 | Phenyl dichloroarsine | 001929-82-4 | Nitrapyrin |
| 000506-77-4 | Cyanogen chloride ((CN)Cl) | 000759-73-9 | N-Nitroso-N-ethylurea | 001983-10-4 | Tributyltin fluoride |
| 000506-78-5 | Cyanogen iodide | 000764-41-0 | 2-Butene, 1,4-dichloro- | 002127-74-4 | Ethanesulfonyl fluoride, 1,2,2,2-tetraf |
| 000509-14-8 | Methane, tetranitro- | 000764-41-0 | 1,4-Dichloro-2-butene | 002155-70-6 | Tributyltin methacrylate |
| 000509-14-8 | Tetranitromethane | 000812-94-2 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4, | 002263-09-4 | 1-Octanesulfonamide, N-butyl-1,1,2,2 |
| 000528-29-0 | o-Dinitrobenzene | 000838-88-0 | 4,4’-methylenedi-o-toluidine | 002312-35-8 | Propargite |
| 000540-73-8 | Hydrazine, 1,2-dimethyl- | 000872-50-4 | N-Methyl-2-pyrrolidone | 002425-06-1 | 1,2,3,6-tetrahydro-N-(1,1,2,2-tetrach |
| 000542-62-1 | Barium cyanide | 000900-95-8 | Stannane, acetoxytriphenyl- | 002475-45-8 | C.I.Disperse Blue 1 |
| 000542-75-6 | 1,3-Dichloropropene | 000924-16-3 | N-Nitrosodi-n-butylamine | 002636-26-2 | Cyanophos |
| 000542-75-6 | 1,3-Dichloropropylene | 000930-55-2 | N-Nitrosopyrrolidine | 002706-91-4 | 1-Pentanesulfonic acid, 1,1,2,2,3,3,4 |
| 000544-92-3 | Copper cyanide | 001066-30-4 | Chromic acetate | 002757-18-8 | Thallous malonate |
| 000554-13-2 | Lithium carbonate | 001066-45-1 | Trimethyltin chloride | 002921-88-2 | Chlorpyrifos |
| 000556-52-5 | 2,3-Epoxypropan-1-ol | 001072-35-1 | Lead stearate | 002965-52-8 | 1-Octanesulfonamide, N,N’-[phosphi |
| 000557-19-7 | Nickel cyanide | 001116-54-7 | N-Nitrosodiethanolamine | 002991-50-6 | Glycine, N-ethyl-N-[(heptadecafluoro |
| 000557-21-1 | Zinc cyanide | 001120-71-4 | Propane sultone | 002991-52-8 | Glycine, N-ethyl-N-[(heptadecafluoro |
| 000563-47-3 | 3-Chloro-2-methyl-1-propene | 001120-71-4 | 1,3-Propane sultone | 003107-18-4 | Cyclohexanesulfonic acid, undecaflu |
| 000563-68-8 | Thallium(I)acetate | 001134-23-2 | Cycloate | 003165-93-3 | 4-Chloro-o-toluidine, hydrochloride |
| 000573-58-0 | C.I. Direct Red 28 | 001163-19-5 | Decabromodiphenyl oxide | 003194-55-6 | Hexabromocyclododecane (HBCD) |
| 000581-89-5 | 2-nitronaphthalene | 001303-28-2 | Arsenic pentoxide | 003278-89-5 | tribromophenyl allyl ether (TBP-AE) |
| 000592-01-8 | Calcium cyanide | 001303-32-8 | Arsenic disulfide | 003296-90-0 | Dibromoneopentyl glycol (DBNPG) |
| 000592-62-1 | Methyl azoxy methyl acetate | 001303-33-9 | Arsenic trisulfide | 003322-93-8 | Dibromoethyldibromocyclohexane |
| 000592-87-0 | Lead thiocyanate | 001304-56-9 | Beryllium oxide | 003697-24-3 | 5-Methylchrysene |
| 000593-60-2 | Vinyl bromide | 001309-64-4 | Antimony trioxide | 003820-83-5 | 1-Octanesulfonamide, N-ethyl-1,1,2,2 |
| 000597-64-8 | Tetraethyltin | 001313-99-1 | Nickel monoxide | 003871-50-9 | Glycine, N-ethyl-N-[(heptadecafluoro |
| 000602-01-7 | 2,3-Dinitrotoluene | 001314-06-3 | Dinickel trioxide | 003871-99-6 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4, |
| 000602-87-9 | 5-nitroacenaphthene | 001314-32-5 | Thallic oxide | 003872-25-1 | 1-Pentanesulfonic acid, 1,1,2,2,3,3,4 |
| 000606-20-2 | 2,6-Dinitrotoluene | 001314-87-0 | Lead sulfide | 004162-45-2 | TBBA-bis(2-hydroxyethyl ether) |
| 000610-39-9 | 3,4-Dinitrotoluene | 001327-52-2 | Arsenic acid | 004549-40-0 | N-Nitrosomethylvinylamine |
| 000612-83-9 | 3,3’-Dichlorobenzidine dihydrochloride | 001327-53-3 | Arsenic trioxide | 0052740-16-6 | Calcium arsenite |
| 000615-05-4 | 2,4-Diaminoanisole | 001327-53-3 | Arsenous oxide | 005522-43-0 | 1-Nitropyrene |
| 000618-85-9 | 3,5-dinitrotoluene | 001330-20-7 | Xylene (mixed isomers) | 005902-51-2 | Terbacil |
| 000619-15-8 | 2,5-dinitrotoluene | 001333-82-0 | Chromium trioxide | 006533-73-9 | Thallium(I) carbonate |
| 000621-64-7 | Di-n-propylnitrosamine | 001335-32-6 | Lead subacetate | 006533-73-9 | Thallous carbonate |
| 000621-64-7 | N-Nitrosodi-n-propylamine | 001344-37-2 | C.I. Pigment Yellow 34 | 006804-07-5 | Methyl 3-(quinoxalin-2-ylmethylene) |
| 000625-45-6 | Methoxyacetic acid | 001420-07-1 | Dinoterb | 006807-17-6 | 4,4’-isobutylethylidenediphenol |
| 000630-08-0 | Carbon monoxide | 001464-53-5 | 2,2’-Bioxirane | 007428-48-0 | Lead stearate |
| 000630-10-4 | Selenourea | 001464-53-5 | Diepoxybutane | 007439-92-1 | Lead |
| 000632-79-1 | Tetrabromophthalic anhydride (TBPA | 001492-87-1 | 2-Propenoic acid, 4-[methyl[(nonafluor | 007439-96-5 | Manganese |
| 000636-21-5 | o-Toluidine hydrochloride | 001493-13-6 | Methanesulfonic acid, trifluoro- | 007440-02-0 | Nickel |

**Table 3: Freescale Alert Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 007440-28-0 | Thallium | 007789-00-6 | Potassium chromate | 013417-01-1 | 1-Octanesulfonamide, N-[3-(dimethylamino |
| 007440-36-0 | Antimony | 007789-09-5 | Ammonium bichromate | 013424-46-9 | Lead azide |
| 007440-38-2 | Arsenic | 007789-12-0 | Sodium dichromate, dihydrate | 013463-39-3 | Nickel carbonyl |
| 007440-47-3 | Chromium | 007789-61-9 | Antimony tribromide | 013597-99-4 | Beryllium nitrate |
| 007446-08-4 | Selenium dioxide | 007791-12-0 | Thallium chloride TlCl | 013654-09-6 | Decabromobiphenyl (DBB) |
| 007446-09-5 | Sulfur dioxide | 007791-12-0 | Thallous chloride | 013765-19-0 | Calcium chromate |
| 007446-14-2 | Lead sulfate | 007791-23-3 | Selenium oxychloride | 013814-96-5 | Lead fluoborate |
| 007446-18-6 | Thallium(I) sulfate | 008001-35-2 | Camphechlor | 014216-75-2 | Nickel nitrate |
| 007446-18-6 | Thallous sulfate | 008001-35-2 | Camphene, octachloro- | 014307-35-8 | Lithium chromate |
| 007446-27-7 | Lead phosphate | 008001-35-2 | Toxaphene | 0147545-41-3 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-no |
| 007488-56-4 | Selenium sulfide | 009006-42-2 | Metiram | 0148240-79-3 | Fatty acids, C18-unsatd., trimers, 2-[methy |
| 007601-90-3 | Perchloric acid | 010025-73-7 | Chromic chloride | 0148240-81-7 | Fatty acids, C18-unsatd., trimers, 2-[methy |
| 007631-89-2 | Sodium arsenate | 010025-91-9 | Antimony trichloride | 014977-61-8 | Chromic oxychloride |
| 007645-25-2 | Lead arsenate | 010031-59-1 | Thallium sulfate | 015245-44-0 | Lead 2,4,6-trinitroresorcinoxide, |
| 007646-79-9 | Cobalt dichloride | 010034-93-2 | Hydrazine sulfate | 015699-18-0 | Nickel ammonium sulfate |
| 007647-18-9 | Antimony pentachloride | 010049-05-5 | Chromous chloride | 015739-80-7 | Lead sulfate |
| 007664-41-7 | Ammonia (anhydrous) | 010099-74-8 | Lead nitrate | 016071-86-6 | C.I. Direct Brown 95 |
| 007718-54-9 | Nickel chloride | 010101-53-8 | Chromic sulfate | 016090-14-5 | Ethanesulfonyl fluoride, 2-[1-[difluoro[(trifle |
| 007726-95-6 | Bromine | 010101-63-0 | Lead iodide | 016543-55-8 | N-Nitrosonornicotine |
| 007738-94-5 | Chromic acid | 010102-18-8 | Sodium selenite | 016812-54-7 | nickel sulphide |
| 007758-01-2 | Potassium bromate | 010102-20-2 | Sodium tellurite | 017329-79-2 | 2-Propenoic acid, 2-[ethyl[(nonafluorobutyl) |
| 007758-95-4 | Lead chloride | 010102-45-1 | Thallium(I) nitrate | 017570-76-2 | Lead(II) methanesulphonate |
| 007758-97-6 | Lead chromate | 010102-48-4 | Lead arsenate | 0180582-79-0 | Sulfonic acids, C6-12-alkane, .gamma.-.or |
| 007775-11-3 | Sodium chromate | 010124-43-3 | Cobalt sulphate | 018883-66-4 | Streptozotocin |
| 007778-39-4 | Arsenic acid | 010124-50-2 | Potassium arsenite | 020566-35-2 | Tetrabromophthalic acid diol/ diester |
| 007778-44-1 | Calcium arsenate | 0103361-09-7 | Flumioxazin | 021055-88-9 | Carbamic acid, (4-methyl-1,3-phenylene)bi |
| 007778-50-9 | Potassium bichromate | 010453-86-8 | Resmethrin | 0212335-64-3 | 2-Propenoic acid, reaction products with N- |
| 007782-49-2 | Selenium | 010588-01-9 | Sodium bichromate | 021725-46-2 | Cyanazine |
| 007782-82-3 | Sodium selenite | 0108225-03-2 | (6-(4-hydroxy-3-(2-methoxyphenylazo)-2- | 021850-44-2 | TBBA-bis(2,3-dibromopropyl ether) |
| 007783-00-8 | Selenious acid | 011115-74-5 | Chromic acid | 023564-05-8 | Thiophanate-methyl |
| 007783-07-5 | Hydrogen selenide | 0119738-06-6 | tetrahydrofurfuryl (R)-2-[4-(6-chloroquinox | 024602-86-6 | Tridemorph |
| 007783-46-2 | Lead fluoride | 012002-03-8 | Cupric acetoarsenite | 024613-89-6 | Chromic chromate |
| 007783-56-4 | Antimony trifluoride | 012002-03-8 | Paris green | 024924-36-5 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4 |
| 007783-70-2 | Antimony pentafluoride | 012035-36-8 | nickel dioxide | 025154-54-5 | Dinitrobenzene (mixed isomers) |
| 007783-80-4 | Tellurium hexafluoride | 012035-72-2 | nickel subsulphide | 025321-14-6 | Dinitrotoluene (mixed isomers) |
| 007784-34-1 | Arsenous trichloride | 012039-52-0 | Selenious acid, dithallium(1+) salt | 025327-89-3 | TBBA-bis(allyl ether) |
| 007784-40-9 | Lead arsenate | 012054-48-7 | Nickel hydroxide | 025357-79-3 | Disodium salt of tetrabromophthalate |
| 007784-41-0 | Potassium amenate | 012124-97-9 | Ammonium bromide | 025637-99-4 | Hexabromocyclododecane |
| 007784-42-1 | Arsine | 012510-42-8 | Erionite | 025808-74-6 | Lead hexafluorosilicate |
| 007784-46-5 | Sodium arsenite | 012656-85-8 | C.I. Pigment Red 104 | 026471-62-5 | Benzene, 1,3-diisocyanatomethyl- |
| 007786-81-4 | Nickel suffate | 0132843-44-8 | Ethanesulfonamide, 1,1,2,2,2-pentafluoro- | 026471-62-5 | Toluenediisocyanate (mixed isomers) |
| 007787-47-5 | Beryllium chloride | 013356-08-6 | Fenbutatin oxide | 026471-62-5 | Toluene diisocyanate (unspecified isomer) |
| 007787-49-7 | Beryllium fluoride | 013356-08-6 | Hexakis(2-methyl-2-phenylpropyl)distann | 026628-22-8 | Sodium azide (Na(N3)) |
| 007787-55-5 | Beryllium nitrate | 013360-57-1 | dimethylsulfamoylchloride | 026644-46-2 | N,N'-(1,4-PiperazinediyIbis(2,2,2-trichloroe |
| 007788-98-9 | Ammonium chromate | 013410-01-0 | Sodium selenate | 026644-46-2 | Triforine |

**Table 3: Freescale Alert Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 026654-97-7 | Ethanesulfonyl fluoride, 2-[1-[difluoro[(tri | 055910-10-6 | Glycine, N-[(heptadecafluoroocty | 067906-70-1 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(tride |
| 026762-91-4 | Tribromophenyl allyl ether (TBP-AE) | 056189-09-4 | Lead stearate | 067906-71-2 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(tride |
| 027140-08-5 | Phenylhydrazine hydrochloride | 056372-23-7 | Poly(oxy-1,2-ethanediyl), .alpha.- | 067906-73-4 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(unde |
| 027607-61-0 | 1-Nonanesulfonyl chloride, 3,3,4,4,5,5,6 | 056773-42-3 | Ethanaminium, N,N,N-triethyl-, s | 067906-74-5 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(unde |
| 027619-88-1 | 1-Hexanesulfonyl chloride, 3,3,4,4,5,5,6 | 057044-25-4 | ‘R-2,3-epoxy-1-propanol | 067923-61-9 | 1-Heptanesulfonamide, N-ethyl-1,1,2,2,3,3 |
| 027619-89-2 | 1-Octanesulfonyl chloride, 3,3,4,4,5,5,6, | 057137-10-7 | Poly-tribromostyrene | 067939-33-7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(nona |
| 027619-90-5 | 1-Decanesulfonyl chloride, 3,3,4,4,5,5,6 | 057213-69-1 | Triclopyr triethylammonium salt | 067939-34-8 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(nona |
| 027619-91-6 | 1-Dodecanesulfonyl chloride, 3,3,4,4,5,5 | 058920-31-3 | 2-Propenoic acid, 4-[[(heptadeca | 067939-36-0 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(pent |
| 027619-97-2 | 1-Octanesulfonic acid, 3,3,4,4,5,5,6,6,7, | 058965-66-5 | Tetradecabromodiphenoxybenze | 067939-37-1 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(pent |
| 028300-74-5 | Antimony potassium tartrate | 059447-55-1 | Poly(pentabromobenzyl acrylate | 067939-42-8 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3, |
| 029420-49-3 | 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4- | 059447-57-3 | Poly(pentabromobenzyl acrylate | 067939-61-1 | 2-Propenoic acid, 2-methyl-, 4-[methyl[(tri |
| 031175-20-9 | Ethanesulfonic acid, 2-[1-[difluoro[(trifle | 061577-14-8 | 2-Propenoic acid, 2-methyl-, 4-[[( | 067939-87-1 | 1-Pentanesulfonamide, N,N’-[phosphinicot |
| 032534-81-9 | Pentabromodiphenyl oxide (PBDPO) | 061798-69-4 | 1-Propanaminium, N-(2-carboxye | 067939-88-2 | 1-Octanesulfonamide, N-[3-(dimethylamine |
| 032536-52-0 | Octabromodiphenyl oxide (OBDPO) | 064902-72-3 | Chlorsulfuron | 067939-89-3 | 1-Butanesulfonamide, N-ethyl-1,1,2,2,3,3, |
| 032588-76-4 | N,N’-ethylene bis(tetratbromophthalimi | 065321-67-7 | Toluene-2,4-diammonium sulph | 067939-90-6 | 1-Pentanesulfonamide, N-ethyl-1,1,2,2,3,3 |
| 032844-27-2 | TBBA carbonate oligomer | 065702-23-0 | 1-Heptanesulfonyl chloride, 3,3,4 | 067939-91-7 | 1-Butanesulfonamide, N,N’-[phosphinicobi |
| 034449-89-3 | 1-Butanesulfonamide, N-ethyl-1,1,2,2,3, | 065702-24-1 | 1-Undecanesulfonyl chloride, 3,3 | 067939-92-8 | 1-Hexanesulfonamide, N,N’-[phosphinicob |
| 034454-97-2 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4- | 066008-67-1 | 2-Propenoic acid, 2-[methyl[(2,2, | 067939-93-9 | 1-Heptanesulfonamide, N,N’-[phosphinico |
| 034455-03-3 | 1-Hexanesulfonamide, N-ethyl-1,1,2,2,3 | 066008-68-2 | 2-Propenoic acid, 2-[[(2,2,3,3,4,4 | 067939-94-0 | 1-Heptanesulfonamide, N,N’,N”-[phosphine |
| 034455-29-3 | 1-Propanaminium, N-(carboxymethyl)-N | 066008-69-3 | 2-Propenoic acid, 2-[[(2,2,3,3,4,4 | 067939-95-1 | 1-Propanaminium, N,N,N-trimethyl-3-[[(non |
| 036483-57-5 | Tribromoneopentyl alcohol (TBNPA) | 066008-70-6 | 2-Propenoic acid, 2-[methyl[(2,2, | 067939-96-2 | 2-Propenoic acid, 2-methyl-, 2-[methyl[(pe |
| 037211-05-5 | Nickel chloride | 066008-71-7 | 1-Propanaminium, N-(carboxyme | 067939-97-3 | 1-Heptanesulfonamide, N,N’-[phosphinicot |
| 037338-48-0 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha | 066008-72-8 | 1-Propanaminium, N-(z-carboxye | 067939-98-4 | 1-Heptanesulfonamide, N-ethyl-1,1,2,2,3,3 |
| 037853-59-1 | Bis(tribromophenoxy)ethane (HBPE) | 066441-23-4 | Fenoxaprop ethyl | 067940-02-7 | 1-Heptanesulfonamide, N-[3-(dimethylamin |
| 037894-46-5 | 6-(2-chloroethyl)-6(2-methoxyethoxy)-2 | 066741-65-9 | Tribromopheynyl allyl ether (TBF | 067969-65-7 | 1-Hexanesulfonamide, N-ethyl-1,1,2,2,3,3, |
| 038850-52-1 | 1-Propanaminium, 3-[(carboxymethyl)[(t | 067485-29-4 | Hydramethylnon | 068081-83-4 | Carbamic acid, (4-methyl-1,3-phenylene)b |
| 038850-60-1 | 1-Propanesulfonic acid, 3-[[3-(dimethyla | 067584-48-9 | 1-Hexanesulfonamide, 1,1,2,2,3, | 068084-62-8 | 2-Propenoic acid, 2-[methyl[(pentadecafluc |
| 039156-41-7 | 2,4-Diaminoanisole sulfate | 067584-49-0 | 1-Heptanesulfonamide, 1,1,2,2,3 | 068156-00-3 | Cyclohexanesulfonyl fluoride, nonafluorobi |
| 039300-45-3 | Dinocap | 067584-50-3 | 1-Heptanesulfonamide, N-ethyl-1 | 068156-06-9 | Cyclohexanesulfonyl fluoride, decafluoro(p |
| 041291-34-3 | Ethylene bis(dibromonorboranedicarbox | 067584-51-4 | Glycine, N-ethyl-N-[(nonafluorobt | 068156-07-0 | Cyclohexanesulfonic acid, decafluoro(triflu |
| 043121-43-3 | Triadimefon | 067584-52-5 | Glycine, N-ethyl-N-[(undecafluorc | 068187-47-3 | 1-Propanesulfonic acid, 2-methyl-, 2-[[1-ox |
| 048077-95-8 | 2-Propenoic acid, 2-[[(3,3,4,4,5,5,6,6,7,7 | 067584-53-6 | Glycine, N-ethyl-N-[(tridecafluoro | 068227-87-2 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(hept |
| 049859-70-3 | 2-Propenoic acid, 2-[methyl[(3,3,4,4,5,5, | 067584-54-7 | 1-Heptanesulfonamide, N-[3-(dim | 068227-94-1 | 2-Propenoic acid, 2-[[(heptadecafluoroocty |
| 050471-44-8 | 3-(3,5-Dichlorophenyl)-5-ethenyl-5-met | 067584-55-8 | 2-Propenoic acid, 2-[methyl[(non | 068227-96-3 | 2-Propenoic acid, butyl ester, telomer with |
| 050471-44-8 | Vinclozolin | 067584-56-9 | 2-Propenoic acid, 2-[methyl[(und | 068227-97-4 | 2-Propenoic acid, 4-[methyl[(pentadecafluc |
| 050598-28-2 | 1-Hexanesulfonamide, N-[3-(dimethylam | 067584-57-0 | 2-Propenoic acid, 2-[methyl[(tride | 068227-98-5 | 2-Propenoic acid, 4-[methyl[(tridecafluorol |
| 050598-29-3 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5, | 067584-58-1 | 1-Propanaminium, N,N,N-trimeth | 068227-99-6 | 2-Propenoic acid, 4-[methyl[(undecafluoro |
| 051032-47-4 | Benzenesulfonic acid, [[[(heptadecafluor | 067584-59-2 | 2-Propenoic acid, 2-methyl-, 2-[m | 068228-00-2 | 2-Propenoic acid, ethyl ester, polymer with |
| 051338-27-3 | Diclofop methyl | 067584-60-5 | 2-Propenoic acid, 2-methyl-, 2-[m | 068239-72-5 | 1-Pentanesulfonamide,1,2,2,3,3,4,4,5,5 |
| 051594-55-9, | (R)-1-chloro-2,3-epoxypropane | 067584-61-6 | 2-Propenoic acid, 2-methyl-. 2-[m | 068239-73-6 | 1-Octanesulfonamide, 1 1,2,2,3,3,4,4,5,5,6 |
| 052032-20-9 | Poly(oxy-1,2-ethanediyl), .alpha.-[[[(hept | 067584-62-7 | Glycine, N-ethyl-N-[(pentadecaflt | 068239-74-7 | 1-Hexanesulfonamide, 1 1,2,2,3,3,4,4,5,5, |
| 052033-76-6 | Phenylhydrazinium sulphate (2:1) | 067584-63-8 | Glycine, N-ethyl-N-[(nonafluorob | 068239-75-8 | 1-Heptanesulfonamide, N-ethyl-1,1,2,2,3,3 |
| 052166-82-2 | 1-Propanaminium, N,N,N-trimethyl-3-[[(t | 067906-38-1 | 2-Propenoic acid, 2-methyl-, 4-[m | 068259-06-3 | 1-Nonanesulfonyl fluoride, 1,1,2,2,3,3,4,4, |
| 052550-45-5 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[[(he | 067906-39-2 | 2-Propenoic acid, 2-methyl-, 4-[m | 068259-07-4 | 1-Heptanesulfonic acid,1,2,2,3,3,4,4,5,5 |
| 052652-59-2 | Lead stearate | 067906-40-5 | 2-Propenoic acid, 2-methyl-, 4-[m | 068259-08-5 | 1-Hexanesulfonic acid,1,2,2,3,3,4,4,5,5, |
| 053518-00-6 | 1-Propanaminium, N,N,N-trimethyl-3-[[(r | 067906-41-6 | 1-Heptanesulfonamide, N-ethyl-1 | 068259-09-6 | 1-Pentanesulfonic acid,1,2,2,3,3,4,4,5,5 |

**Table 3: Freescale Alert Substances List (Continued)**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 068259-10-9 | 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4- | 068555-81-7 | 1-Propanaminium, N,N,N-trimethyl-3-[[(pent | 070225-26-2 | 1-Propanaminium, 3-[[(heptadecafluorooc |
| 068259-12-1 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5 | 068568-54-7 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(no | 070248-52-1 | 1-Propanaminium, N,N,N-trimethyl-3-Rtri |
| 068259-14-3 | 1-Heptanesulfonamide, 1,1,2,2,3,3,4,4,5 | 068568-77-4 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptai | 070657-70-4 | 2-Methoxypropyl acetate |
| 068259-15-4 | 1-Hexanesulfonamide, 1,1,2,2,3,3,4,4,5 | 068608-13-9 | Sulfonamides, C4-8-alkane, perfluoro, Nett | 070776-36-2 | 2-Propenoic acid, 2-methyl-, octadecyl est |
| 068259-38-1 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha | 068758-55-4 | 2-Propenoic acid, 2-[methyl[(2,2,3,3,4,4,5,5 | 070900-40-2 | 2-Propenoic acid, 2-methyl-, 2-[[[[5-[[[4-[[( |
| 068259-39-2 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha | 068758-56-5 | 2-Propenoic acid, 2-[methyl[(2,2,3,3,4,4,5,5 | 071342-77-3 | TBBA carbonate oligomer |
| 068298-06-6 | 2-Propenoic acid, 2-[ethyl[(undecafluorc | 068758-57-6 | 1-Tetradecanesulfonyl chloride, 3,3,4,4,5,5, | 071463-74-6 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5, |
| 068298-07-7 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4- | 068784-73-6 | 2-Propenoic acid, 2-methyl-, 2-[methyl[(.gar | 071463-78-0 | Phosphonic acid, [3-[ethyl[(heptadecafluor |
| 068298-08-8 | 1-Pentanesulfonamide, 1,1,2,2,3,3,4,4,E | 068797-76-2 | 2-Propenoic acid, 2-methyl-, 2-ethylhexyl es | 071463-79-1 | Phosphonic acid, [3-[ethyl[(pentadecafluor |
| 068298-09-9 | 1-Hexanesulfonamide, 1,1,2,2,3,3,4,4,5 | 068815-72-5 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(triC | 071463-80-4 | Phosphonic acid, [3-[ethyl[(heptadecafluor |
| 068298-10-2 | 1-Heptanesulfonamide, 1,1,2,2,3,3,4,4,E | 068877-32-7 | 2-Propenoic acid, 2-methyl-, 2-[ethylKheptat | 071463-81-5 | Phosphonic acid, [3-[ethyl[(pentadecafluor |
| 068298-11-3 | 1-Propanaminium, 3-[[(heptadecafluoroc | 068891-97-4 | Chromium, diaquatetrachloro[.mu.-[N-ethyl- | 071487-20-2 | 2-Propenoic acid, 2-methyl-, methyl ester, |
| 068298-12-4 | 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4- | 068891-98-5 | Chromium, diaquatetrachloropnu.-[N-ethyl- | 072276-05-2 | 2-Propenoic acid, 2-[[(3,3,4,4,5,5,6,6,7,7, |
| 068298-13-5 | 1-Pentanesulfonamide, 1,1,2,2,3,3,4,4,E | 068891-99-6 | Chromium, diaquatetrachloro[.mu.-[N-ethyl- | 072276-06-3 | 2-Propenoic acid, 2-[methyl[(3,3,4,4,5,5,6, |
| 068298-60-2 | 2-Propenoic acid, 2-[butyl[(pentadecaflu | 068900-97-0 | Chromium, diaquatetrachloro[snu4N-ethyl- | 072276-07-4 | 2-Propenoic acid, 2-[methyl[(3,3,4,4,5,5,6, |
| 068298-78-2 | 2-Propenoic acid, 2-methyl-, 2-[[[[5-[[[2-[ | 068957-31-3 | Glycine, N-ethyl-N-[(undecafluoropentyl)sulf | 072276-08-5 | 2-Propenoic acid, 2-[methyl[(3,3,4,4,5,5,6, |
| 068298-79-3 | Poly(oxy-1,2-ethanediyl), ,alpha.-[2-[eth | 068957-32-4 | Glycine, N-ethyl-Nitridecafluorohexyl)sulfo | 072480-32-1 | 2-Propenoic acid, 2-(methylamino)ethyl e |
| 068298-80-6 | Poly(oxy-1,2-ethanediyl), .alpha.[2-[eth | 068957-33-5 | Glycine, N-ethyl-N-[(nonafluorobutyl)sulfony | 072785-08-1 | 1-Propanesulfonic acid, 3-[[3-(dimethylami |
| 068298-81-7 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[eth | 068957-53-9 | Glycine, N-ethyl-N-[(tridecafluorohexyl)sulfo | 073018-93-6 | 2-Propenoic acid, 2-methyl-, 2-ethylhexyl |
| 068298-89-5 | 1-Heptanesulfonamide, 1,1,2,2,3,3,4,4,E | 068957-54-0 | Glycine, N-ethyl-N-Kpentadecafluoroheptyl): | 073019-19-9 | Benzamide, 4-[[4-R[2-[[(heptadecafluoro 1,3- |
| 068299-19-4 | Benzenesulfonic acid, Enonafluorobuty | 068957-55-1 | 1-Propanaminium, N,N,N-trimethyl-3-[[(und( | 073019-20-2 | Benzenedicarboxamide, N3-[2-[[(hept. |
| 068299-20-7 | Benzenesulfonic acid, [[[(undecafluoropi | 068957-57-3 | 1-Propanaminium, N,N,N-trimethyl-3-[[(undc | 073019-28-0 | 2-Propenoic acid, 2-[[(heptadecafluorooc |
| 068299-21-8 | Benzenesulfonic acid, [[[(tridecafluorohE | 068957-58-4 | 1-Propanaminium, N,N,N-trimethyl-3-[[(tride | 073038-33-2 | 2-Propenoic acid, 2-[[(heptadecafluorooc |
| 068299-29-6 | Benzenesulfonic acid, ar-[[[(pentadecafl | 068957-59-5 | 1-Butanesulfonamide, N-[3-(dimethylamino) | 073275-59-9 | 2-Propenoic acid, 2-[[(heptadecafluorooc |
| 068299-39-8 | 2-Propenoic acid, 2-methyl-, 4-[[(heptad | 068957-60-8 | 1-Pentanesulfonamide, N-[3-(dimethylaminc | 073772-33-5 | 1-Hexanesulfonamide, N-[3-(dimethylamin |
| 068310-02-1 | 1-Heptanesulfonamide, N-butyl-1,1,2,2,: | 068957-61-9 | 1-Hexanesulfonamide, N-[3-(dimethylamino | 073772-34-6 | 1-Hexanesulfonamide, N-[3-(dimethylamin |
| 068310-17-8 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha | 068957-62-0 | 1-Heptanesulfon am ide, N-ethyl-1,1,2,2,3,3,, | 077402-03-0 | methyl acrylamidomethoxyacetate (contai |
| 068310-18-9 | Poly[oxy(methyl-1,2-ethanediyl)], .alpha | 068957-63-1 | Glycine, N-ethyl-N-[(pentadecafluoroheptyl) | 077402-05-2 | methyl acrylamidoglycolate (containing ?. |
| 068310-75-8 | 1-Propanaminium, 3-[[(heptadecafluoroc | 068958-60-1 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(p | 080387-97-9 | 2-ethylhexyl 3,5-bis(1,1-dimethylethyl)-4- |
| 068318-34-3 | Cyclohexanesulfonyl fluoride, decafluorc | 068988-52-3 | 2-Propenoic acid, 2-methyl-, C4-8-alkyl este | 085136-74-9 | 6-hydroxy-1-(3-isopropoxypropyl)-4-meth |
| 068318-36-5 | 1-Propanaminium, 3-[(carboxymethyl)[(t | 068988-534 | 2-Propenoic acid, 2-methyl-, C4-18-alkyl es’ | 085509-19-9 | Flusilazole |
| 068391-09-3 | Sulfonic acids, C6-12-alkane, perfluoro, | 068988-54-5 | 2-Propenoic acid, 2-methyl-, C7-8-alkyl este | 088671-89-0 | Myclobutanil |
| 068541-01-5 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[ | 068988-55-6 | 2-Propenoic acid, 2-methyl-, C7-18-alkyl es | 095590-48-0 | 2-Propenoic acid, 2-methyl-, 3-(trimethoxy |
| 068541-02-6 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[ | 069409-94-5 | N-(2-Chloro-4-(trifluoromethyl)phenyl)-DL-v | P-88-2106 | TBBA-diglycidyl ether (epoxy oligomer) |
| 068555-68-0 | Glycine, N-ethyl-N-[(nonafluorobutyl)sull | 069409-94-5 | Fluvalinate | N/A | Antimony Compounds |
| 068555-69-1 | Glycine, N-ethyl-N-[(undecafluoropentyl’ | 069806-50-4 | Fluazifop butyl | N/A | Arsenic Compounds |
| 068555-70-4 | Glycine, N-ethyl-N-[(tridecafluorohexyl)s | 069882-11-7 | Poly(dibromophenylene oxide) (PDBPO) | N/A | Beryllium Compounds |
| 068555-71-5 | Glycine, N-ethyl-N-Dentadecafluorohep | 070225-14-8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6, | N/A | Chromium Compounds |
| 068555-72-6 | 1-Pentanesulfonamide, N-ethyl-1,1,2,2, | 070225-14-8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6, | N/A | Inorganic Cyanide Compounds |
| 068555-73-7 | 1-Heptanesulfonamide, N-ethyl-1,1,2,2, | 070225-15-9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,E | N/A | Lead Compounds |
| 068555-74-8 | 1-Pentanesulfonamide, 1,1,2,2,3,3,4,4,5 | 070225-16-0 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6 | N/A | Nickel Compounds |
| 068555-75-9 | 1-Hexanesulfonamide, 1,1,2,2,3,3,4,4,5 | 070225-17-1 | 1-Pentanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,f | N/A | Selenium Compounds |
| 068555-76-0 | 1-Heptanesuffonam de, 1,1,2,2,3,3,4,4,E | 070225-18-2 | 1-Butanesulfonic acid, 1,1,2,2,3,3,4,4,4-non | N/A | Thallium Compounds |
| 068555-77-1 | 1-Butanesulfonamide, N-[3-(dimethylam | 070225-20-6 | 1-Propanaminium, N,N,N-trimethyl-3-[[(pent | N/A | |
| 068555-78-2 | 1-Pentanesulfon amide, N-[3-(dimethylar | 070225-22-8 | 1-Propanamini um, N,N,N-trimethyl-3-[[(none | N/A | |
| 068555-79-3 | Glycine, N-ethyl-N-Rundecafluoropentyl) | 070225-24-0 | 1-Propanaminium, N,N,N-trimethyl-3-[[(unde | N/A | |

4. Does the compound or any constituent have an Occupational Exposure Limit (OEL) (i.e. TLV, PEL. REL, etc.)? If so, please list constituent(s), weight percent, and OEL data.

5. Is there data indicating that the compound or any constituent at any concentration is a reproductive hazard? If so, please list constituent(s), weight percent, and reproductive hazard data.

6. Does the compound or any of its constituents have an established LD50 and/or LC50? If so, please list constituent(s), weight percent, and LD50 and/or LC50 value.

7. Are all components listed on the Toxic Substance Control Act (TSCA) inventory of existing chemical substances?

8. If not listed on TSCA inventory, are the unlisted components exempt? What kind of exemption?

9. What is the Volatile Organic Compound (VOC) content of this material?

10. Does this chemical contain any EPA-listed Hazardous Air Pollutant (HAP) constituents listed in Table 4 below (including chemicals which fall into a listed category)? If so, please list constituent and weight percent.

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**Table 4: EPA-Listed HAPs**

| CAS | Name | CAS | Name | CAS | Name |
|---|---|---|---|---|---|
| 50-00-0 | Formaldehyde | 79-01-6 | Trichloroethylene | 106-99-0 | 1,3-Butadiene |
| 51-28-5 | 2,4-Dinitrophenol | 79-06-1 | Acrylamide | 107-02-8 | Acrolein |
| 51-79-6 | Ethyl carbamate | 79-10-7 | Acrylic acid | 107-05-1 | Allyl chloride |
| 53-96-3 | 2-Acetylaminofluorene | 79-11-8 | Chloroacetic acid | 107-06-2 | Ethylene dichloride |
| 56-23-5 | Carbon tetrachloride | 79-34-5 | 1,1,2,2-Tetrachloroethane | 107-13-1 | Acrylonitrile |
| 56-38-2 | Parathion | 79-44-7 | Dimethylcarbamoyl chloride | 107-21-1 | Ethylene glycol |
| 57-14-7 | 1,1-Dimethylhydrazine | 79-46-9 | 2-Nitropropane | 107-30-2 | Chloromethyl methyl ether |
| 57-57-8 | Beta-Propiolactone | 80-62-6 | Methyl methacrylate | 108-05-4 | Vinyl acetate |
| 57-74-9 | Chlordane | 82-68-8 | Pentachloronitrobenzene | 108-10-1 | Methyl isobutyl ketone |
| 59-89-2 | N-Nitrosomorpholine | 84-74-2 | Dibutyl phthalate | 108-31-6 | Maleic anhydride |
| 60-11-7 | 4-Dimethylaminoazobenzene | 85-44-9 | Phthalic anhydride | 108-38-3 | m-Xylene |
| 60-34-4 | Methylhydrazine | 87-68-3 | Hexachlorobutadiene | 108-39-4 | m-Cresol |
| 60-35-5 | Acetamide | 87-86-5 | Pentachlorophenol | 108-88-3 | Toluene |
| 62-53-3 | Aniline | 88-06-2 | 2,4,6-Trichlorophenol | 108-90-7 | Chlorobenzene |
| 62-73-7 | Dichlorvos | 90-04-0 | o-Anisidine | 108-95-2 | Phenol |
| 62-75-9 | N-Nitrosodimethylamine | 91-20-3 | Naphthalene | 110-54-3 | Hexane |
| 63-25-2 | Carbaryl | 91-22-5 | Quinoline | 111-42-2 | Diethanolamine |
| 64-67-5 | Diethyl sulfate | 91-94-1 | 3,3’-Dichlorobenzidine | 111-44-4 | Dichloroethyl ether |
| 67-56-1 | Methanol | 92-52-4 | Biphenyl | 114-26-1 | Propoxur |
| 67-66-3 | Chloroform | 92-67-1 | 4-Aminobiphenyl | 117-81-7 | Bis(2-ethylhexyl)phthalate |
| 67-72-1 | Hexachloroethane | 92-87-5 | Benzidine | 118-74-1 | Hexachlorobenzene |
| 68-12-2 | N,N-Dimethylformamide | 92 93 3 | 4-Nitrobiphenyl | 119-90-4 | 3,3’-Dimethoxybenzidine |
| 71-43-2 | Benzene (including benzene from gasoline) | 95-47-6 | o-Xylene | 119-93-7 | 3,3’-Dimethylbenzidine |
| 71-55-6 | Methyl chloroform | 95-48-7 | o-Cresol | 120-80-9 | Catechol |
| 72-43-5 | Methoxychlor | 95-53-4 | o-Toluidine | 120-82-1 | 1,2,4-Trichlorobenzene |
| 72-55-9 | 1,1-dichloro-2.2-bis(p-chlorophenyl) ethylene | 95-80-7 | Toluene-2,4-diamine | 121-14-2 | 2,4-Dinitrotoluene |
| 74-83-9 | Methyl bromide | 95-95-4 | 2,4,5-Trichlorophenol | 121-44-8 | Triethylamine |
| 74-87-3 | Methyl chloride | 96-09-3 | Styrene oxide | 121-69-7 | N,N-Dimethylaniline |
| 74-88-4 | Methyl iodide | 96-12-8 | 1,2-Dibromo-3-chloropropane | 122-66-7 | 1,2-Diphenylhydrazine |
| 75-00-3 | Ethyl chloride | 96-45-7 | Ethylene thiourea | 123-31-9 | Hydroquinone |
| 75-01-4 | Vinyl chloride | 98-07-7 | Benzothichloride | 123-38-6 | Propionaldehyde |
| 75-05-8 | Acetonitrile | 98-82-8 | Cumene | 123-91-1 | 1,4-Dioxane |
| 75-07-0 | Acetaldehyde | 98-86-2 | Acetophenone | 126-99-8 | Chloroprene |
| 75-09-2 | Methylene chloride | 98-95-3 | Nitrobenzene | 127-18-4 | Tetrachloroethylene |
| 75-15-0 | Carbon disulfide | 100-02-7 | 4-Nitrophenol | 131-11-3 | Dimethyl phthalate |
| 75-21-8 | Ethylene oxide | 100-41-4 | Ethylbenzene | 132-64-9 | Dibenzofuran |
| 75-25-2 | Bromoform | 100-42-5 | Styrene | 133-06-2 | Captan |
| 75-34-3 | Ethylidene dichloride | 100-44-7 | Benzyl chloride | 133-90-4 | Chloramben |
| 75-35-4 | Vinylidene chloride | 101-14-4 | 4,4’-Methylenebis(2-chloroaniline) | 140-88-5 | Ethyl acrylate |
| 75-44-5 | Phosgene | 101-68-8 | 4,4’-Methylenediphenyl diisocyanate | 151-56-4 | Ethyleneimine |
| 75-55-8 | 1,2-Propylenimine | 101-77-9 | 4,4’-Methylenedianiline | 156-62-7 | Calcium cyanamide |
| 75-56-9 | Propylene oxide | 106-42-3 | p-Xylene | 302-01-2 | Hydrazine |
| 76-44-8 | Heptachlor | 106-44-5 | p-Cresol | 334-88-3 | Diazomethane |
| 77-47-4 | Flexachlorocyclopentadiene | 106-46-7 | 1,4-Dichlorobenzene | 463-58-1 | Carbonyl sulfide |
| 77-78-1 | Dimethyl sulfate | 106-50-3 | p-Phenylenediamine | 510-15-6 | Chlorobenzilate |
| 78-59-1 | Isophorone | 106-51-4 | Quinone | 532-27-4 | 2-Chloroacetophenone |
| 78-87-5 | Propylene dichloride | 106-88-7 | 1,2-Epoxybutane | 540-84-1 | 2,2,4-Trimethylpentane |
| 78-93-3 | Methyl ethyl ketone | 106-89-8 | Epichlorohydrin | 542-75-6 | 1,3-Dichloropropene |
| 79-00-5 | 1,1,2-Trichloroethane | 106-93-4 | Ethylene dibromide | 542-88-1 | Bis(chloromethyl) ether |

**Table 4: EPA-Listed HAPs (continued)**

| CAS | Name | CAS | Name |
| --- | --- | --- | --- |
| 584-84-9 | 2,4-Toluene diisocyanate | N/A | 2,4-Dichlorophenoxyacetic Acid (including salts and esters) |
| 593-60-2 | Vinyl bromide | N/A | 4,6-Dinitro-o-cresol (including salts) |
| 624-83-9 | Methyl isocyanate | N/A | 1,2,3,4,5,6-Hexachlorocyclohexane (all stereo isomers) |
| 680-31-9 | Hexamethylphosphoramide | N/A | Antimony Compounds |
| 684-93-5 | N-Nitroso-N-methylurea | N/A | Arsenic Compounds (inorganic including arsine) |
| 822-06-0 | Hexamethylene diisocyanate | N/A | Beryllium Compounds |
| 1120-71-4 | 1,3-Propane sultone | N/A | Cadmium Compounds |
| 1319-77-3 | Cresol/Cresylic acid (mixed isomers) | N/A | Chromium Compounds |
| 1330-20-7 | Xylenes (mixed isomers) | N/A | Cobalt Compounds |
| 1332-21-4 | Asbestos | N/A | Coke Oven Emissions |
| 1336-36-3 | Polychlorinated biphenyls (Aroclors) | N/A | Cyanide Compounds |
| 1582-09-8 | Trifluralin | N/A | Glycol ethers |
| 1634-04-4 | Methyl tert-butyl ether | N/A | Lead Compounds |
| 1746-01-6 | 2,3,7,8-Tetrachlorodibenzo-p-dioxin | N/A | Manganese Compounds |
| 7550-45-0 | Titanium tetrachloride | N/A | Mercury Compounds |
| 7647-01-0 | Hydrogen Chloride | N/A | Fine mineral fibers |
| 7664-39-3 | Hydrogen fluoride | N/A | Nickel Compounds |
| 7723-14-0 | Phosphorus | N/A | Polycyclic Organic Matter |
| 7782-50-5 | Chlorine | N/A | Radionuclides (including radon) |
| 7803-51-2 | Phosphine | N/A | Selenium Compounds |
| 8001-35-2 | Toxaphene (chlorinated camphene) | | |

11. Please list any known or suspected chemical incompatibilities for waste disposal.

12. Please list any constituent present which falls into any of the following physical and health hazard categories listed in Table 5 below:

**Table 5: Physical and Health Hazard Categories**

| Category | Constituent | Concentration (wt %) |
| --- | --- | --- |
| Flammable | | |
| Corrosive | | |
| Pyrophoric | | |
| Toxic | | |
| Highly Toxic | | |
| Water Reactive | | |
| Combustible | | |
| Oxidizer | | |
| Unstable | | |

**Certified by:**

Name: Title: Phone:
Company: Date:

## 1.0 PURPOSE

The purpose of this specification is to describe the procedures/requirement used to promote Environmental, Health and Safety practices in all areas of the site. The topics covered are indexed below:



## 2.0 SCOPE

This document applies to all personnel at the Freescale Semiconductor Tempe & Chandler sites including visitors, suppliers, and contractors.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |
| 12MAZ00119B (68ASA66119B | Hazardous Materials System |
| 12MAZ00125B (68ASA66125B) | EHS Training System |
| 12MAZ00126B (68ASA66126B) | Contractors System |
| 12MAZ00153B (68ASA66153B | Equipment Sign-off & Approval |
| 12MAZ00159B (68ASA66159B) | Reporting of Accidents |
| 12MAZ00168B (68ASA66168B) | Personal Protective Equipment |
| 12MAZ00169B (68ASA66169B) | Emergency Eyewash & Safety Shower |
| 12MAZ00171B (68ASA66171B) | Power Operated Industrial Trucks |
| 12MAZ00173B (68ASA66173B) | Machine Guarding |
| 12MAZ00174B (68ASA66174B) | Energy Control(Lockout/Tagout) |
| 12MAZ00180B (68ASA66125B) | Electrical Safety Program |
| 12MAZ00181B (68ASA66181B) | Hoisting Equipment Requirements |
| 12MAZ00196B (68ASA66196B) | Minimum PPE Requirements (Chandler site only) |
| 12MAZ00215B (68ASA66215B) | Hazard Communication Program |
| 12MAZ00217B (68ASA66217B) | Respiratory Protection |
| 12MAZ00218B (68ASA66218B) | Ionizing Radiation Safety |
| 12MAZ00220B (68ASA66220B) | Ergonomics |
| 12MAZ00221B (68ASA66221B) | Laser Safety |
| 12MAZ00319B (68ASA66319B) | Chemical Pre-Acquisition Approval Procedure |
| NA | EHS Management System Documentation http://compass.freescale.net/go/152716432 |
| NA | EHS Material Safety Data Sheet (MSDS) http://msds.freescaie.net/ |

*(Note: Documents in parenthesizes indicate previous document number)*

### 3.2 Document Classification

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### 3.3 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| ANSI | American National Standards Institute |
| APCI | Air Products and Chemical Inc. |
| CDM | Chemical Distribution Module |
| DI | De-ionized |
| DMS | Document Management System |

| Acronym | Description |
|---|---|
| ECS | Emergency Control Station |
| EHS | Environmental, Health and Safety |
| ERT | Emergency Response Team |
| Haz Com | Hazardous Communication |
| IPA | Isopropyl Alcohol |
| LOTO | Lockout/Tagout |
| LSM | Lower Support Module |
| LSO | Laser Safety Officer |
| MERT | Medical Emergency Response Team |
| MSDS | Material Safety Data Sheet |
| OHN | Occupational Health Nurse |
| OHR | Occupational Health Resources |
| OSHA | Occupational Safety & Health Administration |
| PPE | Personal Protective Equipment |
| RSO | Radiation Safety Officer |
| TGM | Toxic Gas Monitoring |

| Definitions & Terms | Description |
|---|---|
| APCI | Partner that supplies chemical management services to the operations |
| ERT | Emergency Response Team (ERT) comprised of volunteers from the site who respond to emergencies |
| ECS | Emergency Control Service |
| LSO | Qualified professional who has the authority to monitor and enforce the control of lasers. The LSO has been trained in accordance with ANSI guidelines |
| MERT | Medical Emergency Response Team (MERT) comprised of volunteers from the site who respond to medical emergencies under the direction of OHR |
| RSO | Qualified personnel who is trained in radiation regulations and able to recognize, evaluate and control potential exposures to radiation in the workplace |

## 4.0 EQUIPMENT AND MATERIAL

None

## 5.0 PROCEDURE

### 5.1 General Responsibilities

5.1.1 Each employee must receive the applicable training to cover the activities to be performed onsite. Refer to control document # **12MAZ00125B**, *EHS Training*. Minimum training requirements include:

- Hazard Communication for awareness on chemically related hazards
- Evacuation Procedures for instructions on reporting emergencies and how to evacuate

The training must be documented with the site's training department.

5.1.2 Each employee must understand and follow the EHS instructions when performing specific jobs as outlined in the process specifications and EHS requirements. This includes knowing the hazards and environmental impacts associated with the process or operation being performed, and what personal protective equipment is necessary to ensure the safety and health of the employee doing the work. Contact EHS with any questions.

5.1.3 Each employee shall NOT work on equipment unless the individual has received the appropriate tool/process specific and EHS related training to do so, or is under the supervision of someone who has received appropriate training.

5.1.4 Any employee should take prompt corrective action whenever unsafe conditions/behaviors or environmental concerns are noted in his/her area of responsibility. Contact the EHS safe-line at xSAFE (x7233), ECS at x2600 or your supervisor if unable to resolve the condition.

5.1.5 An employee that is injured at work must report the injury to OHR and should notify their direct supervisor. If necessary, call ECS at x2600 and medical assistance will be sent to the injured employee. The supervisor will be contacted concerning the investigation of the incident and completion of an accident investigation report. Refer to control document # **12MAZ00159B**, *Reporting of Accidents*.

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**5.2 General Emergency Response and Evacuation Procedures**

5.2.1 Each site has an emergency response plan that is designed to facilitate the immediate evacuation of employees. Refer to your site's emergency evacuation instructions located within the "Emergency Preparedness" link on the regional EHS webpage (http://azehs.freescale.net/)

5.2.2 Responsibilities of all Freescale employees:

- Each employee must be familiar with the following:
  - Evacuation procedures for your area
  - Evacuation exits routes from your work area
  - Assembly areas for your department/group

  Notify your supervisor/manager if you are unsure about these topics
- When leaving your work area: always notify someone. Individual whereabouts must be known in the event of an emergency evacuation
- Each employee is expected to evacuate to his or her designated area in a calm and orderly manner

- When a Freescale employee has a visitor, vendor/supplier or contractor (under their direct supervision/control) on site, the employee is responsible for the safe evacuation and assembly of that individual

5.2.3 Common types of emergency responses: medical, fire/smoke, chemical / gas detection, power failure

5.2.4 Emergency Notification

- Contact ECS at X 2600
- Report the following information:
    - Type of emergency (medical, fire/smoke, chemical/gas detection, or power failure, or other)
    - Exact location and equipment involved
    - Any injuries or exposures
    - Your name, job function, and extension
    - Type of assistance needed

5.2.5 Emergency Alarm Response Procedures:

    - For additional evacuation guidelines and information, go to Evacuation Plan

- Fire Alarm (**Tempe Site**): audible and visual alarm
    - Evacuate building immediately through nearest outside exit. Fab personnel DO NOT stop to remove cleanroom garments.
    - All personnel assemble in designated Evacuation Staging Areas Visitors/Vendors/Suppliers will assemble at the appropriate group sponsor's area
    - Once evacuated, fab personnel can remove cleanroom boots, suits and hoods as necessary. Place in designated collection bin or a central collection point.
    - The supervisor(s) present in each assembly area will identify any missing personnel and report the names of those missing persons to Security or ERT
    - Escalate any medical or personal emergencies to your supervisor or a senior person in the area so help can be obtained.
    - Stay at your assembly area until the all clear is given, or are instructed to relocate, by EHS, ERT or Security personnel
- Fire Alarm (**Chandler Site**): WHITE strobe and audible alarm
    - Evacuate building immediately through nearest outside exit. Fab personnel DO NOT stop to remove cleanroom garments.
    - All personnel assemble in designated Evacuation Staging Areas
    - Visitors/Vendors/Suppliers will assemble at the appropriate group sponsor's area
    - Once evacuated, fab personnel can remove cleanroom boots, suits and hoods as necessary. Place in designated collection bin or a central collection point.
    - The supervisor(s) present in each assembly area will identify any missing personnel and report the names of those missing persons to Security or ERT

- Escalate any medical or personal emergencies to your supervisor or a senior person in the area so help can be obtained.
- Stay at your assembly area until the all clear is given or are instructed to relocate
- Chandler Fab only: A senior person or supervisor at South Fab Staging area will determine with ERT staff a safe passage to North Parking Lot Staging area if necessary. A senior person will lead South Fab Staging area personnel to North Parking lot Staging area. If a safe passage cannot be determined, South Fab Staging area personnel will remain at the location

- Toxic Gas Detections

  For (**CS-1 Fab**): audible and visual alarm

  - Evacuate building immediately through nearest outside exit. Fab personnel DO NOT stop to remove cleanroom garments.
  - All personnel assemble in designated Evacuation Staging Areas Visitors/Vendors/Suppliers will assemble at the appropriate group sponsor's area
  - Once evacuated, fab personnel can remove cleanroom boots, suits and hoods as necessary. Place in designated collection bin or a central collection point.
  - The supervisor(s) present in each assembly area will identify any missing personnel and report the names of those missing persons to Security or ERT
  - Escalate any medical or personal emergencies to your supervisor or a senior person in the area so help can be obtained.
  - Stay at your assembly area until the all clear is given, or are instructed to relocate, by EHS, ERT or Security personnel

  For **Chandler Fab Only**:

  - Local YELLOW strobe, no audible alarms
    - Leave the immediate bay, but it is not necessary to evacuate the factory
    - Notify shift coordinator or group leader immediately
    - ECS will activate Gas Detection Team (GDT) and ERT to investigate
  - Fab wide RED strobe and audible alarm
    - Evacuate building immediately through nearest outside exit. Fab personnel DO NOT stop to remove cleanroom garments.
    - All personnel assemble in designated Evacuation Staging Areas
    - Visitors/Vendors/Suppliers will assemble at the appropriate group sponsor's area
    - Once evacuated, remove cleanroom boots, suits and hoods as necessary. Place in designated collection bin or a central collection point
    - The supervisor(s) present in each assembly area will identify any missing personnel and report the names of those missing persons to Security or ERT
    - Escalate any medical or personal emergencies to your supervisor or a senior person in the area so help can be obtained

- Stay at your assembly area until the all clear is given, or are instructed to relocate, by EHS, ERT or Security personnel
- A senior person at South Fab Staging area will determine with ERT staff a safe passage to North Parking Lot Staging area. A senior person will lead South Fab Staging area personnel to North Parking lot Staging area. If a safe passage cannot be determined, South Fab Staging area personnel will remain at the location

- After any evacuation, final re-entry will only occur after the following:
  - ERT incident commander or Site Safety personnel has verified that it is safe to re-enter, and the building has been cleared by EHS
  - ERT and/or Site Safety has briefed the Shift Management of the affected area as to what happened, the cause(s), containment and remediation action(s) and current conditions (restrictions if any, etc.).
  - Shift Management, with the help of ERT/EHS, has briefed area occupants as to what happened, the cause(s), containment and remediation action(s) and current condition (restrictions if any, etc.)
  - ERT and Site Safety will give approval to ECS to issue an “all clear” all call over the radio
- For additional evacuation guidelines and information, go to Evacuation Plan

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**5.3 Emergency Response to Spills/Odors**

5.3.1 General Rules

- The potential for a spill and/or odor exists in a fab operation and DOES NOT necessarily indicate an emergency evacuation. Call ECS at x2600 or notify an area supervisor/group lead. If necessary, leave the area until the odor dissipates.
- Report any health symptoms from a spill or odor to the area supervisor/group lead and to Occupational Health Resources (OHR).

5.3.2 For Small Chemical Spills (Less than one Gallon) Without Chemical Reaction or the Potential to Cause Employee Injury

- The personnel responsible for the area/spill can clean-up small spills that DO NOT appear to cause any chemical reaction, irritation, or penetrate the cleanroom floor. Contact ECS at x2600 if assistance may be needed.
- Use clean-up methods and materials that are appropriate for the type of spill (e.g. - acid, caustic, solvent, oxidizer). Always wear appropriate PPE to wipe up any chemical spills or splashes
- Dispose of saturated clean up material in the appropriate collection container or separately bag it for disposal as hazardous waste. Ensure to label the bag.

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- DO NOT use the Fab Level House Vacuum System to clean up any liquid material (i.e.: acid, solvent, or water) or potentially hazardous material/waste.
- Contact ECS at X 2600 after the small spill is cleaned up. Report type of spill, approximate quantity, and the need to have the hazardous waste picked-up.
- Notify area coordinator or group leader after clean up.

5.3.3 For Large Spills (Greater than 1 Gallon) that DOES NOT cause a Chemical Reaction or a Possible Employee Injury, Perform the Following:

- Leave the immediate area and relocate to safe location.
- Contact ECS using x2600. Report the following information:
  - Type of emergency
  - Exact location and equipment involved
  - Any injuries or exposures
  - Name, job function, and extension
- ECS will contact ERT to investigate and determine corrective actions
- Notify area coordinator or group leader
- Inform other persons of the situation and instruct them to avoid the area

5.3.4 For Spills/Odor that Cause a Chemical Reaction or Possible Employee Injury, Perform the Following:

- Leave affected area through perimeter or marked exits
- Pull the nearest fire alarm pull box to evacuate building
- Proceed to a safe location and contact ECS using x2600. Report the following information:
  - Type of emergency. If type of emergency is known: identify odor or spill and volume of spill
  - Exact location and equipment involved
  - Any injuries or exposures
  - Name, job function, and extension
- ECS will contact the ERT to investigate and determine corrective actions
- Notify area coordinator and group leader

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**5.4 Personal Protective Equipment (PPE)**

5.4.1 General Requirement

- Refer to control documents **# 12MAZ00168B**, *Personal Protective Equipment*

- Employees whose job duties require personal protective equipment must receive the appropriate training prior to begin the tasks. See your supervisor, training coordinator or the site EHS department for guidance.
- The following lists examples of personal protective equipment:
    - Acid Gloves
    - Solvent Gloves
    - Face Shield
    - Acid Gown and Apron
    - Flame resistant clothing
    - Head Protection
    - - Foot Protection (Footwear)
    - Respirators (as specified equipment, require approval from EHS).
    - Eye protection (appropriate specific to hazard and application, such as goggles for chemicals, laser eye wear)
    - Hearing Protection
- Use only approved PPE that is dispensed through the stockroom. This has been reviewed by the EHS department.
- Inspect all safety gear for rips, holes, or other visible damage prior to wearing. *Never use defective safety equipment*
- As appropriate, wipe down safety gear with DI water and a cleanroom wipe before storage
- Dispose of acid/solvent gloves in the appropriate trash container when task has been completed or at the end of each shift. *If the gloves become damaged, dispose of immediately*
- When available, consult the specification of the task being performed for the correct chemical safety gear to be worn.

5.4.2 Head Protection

- The use of hardhats should be assessed when there is a risk of falling material from overhead, bump hazards while walking/working, or in construction zones. Some areas (e.g. subfab, construction areas) have mandatory hardhat requirements. Notify your supervisor/manager or the site EHS department when a risk is identified.

5.4.3 Eye Protection

- Always wear approved safety eye protection in areas where eye risks are present, such as chemicals are used, mechanized equipment is operating, electrical arcing may occur or flying debris may occur. These areas include wafer fabs, test floors, labs, probe, machine shop areas, facilities support areas, chemical modules and construction zones.

- Safety glasses or eye protection can be removed when performing microscope inspection
- Choose the type of safety approved eye protection that is required according to the task being performed:
    - Regular non-prescription safety glasses
    - High impart safety glasses
    - Prescription safety glasses meet appropriate ANSI Z87 rating
    - Face shields and safety glasses or goggles
    - Laser safety goggles (power and wavelength specific)
    - Splash proof chemical goggles
- Contact lenses can be used with non-prescription safety glasses in all areas and around chemicals with appropriate PPE. Contact your supervisor or department manager for further guidance as some departments still prohibit the use of contacts.

5.4.4 Footwear

- Close-toed shoes shall be worn in cleanroom areas and chemical handling areas.
- Safety shoes must be worn by employees when there is a reasonable risk of injury that can be prevented by wearing safety shoes. Steel toe shoes may be needed for some activities, see your supervisor or the site EHS department for guidance.
- These risk areas include:
    - Shipping and receiving docks
    - Truck and forklift operations
    - Facilities maintenance and shop areas
    - Handling of metal plates or other heavy objects

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**5.5 Use of Respirators**

5.5.1 General Requirements

- Refer to control document # **12MAZ00217B**, *Respiratory Protection*
- Respiratory protection equipment includes air purifying respirators or air supplying respirators.
- New types or styles of respirators must be reviewed and approved by the site EHS department before being put into use.
- Before a respirator is used by an employee for the designated task:
    - The appropriate respirator must be determined by the site EHS department
    - The employee must:
        - be medically approved to wear the respirator by OHR
        - be enrolled in the Freescale Respiratory Protection Program

- receive documented training and fit-testing
- remain clean shaven for wearing a respirator

- The respirator is to be cleaned after each use and stored in a clean location.
- Escalate any issues or equipment malfunctions to your supervisor, OHR and/or the site EHS department.

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5.6 Safety Showers and Eyewashes

5.6.1 General Requirement

- Refer to control document # **12MAZ00169B**, *Emergency Eyewash & Safety Shower*
- Keep the eyewash bowl clean and free of debris. DO NOT put gloves, cleanroom wipes, or waste in showers and eyewashes
- The eyewash bowl and water shall only be used for emergency chemical rinsing, not for any other purpose.
- DO NOT adjust bypass water flow valve on safety showers and eyewash
- Ensure the access to any eyewash and safety shower station is maintained at all times

5.6.2 Report defective showers and eye washes to Facilities Operations immediately, x3333 for Chandler and x3666 for Tempe

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**5.7 Chemical Emergencies**

5.7.1 If an Individual Has Chemical on the Skin, Perform the Following:

- Immediately go to the nearest eye wash/shower, shout/call for assistance
- Begin rinsing for 15 minutes:
  - Remove any contaminated clothing
  - For chemical in the eyes: hold the eyelids open, this is very important to ensure all areas are flushed. If the individual is wearing contact lenses, attempt to remove them AFTER flushing
- Have someone call/radio for ECS to dispatch emergency personnel. If you are alone: shower first, then contact ECS. DO NOT leave location, wait for help and medical treatment
- As needed, remove any watches, rings, or other objects to ensure the chemical is not trapped under objects on the skin
- Continue rinsing until emergency personnel arrive
- Report incident to OHR

5.7.2 If the individual is overwhelmed by chemical or smoke inhalation, perform the following:

- Remove oneself or victim to fresh air if both are able to walk. Do not go into a contaminated area to pull an unconscious person out
- Immediately call ECS at x2600 for emergency personnel

- Always seek medical attention after any chemical exposure. Identify the suspected chemical or cause to assist medical personnel in treatment

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**5.8 Hazardous Chemical Management**

5.8.1 General Requirements

- Before bringing new chemicals on site, the chemical pre-acquisition process must be followed per control documents #**12MAZ00319B**, *Chemical Pre-Acquisition Approval Procedure*. Contact the site EHS department for guidance or questions.
- Chemicals cannot be brought on site through the main employee building entrances. Chemicals shall be brought on/delivered to the site through the designated truck gates once approved by the EHS department.
- Always wear appropriate PPE when handling chemicals and ensure an eyewash & shower is nearby
- Use properly labeled and approved containers, contact the EHS department for guidance
- Be familiar with emergency communication and emergency response procedures when working with chemicals
- Refer to the Material Safety Data Sheet (MSDS) for detailed health safety information of individual chemicals or special mixtures (Approved MSDSs can be viewed electronically at: http://msds.freescale.net/. Hard copies are located at OHR for both sites and for Chandler only, a second copy is kept at ECS).

5.8.2 Transporting One-Gallon (or less) Container

- Put on appropriate PPE prior to handling chemicals
- Hand carry all one-gallon or less containers in an approved enclosure device to prevent dropping and spillage
- Never carry two bottles of incompatible chemical types within the same enclosure or chemical cart (i.e.: oxidizers and solvents)
- Use a designated chemical transportation cart for multiple containers
- Never leave chemicals in transit unattended. Chemicals must be secured in a designated pass-thru or storage facility before leaving
- Verify a clear path exists for a transportation route before moving chemicals.

5.8.3 Pouring Chemicals

- Put on appropriate PPE prior to handling chemicals
- Ensure local exhaust is available to remove hazardous vapors
- Pour chemicals slowly and carefully to avoid splashing
- When diluting, always add the concentrated chemical to water

- When pouring chemicals for cleaning and decontaminating purposes always calculate mixture first before starting the task
- Wipe all residues and splashes off containers and work surfaces immediately

5.8.4 Storing Chemicals

- Store chemicals only in designated and approved locations as established by the EHS department
- Verify labeling indicates chemical name and hazard information
- Never leave a chemical container unattended unless it is in the proper storage location.
- All chemicals, unless otherwise specified, must be in an approved chemical cabinet
- Always segregate chemicals according to classification (Solvents/Flammables, Oxidizers, and Corrosives)
- Refer to control document **12MAZ00119B**, *Hazardous Materials System* for additional information

5.8.5 Gas Cylinder Transport

- Transporting gas cylinders can only be done using appropriate cylinder carts or transport devices designed for that purpose. The cylinder caps shall be in place when the cylinder is not in transport or storage.
- ONLY approved and authorized personnel can transport gas cylinders on site
- OHN/MERT/ERT can transport emergency Oxygen cylinders
- Cylinders must always be properly secured during transport, storage and use

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**5.9 Use of IPA (Isopropyl Alcohol)**

5.9.1 IPA Hazards

IPA is a class 1B flammable material. It is a fire hazard when exposed to heat, flame, ignition source or oxidizer. It is reactive with acids. Vapors are heavier than air and may travel a considerable distance to an ignition source and flash back. Vapor mixtures are explosive.

5.9.2 Requirements

- Use the lowest concentration to do the job.
- A maximum of 9% IPA is allowed for general equipment, lab and fab wipe down purposes as this concentration is not considered a flammable liquid. Use of higher concentrations requires special precautions determined by a Safety Engineer.
- Pouring IPA shall be done in an exhausted solvent hood.
- Employees pouring IPA shall wear an apron, safety glasses with side shields and chemical resistant gloves.
- Pouring of concentration greater than 9% from one container to another shall be bonded and grounded.
- Never pour IPA down acid drains or sewer. Use only drains approved and labeled as “Solvent Drains” or have waste IPA collected for disposal.
- All IPA containers and waste cans must be approved and properly labeled as to the contents and its hazards (see section 5.10 for more information on chemical labeling).
- IPA rags and wipes must be stored in closed containers and when spent, immediately disposed of using the metal step-down solvent waste collection containers. Do not allow discarded IPA to evaporate. (Improper disposal of IPA wipes can create a fire hazard and IPA is cross sensitive to several TGM points, which could cause a false fab evacuation). Keep the lid completely closed when not adding/removing materials
- IPA must be stored in solvent storage cabinets when not in use.
- IPA containers must never be stored with corrosives or oxidizers.
- IPA containers must NOT be stored in acid cabinets or acid hoods.

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**5.10 Chemical Labeling**

5.11.1 All chemical containers (including squeeze bottles), and chemical storage cabinets must have a label to identify contents clearly in accordance with OSHA’s Hazard Communication Standard. Refer to control document #**12MAZ00215B**, *Hazard Communication Program* for additional information

5.11.2 Secure any unmarked container and contact your supervisor immediately for proper disposal. *Never assume to know content of an unmarked container*.

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**5.11 Hazardous Waste Management**

5.11.1 For Empty Chemical Container Disposal Perform the Following:

- Replace and tighten the cap after use
- Return the empty container to the Empty Chemical Collection Station
- Empty chemical bottles and jerricans may contain residual hazardous materials which may pose a risk to health, safety, and the environment and must be handled by trained hazardous materials handlers. Empty chemical containers must never be placed in general trash.
- Refer to control document **12MAZ00119B**, *Hazardous Materials System* for additional information

5.11.2 Hazardous Waste Disposal

- Wipes used to clean up chemicals must be disposed of in an approved container, labeled with the exact words “Hazardous Waste” and a description of the nature of the waste such as “Acid Debris”, “Solvent Debris” or “Arsenic Debris”.
- Ensure the lid to each container is completely closed in order to prevent evaporation and odors
- Never leave hazardous waste products or used wipes unattended or in piles. Immediately place waste materials in a bag or waste container.
- No unauthorized venting or release of specialty gases is permitted under any conditions
- For large clean operations, ensure to properly label the waste bag. Personnel responsible for collection must appropriately identify the waste product with approved tags that indicates contact information, type of material and process type
- Refer to control document **12MAZ00119B**, *Hazardous Materials System* for additional information

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**5.12 Contaminated Parts and Process Debris Handling/Collection**

5.12.1 Scope

This section covers minimum requirements for handling of contaminated parts and process debris with out-gassing potential that could impact employee health and TGM alarm points. This situation is most commonly found during equipment maintenance activities when performing tool cleans, part replacement and vacuuming operations. This procedure addresses requirements for securing contaminated parts/process debris once removed from equipment and how it is to be prepared for collection by the site environmental waste handling personnel.

5.12.2 Procedure

- Contaminated parts intended for disposal and process debris shall be handled as hazardous waste and be collected and processed by site waste handling personnel
- Contaminated parts and process debris must be handled to prevent employee exposure and out-gassing
- Before beginning maintenance, have on hand equipment for exhausting, capping, bagging, sealing and tagging contaminated parts and process debris
- Follow maintenance procedures for appropriate PPE and LOTO
- Know process gases monitored by TGM and the associate cross-sensitivities
- When available use supplemental exhaust when performing maintenance
- Once parts are disconnected immediately seal or cap all open ends and parts. It is not acceptable to use cleanroom gloves to seal openings. Blind flanges, specifically designed caps or cleanroom tape shall be used
- Immediately bag parts/process debris using clear plastic bags, seal and label
- All bagged waste parts/process debris must be labeled indicating tool number, date, generators name, department name and waste material inside bag. Waste labels are available from:
    - The EHS department
    - The CHD-Fab stockroom and/or north CDM waste collection area (Chandler site only)
- When vacuum exhaust has the potential for emitting hazardous gas or causing interference on the TGM system, the vacuum cleaner exhaust shall be vented to a “safe location”. This can be done by venting vacuum exhaust into appropriate house exhaust duct system
- Immediately remove bagged and tagged contaminated parts/process debris out of fab/lab. For waste pick-up:
    - Contact EHS
    - Stage the material at the LSM, an exhausted parts clean hood or the north CDM waste collection area (Chandler only)
- Contaminated parts in needing of cleaning should be stored in an exhausted parts clean hood if there is a risk of off-gassing
- If you suspect your activities could have caused the TGM alarms to activate, immediately contact your supervisor, ECS or the ERT

5.12.3 Maintenance & Storage

- All portable vacuums shall be routinely maintained and filters/ bags shall be changed out in a parts clean hood. The vacuum filters and bags shall be bagged and tagged for collection.
- Chemically contaminated and parts clean wipes shall be immediately placed in appropriate waste collection container or bagged, sealed and tagged for disposal. Contaminated wipes shall not be accumulated on tool or floor.

5.12.4 Waste Collection Area

- Waste will be collected on a scheduled basis, excluding weekends.
- Materials found not to be properly bagged and labeled will be returned to the owning department for correction.
- EHS department will provide waste labels in the collection area and maintain label availability.

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**5.13 Manufacturing Equipment Sign-off**

5.13.1 General Requirements

- Any new, used, and relocated equipment must be reviewed by EHS Department prior to final placement. Equipment modifications or process changes may require the equipment to have another EHS sign-off. Refer to control document # **12MAZ00153B**, *Equipment Sign-off & Approval*
- Equipment being relocated/removed must pass the EHS equipment decontamination review prior to being moved. Refer to control document # **12MAZ00153B**, *Equipment Sign-off & Approval*
- Employees must not use any equipment that has not passed the equipment sign-off process.

5.13.2 The Three Levels Regarding Equipment Status Are as Follows:

- New, used, or relocated equipment pending installation or completion
  - Label reads “CAUTION-DO NOT USE” (green neon label at front of equipment).
  - Equipment is not to be operated under any circumstances by Freescale employees or any contractor
- Equipment installed and signed-off for engineering evaluation or qualification (this covers all facility services **EXCEPT** chemical and hazardous gases)
  - Special restrictions will be noted at the bottom of the label.
  - Label reads “CAUTION APPROVED FOR ENGINEERING EVALUATION” (Pink neon label placed over DO NOT USE label, all engineering signatures must be present).
  - Equipment operated by engineers, technicians and contractors
- Engineering evaluation has been completed and equipment is ready for production use. Label reads “SAFETY INSPECTED AND APPROVED” (green label with white lettering)

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**5.14 Obstacles/Obstructions & Floor Tile Openings**

5.14.1 General Requirements

- DO NOT leave equipment or materials in the cleanroom aisles or exit pathways.
- Keep all aisles clear from cords, lines, and air hoses that run along the floor to reduce tripping hazards
- DO NOT store any items closer than 18” from the ceiling, fire sprinkler heads must remain unobstructed.
- Keep the following areas clear of obstructions and easily accessible at all times:
  - All doors marked as “EXIT”
  - Fire Extinguishers
  - Fire Hose Stations
  - Pull Stations
  - Life Safety System Panels
  - Eyewash and Safety shower stations
  - Electrical Panels/Disconnects

5.14.2 Safety Requirements for Floor Tile Openings

- All floor tile openings in cleanroom areas shall be barricaded with a secured, rigid handrail system, office area floor openings may use other effective methods.
- If the adjacent floor tiles can shift, place bracing around the perimeter of the opening to prevent floor tile from shifting.
- Notify affected bay/chase personnel of intended activities and hazards
- Remove barricade and replace floor tile when job is completed, inspect for trip hazards.

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**5.15 Lockout/Tagout (LOTO)**

5.15.1 General Requirements

- Employees who service and maintain facilities and equipment are required to comply with site LOTO requirement. Refer to control document **#12MAZ001174B**, *Energy Control (Lockout/tagout)*
- Follow lockout/tagout procedures when servicing or maintaining equipment where unexpected energizing, start-up, or release of stored energy could cause injury. Only **RED** locks and appropriate tags shall be used for LOTO situations.
- All personnel are required to comply with restrictions and limitations imposed upon them while equipment is down
- After ensuring that no personnel are exposed, and as a check on having disconnected the energy sources, operate the push button or other normal operating controls to make certain the equipment will not operate. CAUTION: return operating control(s) to the “neutral” or “off” position after testing.
- Examples of stored energy:
  - Electrical
  - Mechanical
  - Hydraulic

- Steam
- Thermal
- Chemicals and Gases

- Interlocks ARE NOT considered an acceptable isolation method for LOTO. See section 5.17, Machine Guarding

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**5.16 Electrical Safety**

5.16.1 General requirements

- Refer to control document # **12MAZ00180B**, *Electrical Safety Program*
- Perform energized troubleshooting, maintenance or repair only when it is not practical to de-energize the equipment, section or module. Energized work requires two trained personnel.
- Prior to performing energizing electrical troubleshooting, maintenance or repair, required training must be completed and documented. The individual shall then be authorized by their supervisor/manager to perform the needed tasks based on training, education, licensing, and experience.
- Identify and use appropriate PPE, tools and instrumentation for the task based on exposure risk and current/voltages present.
- Use appropriate barricading, flagging and signage around exposed energized points to alert any potentially affected individual that may work in or enter the area.
- Replace covers or guarding over energized points when leaving the area unattended.

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**5.17 Machine Guarding**

5.17.1 General Requirements

- Refer to control document # **12MAZ00173B**, *Machine Guarding*
- Guards are engineered to reduce the risk of exposure to mechanical, electrical and chemical hazards of equipment. Ensure that the temporary removal, alteration or bypassing of machine guarding controls is only performed under specific controlled circumstances for maintenance and set-up operations.
- Guards may be removed during maintenance by personnel trained and authorized to do so. Safety precautions need to be taken to keep area personnel away from the exposed hazard. The guards must be replaced when either the equipment is left unattended or the equipment is returned to service.
- When an interlocked guard needs to be bypassed for maintenance, the interlock must be reset before the equipment is returned to service. A tripped interlock is not acceptable to use as lock out, only approved lock out methods are to be used. Refer to section 5.15, Lockout/Tagout
- Report any bypassed, defective or missing machine guards to your supervisor immediately. Take appropriate actions to mitigate the hazard.

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**5.18 Ionizing Radiation Safety**

5.18.1 General Requirements

- Refer to control document # **12MAZ00218B**, *Ionizing Radiation Safety*
- All personnel working with ionizing radiation equipment must be specifically trained for each piece of equipment
- Ionizing Radiation safety requirements and a "Notice to Employees" are posted in a conspicuous location near the ionizing radiation producing system
- Only qualified personnel are permitted to repair or modify radiation generating equipment
- Safety interlocks cannot be bypassed unless authorized by the site's Radiation Safety Officer (RSO) within the site EHS department
- Radiation equipment must not be relocated, moved, or transferred unless authorized by the EHS Department
- Notify EHS Department of any newly purchased or newly acquired Ionizing Radiation source to ensure proper certifications and State registration
- In the event of a radiation emergency contact the ECS at x2600 or the RSO within the site EHS department.

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**5.19 Laser Safety**

5.19.1 General Requirements

- Refer to control document # **12MAZ00221B**, *Laser Safety*
- Never look directly into a laser beam
- Do NOT enter the laser room without proper eye protection when the laser warning lights are on
- Ensure all lasers have the proper WARNING labels attached
- The protective housing can be removed by trained personnel **ONLY** during maintenance activities
- All personnel operating or maintaining equipment containing Class IIIB or IV lasers must attend Freescale Laser Safety Course accordingly
- All personnel, who operate or maintain Class IIIB or IV lasers, must have a baseline laser eye exam before working with a laser. Contact the EHS Department Laser Safety Officer (LSO) for assistance
- Proper laser safety protective eyewear must be worn during operation and/or maintenance of Class IIIB or Class IV lasers
- Always use appropriate and approved laser barriers to control Class IIIb and IV laser access during laser service. During service of the laser, access to the controlled area must be limited to trained individuals

- Notify EHS Department of any newly purchased or newly acquired laser to ensure proper certifications and State registration
- DO NOT remove or make modifications to any class laser system without prior notification to Laser Safety Officer

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**5.20 Manual Material Handling & Ergonomics**

5.20.1 General Requirement

- The maximum weight allowed to be lifted by an individual unassisted is 35 lbs. from the floor to knuckle height, 30 lbs. from knuckle to shoulder height and 20 lbs. maximum for shoulder to arm reach height. (These weight limits are only recommendations and will vary accordingly with an individual's capabilities.)
- Bend knees, keep back straight, and then push upward with legs. This eliminates strain on the back or abdomen.
- Learn and use the following rules of lifting:
  - Feet apart
  - Bend the knees
  - Keep the back straight
  - Lift with legs, not back
  - Keep the load close to body
  - Avoid twisting back while carrying a load
  - Step to move the load, never twist or lean
  - If it is necessary to lift or move an object that is too heavy or too bulky, ask for help
- Use safety stools for the following:
  - Any time individuals reach above the head to operate equipment
  - Remove or place objects on shelves, cabinets etc
  - Step on the stool carefully, placing the full weight in the center of the stool
- When handling heavy objects, involve at least two people, use a hoist and/or cart and use appropriate hand/foot protection. Refer to section 5.22, Hoisting Equipment.

5.20.2 Ergonomics

- Refer to control document # **12MAZ00220B**, *Ergonomics*
- For concerns or questions about workstation set-up, repetitive motions, or having an ergonomic assessment performed, stop by the OHR office, visit Ergonomics section of the OHR webpage (AZ-OHR) or contact a staff member in the EHS department
- Incorporate stretching and bending routines into your daily schedule to help prevent ergonomic injuries
- Immediately report to OHR any aches, pains or stiffness that arise from performing tasks while at work.

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**5.21 Power Operated Industrial Trucks**

General Requirements

- Refer to control document # **12MAZ00171B**, *Power Operated Industrial Trucks*
- Prior to operating a PIT or forklift, the driver must have completed the required training and licensing process. Contact the site Safety department for guidance and to arrange for the licensing process once training has been completed.
- The license will need to be renewed every three years through the Safety department.
- Complete the safety checklist as required prior to operating the truck/forklift.
- If a problem is encountered or the truck/forklift is in need of repair, tag the forklift out of service and contact your supervisor or the site EHS department.
- Ensure that trucks being loaded/unloaded have been properly secured to prevent movement during the loading/unloading process.
- Only use the designated charging stations established at various locations across the site. Specific areas have been established for maintenance, ensure that the truck/forklift is moved to that location before starting maintenance or repair.
- When bringing a truck/forklift to the site, notify the site EHS department prior to it's arrival. The truck/forklift can be operated once it has been reviewed and approved for operation.

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**5.22 Hoisting Equipment**

General Requirements

- Refer to control document # **12MAZ00181B**, *Hoisting Equipment Requirements*
- Ensure that each hoist is visually inspected using the required criteria prior to use to ensure the hoist is in good operating condition. Any noted deficiencies shall be assessed, and if needed, repaired prior to operation. Contact the site EHS department for guidance.
- Associated slings, chains and such shall also be inspected prior to each use.
- Only trained individuals shall operate a hoist.
- Each hoist must have a load-rating label visible on the unit. Use the load-rating label to help ensure the lift will not exceed that load limit.
- Review the hoist's instructions manual for assistance on its operation.
- Use appropriate PPE to protect the eyes, hands, feet and head.
- Never place any part of one's body under a lifted load.
- For crane lifts, contact the EHS department prior to bringing the crane on site, so a review of the lift plan and crane certifications can be conducted.

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**5.23 Recycling Program**

General Information

- The recycled products include a number of different commodities, such as:

- Paper products
- Soda cans
- Plastic bottles
- Wood material
- Fluorescent lamps
- Computers
- Used targets
- Cardboard boxes
- Glass bottles
- Copper wire/tubing
- Landscape trimmings
- Batteries
- Monitors
- Cooking oil
- Aluminum products
- Plastic materials
- Scrap metals
- Ferrous metals
- Furniture
- Silicon wafers

- Your participation in preventing these commodities from entering the general trash receptacles is key to a successful recycling program. If you are unable to locate an appropriate recycling container, please contact the site's EHS department.
- Refer to control document **12MAZ00118B,** *Pollution Prevention System* for additional information

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**5.24 Contractor Safety Program**

General Requirements

- Refer to control document # **12MAZ00126B**, *Contractors System*
- Non-Freescale or non-Motorola personnel that are on site to perform work are included in this program.
- New companies wanting to perform work on a Freescale site must complete and submit a pre-qualification package to the site's EHS department several weeks ahead of time to allow for processing of the request.
- The contract personnel must attend the site's EHS orientation program prior to conducting work on site. The need for an exception to this requirement needs to reviewed with a site EHS representative prior to initiating work.
- The Freescale sponsor bringing the contractor onsite must ensure the contract personnel is aware of the EHS requirements at the site.
- The Freescale sponsor needs to be aware of which contractor type (A or B) that the contract personnel is considered and the responsibilities each party takes on. Contact the site EHS department for assistance.
- Type A: is a non-Freescale employee whose day-to-day activities are directed (i.e. details, means, methods and process by which the work objective is accomplished) by Freescale.
- Type B: A non-Freescale employee hired for the purpose of a construction/installation project, the revision of existing sites or fulfilling maintenance service agreements. The term Type B Contractor shall include "subcontractors". The Type B Contractor's day-to-day activities are not directed by Freescale.

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**5.25 EHS Training Requirements**

General Requirements

- Refer to control document # **12MAZ00125B**, *EHS Training Requirements*

- Each employee and Type A contractor must work with Supervision to identify specific training requirements based on job responsibilities/tasks. These training requirements shall be listed in the employee's individual training plan.
- Each employee must receive the applicable training to cover the activities to be performed onsite. Minimum training requirements include:
  - Hazard Communication for awareness on chemically related hazards
  - Evacuation Procedures for instructions on reporting emergencies and how to evacuate
- The training must be documented with the site's training department.
- Employees shall NOT work on equipment unless the individual has received the appropriate tool specific and safety related training to do so, and when necessary, shall work under the supervision of someone who has received appropriate training to become certified to perform this task alone.
- When an employee's job responsibilities change, the employee shall work with their supervision to address any additional training requirements. Update training plan as necessary.
- When periodic refresher training is required, employees must complete the refresher training prior to the expiration date or risk being removed that specific program and restricted from performing those associated job functions.
- For questions or guidance, please contact your organizations training coordinator or the site's EHS department.

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**6.0 Records**

No records are required by this document

## REVISION SHEET

| Revision Date | Description of Revision & Writer | WI Coord | Effectivity Date |
|---|---|---|---|
| O<br>02 Oct 02 | New document written by Joy R. Jones | J Lund | 02 Oct 02 |
| A<br>23 Dec 03 | Added sections 5.16 and 5.17 addressing Contaminated Parts & Process Debris Handling/Collection and Use of IPA. These sections were included based upon MOS 12 equipment maintenance group request. Changes made by J. Bucciarelli. | J. Lund | 23 Dec 03 |
| B<br>21 Jul 04 | Added Freescale logo and removed reference to Motorola. Modified 5.4.4 to allow contact lenses and 5.8.2 for using eyewash with contact lenses in place. Changes made by T. Steeves. | J Lund | 22 Jul 04 |
| C<br>16 Dec 04 | Added several environmentally related sections.<br>Regrouped sections and made adjustments for document to be used by Tempe and Chandler. Changes made by T. Steeves. | J Lund | 28 Feb 05 |
| D<br>17 Dec 07 | Removed WWCM references and updated document numbers to new method. Made several grammatical changes and removed duplicate sentences. Changed document number and reference documents from 68A's to 12M's. Added iCAP classification. Changes made by T. Steeves. | J. Lund | 14 Feb 08 |

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Title: **Refrigeration Equipment Service Form**

| NUMBER: **12MAZ00323B002** | ISSUE **E** |
|---|---|
| Date: **01 Aug 2007** | PAGE **1** OF **1** |

— EXTERNAL – FOR SERVICE CONDUCTED BY OUTSIDE SERVICE COMPANY

Date. _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____

Fax: _____

Contact Person: _____

Technician Name: _____

Certification Level: ☐ I ☐ II ☐ III ☐ Universal

Certification ID#: _____

EPA Certification by: _____

☐ Attach photocopy of both sides of technician's EPA certification card to this form

Invoice or Purchase Order #: _____

Equipment Location: Building/Room # _____ Other _____

Freescale Equipment ID#: _____

Appliance Type: _____

Model Number: _____

Serial Number: _____

Refrigerant Type: ☐ R-12 ☐ R-22 ☐ R-134A ☐ Other _____

Amount of Recovery/Disposal: _____

Amount of Replenished: _____

Leak Detect Method: ☐ Electronic ☐ Soap Bubbles ☐ Other _____

Vacuum: _____ Inches _____ Microns

Voltage: _____

Description of Service Call (including leak detection result if applicable):

_____

_____

_____

THIS FORM NEEDS TO BE FILLED OUT COMPLETELY AND TECHNICIAN MUST HAVE THE EPA CERTIFICATION CARD WITH HIM IN ORDER TO PERFORM WORK ON THE REFRIGERANT SIDE OF THE EQUIPMENT.

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Title: **Refrigeration Accidental or Unintentional Release Form**

| NUMBER: **12MAZ00323B003** | ISSUE **E** |
|---|---|
| Date: **01 Aug 2007** | PAGE **1** OF **1** |

Technician Name. _____ Date: _____

Equipment Location: Building/Room # _____ Other _____

Freescale Equipment ID#: _____

Refrigerant Type: ☐ R-12 ☐ R-22 ☐ R-134A ☐ Other _____

Leak Location: _____ Estimated Amount of Refrigerant Lost: _____

Description of event:

Why did the event occur?

What future precautions will be used to prevent this kind of event?

Who discovered the situation (Name, Employee Number)?

Who has been informed of the situation (Name, Employee Number)?

Signed: _____ Date: _____

THIS FORM NEEDS TO BE FILLED OUT COMPLETELY.

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| TITLE: | DOCUMENT NUMBER: 12MAZ00323B | | |
|---|---|---|---|
| **Refrigerant Management Program** | ISSUE **G** | DATE **21 May 08** | PAGE **1** OF **10** |

## 1.0 PURPOSE

To define procedures for minimizing ozone-depleting chemicals from being released into the environment.

## 2.0 SCOPE

This document applies to the Freescale Chandler and Tempe sites.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00123B (68ASA66123B) | Personal Safety System |
| 12MAZ00124B (68ASA66124B) | Equipment Safety System |
| 12MAZ00128B (68ASA66128B) | Non-Conformance and Corrective & Preventive Action |
| 12MAZ00132B (68ASA66132B) | Regulatory and Operational Reporting |
| 12MAZ00153B (68ASA66153B) | Equipment Sign Off & Approval |
| 12MAZ00195B (68ASA66195B) | Site General EHS Requirements |
| 12MAZ00319B (68ASA66319B) | Chemical Pre-Acquisition Approval Procedure |
| 12MWS10510D | Records Management Procedure |

*(Note: Documents in parenthesizes indicate previous document number)*

#### 3.1.1 Referenced Forms

| Form Number | Form Title |
|---|---|
| 12MAZ00323B001 | Refrigeration Equipment Service Form — Internal — For Service Conducted by Facilities Operations and Maintenance Group Personnel |
| 12MAZ00323B002 | Refrigerant Service Equipment Form — External— For Service Conducted by Outside Service Company |
| 12MAZ00323B003 | Refrigerant Accidental or Unintentional Release Form |
| 12MAZ00323B 04 | Refrigerant Cylinder Log Sheet |

#### 3.1.2 Other Related Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |
| 12MAZ00119B (68ASA66119B) | Hazardous Materials System |

### 3.1.3 Drivers

| Driver Description |
|---|
| 40CFR§82: Protection of Stratospheric Ozone<br>Clean Air Act Title VI — Stratospheric Ozone Protection |

### 3.2 General Environmental, Health and Safety Requirements

For general Environmental, Health and Safety (EHS) requirements, please refer to control document **#12MAZ00195B**, *Site General EHS Requirements*

### 3.3 Document Classification

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### 3.4 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| CFC | Chlorofluorocarbon |
| CFR | Code of Federal Regulations |
| D 4S | Document Management System |
| DOT | Department of Transportation |
| EHS | Environmental, Health and Safety |
| EPA | Environmental Protection Agency |
| HCFC | Hydrochlorofluorocarbon |
| HFC | Hydrofluorocarbon |
| SRM | Site Refrigerant Manager |

| Definitions & Terms | Description |
|---|---|
| Certified Refrigerant Technician | Any employee of Freescale or of a Service Company with a valid appropriate certification for Refrigerant Transition and Recovery Certification that meets the requirements in 40CFR 82. |
| EHS Management | EHS Manager and management staff |
| EHS Program/System Champion | EHS professional responsible for an EHS program |
| Facilities Engineering | Facilities organization responsible for engineering, planning, and project management for the site |
| Facilities Operations and Maintenance Department | Facilities organization responsible for operation and maintenance functions for the site |

| Definitions & Terms | Description |
|---|---|
| Refrigerant | For the purpose of this document, the word refrigerant includes any substance consisting in part or whole of a CFC, HCFC, and HFC that is used for heat transfer purposes and provides a cooling effect. |
| Refrigeration Equipment | Chillers, closed loop units on process equipment, window air conditioners, and/or any other refrigerant system that EHS and the refrigeration equipment owner agree on |
| Refrigeration Equipment Owner | The organization that owns or has the responsibility in operating the refrigeration equipment or units installed on site |
| Service Company | Any company with a valid appropriate certification that service refrigeration equipment owned by Freescale |
| Site Refrigerant Manager | Freescale employee assigned to manage refrigerant use on site |

## 4.0 PROCEDURE

Available scientific evidence indicates that ozone depleting compounds, when released into the environment, initiate chemical reaction in the upper atmosphere which contributes to the deterioration of the earth's protective ozone layer, thereby posing a long term threat to human health and the environment. **EPA Clean Air Act** prohibits venting of ozone depletion compounds and requires the phase-out of production of some of these chemicals. In addition, Section 608 of the EPA Clean Air Act establishes other requirements to maximize recycling of ozone depleting compounds.

### 4.1 General Safety Guidelines

| Who | What | When |
|---|---|---|
| Certified Refrigerant Technician | Responsible for complying with all applicable Freescale Safety standards and requirements. Refer to control document #**12MAZ00123B**, *Personal Safety System*, and control document #**12MAZ00124B**, *Equipment Safety System* | During each service |
| | Never refill refrigerant cylinders in excess of 80% of fluid capacity | As needed |
| | Never refill a disposal cylinder. | Never |
| | Responsible to secure cylinders when being transport | As needed |

### 4.2 Refrigerant Management

| Who | What | When |
|---|---|---|
| EHS Program/System Champion, and/or SRM | Responsible for reviewing the new refrigerants prior to coming on site. Refer to control document #**12MAZ00319B**, *Chemical Pre-Acquisition Approval Procedure* | As needed |
| | Responsible for maintaining and updating a Refrigeration Equipment Site Inventory | Annually |
| EHS Program/System Champion, Facilities Engineering, Refrigerant Equipment Owner | Responsible for evaluating the feasibility of converting to more friendly refrigerants and implementing retirement/replacement plan for refrigerants per EPA's requirements | As needed |
| SRM, Refrigeration Equipment Owner | Responsible for ensuring that technicians working on refrigeration equipment are certified in accordance with 40CFR§82. File a copy of the certificate or ensure the certification information is on file. | As needed |
| Refrigeration Equipment Owner | Responsible for providing information to SRM necessary to update the Refrigeration Equipment Site Inventory | When requested |
| | Responsible for implementing preventive maintenance programs to ensure system integrity | Continually |
| | Responsible for keeping records of the preventive maintenance of their respective refrigeration equipment. | Continually |
| | Responsible for training and certification of its refrigerant technicians | As needed |
| | Responsible for notifying the Service Company and Freescale employees who are certified refrigerant technicians about their responsibilities addressed in this document | Prior to each service visit |

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| Who | What | When |
|---|---|---|
| Refrigeration Equipment Owner (cont) | Responsible for having a refrigeration equipment service form filled out for each service that comes into contact with the refrigerant of the refrigeration equipment. Freescale provides the Refrigeration Equipment Service Form, **#12MAZ00323B001** and/or **#12MAZ00323B002** for services of refrigeration equipment. The refrigerant equipment owner will maintain the completed equipment service form(s) according to its recordkeeping requirements of maintenance records. Refer to the EHS web site: http://compass.freescale.net/go/form to obtain the applicable form. An alternative refrigeration equipment service form can be provided by the certified outside refrigeration equipment company with the information that meets the requirements in 40 CFR 82, and document the scope of the service and the equipment that is serviced. | After each service |
| | Responsible for having a *Refrigerant Accidental or Unintentional Release Form*, #**12MAZ00323B003**, filled out for any accidental or unintentional release of refrigerants into the atmosphere. Refer to the EHS web site: http://compass.freescale.net/go/form to obtain the form. The refrigerant equipment owner will maintain the completed form(s) according to its recordkeeping requirements of maintenance records. The use of the Refrigerant Accidental or Unintentional Release Form, #**12MAZ00323B003**, is optional for appliances containing less than 50 pounds as long as the information about the refrigerant release is kept in a refrigerant management database, refrigerant tracking spreadsheet, etc. | As needed |
| | When a leak is detected on a unit that contains more than 50 pounds of refrigerant, necessary repairs should be made as soon as possible after the leak is detected. As a general guideline, if the leak repair cannot be arranged or conducted after the leak is detected on the same day or next business day, notify the SRM for immediate assessment and leak rate calculation to determine a repair schedule according to the leak rate of the refrigerant equipment. | As needed, when the repair cannot be performed or planned immediately after the leak is detected |

| Who | What | When |
|---|---|---|
| Refrigeration Equipment Owner (cont) | Responsible for submitting a completed Refrigerant Accidental or Unintentional Release Form, #12MAZ00323B003, for refrigeration equipment that contains more than 50 pounds of refrigerant as well as the associated refrigeration equipment service form(s), Refrigeration Equipment Service Form, #12MAZ00323B001 and/or #12MAZ00323B002, to the SRM when refrigerant leak is detected and repaired. Refer to the EHS web site: http://compass.freescale.net/go/form to obtain the form. These forms are maintained as records stated in Section 5.1. | When refrigerant leak is detected and repaired |
| Certified Refrigerant Technicians | Responsible for using a certified recovery, recycling and/or transfer unit and/or vessel<br>Responsible for proper recovery, recycling and/or transfer unit maintenance and repairs<br>Must follow manufacturer and EPA's guidelines for achieving the required recovery efficiency. | As needed<br>As needed<br>As needed during each service |
| Refrigeration Equipment Owner | Responsible for ensuring that recovery, recycling and/or transfer unit is serviced by certified technician(s) | During each service |
| | Responsible for compliance with all applicable safety standards for the operation of recovery, recycling and/or transfer unit and/or vessel<br>Responsible for ensuring the maintenance of recovery, recycling and/or transfer unit, if applicable, at the site<br>Responsible for cleaning all refrigerant recovery, recycling and/or transfer unit. This includes all equipment directly supporting service work, such as:<br>• Gauges<br>• Hoses<br>• Filter dryers<br>• Vacuum pumps, and | During each service<br>As needed<br>During each service |
| | Recovery, recycling and/or transfer unit<br>Responsible for filling out the *Refrigerant Cylinder Log Sheet*, #**12MAZ00323B004**, when new refrigerant is purchased. Refer to the EHS web site: http://compass.freescale.net/go/form to obtain the form<br>Responsible for maintaining and updating the Refrigerant Cylinder Log Sheets for existing cylinders in use as well as new cylinders added to the inventory on site.<br>Responsible for submitting the refrigerant cylinder log sheet to the SRM after the cylinder is inactive or no longer on site. | As needed<br>Continually<br>As needed |

| Who | What | When |
|---|---|---|
| SRM | Responsible for notifying the EHS Program/System Champion of refrigerant releases to the atmosphere, and to work with the EHS Program/System Champion for reports to regulatory agencies, if required. | As soon as possible |
| | Responsible to escalate if the refrigeration equipment owner does not follow procedure. Refer to control document #**12MAZ00128B**, *Non-conformance and Corrective & Preventive Action* | As needed |
| EHS Management | Responsible for additional reporting, if required. Refer to control document #**12MAZ00114B**, *Significant Incident Reporting* | As soon as possible |

### 4.3 Refrigerant and Oil Contamination

| Who | What | When |
|---|---|---|
| Certified Refrigerant Technicians | Responsible for not mixing refrigerants | As needed |
| | Responsible for using a clean recovery, recycle and/or transfer unit or vessel for each refrigerant | As needed |
| | Responsible for properly labeling each recovery, recycle and/or transfer unit or vessel and refrigerant cylinder | As needed |
| | Responsible for capturing and labeling extra/contaminated oil or refrigerant from refrigeration equipment | As needed |
| Refrigeration Equipment Owner | Ensure the extra/contaminated oil or refrigerant from the refrigeration equipment is properly labeled for easy identification. Contact EHS Program/System Champion for proper disposal of the materials. | After each service visit |

### 4.4 Decommissioning and Relocation of Refrigeration Equipment

Refer to control document **# 12MAZ00153B**, *Equipment Sign Off & Approval* for proper decommissioning and relocation procedures.

| Who | What | When |
|---|---|---|
| Refrigeration Equipment Owner | Responsible for submitting a completed Equipment Decommissioning Plan to EHS and obtaining an Equipment Removal Tag. Refer to control document #**12MAZ00153B**, *Equipment Sign Off & Approval* | As needed |
| | Ensure a Certified Refrigerant Technician(s) is contacted to perform the task. | As needed |
| | Ensure that the Certified Refrigerant Technician is familiar with the requirements of this document. | As needed |
| | Ensure that equipment to be sold or reused has service valves to facilitate the removal of refrigerant. | As needed |
| | Ensure refrigerant and oil are properly recovered if the equipment is to be disposed of or salvaged. | As needed |
| Certified Refrigerant Technicians | Responsible for removing the refrigerant from the equipment and weighing the refrigerant that was recovered from the equipment. Evacuate refrigerant to level specified in 40CFR82.156. | As needed |
| | Responsible for signing the appropriate box on the Equipment Removal Tag | As needed |
| | Responsible for proper handling, collection, and labeling of refrigerant | As needed |
| | Responsible for updating the Refrigerant Cylinder Log Sheet when adding refrigerant recovered from the equipment to the on-site refrigerant-specific cylinder. | As needed |
| | Responsible for filling out all applicable forms (*Refrigeration Equipment Service Form*, #**12MAZ00323B001** and/or #**12MAZ00323B002**; *Refrigerant Accidental or Unintentional Release Form*, #**12MAZ00323B003**) and submit them to the refrigeration equipment owner. Refer to the EHS web site: http://compass.freescale.net/go/form to obtain the applicable form | As needed |
| Refrigeration Equipment Owner | Ensure proper labeling and storage of refrigerant or oil from the refrigeration equipment | As needed |
| | Notify EHS Program/System Champion for proper storage and disposal requirements. | As needed |
| | Responsible for submitting the completed *Equipment Decommissioning Checklist*, #**12MAZ00153B002**, to EHS Program Champion. Refer to control document #**12MAZ00153B**, *Equipment Sign Off & Approval*. | As needed |
| SRM, EHS Program/System Champion | Responsible for ensuring the Equipment Decommissioning Checklist, #12MAZ00153B002, is completed and filed. Refer to control document #12MAZ00153B, Equipment Sign Off & Approval. | As needed |

## 5.0 RECORDS

### 5.1 Required Records

| Paragraph | Record Description | Retention |
|---|---|---|
| 4.2, 4.4 | Refrigeration Equipment Service Form — Internal — For Service Conducted by Facilities Operations and Maintenance Group Personnel, #12MAZ00323B001 (for refrigeration equipment containing more than 50 pounds of refrigerant) | 30 years |
| 4.2, 4.4 | Refrigeration Equipment Service Form — External — For Service Conducted by Outside Service Company, #12MAZ00323B002 (for refrigeration equipment containing more than 50 pounds of refrigerant) | 30 years |
| 4.2, 4.4 | Refrigerant Accidental or Unintentional Release Form, #12MAZ00323B003 (for refrigeration equipment containing more than 50 pounds of refrigerant) | 30 years |
| 4.4 | Equipment Decommissioning Checklist, #12MAZ00153B002. | Refer to control document # 12MAZ00153B, Equipment Sign Off & Approval, for retention requirements |
| 4.2 | Inactive Refrigerant Cylinder Log Sheet, #12MAZ00323B004 | 5 years |

Refer to control document **#12MWS10510D**, *Records Management Procedure* which outlines the requirements for compliance with Records Management Policy SOP 4-15.

## REVISION SHEET

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| O<br>12 Apr 01 | New document written by Elizabeth Betancourt. | RB | 12 Apr 01 |
| A<br>07 Jan 02 | Added the responsibility of filling out and submitting the CFC/HCFC Accidental or Unintentional Release Form. Changes made by Elizabeth Betancourt | RB | 07 Jan 02 |
| B<br>20 Jun 02 | Incorporated discharges of refrigerant to the atmosphere into the Refrigerant Accidental or Unintentional Release Form. Added forms numbers and titles to Section 3.1 and in all applicable sections. Changed the document and forms titles. Changes made by Elizabeth Betancourt | J. Lund | 20 Jun 02 |
| C<br>24 Sept 03 | Implemented new format in sections 3.1's and added sections 4.4.1 and 4.4.2 for equipment decommissioning land relocations. Changes made by Hsi-An Kwong | J. Lund | 24 Sept 03 |
| D<br>07 Dec 04 | General updates to include both the Chandler and the Tempe sites. Changes also included company name change from Motorola to Freescale. Added the use of refrigerant cylinder log sheet as developed in an inactive document #68ASA66347B. Document also replaces Tempe 68ASA66597B. Revisions made by Hsi-An Kwong | J. Lund | 31 Jan 05 |
| E<br>04 Jun 07 | General updates to revise responsibilities of the refrigerant equipment owner in Section 4.1, and recordkeeping requirements in Section 5.1. Added iCAP classification. Forms reviewed, no changes. Formal 24 month document review. Revision made by Hsi-An Kwong | J. Lund | 15 Jun 07 |
| F<br>01 Aug 07 | Change document number and reference documents from 68A's to 12M's. No procedural changes made. | J. Lund | 01 Aug 07 |
| G<br>05 May 08 | Provide clarification on recordkeeping of service forms of the refrigeration equipment owner in Section 4.2. Combine sections 4.4.1 and 4.4.2 into one common section. Revised Section 4.4 to integrate with existing EHS equipment sign-off and approval program. Revision made by Hsi-An Kwon | J. Lund | 21 May 08 |

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| TITLE: | DOCUMENT NUMBER: | | |
|---|---|---|---|
| **Equipment Sign-off and Approval** | **12MAZ00153B** | | |
| | ISSUE | DATE | PAGE |
| | **H** | **21 May 08** | **1** OF **12** |

## 1.0 PURPOSE

The purpose of this specification is to provide a uniform procedure that will ensure manufacturing process equipment that is placed into operations, removed or relocated is reviewed for compliance to EHS installation and decommissioning requirements. Additionally, this review and approval process includes specific tool modifications on existing tools and sign-off for chemical delivery systems as identified in this document.

## 2.0 SCOPE

This document applies to all **process** related equipment/tools to include front end, back end, point of use abatement, metrology, test and laboratory that can present an electrical, radiation, mechanical, environmental, fire, ventilation, ergonomic, or chemical hazard. In addition, this document applies to equipment that is connected to facility services such as house exhaust, waste drains, chemical feeds, toxic gas monitoring, fire protection, house air/vacuum systems and hard wired electrical systems. This document does not include Facility support equipment **(Exception: Freon containing equipment being removed from site — see section 6.4)**. This document applies to Freescale Chandler and Tempe sites.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00195B (68ASA66195B) | Site General EHS Requirements |
| 12MWS10510D | Records Management Procedure |

*(Note: Documents in parenthesizes indicate previous document number)*

#### 3.1.1 Referenced Forms

| Document Number | Document Title |
|---|---|
| 12MAZ00153B001 | Equipment Decommissioning Plan |
| 12MAZ00153B002 | Equipment Decommissioning Checklist |
| None | New Equipment Installation and Process Change (Tempe) |

#### 3.1.2 Other Related Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |

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| Document Number | Document Title |
|---|---|
| 12MAZ00119B (68ASA66119B) | Hazardous Materials System |
| 12MAZ00123B (68ASA66123B) | Personal Safety System |
| 12MAZ00124B (68ASA66124B) | Equipment Safety System |
| 12MAZ00128B (68ASA66128B) | Non Conformance, Corrective and Preventative Action |
| 12MAZ00157B (68ASA66157B) | Chemical Management Plan |
| 12MAZ00163B (68ASA66163B) | Design Review |
| 12MAZ00212B (68ASA66212B) | Chemical Exposure Assessment and Monitoring |
| 12MAZ00213B (68ASA66213B) | Non-ionizing Radiation Energy |
| 12MAZ00215B (68ASA66215B) | Hazard Communication |
| 12MAZ00218B (68ASA66218B) | Ionizing Radiation Safety |
| 12MAZ00221B (68ASA66221B) | Laser Safety |
| 12MAZ00347B (68ASA66347B) | Refrigerant Equipment Preventive Maintenance and Repair |
| FSL-1 | Tool Sign-off Application Guide. |
| FSL-3 | Exhaust Ventilation |
| FSL-4 | Hazardous Gas — Vaporized Liquid |

### 3.1.3 Drivers

| Drivers | |
|---|---|
| SEMI S-2 | Safety Guidelines for Semiconductor Manufacturing Equipment |
| 49CFR171 - 178 | Department of Transportation (DOT) |
| 40CFR260 - 271 | Resource Conservation & Recovery Act (RCRA) |
| 29CFR1910 | Occupational Health & Safety Administration (OSHA) |

International Fire Code

## 3.2 General Environmental, Health and Safety Requirements

For general Environmental, Health and Safety (EHS) requirements refer to control document # **12MAZ00195B**, Site General EHS Requirements.

## 3.3 Document Classification

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## 3.4 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| CAR(s) | Corrective Action Request(s) |
| CDM | Chemical Dispensing Module |

| Acronym | Description |
|---|---|
| DMS | Document Management System |
| EHS | Environmental, Health and Safety |
| RF | Radio Frequency |
| SEMI | Semiconductor Equipment and Material International |
| VMB | Valve Manifold Box |

| Definitions & Terms | Description |
|---|---|
| Chemical | Any solid, liquid, or gas that is, or has the potential to be, a physical or health hazard. |
| Chemical Delivery System | Any system or equipment that supplies, or stores liquid chemicals or gases including gas cabinets, chemical delivery units, tanks, drums, or other delivery systems that supply chemicals in bulk to process related equipment/tools. |
| Decommissioning | The entire process of removing equipment from service including decontamination, defacilitization and final disposition. |
| Decontamination | Removal of contamination source and/or chemical contaminants from equipment, facilities and infrastructure by cleaning it to prevent harm to human health or the environment. |
| Defacilitization | Removal of facilities including electrical, piping, drains, ductwork, support equipment and infrastructure. |
| EHS Professional | Individual(s) assigned to EHS activities and who by education and experience are qualified to make EHS decisions. |
| Equipment | Term used within this document intended to describe any process equipment/tool, research equipment/tool and/or support equipment that is directly or indirectly used towards the manufacture, research, and/or development of a finished or processed product. |
| Equipment Decommissioning Plan & Checklist | The detailed checklist is to be used by equipment owner and contractor as a guide and documentation, specifying the decommission process to include decontamination and removal procedures. Forms 12MAZ0015313001 and 12MAZ00153B002 will be used. |
| Facilities Engineering | Facilities organization responsible for engineering layout, planning and design. |
| Hazardous chemical | Means any chemical that is a physical hazard or a health hazard as defined in 29CFR1910.1200. |
| Idle Equipment | Equipment/tools that have been taken out of service or placed offline for an extended period (greater than 6 months) and uses, contains, comes in contact with a hazardous chemical, and/or connects to a facility exhaust, waste drain, toxic gas monitoring or fire protection systems and/or contains any ionizing or non-ionizing radiation source (i.e. laser, RF microwave, X-ray, etc.). |
| Process | Manufacturing operations and Research/Development activities that contribute to the development of a product. |

| Definitions & Terms | Description |
|---|---|
| Project Manager/Coordinator | Person overseeing/managing a project with manufacturing focus on design level issues. |
| Site Refrigerant Manager | Freescale employee assigned to manage refrigerant use on site. |
| Utility | Services supplied to equipment/tool for operation and/or processing. This includes pneumatic, hydraulic, electrical, wastewater discharge, exhaust discharge, chemical delivery/collection, toxic gas monitoring and fire suppression/annunciation. |

## 4.0 EQUIPMENT AND MATERIAL

- Equipment Sign-off “Equipment Off — Caution - Do Not Use” Sticker
- Equipment Sign-off “Caution Approved for Engineering Evaluation” Sticker
- Equipment Sign-off “EHS Inspected and Approved” Sticker
- Equipment Sign-off “Equipment Removal Tag” Sticker

## 5.0 PROCEDURE

### 5.1 Manufacturing Equipment/Tool Installation Sign-off Procedure:

The review and approval sign-off team is made up of the principle parties involved in acquiring, designing and/or installing the equipment. This can include EHS representatives, project manager/coordinator, appropriate facilities engineering disciplines or facilities operations, equipment engineering and process engineering personnel.

| Step | Description |
|---|---|
| 1 | Upon arrival of equipment for installation, the “Equipment-off Caution Do Not Use” sticker must be affixed at the equipment in a visible location by the project manager/coordinator. The top section of the sticker is to be completed by project manager/coordinator and signed by equipment engineer/owner. |
| 2 | Tool fit-up installation process can now begin. Construction activities for tool/equipment utility install can proceed. |
| 3 | When all utility installations in Level 1 Priority Utility Sign-off section of the “**Equipment-off Caution Do Not Use**” sticker are completed and ready for start-up, the project manager/coordinator will arrange with the affected facilities engineering discipline or facilities operation personnel for review, approval and sign-off of the utilities. Any significant issues found during review that could impact people or property must be addressed prior to utility approval. If facilities engineering or facilities operation personnel are satisfied with only **minor** punch list items to complete, they will then sign-off the Priority Utility Sign-off (Level 1 section) indicating the utilities they have approved for start-up. (Minor punch list items that are not safety related and will not interfere with the safe operation of the tool can be finished during the remaining equipment installation process.) Minor punch list items must be listed in entirety on the punch list form. (Each sac will follow established methodology for tracking punch list items.) |

| Step | Description |
|---|---|
| 4 | Prior to starting up equipment and using any utility, the EHS representative, equipment engineer, and project manager/coordinator shall inspect tool installation and agree that the punch list items as listed by the inspectors are not significant enough to prevent the startup of the tool and/or utility. If in agreement, all 3 will sign-off in Level 1 section and the PRIORITY UTILITY SIGN-OFF will be granted. The EHS representative will place a "**Caution Approved for Engineering Evaluation**" sticker over top of the "**Equipment-off Caution Do Not Use**" sticker listing the utilities that can be turned on and sign/date sticker. Under certain circumstances EHS representative can make a determination if final sign-off is possible and grant the final tool installation approval and provide the "**EHS Inspected & Approved**" sticker. |
| 5 | After the Priority Utility Sign-off sticker is granted and applied, the equipment engineer can now request activation of the identified utilities from Facilities and/or chemical management service. At this step of the process, the equipment maintenance or vendor can now begin verification of tool functionality (I.e. EPO circuits, exhaust interlocks, cabinet interlocks, wafer handling systems, etc.) |
| 6 | When a discipline's area of responsibility has been finalized from an equipment installation basis, the representative of Facilities engineering or operation discipline representative will inspect all of the utilities related to their area of responsibility and sign off in the Level 2 section titled FACILITIES INSTALLATION COMPLETION of the "**Equipment- off Caution Do Not Use**" sticker. This level 2 section will also require the signoff of Factory Support at the Chandler site. **This section shall be signed only after all items have been completed in each representative's discipline — no open punch-list items**. |
| 7 | Before any hazardous chemicals can be turned onto tool/equipment, the EHS representative, tool owner, and project manager/coordinator must review, approve and sign-off under the FACILITIES INSTALLATION COMPLETION level 2 section. The Level 2 section must have all applicable signatures prior to allowing hazardous chemicals to be used — **exception** is recognized inert gases. |
| 8 | After obtaining the Facilities Installation Completion sign-offs, the EHS representative will update tool utility status with a "**Caution Approved for Engineering Evaluation**" sticker listing all utilities that can now be used or place a "**EHS Inspected & Approved**" sticker on the equipment /tool. The tool owner is permitted to activate all utilities of the equipment/tool identified on the "**Caution Approved for Engineering Evaluation**" sticker or if issued "**EHS Inspected & Approved**" sticker tool can now be released for manufacturing use. |
| 9 | At this time, if applicable EHS surveys and tests are to be completed by the EHS department and equipment engineering punch list items finalized during this stage. |
| 10 | The FINAL TOOL COMPLETION AND EHS APPROVAL sign-off involves the tool owner/equipment engineer and EHS representative reviewing tool for open punch list items and ability to release tool to manufacturing. EHS representative then removes all existing stickers and punch list and installs an "**EHS Inspected and Approved**" sticker, thereby formally releasing the tool for manufacturing use. |
| 11 | **Equipment-off Caution Do Not Use** sticker, **Caution Approved for Engineering Evaluation** sticker, punch lists and completed checklists will be put into the tool install package that is kept by Facilities Project Management Group. |
| 12 | The EHS Equipment, Gas Cabinet & VMB checklists are available to assist during review of tool/equipment. Facility engineering checklists can be found on the Site Services website. Checklists are used as reference only. |

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### 5.2.1 Equipment Relocation Sign-off Requirement

When a piece of equipment/tool is relocated the "**EHS Inspected & Approved**" sticker becomes invalid (see section 6.0 Equipment Decommissioning and Relocation). The department that owns the equipment must initiate a new sign-off process. If the equipment to be relocated is located within the same bay/room discuss the equipment sign-off requirements with safety representative, environmental representative and facilities project manager/coordinator. The sign-off process may be modified depending on the scope of installation required.

### 5.2.2 Equipment Modification Sign-off Requirement

When a piece of equipment/tool is planned to be modified, the department that owns the equipment must review the modification with safety representative and environmental representative to determine if the modification activity triggers a new a sign-off process. The following is a listing of items definitely requiring sign-off process activation:

- Change or addition to chemistry on the tool
- Major equipment addition to the tool (i.e. chamber, generator, etc.)
- Any Safety system hardware or software changes (i.e. EMO, interlocks, etc.) Change of exhaust system on the tool or support equipment
- Change to Toxic Gas Monitoring (TGM) point or fire protection system Change of effluent into waste drain system
- Addition of a new utility

### 5.4 Idled Equipment

Equipment/tools that have been taken out of service or offline for an extended period (greater than 6 months) shall require a limited review and approval prior to re-starting. Discuss with safety representative and environmental representative the equipment/tool review and sign-off requirements regarding these conditions.

### 5.5 Gas Cabinet, Chemical Dispense Modules & VMB General Sign-off Criteria

All chemical delivery systems must undergo equipment sign-off process prior to start-up of equipment. All appropriate utility disciplines shall participate in this process to include chemical management department, if applicable. The format for the sign-off shall be the same as in section 5.1 titled "Manufacturing Equipment/Tool Installation Sign-off Procedure" of this document.

## 6.0 EQUIPMENT DECOMMISSIONING AND RELOCATION:

This section defines the procedures for handling process related equipment/tools for relocation. A sign-off requirement for decontaminating and decommissioning of front end, back end, point of use abatement, metrology, test and laboratory process related equipment/tools guides this procedure to ensure applicable regulations are met. Included in this procedure are a review, approval and sign-off process that encompasses the safe and proper decontamination and notification for equipment/tool, support or ancillary equipment being decommissioned or relocated.

Included in the "Equipment Relocation" sign-off process are the following equipment/tool situations:

- Relocation (for re-installation within same bay/room or within site boundaries)
- Moved to storage/staging on site
- Sent off-site (sold to another company, for refurbishment, repair or maintenance)

  * * * **Exception: this does not include parts clean operations and pump repairs—provided a written procedure has been developed regarding the safe handling/shipping of equipment with residual contamination)**

And in addition, if the equipment/tool has any *one* of the following features:

- Uses, contains, comes in contact with a hazardous chemical
- Connects to a facility system such as house exhaust, waste drains, chemical feed, toxic gas monitoring, fire alarm and/or suppression, and house air/vacuum systems
- Has hardwired electrical service
- Contains any ionizing or non-ionizing radiation source (i.e. laser, RF microwave, X-ray, etc.).

* * * Transportation, safety and environmental regulations prohibit the improper transportation and disposal of hazardous materials. Thus contaminated equipment and support facilities must be decontaminated prior to removal. When sufficient decontamination is not attained or is unfeasible, equipment and/or support materials will be packaged, labeled, transported, and disposed of as regulated waste.

Additionally, state regulations govern radiation sources and they must be properly managed and inventoried when removed or relocated

Manufacturing, finance or receiving entity equipment disposition requirements for asset removal or transfer are not included in this document.

## 6.3 PROCEDURE

### 6.3.1 Equipment Decommissioning and Removal Responsibilities

Equipment Engineer/Owner Responsibilities:

| Step | Description |
|---|---|
| 1 | Declare intent and initiate process to remove or relocate equipment. Enter service request for tool removal, if applicable. Obtain and complete the **#12MAZ00153B001**, *Equipment Decommissioning Plan*, prior to any decontamination or defacilitization activities. |
| 2 | Determine the steps for proper decontamination and defacilitization for the equipment. Complete the Equipment Decommissioning Plan with the assistance of the Facilities Department, EHS Department, and personnel who will be performing the decommissioning or relocation. Prior to any decontamination or defacilitization activities. |
| 3 | Obtain approval of the Equipment Decommissioning Plan from personnel specified on the form. Upon completion of the Equipment Decommissioning Plan. |
| 4 | Install **Equipment Removal Tag** sticker on equipment/tool to be removed. Upon completion of the Equipment Decommissioning Plan. |
| 5 | Affix the **#12MAZ00153B002**, *Equipment Decommissioning Checklist* to equipment. Prior to any decontamination or defacilitization activities. |
| 6 | Coordinate the physical equipment decontamination process with appropriate personnel as detailed in the Equipment Decommissioning Plan. Upon approval of the Equipment Decommissioning Plan and after the **Equipment Removal Tag** sticker and Equipment Decommissioning Checklist have been affixed to the equipment. |
| 7 | Communicate to Project Manager and EHS professional that equipment/tool decontamination process is complete. After equipment/tool is decontaminated and **PRIOR** to packaging for transport/move. |
| 8 | Have EHS professional inspect/signoff equipment/tool prior to defacilitization work beings to ensure adequate decontamination has been performed on tool. To be completed on all equipment/tools that contained **liquid** chemistry. |

Project Manager/Coordinator responsibilities:

| Step | Description |
|---|---|
| 1 | Provide a copy of Equipment Decommissioning Plan to contractors involved in the equipment/tool removal process and communicate hazards and requirements of work to be performed. Prior to any decontamination or defacilitization activities. |
| 2 | Ensure all applicable parties sign the **Equipment Removal Tag** sticker and Equipment Decommissioning Checklist. After equipment area of responsibility has been inspected/approved and **PRIOR** to packaging for transport/move. |
| 3 | Contact EHS for final sign-off and approval. After equipment is inspected/approved for decommissioning and **PRIOR** to packaging for transport/move. |
| 4 | Coordinate the completion of the equipment decommissioning and relocation process. After EHS professional issued the final approval and signed the **Equipment Removal Tag** sticker and Equipment Decommissioning Checklist. |

EHS Professional responsibilities:

| Step | Description |
|---|---|
| 1 | Review and approve the Equipment Decommissioning Plan. Upon return of the completed Equipment Decommissioning Plan. |
| 2 | Keep a copy of the Equipment Decommissioning Plan. Upon approval of the Equipment Decommissioning Plan. |
| 3 | Inspect and approve decontamination effectiveness on all tools containing liquid hazardous chemicals. Only for equipment/tools containing liquid hazardous chemicals. |
| 4 | Review tool and issue the final sign off on the Equipment Removal Tag sticker and Equipment Decommissioning Checklist. After equipment is inspected/approved for decommissioning and **PRIOR** to packaging for transport/move. |
| 5 | File copies of the completed Equipment Decommissioning Plan & Checklist in accordance with document 68ASA66128B EHS record document. Upon completion of Equipment Removal sign-off process. |

Facilities Department, Equipment Engineer/Owner, Equipment Vendor, Equipment Maintenance or Freescale Contractor Personnel responsibilities:

| Step | Description |
|---|---|
| 1 | Decommission tool according to Equipment Decommissioning Plan & Equipment Decommissioning Checklist. Review and approve the Equipment Decommissioning Plan. When decommissioning begins and throughout the decommissioning process. |
| 2 | Sign your name on the Equipment Removal Tag sticker and Equipment Decommissioning Checklist. Upon work completion. |

Factory Support responsibilities:

| Step | Description |
|---|---|
| 1 | Inspect tool area for any clean room integrity follow-up (I.e. laminar flow, lighting, particles and signage. |
| 2 | Sign your name on the Equipment Removal Tag sticker and Equipment Decommissioning Checklist. Upon work completion. |

### 6.4 Facilities Operations Owned and Operated Refrigeration Equipment — Decommissioning and Relocation Requirements

This section applies to refrigeration equipment that is owned and/or operated by the site Facilities Operations Department. Refer to control document # **12MAZ00323B**, *Refrigeration Management Program*, for additional general information.

| Who | What | When |
|---|---|---|
| Refrigeration Equipment Owner | Responsible for submitting a completed *Equipment Decommissioning Plan Form*, #**12MAZ00153B001** to EHS and obtaining an Equipment Removal Tag. | As needed |
| | Ensure a Certified Refrigerant Technician(s) is contacted to perform the task. | As needed |
| Certified Refrigerant Technicians | Responsible for signing the appropriate box on the Equipment Removal Tag | As needed |
| | Responsible for proper handling, collection, and labeling of refrigerant | As needed |
| | Responsible for filling out all applicable service forms (*Refrigeration Equipment Service Form*, #**12MAZ00323B001** and/or #**12MAZ00323B002**; | As needed |

| Who | What | When |
|---|---|---|
| | Refrigerant Accidental or Unintentional Release Form, #**12MAZ00323B003**, and/or *Refrigerant Cylinder Log Sheet*, #**12MAZ00323B004**). Refer to control document #**12MAZ00323B**, *Refrigerant Management Program*. | |
| Refrigeration Equipment Owner | Ensure proper labeling and storage of refrigerant or oil from the refrigeration equipment | As needed |
| | Notify EHS Program/System Champion for proper storage and disposal requirements. | As needed |
| Site Refrigerant Manager & EHS Program/System Champion | Responsible for ensuring the *Equipment Decommissioning Checklist*, #**12MAZ00153B002**, is completed and filed. Refer to control document #**12MAZ00153B**, *Equipment Sign Off & Approval.* | As needed |

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## 7.0 RECORDS

### 7.1 Required Record

| Paragraph | Record Description |
|---|---|
| 5.1 | "Equipment-off Caution Do Not Use' Sticker |
| 5.1 | "Caution Approved for Engineering Evaluation" Sticker |
| 5.1 | Equipment/Tool Sign-Off Punch List |
| 6.3 | Equipment Decommissioning Plan |
| 6.3 | Equipment Decommissioning Checklist |

"**Equipment-off Caution Do Not Use**" Sticker, "**Caution Approved for Engineering Evaluation**" Sticker, Equipment Sign-Off Punch Lists and completed checklists will be put into the tool install package that is kept by Facilities Project Management Group.

Equipment Decommissioning Plan and Equipment Decommissioning Checklist will be maintained by EHS professional.

Refer to control document #**12MWS10510D**, *Records Management Procedure* which outlines the requirements for compliance with Records Management Policy SOP 4-15.

## REVISION SHEET

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| O<br>28 Jan 00 | New document written by Troy McCuskey. | HD | 05 Nov 99 |
| A<br>24 Feb 00 | Section 6.1, Required Records revised by Troy McCuskey | HD | 24 Feb 00 |
| B<br>08 Mar 01 | Section 5.1 Steps 5, 8, 10, 12, 13, and section 6.1 revised by Troy McCuskey to reflect current practices. | HD | 06 Oct 00 |
| C<br>09 Mar 01 | Section 3.1 revised - document title of reference document # 68ASA66157B changed. Revised by Hana Dostalova | HD | 09 Mar 01 |
| D<br>18 Sep 02 | Added section 5.2 and 5.3. Revised by Joy Jones | J. Lund | 18 Sep 02 |
| E<br>14 Jun 05 | This document replaces Tempe and Chandler documents 68ASA66334B, 68ASA66453B, and 68ASA66454B. Add EHS professional decontamination inspection for liquid chemistry. Integrated Chandler and Tempe document. Document revised by John Bucciarelli. | J Lund | 19 Sep 05 |
| F<br>29 Sep 05 | Added “New Equipment Installation and Process Change” Work Aid to be used at the Tempe Site. No procedural changes made. | J. Lund | 29 Sep 05 |
| G<br>31 Oct 07 | Incorporated Factory Support personnel into equipment signoff and decommissioning process. Changed document number and reference documents from 68A’s to 12M’s. Added iCAP classification. Minor procedural changes made. Updates submitted by J. Bucciarelli and D. Crider. | J. Lund | 29 Nov 07 |
| H<br>05 May 08 | Added section 6.4 to include the refrigeration equipment owned and/or operated by Facilities Operations for decommissioning and relocation purposes. Added exception statement under Scope and included a definition of Site Refrigerant manager. Updated 12MAZ00153B002. Revised by H. Kwong and J. Bucciarelli | J. Lund | 21 May 08 |

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| TITLE: | DOCUMENT NUMBER: 12MAZ00106B | | |
|---|---|---|---|
| | ISSUE | DATE | PAGE |
| **EHS Goals & Management Review** | **H** | **07 Feb 08** | **1** OF **9** |

## 1.0 PURPOSE

The purpose of this document is to define the procedures for establishing and maintaining the site's EHS goals, to establish an EHS program management procedure for monitoring these EHS goals and the process of conducting Management Reviews.

## 2.0 SCOPE

This document applies to Research, Design and Manufacture of Semiconductors at the Freescale Tempe and Chandler sites.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MWS10510D | Records Management Procedure |
| 12MAZ00102B (68ASA66102B) | EHS Risk Assessment |
| 12MAZ00104B (68ASA66104B) | Regulatory and Other Requirements |
| 12MAZ00107B (68ASA66107B) | Management of Change |
| 12MAZ00113B (68ASA66113B) | EHS Communication, Awareness and Employee Participation |
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |
| 12MAZ00128B (68ASA66128B) | Non-Conformance and Corrective & Preventive Action |
| 12MAZ00131B (68ASA66131B) | EHS Assessments |
| 12MAZ00195B (68ASA66195B) | Site General EHS Requirements |

*(Note: Documents in parenthesizes indicate previous document number)*

### 3.1.1 Referenced Forms

No forms are required by the document.

### 3.1.2 Other Related Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00127B (68ASA66127B) | EHS Monitoring, Measurement & Calibration |
| 12MAZ00132B (68ASA66132B) | Regulatory and Operational Reporting |

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### 3.1.3 Drivers

**Driver Description**

Arizona EHS Management System Plan 12MAZ00101B (68ASA66101B)
Corporate Environmental, Health and Safety Management Plan (A 1000)
ISO 14001 - International Standard, Environmental Management Systems

### 3.2 General Environmental, Health and Safety Requirements

For general Environmental, Health and Safety (EHS) requirements refer to control document # **12MAZ00195B**, *Site General EHS Requirements.*

### 3.3 Document Classification

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### 3.4 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| DMS | Document Management System |
| EHS | Environmental, Health and Safety |
| OHR | Occupational Health Resources |

| Definitions & Terms | Description |
|---|---|
| EHS Management | EHS Manager and management staff |
| Management Team | Management team comprised of organizational managers capable of setting/defining organizational goals and priorities and allocation of resources to support those goals and objectives |
| EHS Staff | EHS Employees at the site, including the EHS Management |

## 4.0 PROCEDURE

### 4.1 Inputs to Goal Setting Process and Selection of Goals

The table below represents the minimum set of input criteria for the EHS goal setting exercise. The process is led by the site's EHS management. A flow chart of the process is depicted in Appendix A (Flow Chart of Goal Setting & Management Process).

| Who | What | When |
|---|---|---|
| EHS Management | Ensure a system is implemented for managing the list of potential EHS goals by considering at a minimum the following sources, and as appropriate the applicability to the site:<br>• Significant Environmental Aspects and Health and Safety Risks to determine highest priority risks (refer to control document # **12MAZ00102B**, *EHS Risk Assessment*)<br>• Results of the assessments of the EHS Management System and evaluation of compliance (refer to control document # **12MAZ00131B**, *EHS Assessments*)<br>• Changes in legal and other requirements with potential site impact (refer to control document # **12MAZ00104B**, *Regulatory and Other Requirements*)<br>• Changes /issues related to site's operations (refer to control documents # **12MAZ00107B**, *Management of Change*, and # **12MAZ00128B**, *Non-Conformance and Corrective & Preventative Action*)<br>• Technological options and financial, operational and business requirements with potential site impact<br>• Identified pollution prevention opportunities (refer to control document # **12MAZ00118B**, *Pollution Prevention System*)<br>• Corporate EHS Strategic Agenda<br>• Proposed Corporate EHS Goals<br>• Comments from internal and external customers and other interested parties for EHS improvement, (refer to control document # **12MAZ00113B**, *EHS Communication, Awareness and Employee Participation*)<br>• Potential goals from previous year(s) that have been deferred | Initial stages of the goal setting process and when significant risks are identified. |
| | Prioritize this potential list based on significance and potential EHS impact | During annual goal setting process |
| EHS Staff | Escalate information to the EHS management that could be an input to the potential goal list or impact the current goal list | During annual goal setting process and as findings, changes or non conformances are identified. |

### 4.1.2 Formalizing EHS Goals and Capital Planning

Once the EHS management has prioritized all potential EHS goals, the EHS management must determine which goals are potentially achievable given staffing & resource limitations. One “Improvement of Environmental Performance” goal per year (at minimum) will be adopted, refer to Corporate Environmental, Health and Safety Management Plan (A1000).

| Who | What | When |
|---|---|---|
| EHS Management | Adopt or modify site EHS goals through the applicable following actions:<br>• Review and prioritize capital related goals<br>• Prepare or obtain costs estimates for high priority goals and submit to appropriate members of the site’s Management Team, where appropriate<br>• From the prioritized funded capital and non-capital related goals; develop a prioritized list of adopted site goals<br>• Ensure that the goals are consistent with the site EHS policy<br>• Ensure that the goals are established at each relevant function and level of the operation, where appropriate<br>• Ensure site’s management team feels adequate staffing & resources are available to achieve goals sponsored by their organization<br>• Incorporate adopted site goals into the performance plans for each EHS department staff member members’ assigned responsibility and accountability for achieving EHS goals.<br>• Ensure each goal includes designation of responsibility and accountability for achieving EHS goals, and the key milestones including, accountability and time-frame by which these are to be achieved. | During annual goal setting process |
| | Ensure the potential goal list, even those not adopted by the site for the coming year, is maintained per **Section 5.0, Records**. | After the annual goal setting process. |
| | Modify adopted site EHS goals and affected performance plan(s) based on the evaluation/control results of any audit, inspection, environmental aspect/ EHS risk assessment, business condition change or capital availability. | When identified issue(s) warrant a change in the site EHS goals. |

| Who | What | When |
|---|---|---|
| Management Team | Integrate (sponsor) selected EHS goal(s) into the organization's scorecard<br>• Ensure adequate site staffing & resources are available to achieve adopted EHS goals sponsored by their organization<br>• Support EHS objectives that are applicable to the manager's specific operations | During annual goal setting process, then continuously throughout the year. |

### 4.1.3 EHS Program Management

| Who | What | When |
|---|---|---|
| EHS Management | Ensure reviews are conducted of the EHS goals to assess progress and the need for changes or additional resources. Include:<br>• Assessing the progress of EHS related goals sponsored by organizations other than the EHS department<br>• Tracking the progress of each EHS goal which includes listing key EHS and non-EHS contributors/team members. This record shall be maintained per **Section 5.0, Records** | Semiannually at a minimum. |
| EHS Staff | Monitor progress of the individual's specific EHS goal(s). Escalate issues that may have an impact on the site's EHS goals | Continuously |

### 4.2 EHS Management Review Process

The management review shall assess the continuing suitability, adequacy and effectiveness of the EHS Management System. The management review shall take into account assessment results, changing processes, products, regulatory constraints, and the commitment to continual EHS improvement. The management review shall address the possible need for changes to the organization's policy, goals and other programs, which address the elements of the site's EHS Management System. Inputs to management review shall include:

- Results of internal audits and evaluations of compliance with legal requirements and with other requirements to which the organization subscribes (refer to control documents **# 12MAZ00131B**, *EHS Assessments*)
- Communication(s) from external interested parties, including complaints (refer to control document **#12MAZ00113B**, *EHS Communication, Awareness, and Employee Participation*)
- The environmental, health and safety performance of the organization
- Progress towards EHS goals / the extent to which EHS goals have been met

- Status of corrective and preventive actions for significant issues (refer to control document **# 12MAZ00128B**, *Non-conformance and Corrective and Preventive Action*)
- Follow-up actions from previous management reviews
- Changing circumstances, including developments in legal and other requirements related to its environmental aspects (refer to documents **# 12MAZ00102B**, *EHS Risk Assessments* and **# 12MAZ00107B**, *Management of Change*)
- Recommendations for Improvement

**Meeting Requirements:**

| Who | What | When |
|---|---|---|
| EHS Management EHS | Coordinate preparation of the EHS Management Review presentation materials and scheduling of the meeting with site's Management Team. | At least annually. Also, when a significant issue that needs to be reviewed, approved or funded by the site senior management emerges, schedule the EHS review as soon as possible. |
| | Chair the EHS Management Review meeting and ensure:<br>• Each member of the site management team receives the review<br>• Management views the EHS Management System as suitable, adequate and effective<br>• Meeting minutes are sent out including decisions and results discussed | During meeting. |
| | Maintain EHS Management Review Presentation Materials, Meeting Attendance List, and Meeting Minutes (including management comments and recommendations) per **section 5.0, Records**. | After each Management Review meeting |
| Management Team | Attend site's EHS Management Review to:<br>• Make decisions and/or provide support regarding issues being presented<br>• Discuss EHS goals and sponsorship<br>• Identify continuous improvement opportunities<br>• Review the effectiveness of the EHS Management System | During meeting |

The outputs from the management review shall include any decisions and actions related to possible changes to environmental, health and safety policy, goals, and other elements of the EHS management system, consistent with the commitment to continual improvement.

### 4.3 Non-conformance and Corrective Action

Non-conformances to the requirements of this document and related preventive and/or corrective actions will be addressed in accordance with control document **# 12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action*.

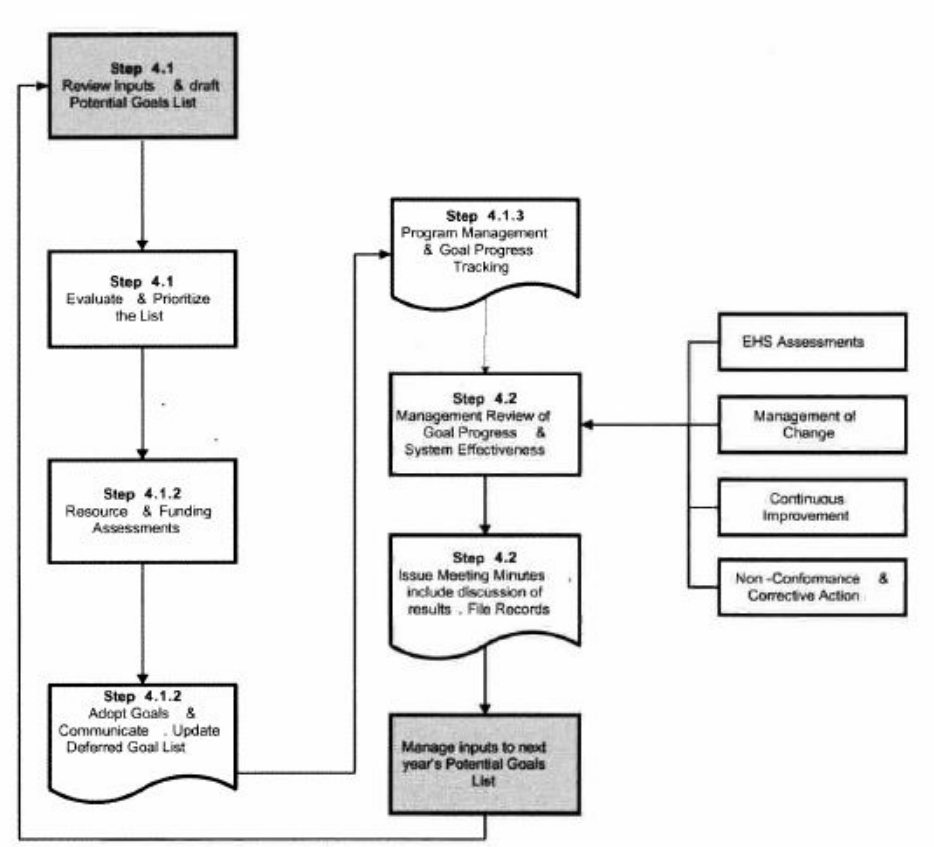
## 5.0 RECORDS

### 5.1 Required Records

| Paragraph | Record Description | Retention |
|---|---|---|
| 4.1.2 | List of Proposed EHS Goals | 5 yrs |
| 4. 1.3 | EHS Goal Status Reviews | 5 yrs |
| 4.7 | EHS Management Review Presentation Materials | 5 yrs |
| 4.2 | Management Review Meeting Attendance List | 5 yrs |
| 4.2 | Management Review Meeting Minutes | 5 yrs |

Refer to control document **#12MWS10510D**, *Records Management Procedure* which outlines the requirements for compliance with Records Management Policy SOP 4-15.

Appendix A
Flow Chart of Goal Setting & Management Review Process



REVISION SHEET

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| | Previous revision maintained in WWCM | | |
| D<br>19 Nov 04 | Merged Chandler and Tempe documents into one procedure applicable to both facilities. Merged Tempe document *EHS Goals* 68ASA66406B and *Management Review* 68ASA66133 and 68ASA66433 documents for both sites. Revised by Tom Steeves. J. Lund | J. Lund | 31 Jan 05 |
| E<br>28 Sep 05 | Modified section 4.1.2 to reflect current practice. Modified section 4.2 to include requirements of ISO 14001:2004 standard. Revised by Hana Dostalova | J. Lund | 30 Sep 05 |
| F<br>23 Mar 06 | Modified document to comply with the 2004 revision of the ISO 14001 standard. Modified section 2.0, Scope to clarify document applies to Research, Design and Manufacture of Semiconductors. Modified section 4.2 to include current corporate EHS requirements. Revised by Hana Dostalova | J. Lund | 24 Apr 06 |
| G<br>27 Apr 06 | Updated 4.2 Management Review Process. Revised by P. Felice and H. Dostalova | J. Lund | 27 Apr 06 |
| H<br>11 Dec 07 | Updated goal process. Updated reference documents. Changed WWCM reference to DMS. Changed document number and reference documents from 68A's to 12M's. Added iCAP classification. Updates by P. Felice and H. Dostalova | J. Lund | 07 Feb 08 |

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| TITLE: | DOCUMENT NUMBER: 12MAZ00319B | | |
|---|---|---|---|
| | ISSUE | DATE | PAGE |
| **Chemical Pre-Acquisition Approval** | **I** | **21 May 08** | **1** OF **12** |

## 1.0 PURPOSE

The purpose of this document is to define the responsibilities and procedures used to evaluate all chemicals prior to being brought onto the Freescale Site.

## 2.0 SCOPE

This document applies to Freescale Chandler and Tempe sites.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| A3009 | Control and Approval of Chemicals Directive |
| 12MWS10510D | Records Management Procedure |
| 12MAZ00128B (68ASA66128B) | Non-conformance and Corrective & Preventive Action |
| 12MAZ00131B (68ASA66131B) | EHS Assessments |
| 12MAZ00153B (68ASA66153B) | Equipment Sign Off & Approval |
| 12MAZ00195B (68ASA66195B) | Site General EHS Requirements |
| 12MAZ00215B (68ASA66215B) | Hazard Communication Program |
| 12MAZ00326B (68ASA66326B) | TSCA Site Plan |
| NA | Arizona Approved Chemical List |
| NA | DHS Appendix A List |
| NA | Freescale Chemical Approval List |
| NA | Materials Rules |

*(Note: Documents in parenthesizes indicate previous document number)*

### 3.1.1 Referenced Forms

| Form Number | Form Title |
|---|---|
| 12MAZ00319B002 | Freescale Arizona Chemical Disclosure Questionnaire |

### 3.1.2 Other Related Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |
| 12MAZ00119B (68ASA66119B) | Hazardous Materials System |
| 12MAZ00126B (68ASA66126B) | Contractors System |

### 3.1.3 Drivers

| Driver Description |
|---|
| 29 CFR 1910.1200 OSHA Hazard Communication Standard |
| 29 CFR 1910.Subpart Z Toxic and Hazardous Substances |
| 40 CFR 700-799 & 19 CFR Part 12 EPA TSCA Standard |
| A3009 Control and Approval of Chemicals Directive |

### 3.2 General Environmental, Health and Safety Requirements

For general Environmental, Health and Safety (EHS) requirements refer to control document **# 12MAZ00195B**, *Site General EHS Requirements*.

### 3.3 Document Classification

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### 3.3 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| CAS | Chemical Abstract Service |
| DHS | Department of Homeland Security |
| DMS | Document Management System |
| EHS | Environmental, Health and Safety |
| EU CMR | European Union Carcinogen, Mutagen, and Reprotoxin list |
| FIFRA | Federal Insecticide, Fungicide, and Rodenticide Act |
| FSL | Freescale |
| IARC | International Agency for Research on Cancer |
| MSDS | Material Safety Data Sheet |
| NTP | National Toxicology Program |
| OSHA | Occupational Safety and Health Administration |
| SNUR | Significant New Use Rule |
| TSCA | Toxic Substances Control Act |
| USEPA | United States Environment Protection Agency |

| Definitions & Terms | Description |
|---|---|
| Alert | Chemical that show up in the available international literature relating to carcinogens, tetratogens, mutagens, or reproductive toxins published by (IARC, ACGIH, OSHA, NTP, Reprotext, Shepard's, California Proposition 65, EU CMR, etc.) but do not fit into the Restricted category. |
| Banned | Chemicals that are banned for use in electronic products above certain concentrations or in the manufacturing process.<br><br>This category may include chemicals that are not currently banned for use; but, a ban is expected or voluntary phase-out is likely. It may include any chemicals that are on any of Freescale's product content lists. |
| Chemical | Any element, compound, or mixture thereof in solid, liquid, or gaseous form. Chemicals regulated by FIFRA are exempt from the requirements of this document. MSDSs of FIFRA regulated chemicals do not need to follow this approval process as long as the MSDSs are available during use on site. |
| Chemical Management Partner | Partner that supplies chemical management services to the operations |
| Contractor Chemical | Any chemical that is used by Freescale service contractors. |
| EHS Program/System Champion | EHS professional responsible for an EHS program |
| Free Chemical Sample | A chemical offered to Freescale by a vendor at no charge (e.g. certain evaluation chemicals) |
| New Chemical | A chemical never used at the site before, or a chemical to be acquired from a new manufacturer |
| Requisitioning System | FSL approved current purchasing system (Le. SAP, My Supply). Purchase of chemicals with company credit card is NOT allowed. |
| Requestor | Any individual initiating EHS approval of a chemical, and chemical acquisition request |
| Restricted | Chemicals that are 'known or reasonably expected to be' carcinogens, teratogens, mutagens, or reproductive toxins 'in humans' as found in all the available international literature relating to those categories published by (IARC, ACGIH, OSHA, NTP, Reprotext, Shepard's, CA Proposition 65, EU CMR, etc.) |
| TSCA Inventory | A chemical inventory maintained and originated by EPA. Chemicals listed on the inventory may be used for commercial purposes |

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## 4.0 PROCEDURE

### 4.1 New Chemical Approval

Before a new chemical can be brought on site, MSDS review must take place and EHS approval must be received prior to the chemical requisition. Refer to Attachment A for the process flowchart.

Note: MSDSs for chemicals not used at a site for more than one year or which issue date has passed 10 years will be archived. Acquisition of chemical which MSDS has been archived needs to follow new chemical approval process.

| Who | What | When |
|---|---|---|
| Requestor | Obtain an MSDS of new chemical from the manufacturer. Refer to control document **# 12MAZ00215B**, *Hazard Communication* | Prior to order new chemical/sample |
| | Request completion of Freescale Arizona Chemical Disclosure Questionnaire from chemical manufacturer. The questionnaire can be accessed at littp://compass.freescale.net/go/chemdisclosure | When only minimal data is provided on the MSDS and EHS is unable to verify compliance with this document and/or regulatory requirements per EHS request |
| | Submit New Chemical/Sample MSDS Approval Requests' and MSDS to obtain EHS Approval. The Request can be accessed through the Freescale intranet at http://compass.freescale.net/go/azmsds Follow the Instruction on the website (click on "Help" for instruction) to submit the request. | Prior to order new chemical/ sample |
| EHS Program/System Champion(s) | 1. Review chemical components against the Freescale Chemical Approval List (access at http://compass.freescale.net/go/azmsds)<br>2. Review chemical components against the DHS Appendix A List (access at http://compass.freescale.net/go/azmsds)<br>3. Obtain any additional chemical information as needed for the internal review process<br>4. Evaluate the chemical for environmental, safety, industrial hygiene (toxicity), emergency response, and health aspects | After request received |

| Who | What | When |
|---|---|---|
| EHS Program/System Champion(s) (cont) | Contact the requestor i [any concern related to unusual hazard/toxicity, regulatory, location of use, quantity of chemical requested, or other EHS concern is identified. | Per the judgment of the EHS professional based on the available data |
| | Contact corporate EHS if the chemical or component is listed as “restricted” for further approval by corporate EHS. Identify that the use of this chemical is critical for the manufacturing process and why.<br>If use of the chemical does not get approved and the site would like additional consideration, the site must request a review by the “Corporate Chemical Review Committee”. | During the chemical approval process. For chemicals critical for the manufacturing process. |
| | Track chemicals that have components listed on the “Alert” list by utilizing “Alert Chemical Tracking” Worksheet<br>Note: The spreadsheet needs to be checked out/reserved from Compass, downloaded to desktop, the site chemical information added, and then uploaded as a new version. | During the chemical approval process |
| | Reject chemicals that have components listed as both “banned” **and** “restricted” (unless otherwise instructed by “Corporate Chemical Review Committee”) | During the chemical approval process |
| | Reject chemicals that have components listed as “restricted” if use of this chemical is not critical to the manufacturing process (unless otherwise instructed by “Corporate Chemical Review Committee”) | During the chemical approval process |
| | Review all new chemical/sample for compliance with the TSCA Site Plan. Refer to document **# 12MAZ00326B**, *TSCA Site Plan* | During the chemical approval process |
| | Upon approval of a chemical that is covered by a SNUR from the USEPA:<br>1. Notify the Corporate TSCA Coordinator<br>2. Define the specific requirement noted in the USEPA regulations<br>3. Include these requirements in the approval documentation (Completed New Chemical/Sample MSDS Approval Request)<br>4. Require the chemical user to follow these requirements and keep the required records | Upon approval of a chemical that is covered by a SNUR |

| Who | What | When |
|---|---|---|
| EHS Program/System Champion(s) (cont) | Upon approval of a chemical that is listed on the DHS Appendix A:<br>1. Notify Corporate EHS that new regulated chemical has been approved,<br>2. Track the quantity of chemicals listed on the DHS Appendix A list<br>3. Notify Corporate EHS when the quantity of chemicals listed on the DHS Appendix A list exceeds the reportable quantity for a DHS "Top Screen" notification. | Notify upon approval, track continually and report when reportable quantity is exceeded. |
| | Identify chemicals no longer used (not used for more than one year). Provide the list of no longer used chemicals to MSDS coordinator who will archive the MSDS. | Annually |
| MSDS Coordinator(s) | Enter all applicable information into Arizona Approved Chemical List. The Database can be accessed through the Freescale intranet at http://compass.freescale.net/go/azmsds | Upon approval of new chemical |
| | Assign a MSDS number once the MSDS is approved | As needed |
| | Enter all applicable information into the Essential EH&S MSDS Module database. Refer to Material Rules for rules that need to be followed when entering new materials into the database. The Rules can be accessed through the Freescale intranet at http://compass.freescale.net/go/azmsds | As needed |
| | Scan/insert the MSDS into the MSDS Database located at "http://msds.freescale.net" | As needed |
| | File the original MSDS in the site Master MSDS file | As needed |
| | Identify MSDSs with issue date older than 10 years. Update MSDSs with newer version or archive MSDSs of chemicals not used for more than one year. | Annually |
| | Update Essential EH&S MSDS database and Arizona Approved Chemical List. Define MSDS as "Archived". Ensure hard copy of MSDS is moved to Archived file. | Upon archiving of an MSDS. |

### 4.2 Ordering Chemical and Purchasing Order Approval

Once chemical is approved for use on site, purchase requisition can be submitted. Refer to Attachment B for the process flowchart.

All chemicals (other than contractor chemicals and pre-approved free samples) must have a requisition submitted through approved requisitioning system in order to initiate chemical purchase or acquisition of a free sample. Commodity code or other indicator

needs to be included in order to clearly identify the requisition as chemical purchase. Purchase of chemicals with company credit card is not allowed.

Acquisition of contractor chemicals needs to comply with section 4.3. Certain free samples may be acquired outside of the approved requisitions system upon EHS approval.

| Who | What | When |
|---|---|---|
| Requestor | Create and submit a requisition on an approved electronic requisitioning system prior to ordering any chemical(s). Include commodity code or other indicator to clearly identify the requisition as chemical purchase. | As needed |
| | Refer to the 'Arizona Approved Chemical List' to verify that a chemical has been approved for use on site. The list can be accessed through the Freescale intranet at http://compass.freescale.net/go/azmsds | As needed |
| | Follow all the requirements of # **12MAZ00153B**, *Equipment Sign off and Approval* prior to ordering applicable chemical products | When applicable |
| Global Procurement | Ensure that chemicals ordered over an approved electronic requisitioning system have full EHS approval before processing the chemical order | Ongoing. |
| EHS Program/System Champion | Review chemical purchase orders and verify approved MSDS is on file. | Prior to chemical purchase approval |
| | Approve chemical purchase. | If active MSDS is on file |
| | Notify chemical purchase requestor about the need to follow MSDS approval process. | If active MSDS is not on file. |
| Chemical Management Partner | Ensure that chemical orders have full EHS approval and follow an approved ordering process prior to placing a chemical order | Ongoing |
| | Maintain a current inventory of manufacturing chemical deliveries to the site | As needed |
| | Chemicals without prior EHS approval are refused delivery and EHS is notified. Refer to documents # **12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action.* | Upon occurrence |
| Site Security | Maintain security at the entrances to the site and disallow any party from bringing chemicals onto the site without the proper approvals. | Continuously |
| | Contact the EHS for information about the approval status of any chemicals in question | As needed |

| Who | What | When |
|---|---|---|
| Shipping & Receiving | Responsible for NOT receiving chemicals at non-chemical receiving docks. | Continuously |

### 4.3 Contractor Chemicals

| Who | What | When |
|---|---|---|
| Contractor | Contact project manager or EHS to verify a chemical has been approved for use on site. | Prior to bringing chemical on site |
| Project Manager/Contractor | Submit an MSDS for any new chemicals to be used on site to EHS for approval. Follow steps described in section 4.1 | Prior to bringing chemical on site |
| EHS Program/System Champion | Review and approve all new chemicals as described in section 4.1 | As needed. |
| EHS Staff | Audit contractors to assure MSDS's are available. Refer to # **12MAZ00131B**, *EHS Assessments*. | Periodically |

### 4.4 Access to Copies of MSDS's

Copies of MSDSs can be found in the following locations at the Freescale Chandler and Tempe Sites:

- Occupational Health Resources Office
- MSDS Database located at "http:/msds.freescale.net" (not all approved MSDSs may be available through the web at this time)

### 4.5 Non-conformance and Corrective Action

Non-conformances to the requirements of this document and related preventive and/or corrective actions will be addressed in accordance with document **# 12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action*.

## 5.0 Requires Records

| Paragraph | Record Description | Retention |
|---|---|---|
| 4.1 | Approved MSDSs | 30 years after last use of chemical |
| 4.1 | Alert Chemical Tracking Worksheet | Retained by corporate EHS |
| 4.1 | Completed Chemical Disclosure Questionnaire | 30 years from record creation |

| Paragraph | Record Description | Retention |
| --- | --- | --- |
| 4.1 | Completed New Chemical/Sample MSDS Approval Requests | 30 years from record creation |
| 4.1 | List of Approved Chemicals | 30 years from last record entry |
| 4.1 | List of Archived MSDSs | 30 years from last record entry |

Refer to control document **#12MWS10510D**, Records Management Procedure which outlines the requirements for compliance with Records Management Policy SOP 4-15.

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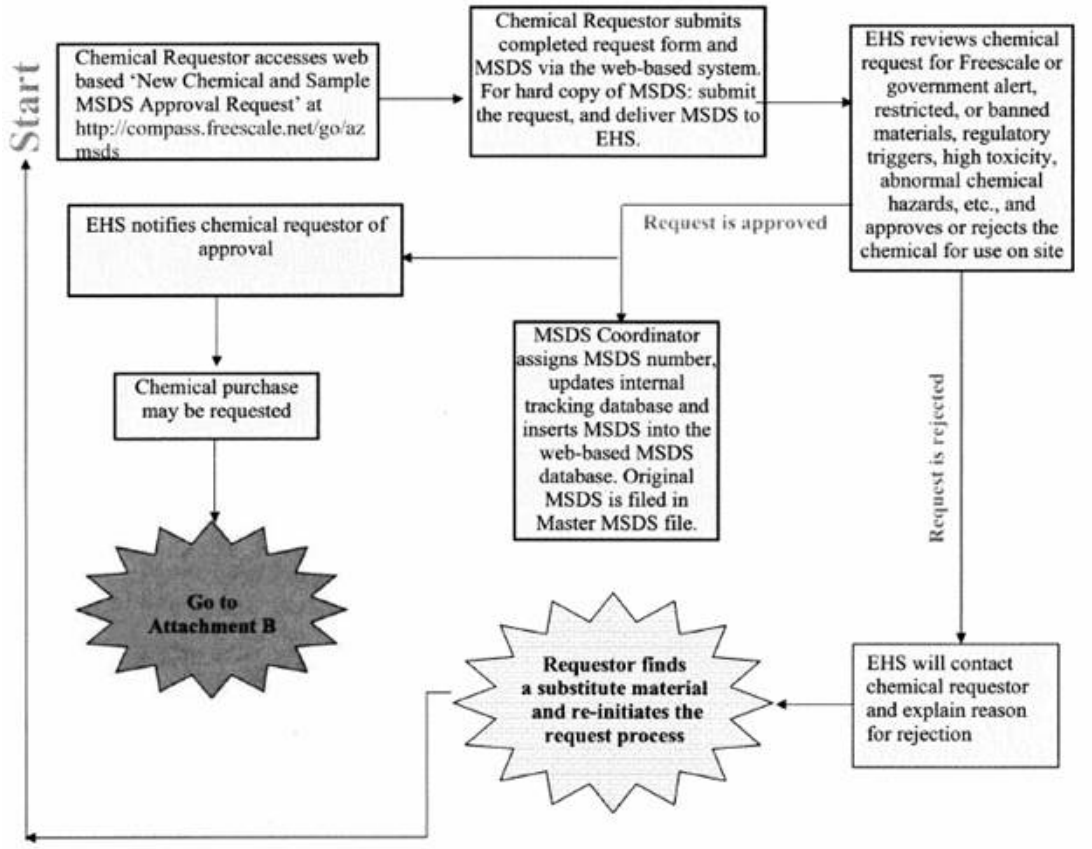
**Attachment A**

**Chemical / Sample EHS Approval Request**

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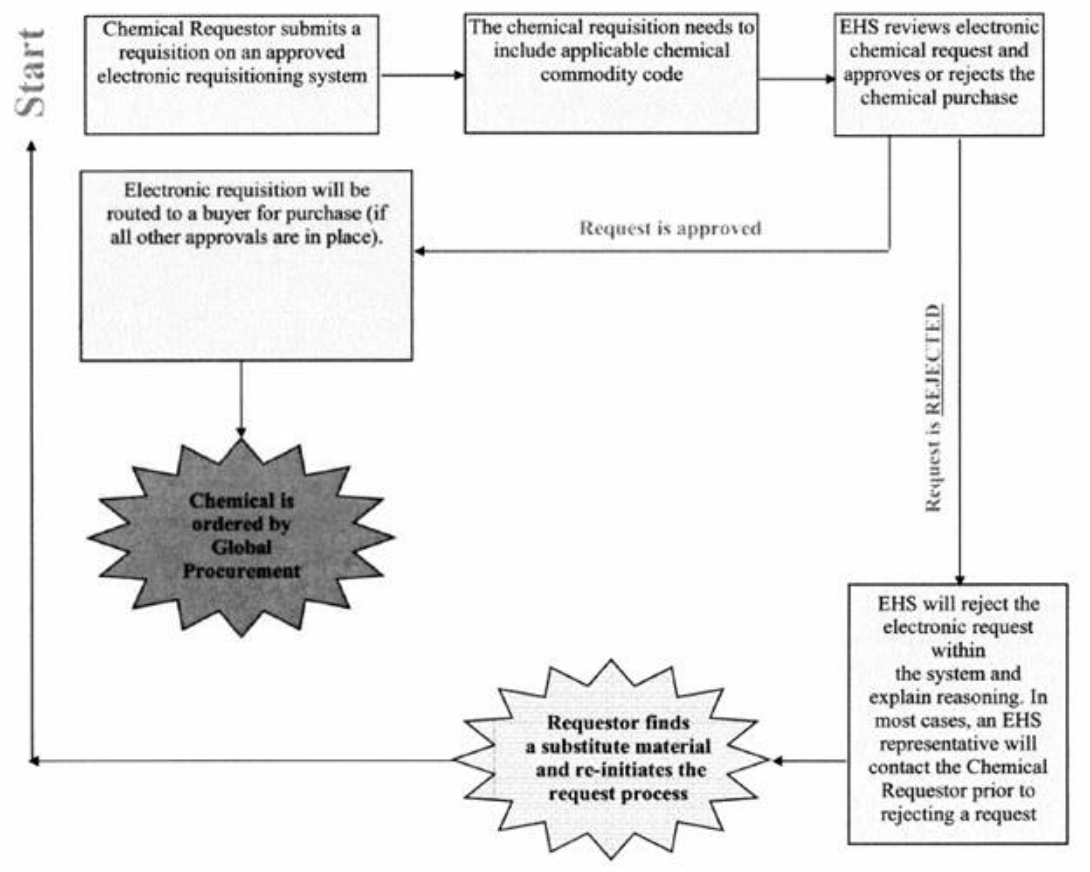
**Attachment B**

**Chemical Purchase Request**



**REVISION SHEET**

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| | Previous revision maintained in WWCM | | |
| C<br>26 Apr 05 | Updated links. Defined locations of some referenced documents. Made other minor formatting changes. Revised by Hana Dostalova | J. Lund | 27 Apr 05 |
| D<br>16 May 05 | Updated link to Chemical Disclosure Questionnaire. No procedural changes made. Updated by J. Lund. | J. Lund | 16 May 05 |
| E<br>23 Sep 05 | Updated section 4.1, added requirement to check for PFAS. Updated section 3.4 to add PFAS and SNUR. Revised by Hana Dostalova. | J. Lund | 23 Sep 05 |
| F<br>10 Oct 06 | Revised document to include reference to and requirements of corporate EHS document A3009, Control and Approval of Chemicals Directive. Revised by Hana Dostalova. | J. Lund | 10 Oct 06 |
| G<br>18 Jul 07 | Deleted references to obsolete documents 68ASA66129B, SOP 5-15, and SOP 5-28. Added reference to 12MWS10510D, Records Management Procedure. Updated definition for Chemicals. Changed document number and reference documents from 68A's to 12M's. Added iCAP classification. Revised by H. Dostalova. | J. Lund | 05 Sep 07 |
| H<br>30 Aug 07 | Added acronym FIFRA and definition for Requisitioning System. Updated sections 4.2 and 4.3. Revised by H. Dostalova. | J. Lund | 30 Oct 07 |
| I<br>05 May 08 | Added Department of Homeland Security (DHS) and DHS Appendix A List to Section 3.0. Included DHS related requirements in Section 4.1. Also provided some clarifications to Section 4.1. Deleted ECS/Security from section 4.4 | J. Lund | 21 May 08 |

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| TITLE: | DOCUMENT NUMBER: 12MAZ00101B | | |
|---|---|---|---|
| **Arizona EHS Management System Plan** | ISSUE **J** | DATE **19 Feb 08** | PAGE **1** OF **15** |



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## 1.0 GENERAL REQUIREMENTS

The Freescale Semiconductor Corporate framework for EHS Management Systems is established in document **A1000**, *Corporate Environmental, Health and Safety Management Plan* and **A2000**, *Freescale Semiconductor Environmental, Health and Safety Management System*.

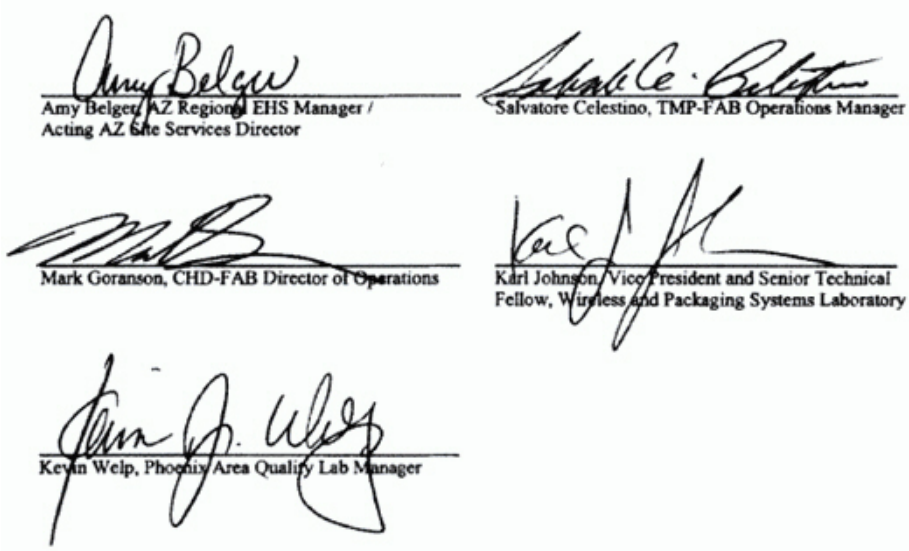
The Sites Managers' statement concerning their commitment to continuous EHS improvement and responsibility for the EHSMS Plan is as follows:

I have reviewed this EHS Management Systems Plan, and am satisfied that it is adequate to achieve:

- compliance with applicable laws and regulations,
- conformance with other applicable requirements, and
- the goals of the company's and Site's EHS policies

I am personally committed to this EHS Management Plan, continuous EHS improvement and to the company's EHS policies.

To the best of my belief, this operation has the necessary resources to implement the management systems outlined in the EHS Management System Plan.

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### 1.1 Purpose

The purpose of this EHS Management System Plan is to establish consistent methods for managing Environmental, Health and Safety Systems at the Freescale Chandler and Tempe sites, in accordance with Freescale EHS Policy, Freescale Environmental, Health and Safety Management System, ISO 14001 and all applicable regulations and requirements.

### 1.2 Scope

—This EHS Management System Plan is applicable to Research, Design and Manufacture of Semiconductors at Freescale Chandler and Tempe sites.

### 1.3 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MQE00005A | Document and Data Control |
| 12MWS10510D | Records Management Procedure |
| 12MAZ00102B (68ASA66102B) | EHS Risk Assessment |
| 12MAZ00104B (68ASA66104B) | Regulatory and Other Requirements |
| 12MAZ00106B (68ASA66106B) | EHS Goals and Management Review |
| 12MAZ00107B (68ASA66107B ) | Management of Change |
| 12MAZ00113B (68ASA66113B) | EHS Communication, Awareness and Employee Participation |
| 12MAZ00118B (68ASA66118B) | Pollution Prevention System |
| 12MAZ00119B (68ASA66119B) | Hazardous Materials System |
| 12MAZ00120B (68ASA66120B) | Emergency Preparedness and Response System |
| 12MAZ00121B (68ASA66121B) | Occupational Health System |
| 12MAZ00122B (68ASA66122B) | Injury and Illness System |
| 12MAZ00123B (68ASA66123B) | Personal Safety System |
| 12MAZ00124B (68ASA66124B) | Equipment Safety System |
| 12MAZ00125B (68ASA66125B) | EHS Training System |
| 12MAZ00126B (68ASA66126B) | Contractors System |
| 12MAZ00127B (68ASA66127B) | EHS Monitoring, Measurement and Calibration |
| 12MAZ00128B (68ASA66128B) | Non-Conformance and Preventive & Corrective Action |
| 12MAZ00131B (68ASA66131B) | EHS Assessments |
| 12MAZ00132B (68ASA66132B) | Regulatory and Operational Reporting |
| A1000 | Corporate Environmental Health and Safety Management Plan |
| A2000 | Freescale Environmental Health and Safety Management System |
| A3026 | EHS Reporting |
| ISO 14001 | International Standard, Environmental MS |

*(Note: Documents in parenthesizes indicate previous document number)*

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## 2.0 MANAGEMENT COMMITMENT

### Freescale Semiconductor EHS Policy

The Chandler and Tempe Freescale sites adopt and abide by the Freescale Corporate EHS Policy as their respective sites' policy. The policy is communicated to all persons working for or on behalf of the organization, annually, and is available to the public.

It is the policy of Freescale Semiconductor to conduct all business activities in a responsible manner, free from recognized hazards and to respect the environment, health, and safety of our employees, customers, suppliers, partners and the community. We will comply with all environmental, health, and safety laws and regulations of countries where we operate, and we will strive to foster the sustainable use of the earth's resources. We are committed to the implementation, maintenance and continuous improvement of our EHS management systems.

**Key EHS Strategies Under This Policy:**

**Excellence in Employee Health**. Maintain a safe and healthy workplace and support our employee's work-life balance.

**Minimization of Operational Risks**. Assess the environmental aspects and safety and health risks of our operations, activities and services, and incorporate practical procedures and controls necessary to prevent adverse impacts.

**Waste Minimization and Resource Conservation**. Support the reuse and recycle of waste materials, the elimination of emissions that adversely impact the environment, and the conservation of natural resources.

**Continuous Improvement in EHS**. Set and review EHS goals and targets designed to ensure continuous improvement in EHS performance, occupational health and work place safety, and the prevention of pollution.

**Supplier Business Conduct**. Partner with our customers and suppliers to enhance EHS performance and Freescale Semiconductor's competitive advantage.

**Product Stewardship**. Protect the environment by improving our environmental performance and designing environmentally conscious products.

**Community Connection**. Achieve global EHS leadership through participation in the formulation of improvements in EHS public policy, and extending our resources to improve the communities in which we live.

Michel Mayer
Chairman of the Board & CEO

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## 3.0 PLANNING

### 3.1 Environmental Aspects & Occupational Health and Safety Risk Assessments

Procedures for establishing, implementing, and maintaining a system to identify and evaluate environmental aspects and occupational health and safety risks of the site's activities, processes, products and services within the defined scope of the EHS Management System that can be controlled and those that can be influenced taking into account planned or new developments, or new or modified activities, products and services are included in document **12MAZ00102B**, *EHS Risk Assessment*. As detailed in the document significant aspects and risks are determined and related information is documented and kept up to date. Communication of significant environmental aspects to general public is limited to publicly available reports i.e., Toxic Release Inventory.

### 3.2 Legal and Other Requirements

The Procedure to identify and have access to current applicable Corporate, regulatory/legal, and other environmental, occupational health and safety requirements and to determine how these requirements apply to its aspects is included in document **12MAZ00104B**, *Regulatory & Other Requirements*.

### 3.3 EHS Goals and Program Management

EHS Goals have been established and are maintained by each site. This procedure is outlined in control document **12MAZ00106B**, *EHS Goals & Management Review*. When establishing and reviewing goals, consideration is given to legal and other requirements, significant environmental aspects, occupational health and safety risks, technological options and financial, operational and business requirements, and the views of interested parties. The site shall establish one Improvement in environmental performance' goal at a minimum. The goals shall be consistent and supportive of the corporation's goals and EHS policies and measurable where practicable. The EHS goals shall be integrated into the operation's overall goals. The EHS goals are established at each relevant function and level of the operation, where appropriate.

This procedure designates responsibility and accountability for achieving EHS goals, and determines key milestones and the time frame by which they are to be achieved.

### 3.4 Management of Change

Procedure to manage change in the EHS Management System is included in document **12MAZ00107B**, *Management of Change*. This procedure ensures that environmental aspects and occupational health and safety risks are evaluated for identified significant changes in activities, processes, products, services and/or facilities. The procedure also ensures that changes to regulatory/legal and other requirements are implemented into the appropriate operational control procedures to maintain compliance.

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## 4.0 IMPLEMENTATION AND OPERATION

### 4.1 Structure and Responsibility

4.1.1 Designated Responsible Manager

Arizona Site Services Manager Amy Belger, has the authority and responsibility for establishing, implementing, maintaining and improving the EHS management system. The Arizona Regional EHS Manager is responsible for reporting on the performance of the EHS management system to the senior management team for review and a basis for improvement of the EHS management system and environmental performance.

4.1.2 EHS Roles, Responsibilities, Authorities and Accountabilities

Freescale Semiconductor is dedicated to the Safety and Health of all its employees and to the protection and preservation of the environment. To ensure that environmental, health and safety programs are fully implemented at each facility, corporate EHS policy, signed by CEO Michel Mayer, has been adopted by the Chandler and Tempe sites. The management team for the Arizona Region is identified on the Site Managers' Statement, section 1.0, of this document.

Although all site employees have an implied duty with respect to Environmental, Health and Safety issues and everyone has the authority to take the necessary steps to ensure that Corporate and site obligations are met, certain specialized support personnel have specific responsibilities. These responsibilities are outlined in level 2 procedures within the Management System. Competency for jobs that could impact the environmental is determined by training, experience, certification, education or a combination of these factors.

**Site Management Team**

Site management team is comprised of management from manufacturing, research & development, major business groups and site services capable of setting/defining organizational goals and priorities, and allocation of resources to support those goals and objectives. The role of the management team includes:

(a) The overall responsibility for administering the Environmental, Health and Safety Policy rests with the management team.

(b) The management team will ensure that the necessary resources are available and that the Environmental, Health and Safety Policy is being effectively implemented.

(c) Review progress of Environmental, Health and Safety Programs regularly and ensure responsibility is properly assigned, accepted and understood at appropriate levels.

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**Environmental, Health and Safety Department**

The EHS Department is comprised of Environmental, Safety, Industrial Hygiene and Occupational Health Resources personnel. The role of the EHS Department includes:

(a) Formulate, administer and make necessary changes in the site EHS programs in accordance with Corporate and regulatory requirements. Act in an advisory capacity on EHS matters pertaining to Freescale Semiconductor operations.

(b) Maintain a record system for the investigation and prevention of accidents, incidents and injuries.

(c) Convey requirements of national, regional, local regulations, legal requirements and pertinent industry standards to site management; develop methods of compliance and/or methods to enhance EHS programs on site.

(d) Evaluate proposed regulations, legal requirements or standards for their impact on the site. Make comments and recommendations to management as to the applicability, cost of implementation, future benefit, and any additional review.

(e) Ensure safety is engineered into each job where there is a potential for significant physical or health risk.

**Occupational Health Resources**

The OHR Department is comprised of Occupational Health Resources personnel. The responsibilities of the OHR Department include:

(a) Standard Occupational Health Nursing services

(b) Emergency preparedness, response and triage.

(c) Assessment and treatment of injuries/illnesses.

(d) Preventative health.

(e) Case management.

(f) Risk assessments.

**Management**

Management includes all managers located at the site and managers directly responsible for operations at the site. This includes, but is not limited to, the management team. The role of Management includes:

(a) Encourage and enforce safe behavior of employees under his/her direction and operate his/her business safely. Manager is responsible for the actions of employees under his/her direction and for the safety of the operation.

(b) Maintain full support of all EHS requirements, procedures and policies.

**Supervisors/Managers**

Supervisors/Managers are supervisors and managers with direct reports. The role of Supervisors/Managers includes:

(a) Ensure all direct reports have received hazard communication training and new employee orientation.

(b) Ensure all direct reports receive basic safety and environmental instructions for the job that they will perform. This must occur prior to beginning his/her duties without direct supervision, or when transferred to a new assignment.

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(c) Ensure direct reports who have duties requiring function specific training such as lockout/tagout, forklift operation, confined space entry, etc. receive the appropriate EHS training before performing those duties.

(d) Provide safety equipment and protective devices as required by the job and specified by the EHS department, and ensure proper use and working order of each.

(e) Investigate and determine the cause of all accidents/incidents with the assistance of the EHS department, including those resulting in minor injuries or near misses.

(f) Take prompt corrective action whenever conditions or behaviors are noted in his/her area that are contrary to EHS policies or procedures.

(g) Ensure that employees under his/her direction are informed of established EHS rules, inform direct reports that violation of these rules will not be tolerated, and that corrective action to improve employee performance in this area will be instituted.

**Employees**

Employees include Freescale employees and embedded contractors. Their roles include:

(a) Observe all established EHS policies, requirements and procedures.

(b) Understand and follow EHS guidelines included in work instructions. This information should include the hazards associated with the process or operation being performed, and what personal protective equipment is necessary to ensure the safety and health of the employee doing the work.

(c) Attend mandatory EHS training courses.

(d) Report any conditions or behaviors that are contrary to EHS policies or procedures.

**Contractors**

Contractors are sponsored by a Freescale employee. The contractors are advised of company regulations, with regards to the environment, health and safety and to facility emergency procedures. The Freescale sponsor is responsible for their safety and conduct while on Freescale site. The role of the Contractor includes:

(a) Take responsibility for themselves and others who may be affected by his/her actions or omissions; and

(b) Follow EHS requirements, laws and regulations.

**Visitors**

All Visitors are escorted by a Freescale employee or authorized contractor. The escort is responsible for their safety and conduct while on Freescale site. This includes compliance with company regulations, with regards to the environment, health and safety and to facility emergency procedures. The role of the Visitor includes:

(a) Be escorted by authorized Freescale employee / contractor and follow directions.

**4.2 Awareness and Employee Participation**

Procedures to make persons working for or on behalf of the company aware of the importance of conformity with the EHS policy and procedures and with the requirements of the EHS management system, the significant EHS aspects and related actual or potential impacts associated with their work, and the environmental benefits of improved personal performance, their roles and responsibilities in achieving conformity with the requirements of the EHS management system, and the potential consequences of departure from specified procedures are included in document **12MAZ00113B**, *EHS Communication, Awareness and Employee Participation*. This procedure demonstrates ongoing and meaningful management and employee involvement in relevant EHS initiatives.

**4.3 Communication**

Procedures for internal communication between the various levels and functions of the organization are included in document **12MAZ00113B**, *EHS Communication, Awareness and Employee Participation*. This document also references a procedure for internal reporting, including anonymous reporting, of perceived violations of EHS laws, regulations and internal requirements.

The procedure describes how confidentiality and anonymity are maintained to the extent allowed by law, custom or policy. The procedures also include a no-reprisal commitment, identify the methods by which issues are referred to individuals who can respond appropriately, define responsibility and authority for handling and investigating issues, and provide a mechanism for following-up with the reporting person, whenever possible, on the outcome of any investigation initiated as a result of the report.

Procedures for receiving, documenting and responding to relevant communication from external interested parties are also included in document **12MAZ00113B**, *EHS Communication, Awareness and Employee Participation.* This document considers EHS community communication programs and visibility in the community.

**4.4 EHS Management System Documentation**

The EHS management system documentation includes

1. The EHS policy and goals,
2. Description of the scope of the EHS management system,
3. Description of the main elements of the EHS management system and their interaction, reference to related documents,
4. Documents, including records, required by the management system, and
5. Documents, including records, determined to be necessary to ensure the planning; operation and control of processes that relate to the site's significant EHS aspects

This EHS MS Plan and documents referenced by this Plan represent the core elements of the EHS management system. This EHS MS Plan represents the guiding principals of the management system. The nine EHS systems, described in section 4.6, provide guidance for compliance with procedures required by regulatory authorities or the Corporation. Each of the nine EHS systems delineates procedures and/or records required for substantiating conformance with the systems. Other documents are referenced for guidance as needed. These reference documents include regulatory citations and documents controlled under other Freescale management systems in place such as TS16949. This EHS MS Plan, the nine EHS systems and any procedures required for conformances to the Plan are controlled documents.

**4.5 Document Control**

The EHS MS documents are controlled per document **# 12MQE00005A** *Document and Data Control*. This document establishes and maintains procedures for the creation and modification of various types of documents and for controlling all documents required by the EHS Management System to ensure that:

1. They can be located;
2. They are periodically reviewed, revised as necessary and approved for adequacy by authorized personnel;
3. The current versions of relevant documents are available at all locations where operations essential functioning of the EHS management system are performed;
4. Obsolete documents are removed from all points of issue and points of use, otherwise assured against unintended use;
5. Any obsolete documents retained for legal and/or knowledge preservation purposes are suitable identified.

Documentation shall be legible, dated (with dates of revision) and readily identifiable, maintained in an orderly manner and retained for a specified period.

**4.6 Operational Control**

Operations, equipment and activities that are associated with significant environmental aspects or occupational health and safety risks are identified in accordance with document **12MAZ00102B**, *EHS Risk Assessment*. Procedures are established, implemented and maintained to control situations where their absence could lead to deviations from legal and other requirements, the EHS policy and goals. These procedures are based on the aspects and risk assessment. These procedures stipulate operating criteria and include preventive maintenance elements. Relevant procedures are communicated to affected parties, including but not limited to suppliers and contractors. These procedures have been categorized as follows:

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#### 4.6.1 Pollution Prevention System (Document 12MAZ00118B)

Pollution prevention system identifies waste streams, opportunities to reduce or eliminate waste streams and conserve natural resources, and develop, implement and track plans to address identified opportunities.

#### 4.6.2 Hazardous Materials Management System (Document 12MAZ00119B)

Hazardous materials management system identifies hazardous materials brought onto or created on-site, develops and maintains necessary safety and health information related to the identified hazardous materials, and provides for the safe, healthful and environmentally acceptable handling, use, storage, transport and disposition of the identified hazardous materials.

#### 4.6.3 Emergency Preparedness and Response System (Document 12MAZ00120B)

Emergency preparedness and response system establishes, implements, and maintains procedures to identify the potential for and respond to accidents and emergency situations, and for preventing and mitigating the EHS risks associated with them. The procedures are periodically reviewed and revised, in particular, after the occurrence of accidents or emergency situations and the procedures are periodically tested where practicable.

#### 4.6.4 Occupational Health System (Document 12MAZ00121B)

Occupational health system anticipates, identifies, evaluates and controls potential chemical, physical and biological agents or stressors in the workplace.

#### 4.6.5 Injury and Illness System (Document 12MAZ00122B)

Injury and illness system provides for a consistent method of reporting and recording occupational injuries and illnesses, develops trends and established accident investigation procedures to reduce or eliminate causes of injuries and illnesses.

#### 4.6.6 Personal Safety System (Document 12MAZ00123B)

Personal safety system establishes programs and procedures for employees, and minimizes risks associated with exposure to potential workplace hazards that could cause injuries or illnesses.

#### 4.6.7 Equipment Safety System (Document 12MAZ00124B)

Equipment safety system evaluates potential hazards associated with equipment utilized in the workplace, and assures that appropriate controls are in place to minimize risks associated with exposure to potential workplace hazards.

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#### 4.6.8 Environmental, Health and Safety Training System (Document 12MAZ00125B)

Training system identifies necessary environmental, health and safety skills and awareness.

#### 4.6.9 Contractors System (Document 12MAZ00126B)

Contractors system pre-qualifies independent contractors, randomly evaluates and monitors their EHS activities, and exchanges appropriate EHS information with them.

## 5.0 CHECKING AND CORRECTIVE ACTION

### 5.1 Monitoring, Measurement and Calibration

Procedures to establish and maintain documented inspection systems, to monitor and measure, on a regular basis, identified operations and activities that can have significant impact on the environment or occupational health and safety risk and equipment calibration are included in document **12MAZ00127B**, *EHS Monitoring, Measurement and Calibration*. These include recording information to track EHS performance, identify hazards, relevant operational controls and conformance with the operation's EHS goals.

### 5.2 Non-Conformance and Corrective & Preventive Action

Procedures for handling and investigating actual and potential nonconformity(ies) and for initiating, tracking and completing corrective and preventive action items are described by document **12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action*.

This document includes implementation and recording of any changes in the documented procedures resulting from preventive and corrective action and review the effectiveness of corrective and preventive action taken; and reference to methodology and administration of disciplinary action where warranted for EHS violations.

### 5.3 Records

Records required by this EHS Management System Plan are identified in the applicable procedures and/or work instructions. Procedures for the maintenance and disposition of records are described by document **12MWS10510D**, *Records Management Procedure*.

### 5.4 EHS Assessments

Procedures for conducting annual documented assessment of the EHS Management System, including EHS compliance, are described by document **12MAZ00131B**, EHS Assessments. Results that provide evidence of depth and scope of the assessment shall be maintained in accordance with document **12MWS10510D**, *Records Management*

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*Procedure*. The assessment procedure covers scope, frequency and methodologies, and responsibilities for planning and conducting the assessment and reporting results and maintaining associated records. Results will be provided to the site management team, and site and corporate EHS management. The assessors are independent of the program to ensure objectivity and the impartiality of the assessment process. For issues identified, a written corrective action plan will be developed in accordance with the procedure defined in Section 5.2.

### 5.5 Reporting

Procedures to identify, prepare and file required regulatory and operational reports are described by document **12MAZ00132B**, *Regulatory and Operational Reporting*. Internal reporting of significant EHS incidents and other EHS issues and non-conformances are also completed according to corporate document **A3026**, *EHS Reporting.*

## 6.0 MANAGEMENT REVIEW

Procedure for management review of progress towards EHS goals and the EHS Management System is described by document **12MAZ00106B**, *EHS Goals & Management Review*

This procedure ensures continuing suitability, adequacy and effectiveness of EHS Management System. The management of progress towards EHS goals and the EHS Management System reviews involve at a minimum, the Operations Managers and site EHS management. These reviews are to be documented and take into account assessment results, changing processes, products, regulatory constraints, and the commitment to continual EHS improvement. These reviews address the possible need for changes to the operation’s policy, goals, and other programs that address the elements of the EHS Management System.

Input to management reviews shall include:

1. Results of internal audits and evaluations of compliance with legal requirements and with other requirements to which the organization subscribes
2. Communication(s) from external interested parties, including complaints
3. The environmental, health and safety performance of the organization
4. The extent to which objectives and targets have been met
5. Status of corrective and preventive actions
6. Follow-up actions from previous management reviews
7. Changing circumstances, including developments in legal and other requirements related to its environmental aspects
8. Recommendations for improvement

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The outputs from management reviews shall include any decisions and actions related to possible changes to environmental, health and safety policy, goals and other elements of the EHS management system, consistent with the commitment to continual improvement.

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## REVISION SHEET

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| | Previous revisions maintained in WWCM | | |
| F<br>04 Nov 04 | Merged Price and Elliot EHS Management System Plan (68ASA66401B) into the Chandler Site's EHSMS Plan. Renamed the document to Arizona EHS Management System Plan. Revised text and format from Motorola to Freescale. Updated the designated responsible manager. Deleted Site EHS Policy as the site adopts Corporate EHS Policy, updated corporate EHS policy, updated site Management Endorsement to include current Chandler and Tempe Site Managers. Other content changes to address procedures in both Arizona sites. Revised by Hana Dostalova. | J Lund | 31 Jan 05 |
| G<br>14 Apr 06 | Modified document to include requirements of revised ISO 14001:2004 standards per Freescale Semiconductor Environmental, Health and Safety Management System document A2000 requirements. Modified format to be consistent with A 1000, Corporate Environmental Health and Safety Management Plan. Revised Sites Managers' Statement to obtain current endorsement of the management team. Revised by Hana Dostalova | J Lund | 15 May 06 |
| H<br>17 Dec 07 | Removed references to 68ASA66129B (EHS Records), and 68ASA66117B (EHS Documentation and Document Control). Added references to 12MWS10510D (Records Management) and 12MQE00005A (Document and Data control). Updated Section 1.0, Site Managers' Statement to include current management. Updated section 4.1.1 - new title for Amy Belger. Changed document number and reference documents from 68A's to 12M's. Added iCAP classifications. | J Lund | 25 Jan 08 |
| J<br>15 Feb 08 | Updated Section 1.0, General Requirements with additional managers' signatures. | J Lund | 19 Feb 08 |

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| TITLE: | DOCUMENT NUMBER: 12MAZ00118B | | |
|---|---|---|---|
| **Pollution Prevention System** | ISSUE **K** | DATE **17 Oct 07** | PAGE **1** OF **13** |

## 1.0 PURPOSE

The purpose of this specification is to define those programs and procedures required to reduce and/or eliminate the generation of waste streams and conserve natural resources.

## 2.0 SCOPE

This document applies to the Freescale Tempe and Chandler sites.

## 3.0 DOCUMENT INFORMATION

### 3.1 Reference Documents

| Document Number | Document Title |
|---|---|
| 12MAZ00102B (68ASA66102B) | EHS Risk Assessment |
| 12MAZ00104B (68ASA66104B) | Regulatory & Other Requirements |
| 12MAZ00106B (68ASA66106B) | EHS Goals and Management Review |
| 12MAZ00107B (68ASA66107B) | Management of Change |
| 12MAZ00113B (68ASA66113B) | EHS Communication, Awareness and Employee Participation |
| 12MAZ00119B (68ASA66119B) | Hazardous Materials System |
| 12MAZ00125B (68ASA66125B) | EHS Training System |
| 12MAZ00127B (68ASA66127B) | EHS Monitoring, Measurement, and Calibration |
| 12MAZ00128B (68ASA66128B) | Non-Conformance and Corrective & Preventive Action |
| 12MAZ00132B (68ASA66132B) | Regulatory and Operational Reporting |
| 12MAZ00153B (68ASA66153B) | Equipment Sign Off & Approval |
| 12MAZ00163B (68ASA66163B) | Design Review |
| 12MAZ00195B (68ASA66195B) | Site General EHS Requirements |
| 12MAZ00319B (68ASA66319B) | Chemical Pre-Acquisition Approval Procedure |
| 12MSA10598D | AZSS Calibration of Environmental Compliance Monitoring Equipment |
| 12MWS10510D | Records Management Procedure |
| 40 CFR 122.26 | Federal Regulations — Storm Water Protection Program |
| N/A | Chandler/Tempe Pollution Prevention Plans (approved by ADEQ) |
| N/A | Chandler/Tempe Air Permit and Operations and Maintenance Plans (approved by MCAQD) |
| N/A | Chandler/Tempe Spill Prevention Control and Countermeasures Plans |

| Document Number | Document Title |
|---|---|
| N/A | Chandler/Tempe Stormwater Pollution Prevention Plans |
| N/A | Chandler/Tempe CAD Drawings of Potential Pollution Conveyances |
| N/A | Chandler/Tempe Waste Characterization Guidelines |

*(Note: Documents in parenthesizes indicate previous document number)*

### 3.1.1 Referenced Forms

| Form Number | Form Title |
|---|---|
| N/A | |

### 3.1.2 Other Related Documents

| Form Number | Form Title |
|---|---|
| N/A | |

### 3.1.3 Drivers

| Driver Description |
|---|
| A2000 Corporate 1-. I IS Management Systems |
| ADEQ Pollution Prevention Planning |
| Freescale Pollution Prevention Initiatives |
| ISO 14001 Environmental Management Systems |
| Chandler/Tempe Air Permit |
| Chandler/Tempe Wastewater Discharge Permit |

## 3.2 General Environmental, Health and Safety Requirements

For general Environmental, Health and Safety (EHS) requirements refer to control document **# 12MAZ00195B**, *Site General EHS Requirements*

## 3.3 Document Classification

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### 3.4 Acronyms, Definitions & Terms

| Acronym | Description |
|---|---|
| ADEQ | Arizona Department of Environmental Quality |
| BMP | Best Management Practice |
| CAD | Computer Aided Design |
| DMS | Document Management System |
| EHS | Environmental, Health, and Safety |
| IWT | Industrial Wastewater Treatment |
| KBP | Key Business Partner |
| MCAQD | Maricopa County Air Quality Department |
| O&M | Operations and Maintenance |
| SPCC | Spill Prevention Control and Countermeasure |
| SWPP | Storm Water Pollution Prevention |

| Definitions & Terms | Description |
|---|---|
| AZ Sites | Chandler and Tempe Arizona sites |
| EHS Manager | A person with responsibilities over Environmental Health and Safety Department |
| EHS Professional | Individual(s) assigned to EHS activities and who by education and experience are qualified to make EHS decisions |
| EHS Program/System Champion | EHS professional responsible for an EHS program |
| Facilities Engineering Manager | A person responsible for facilities engineering and CAD, functions |
| Facilities Operations and Maintenance Manager | A person responsible for facilities operation and maintenance functions |
| Key Business Partner | Freescale employees and contractors outside of the EHS Organization |
| Management Team | Management team comprised of organizational managers capable of setting/defining organizational goals and priorities and allocation of resources to support those goals and objectives |
| Pollution Prevention | Use of processes, practices, techniques, materials, products, services or energy that avoid, reduce or control (separately or in combination) the creation, emission or discharge of any type of pollutant or waste in order to reduce adverse environmental impacts. This may include recycling, treatment, process changes, control mechanisms, energy or resource efficiency, and material substitution |
| Site Services | An organization consists of Facilities, Project Management, and EHS |

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| Definitions & Terms | Description |
|---|---|
| Waste Streams | Air emissions, hazardous/non-hazardous wastes, and wastewater effluent |

## 4.0 PROCEDURE

### 4.1 Pollution Prevention System

The Pollution Prevention System ensures a comprehensive identification of the waste materials and evaluates opportunities to reduce or eliminate the waste streams and conserve natural resources. The system also establishes methods for the development, implementation and tracking of plans to address identified pollution prevention opportunities.

### 4.2 Identification and Characterization of Waste Streams

Freescale Chandler and Tempe sites identify and characterize waste streams resulting from the site activities using related EHS management systems elements such as; control document #**12MAZ00107B**, *Management of Change* (**#12MAZ00163B**, *Design Review*, **#12MAZ00153B**, *Equipment Sign Off & Approval*, and **#12MAZ00319B**, *Chemical Pre-acquisition Approval Procedure*). Potential risks and impacts to the environment, safety, and health of employees, plant neighbors, and the environment are evaluated in on-going basis as new waste streams are identified, and regulatory requirements are assessed and addressed in accordance with control documents #12MAZ00104B, Regulatory and Other Requirements and **#12MAZ00102B**, *EHS Risk Assessment*. Identification and characterization of significant waste streams are documented in Waste Characterization Guidelines, hazardous waste manifests and related records, recycling and landfill records, air permit compliance emissions tracking and reporting tools, and waste water monitoring activities.

| Who | What | When |
|---|---|---|
| EHS Professional(s), EHS Program/System Champion | Identify and characterize waste streams, waste generation activities, and materials that may contribute to these waste streams. | As needed |
| | Evaluate potential risks associated with identification of existing and new waste streams and incorporate into operational controls and to mitigate risks in accordance with control documents **#12MAZ00102B**, *EHS Risk Assessment* and **#12MAZ00107B**, *Management of Change* | As needed, annually at minimum |
| | Document identification and characterization of significant waste streams. | As needed |

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4.3 **Reduction or Elimination of Waste Streams and Conservation of Natural Resources**

a. Freescale AZ EHS identifies opportunities to reduce or eliminate waste streams and conserve natural resources through a variety of sources. These sources include, but are not limited to, management of change programs (design review, new equipment installation and process change review/approval, chemical acquisition protocol, and monitoring and measurement data collection and review) participation in manufacturing meetings, new construction activities, and technical council activities. Pollution prevention opportunities are also identified and/or mandated by specific programs such as regulated air emissions reductions, Freescale Corporate or regional pollution prevention initiatives, energy reduction, water use/waste reduction, regulatory permit conditions, and Pollution Prevention Planning program administered by ADEQ.

b. The pollution prevention goals are tied to eliminating, reusing, recycling or reducing the amount of natural resources used by the Freescale Arizona sites, and to reducing wastes generated at each site. Pollution prevention opportunities are identified, considered, and implemented in accordance with control document **#12MAZ00106B**, *EHS Goals and Management Review*.

c. Site-specific goals are selected and prioritized in accordance with control document **# 12MAZ00106B**, *EHS Goals and Management Review*. Progress to meeting EHS (pollution prevention) goals is managed using EHS Goal setting and progress maintenance process.

d. The potential pollution prevention goals are presented to operations management at least annually in accordance with the site's control document **#12MAZ00106B**, *EHS Goals and Management Review*. The pollution prevention goals are endorsed and supported by the site senior management at implementation. EHS (pollution prevention) goals may be integrated into site operational goals as appropriate to the nature of the goal and the source of pollution prevention. Progress to meeting established EHS (pollution prevention) goals is communicated to corporate, regional, and EHS management and employees in accordance with control documents **#12MAZ00113B**, *EHS Communications, Awareness, and Employee Participation*, **#12MAZ00107B**, *Management of Change*, and to appropriate regulatory authorities/agencies in accordance with control document **#12MAZ00104B**, *Regulatory and Operational Reporting*.

e. Refer to control document **#12MAZ00132B**, *Regulatory and Operational Reporting*, on requirements for regulatory and operations reports such as Toxic Release Inventory Report, Facilities Annual Report (hazardous waste), Tier II Report, Emissions Inventory Report (air emissions), Industrial Wastewater Discharge Report, EHS metrics Report (internal), Pollution Prevention Progress Reports, etc. The EHS *Regulatory Reporting Schedule* outlines the schedule and recordkeeping requirements. All regulatory and operations reports related to pollution prevention program will be managed in accordance with control document **#12MWS10510D**, *Records Management Procedure*.

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| Who | What | When |
|---|---|---|
| EHS Program/System Champion(s) | Identify opportunities to reduce or eliminate waste streams and conserve natural resources. | Continually |
| | Identify pollution prevention goals based on opportunities identified. | Annually |
| | Communicate/report pollution prevention goals and progress to Freescale management, employees, and regulatory agencies | As needed/ required. |
| | Address non-conformance to EHS (pollution prevention) goals in accordance with control documents **#12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action* and **#12MAZ00106B**, *EHS Goals and Management Review* | As needed |
| EHS Manager | Present pollution prevention progress and potential goals to the site senior management. | As needed, annually at minimum |
| Key Business Partners | Review, endorse and support pollution prevention goals. Integrate into operational goals as appropriate. | Review and endorse periodically, support continually |

### 4.4 Treatment, Disposal and Recycling of Hazardous and Non-hazardous Waste

Freescale AZ EHS employs the most environmentally friendly options for treatment and disposal of its hazardous and non-hazardous waste. Recycling and reuse opportunities are always considered first, before disposal options. For waste disposal options refer to Waste Characterization Guidelines. For requirements concerning the management of hazardous waste, see control document **#12MAZ00119B**, ***Hazardous Materials System***.

| Who | What | When |
|---|---|---|
| EHS Professional(s) | Identify methods of treatment, disposal and recycling of hazardous and non-hazardous waste based upon minimizing long-term impact on the environment; economics; and professional knowledge of methodologies. Refer to control document **#12MAZ00119B**, *Hazardous Materials System* and Waste Characterization Guidelines. | Continually |

### 4.5 Air Pollution Emission Control

Freescale AZ EHS utilizes the best practical control technologies to minimize emissions in accordance with federal, state, or local regulations and permit conditions. Control technology selection/considerations include; capital and operational cost, control efficiency, physical space, applicable regulatory requirements. Where required, air emissions are controlled to levels mandated by each site's air permit, and in certain operations no physical controls may be employed or required. To ensure the continued efficient operation of control equipment and abatement of air emissions, in accordance with local regulatory requirements, Operations and Maintenance (O&M) Plans are developed and implemented when required. Approved O&M Plans and associated records of compliance are maintained in accordance with control document **#12MWS10510D**, *Records Management Procedure*. Non-conformances with O&M Plan limits and maintenance intervals are addressed in accordance with control document **#12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action* as well as control document **#12MAZ00132B**, *Regulatory and Operational Reporting* as needed. Equipment used to monitor and measure performance of control devices are calibrated, where applicable, in accordance with control document **#12MAZ00127B**, *EHS Monitoring, Measurement and Calibration* and AZ Site Services control document **#12MSA10598D**, *AZSS Calibration of Environmental Compliance Monitoring Equipment.*

| Who | What | When |
|---|---|---|
| EHS Manager, Facilities Operations and Maintenance Manager, and EHS Program/System Champion | Responsible for compliance with air emissions permit limits and O&M Plan requirements. | Continually |
| EHS Program/System Champion, KBPs, Facilities Engineering and Operations/Maintenance | Ensure the utilization of the best practical air emission control technologies, where required, to minimize emissions. | Continually |
| | Ensure proper operation and maintenance of emission control technologies as specified in O&M Plans | Continually |
| Facilities Operations and Maintenance, KBPs | Responsible for performing preventive maintenance (PM) on air abatement equipment and generating records of maintenance. Refer to control document **#12MWS10510D**, *Records Management Procedure*. | According to PM program |

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| Who | What | When |
|---|---|---|
| Facilities Operations and Maintenance, KBPs (cont) | Contact EHS Program/System Champion immediately when the operating parameter of the air abatement equipment is out of the specifications, or when an emergency occurs that may lead to permit violation or threaten the safety and health of personnel or the environment. | As needed |
| | Ensure newly employed personnel work under the supervision of a trained person before starting to operate or service the air abatement equipment alone. | Until trained and authorized by supervision |
| | Ensure air abatement equipment training is completed for any new employee. | Continually |
| EHS Management, EHS Program/System Champion | Maintain monitoring, measurement, and calibration of compliance equipment records as well as reports to regulatory agencies in accordance with control document **#12MWS10510D**, *Records Management Procedure.* | Continually |
| | Report non-conformances to air permit conditions/limitations in accordance with control documents **#12MAZ00132B**, *Regulatory and Operational Reporting* and **12MAZ00128B** *Non-Conformance and Corrective & Preventive Action* | As needed |

### 4.6 Industrial Waste Water

Freescale AZ sites operate Industrial Wastewater Treatment (IWT) systems, to ensure that industrial wastewater discharge permit limits are met. Equipment used to monitor and measure industrial wastewater discharges (eg. pH and flow) are calibrated in accordance with control document **# 12MAZ00127B**, *EHS Monitoring, Measurement and Calibration* as well as control document **#12MSA10598D**, *AZSS Calibration of Environmental Compliance Monitoring Equipment*

| Who | What | When |
|---|---|---|
| EHS Program/System Champion | Maintain monitoring, measurement, and calibration of compliance equipment records as well as reports to regulatory agencies in accordance with control document **#12MWS10510D**, *Records Management Procedure* | Continually |

| Who | What | When |
|---|---|---|
| EHS Program/System Champion | Report non-conformances to wastewater permit conditions/limitations in accordance with control document **#12MAZ00132B** *Regulatory and Operational Reporting* and **#12MAZ00128B** *Non-Conformance and Corrective & Preventive Action* | As needed |
| (cont) | | |
| EHS Manager, Facilities Operations and Maintenance Manager, EHS Program/System Champion | Responsible for compliance with industrial wastewater discharge permit limits. | Continually |
| Facilities Operations and Maintenance | Responsible for performing preventive maintenance (PM) on equipment and instrumentation of the wastewater treatment system and generating records of maintenance. Refer to control document **#12MWS10510D**, *Records Management Procedure*. | According to PM program |
| | Contact EHS Program/System Champion immediately when the pH of the wastewater discharge is not within the permitted pH limits, or when an emergency occurs in the wastewater treatment systems that may lead to a permit violation or threaten the safety and health of personnel or the environment. | As needed |
| | Ensure the newly employed Wastewater Operator works under the supervision of a trained Wastewater Operator before starting to operate or service the wastewater treatment system alone. | Until trained and authorized by supervision |
| | Ensure wastewater treatment training is completed for any new employee. | Continually |
| EHS Program/System Champion, Facilities Engineering, and/or Facilities Operations and Maintenance | Determine the root cause of a permit violation or a system failure. Assure that a corrective/preventive action plan is implemented to address the deficiency. Refer to control document **# 12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action*. | After a violation occurs or a significant system failure that would lead to a permit violation or pose threats to the safety and health of personnel. |

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| Who | What | When |
|---|---|---|
| EHS Management, EHS Program/System Champion | Perform notification, as applicable, described in the control document **# 12MAZ00132**, *Regulatory and Operational Reporting.* | Upon knowledge of the violation |

### 4.7 Surface Water and Groundwater Protection

Freescale AZ sites protect surface water and groundwater quality from industrial and construction contamination through implementation of Best Management Practices (BMP's). Each site maintains written and implemented Storm Water Pollution Prevention (SWPP) Plans. SWPP Plans identify potential on-site surface water pollution sources, and describe management practices, which are in place to prevent surface water contamination. Prior to soil disturbance, the need for a surface water pollution prevention plan for construction activities is evaluated, a written plan developed, and a permit secured if necessary. The sites have implemented a number of additional provisions such as the Spill Prevention Control and Countermeasure (SPCC) Plan in order to prevent pollution in the stormwater and groundwater.

| Who | What | When |
|---|---|---|
| Facilities Operations and Maintenance Manager | Ensure provisions to protect surface water quality from industrial and construction contamination are implemented. | Continually |
| EHS Program/System Champion | Ensure the Storm Water Pollution Prevention Plan is developed and implemented. | Continually |
| | Evaluate the need for surface water pollution prevention plan for construction activities and develop a written plan if required. Refer to 40 CFR 122.26(b)(15) for requirements on storm water discharges associated with small construction activity under EPA's storm water program. | As Needed |

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***PRINTED*** *VERSIONS ARE UNCONTROLLED EXCEPT WHEN STAMPED "CONTROLLED COPY" IN* ***RED****.*

| Who | What | When |
|---|---|---|
| EHS Professional(s) | Maintain the Spill Prevention Control and Countermeasures (SPCC) Plans. Each site maintains a SPCC Plan that describes procedures to prevent releases of oil based hazardous liquids to the environment. | Continually |
| | Conduct regular inspections of bulk tanks containing regulated hazardous materials, and their secondary containment areas for leaks and signs of deterioration in accordance with control document **#12MAZ00119B**, *Hazardous Materials System.* | Monthly |
| | Address hazardous material storage and secondary containment deficiencies and spills in accordance with control documents **#12MAZ00128B**, *Non-Conformance and Corrective & Preventive Action* and **#12MAZ00132B**, *Regulatory and Operational Reporting* | As needed |
| Facilities Engineering Manager | Ensure secondary containments are provided for all external hazardous material storage facilities. | Continually |
| Facilities Operations and Maintenance, EHS Program/System Champion (site specific) | Ensure the diesel tanks and the secondary containment of emergency generators and fire pumps are inspected for their integrity and for signs of spills. Provide maintenance or repairs as needed. | Periodically during scheduled preventive maintenance activities, or monthly (site specific) |

### 4.8 Identification of Potential Pollution Conveyances

Freescale AZ sites identify potential pollution conveyances such as piping, wells, and storm water retention basins, water supply wells, and drywells. The site drawings are maintained within the Facilities Engineering CAD department.

### 4.9 Personnel Training on Pollution Prevention

Freescale AZ sites conduct personnel training to promote general awareness and provide site specific information and instructions to prevent pollution to the environment. EHS Training requirements are described in control document #12MAZ00125B, EHS Training System.

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## 5.0 RECORDS

### 5.1 Required Records

| Paragraph | Record Description | Retention |
|---|---|---|
| 4.5 | Air permit monitoring, measurement, and calibration records as well as reports to regulatory agencies | Year created +30 yrs |
| 4.6 | Wastewater discharge and wastewater treatment monitoring, measurement, and calibration records as well as reports to regulatory agencies | Year created + 30 yrs |

Refer to control document **#12MWS10510D**, *Records Management Procedure* which outlines the requirements for compliance with Records Management Policy SOP 4-15.

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## REVISION SHEET

| Revision Date | Description of Revision & Writer | Spec Coord | Effective Date |
|---|---|---|---|
| | Previous revision maintained in WWCM | | |
| G<br>15 Jan 05 | Combined elements of Tempe and Chandler Pollution Prevention System documents into one document to be shared by both sites. This document replaces 68ASA66141B, 68ASA66296B, 68ASA66310B, 68ASA66314B, 68ASA66596B, 68ASA66610B. Document revised by Brian Johnson and Hsi-An Kwong. | J Lund | 10 Feb 05 |
| H<br>19 Sep 05 | Changed name of ancillary document from “Identification and Characterization Log” to “Waste Characterization Guidelines”. Added additional sources of waste stream characterization. Modified sections 3.0 and 5.0 to include current documents and records. Modified section 4.8. Minor format changes made throughout the document. Document revised by B. Johnson and Hana Dostalova | J Lund | 30 Sep 05 |
| J<br>04 May 06 | Changed Stormwater Pollution Prevention Plan to a work aid by removing it from Section 5.1. Added Section 4.3.e to address pollution prevention related reports. Modified Section 4.3.b to remove regulatory or operations reports to a new Section 4.3.e. Updated the list of required records and record retention in Section 5.1. Document revised by Hsi-An Kwong. | J Lund | 15 May 06 |
| K<br>21 Aug 07 | Combined Section 4.8 Groundwater Protection into Section 4.7 to include both surface water and groundwater protections in the same section. Added reference to 40 CFR 122.26 in Section 4.7. Updated responsibility of KBP in sections 4.5 and 4.6. Updated recordkeeping requirements to the Corporate document throughout the sections. Updated training requirements in Section 4.9. Updated existing document numbers to new document numbers throughout all sections. Document number and reference documents changed from 68A’s to 12M’s. Added iCAP classification. Document revised by Hsi-An Kwong | J Lund | 17 Oct 07 |

***ELECTRONIC*** *VERSONS ARE UNCONTROLLED EXCEPT WHEN ACCESSED DIRECTLY FROM COMPASS SERVER.*
***PRINTED*** *VERSIONS ARE UNCONTROLLED EXCEPT WHEN STAMPED “CONTROLLED COPY” IN* ***RED****.*

**EXHIBIT C**

**Floor Plans of Premises**

[Attached]

# Chandler - A and B Bldg Level 1


**MESA Lab Space highlighted in Brown**

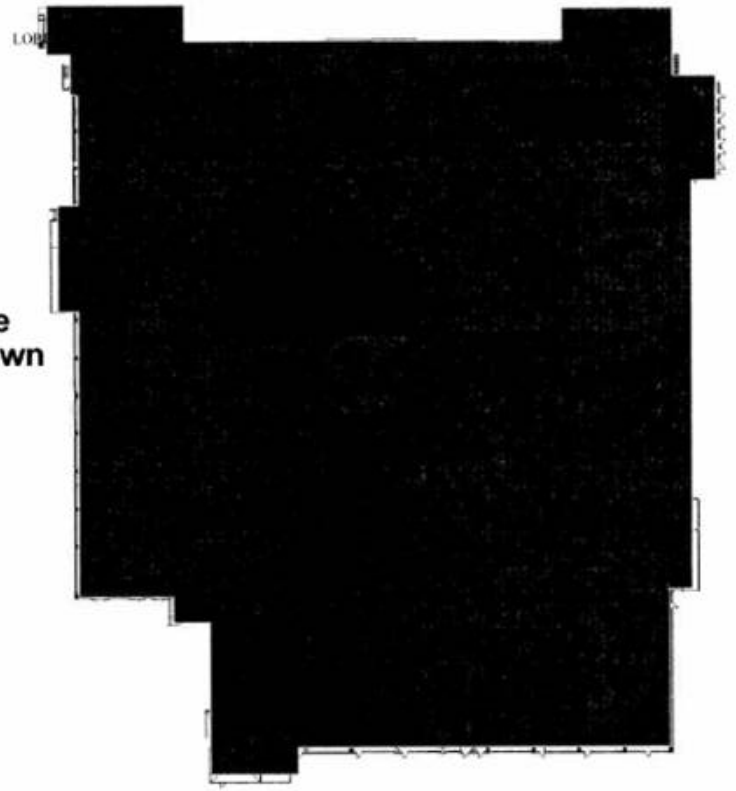
M. Aguirre
Freescale Real Estate & Space Mgmt

January 24, 2008

## Chandler Site –M and N Building - Level 1

**MESA Fab Space highlighted in Brown**

Fab: 7,130 sf

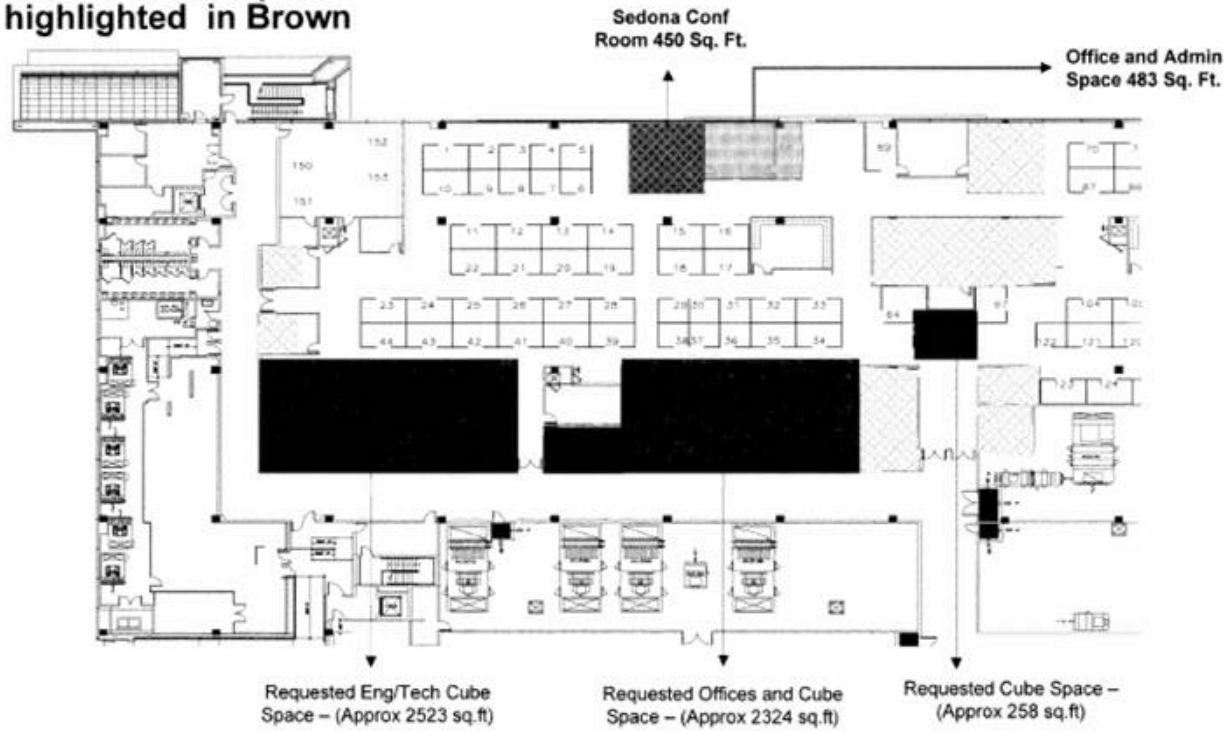


M. Aguirre
Freescale Real Estate & Space Mgmt

January 24, 2008

# Chandler Site - M and N Building - Level 2

**MESA Office Space highlighted in Brown**




**Total Space requested = 6,038 sq. ft.**

M. Aguirre
Freescale Real Estate & Space Mgmt

January 24, 2008

**EXHIBIT D**

**Description of Property**

PARCEL 1:

THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; EXCEPT THE SOUTH 20 FEET OF THE NORTH 33 FEET; AND

EXCEPT THE WEST 322 FEET OF THE NORTH 270.56 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 20; and

EXCEPT COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20;

THENCE NORTH 00 DEGREES 09 MINUTES 47 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 20 A DISTANCE OF 1390.28 FEET TO A POINT WHICH BEARS SOUTH 00 DEGREES 09 MINUTES 47 SECONDS WEST A DISTANCE OF 1251.15 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 20;

THENCE NORTH 89 DEGREES 50 MINUTES 13 SECONDS WEST, A DISTANCE OF 158.39 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE WEST, A DISTANCE OF 59.58 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 38 SECONDS EAST, A DISTANCE OF 45.97 FEET;

THENCE EAST A DISTANCE OF 16.60 FEET;

THENCE SOUTH 00 DEGREES 14 MINUTES 35 SECONDS WEST, A DISTANCE OF 6.42 FEET;

THENCE EAST A DISTANCE OF 46.77 FEET;

THENCE NORTH, A DISTANCE OF 31.65 FEET;

THENCE EAST, A DISTANCE OF 38.63 FEET;

THENCE SOUTH 00 DEGREES 14 MINUTES 50 SECONDS WEST, A DISTANCE OF 28.74 FEET;

THENCE SOUTH 45 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 60.05 FEET TO THE POINT OF BEGINNING; AND

EXCEPT ANY PORTIONS THEREOF LYING WITHIN DEDICATIONS FOR THE RIGHT OF WAY FOR ALMA SCHOOL ROAD.

PARCEL 2:

THAT PORTION OF SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20;

THENCE NORTH 00 DEGREES 47 MINUTES 35 SECONDS WEST, ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER, 1320.74 FEET TO THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER;

THENCE SOUTH 89 DEGREES 02 MINUTES 34 SECONDS WEST, ALONG SAID NORTH LINE, 55.00 FEET TO THE WEST LINE OF EAST 55.00 FEET OF SAID SOUTHEAST QUARTER AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 02 MINUTES 34 SECONDS WEST, ALONG SAID NORTH LINE 1174.85 FEET;

THENCE SOUTH 00 DEGREES 57 MINUTES 26 SECONDS EAST, 37.50 FEET;

THENCE SOUTH 45 DEGREES 57 MINUTES 26 SECONDS EAST, 53.03 FEET TO THE SOUTH LINE OF THE NORTH 75.00 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 89 DEGREES 02 MINUTES 34 SECONDS EAST, ALONG SAID WEST LINE, 1137.13 FEET TO THE WEST LINE OF THE EAST 55.00 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER;

THENCE NORTH 00 DEGREES 47 MINUTES 35 SECONDS WEST, ALONG SAID WEST LINE, 75.00 FEET TO THE TRUE POINT OF BEGINNING.

**EXHIBIT E**

**Initial Term Fixed Rent Chart**

| Location | Sq.Ft. | Unit Fixed Rent Rate | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|---|
| Office Space (Building M) | 6,038 | $20/sq.ft./year | $ 120,760/year | $ 10,063.33/month |
| Fab Space (Bldgs. M&N) | 7,130 | $85/sq.ft/year | $ 606,050/year | $ 50,504.17/month |
| Lab Space (Bldg. B) | 2,856 | $40/sq.ft/year | $ 114,240/year | $ 9,520.00/month |
| **Total** | **16,024** | | **$ 841,050/year** | **$70,087.50/month** |

**EXHIBIT F**

**Renewal Term Fixed Rent Chart**

| Location | Sq.Ft. | Unit Fixed Rent Rate | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|---|
| Office Space (Building M) | 6,038 | $20.80/sq.ft./year | $ 125,590.40/year | $ 10,465.87/month |
| Fab Space (Bldgs. M&N) | 7,130 | $88.40/sq.ft/year | $ 630,292.00/year | $ 52,524.33/month |
| Lab Space (Bldg. B) | 2,856 | $41.60/sq.ft/year | $ 118,809.60/year | $ 9,900.80 /month |
| **Total** | **16,024** | | **$ 874,692.00/year** | **$ 72,891.00/month** |

**EXHIBIT G**
**Intentionally Deleted**

**EXHIBIT H**

**Janitorial Specifications**

(i) Landlord will dust and vacuum the Office Space twice per month.

(ii) Trash will be emptied 2 to 3 times per week from the Office Space.

(iii) Landlord will clean rest rooms daily Monday through Friday except during holidays or shutdown days.

(iv) Window cleaning will be an additional charge to Tenant which shall be paid as Additional Rent.

(v) Tenant to provide janitorial services to the Lab Space and the Fab Space in accordance with all applicable site specifications and requirements at its cost with personnel approved by Landlord.

**EXHIBIT I**

**Description of Landlord's Furniture in Premises**

**OFFICE SPACE (M Building – Level 2):**

**Sedona Conference Room**

| Description | Qty |
|---|---|
| Improv task chairs | 10 |
| Improv side chairs | 12 |
| 12x4 conference room table | 1 |
| PC small table | 1 |
| Electric screen | 1 |
| polycom phone | 1 |
| Epson overhead projector | 1 |

**Executive Office and Admin area**

| Description | Qty |
|---|---|
| 7' wood desk | 1 |
| 5' wood credenza | 1 |
| 5' wood wardrobe cabinet | 1 |
| small 72"x36" table | 1 |
| conference chairs | 8 |
| Panaboard-electric white board | 1 |
| white screen | 1 |
| 4' foot Haworth panels | 4 |
| 42" wide/ file cabinets | 4 |
| Haworth work surfaces | 3 |
| Improv office chair | 1 |

**Cubicles in M bldg office area**

| | |
|---|---|
| 8x8 Haworth cubicles | 4 |
| 8x12 Haworth cubicles | 17 |
| Hardwall offices | 5 |

**Each 8x8 cubicle has the following**

1. seats one person
2. has 7 4 foot panels
3. has 3 work surfaces
4. has 2 - 4 overheads
5. has 1 - 2 drawer file cabinet
6. has 2 pedestal file cabinets
7. has 1 keyboard holder
8. has 1 office chair

**Each 8x12 cubicle has the following**

1. seats 2 persons
2. has 9 4 foot panels
3. has 5 work surfaces
4. has 4 - 4 overheads
5. has 1- 2 drawer file cabinet
6. has 4 pedestal file cabinets
7. has 2 keyboard holder
8. has 2 office chair

**Each Hard wall office has the following**

1. seats one person
2. Has one 5 high file cabinet
3. has 5 work surfaces
4. has 4 - 4 overheads
5. has 1 - 2 drawer file cabinet
6. has 2 pedestal file cabinets
7. has 1 keyboard holder
8. has 1 office chair

**LAB SPACE (A Building – Level 1)**

| Description/Office Equipment | Qty |
|---|---|
| 42” Haworth file cabinets | 7 |
| misc stools and lab seating | 11 |
| Haworth 36” panels | 12 |
| Haworth work surfaces | 15 |
| Office type chairs- various | 8 |
| Lab benches- various | 6 |
| Various computers and monitors | |

**FAB SPACE (M Building – Level 1): None**

**EXHIBIT J**

**Additional Rent @ Up to 75wspw Full Wafer Equivalent:**

**Gas & Chemicals and**

**Failure and Reliability Analytical Laboratory Services**

| Item | Additional Rent Year 1 |
|---|---|
| **Manufacturing Services** | |
| 1. Manufacturing consumables<br>Includes: - Bulk gases and chemicals for up to 75wspw full wafer equivalent | $3,404/mo |
| 2. Manufacturing support services<br>Includes:<br>- Use of factory manufacturing execution and analysis software (PROMIS, Tool Tracking, SPC) in CH-FAB<br>- Chandler Analytical Lab services (PALAZ TEM, SEM, etc. Maximum 18 samples/mo)<br>- Chandler Failure and Reliability Analysis Lab services<br>- Tenant may requisition incidental parts and supplies from CH-FAB with a total value not to exceed $1,000 per month at no charge | $12,176/mo |
| **Items not included:**<br>- Maintenance of MRAM equipment not included in service contracts<br>- Shipping costs<br>- Parts ordering and stocking<br>- Operator staffing to run Tenant-owned tools<br>- Specialty gases and chemicals that are not provided as part of factory bulk delivery systems | Tenant expense |

The rate for each of the above items will increase on the first (1st) anniversary (and each anniversary thereafter) of the Lease Term by an amount equal to four percent (4.0%) of the rate for such item for the preceding year.

**EXHIBIT K**

**HVAC SPECIFICATIONS**

**Lab Space (A Building – Level 1):**

Temperature: 62ºF – 74ºF

Relative Humidity: 15% – 75%

**Fab Space (M Building – Level 1):**

Temperature: 66ºF – 70ºF

Relative Humidity: 37% – 48%

**EXHIBIT L**

**FORM EMPLOYEE COMPUTER ACCESS AGREEMENT**

**[Attached]**

**Freescale Semiconductor, Inc.**

**NON-DISCLOSURE AGREEMENT- COMPUTER ACCESS**
**COMPANY: EVERSPIN TECHNOLOGIES, INC.**
**EMPLOYEE'S/AGENT'S NAME:**

The term '*User*', as used herein, shall be deemed to refer equally to Company and Company's individual employee or agent signing this Non-Disclosure Agreement-Computer Access (this "*Agreement*"). IN consideration of Freescale Semiconductor, Inc. ("Freescale') providing access to User to certain of Freescale's computerized data. User hereby agrees as follows:

1. Company agrees to require all of its employees or agents who will obtain access to a password (used for authentication purposes) and a user id (used to identify computer system users) permitting access to Freescale's computer to sign a copy of this Agreement.

2. The password, together with the proprietary information and other confidential data which are stored on Freescale's computer systems ("Proprietary Information") are of a confidential and proprietary nature and are and will remain the property of Freescale and may only be accessed by means of a password to be provided to User by Freescale. The term Proprietary Information shall exclude any of User's confidential or proprietary information stored on Freescale's computer systems. A password will be provided to User by Freescale which User will be instructed to change periodically to maintain the password's integrity. User hereby agree to maintain any password, together with all Proprietary Information acquired from the Freescale computer systems, in confidence. User agree not to copy, use or disclose Proprietary Information except only for the limited purpose expressly set forth in this Agreement or in any other written Agreement between User and Freescale. User agree to access the Freescale computer system only from the Freescale Chandler, Arizona facility or any other site approved in writing by Freescale.

3. User's obligations under this Agreement will continue 10 years from after the date of this Agreement, even after the completion by User of any work for Freescale, except with respect to any information which:

    A. was known to User prior to disclosure by Freescale without restriction on disclosure, or is, at the time of disclosure under this Agreement, already known to the User without restriction on disclosure, or

    B. is now generally known to the public, or later becomes so through no fault of User, or

    C. comes to User without any obligation of secrecy, from a third party that did not receive it directly or indirectly from Freescale, or

    D. which is ordered to be produced by a court, in which event User shall notify Freescale in writing before producing such information in order to afford Freescale the opportunity to seek a protective order.

4. On the earlier of (i) a written request by Freescale, or (ii) the termination of this Agreement, User will promptly deliver to the designated Freescale representative all Freescale documents, Proprietary Information, records, passwords, access codes, user id's and other data which relate to the business activities of Freescale and were received by User under this non-disclosure Agreement-computer access.

5. Upon Freescale's written request not more than twice annually, an officer of the Company will certify in writing that User is in compliance with this Agreement.

6. This Agreement is governed by the laws of the State of Arizona. This Agreement can be modified or waived only in a writing signed by the parties.

UNDERSTOOD AND AGREED:

(All information below must be provided before NDA can be approved.)

**'COMPANY PRESIDENT / VICE PRESIDENT'**

NAME & TITLE: _____

SIGNED: _____

DATE: _____

**EMPLOYEE/AGENT**

NAME & TITLE: _____

SIGNED: _____

DATE: _____

**FREESCALE SEMICONDUCTOR, INC.**

NAME & TITLE: _____

SIGNED: _____

DATE: _____

CID: _____

**AMENDMENT NO. 1 TO LEASE**

This **AMENDMENT NO. 1 TO LEASE** ("***Amendment***"), dated , 2008 ("***Execution Date***") for reference purposes only, is entered into by and between FREESCALE SEMICONDUCTOR, INC., a Delaware corporation ("***Landlord***"), and EVERSPIN TECHNOLOGIES, INC., a Delaware corporation ("***Tenant***"), with reference to the following facts:

A. Landlord and Tenant are parties to that certain Lease dated as of June 4, 2008 ("**Lease**"), pursuant to which Landlord leases to Tenant certain space (***"Premises***") located at 1300 North Alma School Road, Chandler, Arizona.

B. The parties desire to amend the Lease to correct certain inaccurate provisions and exhibits in the Lease and have such corrections in this Amendment be deemed to take place as of the Effective Date of the Lease, which is June 4, 2008, all on the following terms and conditions.

***NOW, THEREFORE***, in consideration of the above recitals which are hereby incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend the Lease, effective as of the Effective Date of the Lease, as follows:

1. **Premises.** Section 1.A. of the Lease is hereby replaced with the following:

A. For and in consideration of the covenants and agreements on the part of Tenant contained herein, and under and subject to the terms and conditions hereof, Landlord hereby leases and demises unto Tenant those certain premises in portions of the buildings known as A Building, B Building, M Building and N Building (individually, a **"Building**" and collectively with all other buildings located in the Project, the **"Buildings**") which are part of that certain project owned by Landlord known as "Chandler" (herein the **"Project**") located at 1300 North Alma School Road, Chandler, Arizona 85224 as illustrated on **Exhibit A** attached hereto and hereby made a part hereof, containing 6,816 square feet of office space in M Building (of which 486 square feet consists of a conference room) (said 6,816 square feet of space is herein referred to as the **"Office Space**"), 9,259 square feet of fabrication space in M Building (herein the **"Fab Space**"), and 5,625 square feet of lab space in A Building (herein the **"Lab Space**") totaling 21,700 square feet of floor area (hereinafter called the **"Premises**") as illustrated on the floor plans contained in **Exhibit C-1** attached hereto and made a part hereof, together with the right to use certain facilities that are located on the real property legally described in **Exhibit D** attached hereto and made a part hereof (herein the **"Property**") that are provided by Landlord in common to Tenant,

Landlord's employees and other third parties such as vendors and suppliers designated by Landlord and are defined below as Common Areas. In addition to the Premises, Landlord hereby grants to Tenant, during the Term of this Lease, at no additional charge, the non-exclusive right to use the space (the "**TSO Space**") designated on **Exhibit C-1** as the TSO Lab, subject to procedures adopted by Landlord governing such access by Tenant. Tenant may locate certain of Tenant's Property (as herein defined) in the TSO Space as previously approved by Landlord."

2. **Floor Plan of Premises.** Exhibit C is hereby replaced with the Floor Plan attached hereto as Exhibit C-1.

3. **Initial Term Fixed Rent.** Exhibit E is hereby replaced with the Initial Term Fixed Rent schedule attached hereto as Exhibit E-1.

4. **Renewal Term Fixed Rent.** Exhibit F is hereby replaced the Renewal Term Fixed Rent schedule attached hereto as Exhibit F-1.

5. **Brokers.** Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment. Tenant agrees to indemnify and hold Landlord harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Amendment. Landlord agrees to indemnify and hold Tenant harmless from all claims of any broker claiming to have represented Landlord in connection with this Amendment.

6. **Miscellaneous.** This Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control. Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. This Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment may be executed in so-called "PDF" format, and each party has the right to rely upon a PDF counterpart of this Amendment signed by the other party to the same extent as if such party had received an original counterpart.

***[SIGNATURES ARE ON FOLLOWING PAGE]***

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Amendment as of the day and year first above written.

**LANDLORD:**

**FREESCALE SEMICONDUCTOR, INC.,**
a Delaware corporation

By: /s/ Lisa Su
Print Name: Lisa Su
Its: SR VP & GM of NMG & CTO
Date: 01/15/09

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.,**
a Delaware corporation

By: /s/ Saied Tehrani
Print Name: Saied Tehrani
Its: COO
Date: 2/2/09

**EXHIBIT C-1**

**Floor Plan**

**(attach copy)**

**EXHIBIT E-1**

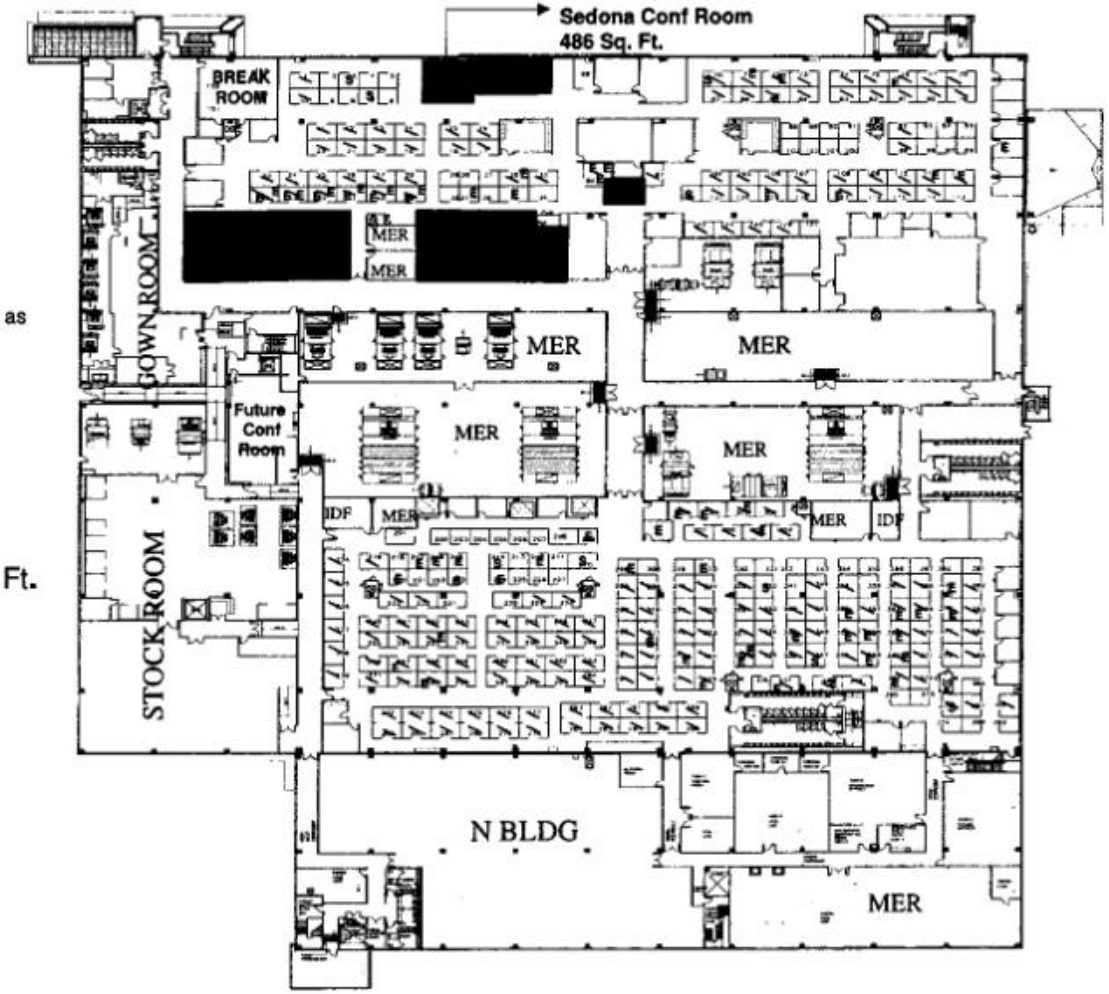
**Initial Term Fixed Rent Chart**

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $120,760/year | $10,063.33/month |
| Fab Space (M Building) | 9,259 | $606,050/year | $50,504.17/month |
| Lab Space (A Building) | 5,625 | $114,240/year | $9,520.00/month |
| **Total** | **21,700** | **$841,050/year** | **$70,087.50/month** |

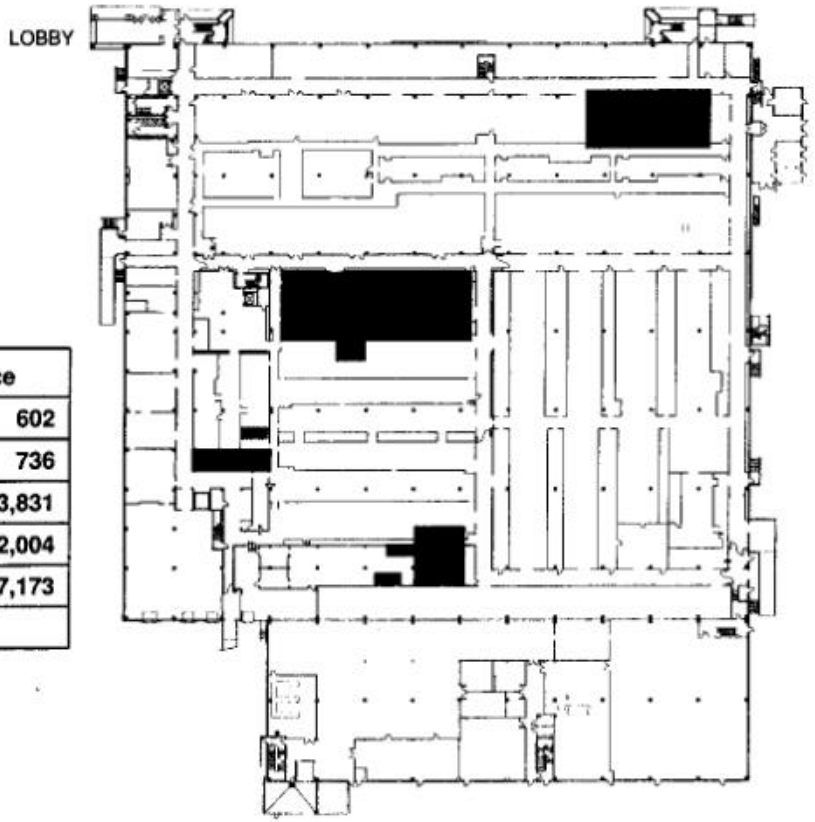
# Office Space – Chandler M Building - Level 2

Office Space
8 Offices
22 Cubes
1 Conf Rm
Adjacent hallways as indicated

Total = 6,816 Sq. Ft.



# Fab Space – Chandler M Building - Level 1




Fab Space

| Area | Clean Room | Gray space |
|---|---|---|
| ZB Bay | 95 | 602 |
| CU Bay | 245 | 736 |
| AM Bay | 1,315 | 3,831 |
| IE Bay | 431 | 2,004 |
| Subtotals | 2,086 | 7,173 |
| Total sf | 9,259 | |

# Lab Space - Chandler A Bldg - Level 1

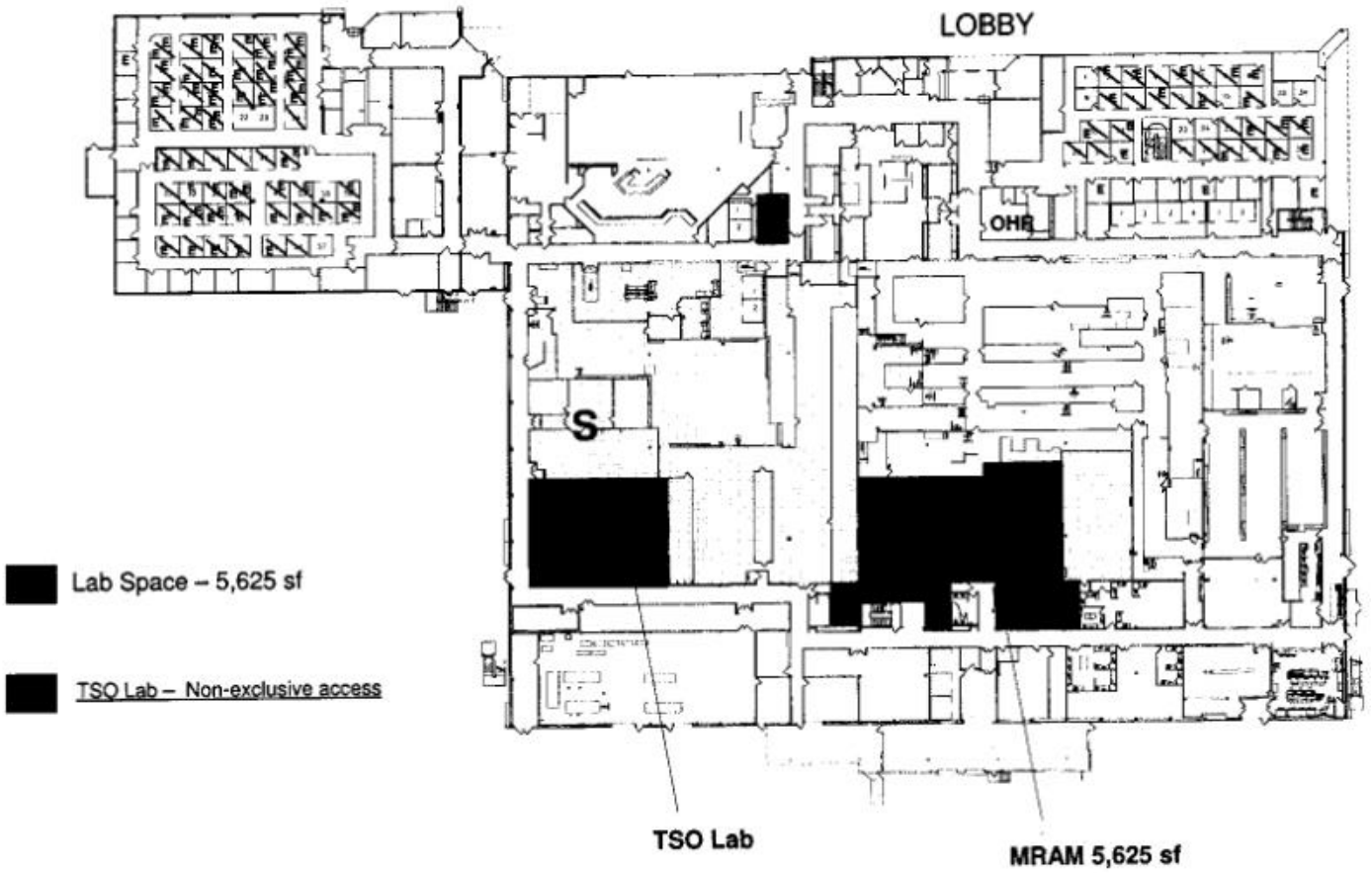


**Exhibit 10.7**

**AMENDMENT NO. 2 TO LEASE**

This **AMENDMENT NO. 2 TO LEASE** ("***Amendment No. 2***"), dated , 2010 ("***Amendment Effective Date***") for reference purposes only, is entered into by and between **FREESCALE SEMICONDUCTOR, INC**., a Delaware corporation ("***Landlord***"), and **EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation ("***Tenant***"), with reference to the following facts:

A. Landlord and Tenant are parties to that certain Lease dated as of June 4, 2008 and Amendment No. 1 to Lease dated February 2, 2009 (collectively "***Lease***"), pursuant to which Landlord leases to Tenant certain space ("***Premises***") located at 1300 North Alma School Road, Chandler, Arizona.

B. The parties desire to amend the Lease to extend the term of the Lease and modify certain provisions of the Lease deemed to take place as of the Amendment Effective Date, all on the following terms and conditions.

***NOW, THEREFORE***, in consideration of the above recitals which are hereby incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend the Lease, effective as of the Amendment Effective Date, as follows:

**1. Premises.** Section 1.A. of the Lease is hereby replaced with the following:

A. For and in consideration of the covenants and agreements on the part of Tenant contained herein, and under and subject to the terms and conditions hereof, Landlord hereby leases and demises unto Tenant those certain premises in portions of the buildings known as A Building, B Building, M Building and N Building (individually, a "**Building**" and collectively with all other buildings located in the Project, the "**Buildings**") which are part of that certain project owned by Landlord known as "Chandler" (herein the "**Project**") located at 1300 North Alma School Road, Chandler, Arizona 85224 as illustrated on **Exhibit A** attached hereto and hereby made a part hereof, containing 6,816 square feet of office space in M Building (of which 486 square feet consists of a conference room) (said 6,816 square feet of space is herein referred to as the "**Office Space**"), 10,741 square feet of fabrication space in M Building (herein the "**Fab Space**"), and 6,495 square feet of lab space in A Building (herein the "**Lab Space**") totaling 24,052 square feet of floor area (hereinafter called the "**Premises**") as illustrated on the floor plans contained in **Exhibit C** attached hereto and made a part hereof, together with the right to use certain facilities that are located on the real property legally described in **Exhibit D** attached hereto and made a part hereof (herein the "**Property**") that are provided by Landlord

in common to Tenant, Landlord's employees and other third parties such as vendors and suppliers designated by Landlord and are defined below as Common Areas. In addition to the Premises, Landlord hereby grants to Tenant, during the Term of this Lease, at no additional charge, the non-exclusive right to use the space (the "**TSO Space**") designated on **Exhibit C** as the TSO Lab, subject to procedures adopted by Landlord governing such access by Tenant. Tenant may locate certain of Tenant's Property (as herein defined) in the TSO Space as previously approved by Landlord."

**2. Floor Plan of Premises.** Exhibit C is hereby replaced with the new Exhibit C Floor Plan attached as Schedule 1 to this Amendment No. 2.

**3. Term.**

**a.** Section 2 of the Lease is hereby replaced with the following:

A. The term of this Lease shall be for a period of six (6) years (the "**Term**"), which shall commence on June 6, 2008 (the "**Commencement Date**") and end on June 6, 2014.

B. One party may terminate this Lease prior to the expiration of the Term without cause and for convenience by giving the other party twelve (12) months advance written notice of such termination.

**b. Removal of Initial and Renewal Terms.**

**(i)** Entry 27 of the Table of Contents on page i of the Lease is hereby deleted and replaced with the following: 27. [Intentionally Left Blank]

**(ii)** Exhibit F in the List of Exhibits on page ii of the Lease is hereby deleted and replaced with the following:

Exhibit F [Intentionally Left Blank]

**(iii)** Sections 3.A. and 3.B. of the Lease are hereby deleted.

**(iv)** Section 27 of the Lease, including its subsections A, B, C and D, are hereby deleted and replaced with the following:

**27.** [Intentionally Left Blank]

**(v)** Exhibit F of the Lease is hereby deleted and replaced with the following:

**EXHIBIT F**
[Intentionally Left Blank]

**4. Fixed Rent.**

**a.** Exhibit E in the List of Exhibits on page ii of the Lease is hereby deleted and replaced with the following:

Exhibit E Fixed Rent Chart

**b.** The following sentence is inserted at the end of the paragraph of Section 3 of the Lease:

During the Term of the Lease, Tenant will pay Fixed Rent to Landlord in the manner set forth in Section 4 below in monthly installments in advance on the first day of each calendar month in the amounts set forth on the schedule attached hereto as **Exhibit E**.

**c.** Exhibit E is hereby replaced with the new Exhibit E Fixed Rent Chart attached as Schedule 2 to this Amendment No. 2.

**5. Miscellaneous Other Services.** Exhibit J is hereby replaced with the new Exhibit J attached as Schedule 3 to this Amendment No. 2.

**6. Miscellaneous.** This Amendment No. 2 sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment No. 2, the provisions of this Amendment No. 2 shall govern and control. Each signatory of this Amendment No. 2 represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. This Amendment No. 2 may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment No. 2 may be executed in so-called "PDF" format, and each party has the right to rely upon a PDF counterpart of this Amendment No. 2 signed by the other party to the same extent as if such party had received an original counterpart.

***[SIGNATURES ARE ON FOLLOWING PAGE]***

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Amendment No. 2 as of the Amendment Effective Date.

**LANDLORD:**

**FREESCALE SEMICONDUCTOR, INC.,**
a Delaware corporation

By: /s/ Ken Hansen
Print Name: Ken Hansen
Title: VP & CTO

Date: 2/18/10

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.**,
a Delaware corporation

By: /s/ Aurangzeb Khan
Print Name: Aurangzeb Khan
Title: President & CEO

Date: 2-18-10

**Schedule 1**

**EXHIBIT C**

**Floor Plan**

**(attach copy)**

5.

**Schedule 2**
**EXHIBIT E**
**Fixed Rent Chart**

Beginning on the Amendment Effective Date and ending on June 6, 2010, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $ 120,760/year | $ 10,063.33/month |
| Fab Space (M Building) | 10,741 | $ 636,480/year | $ 53,040.00/month |
| Lab Space (A Building) | 6,495 | $ 137,600/year | $ 11,466.67/month |
| **Total** | **24,052** | **$ 894,840/year** | **$74,570.00/month** |

Beginning on June 7, 2010 and ending on June 6, 2011, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $ 125,590/year | $ 10,465.87/month |
| Fab Space (M Building) | 10,741 | $ 661,939/year | $ 55,161.60/month |
| Lab Space (A Building) | 6,495 | $ 143,104/year | $ 11,925.33/month |
| **Total** | **24,052** | **$ 930,634/year** | **$77,552.80/month** |

Beginning on June 7, 2011 and ending on June 6, 2012, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $ 130,614/year | $ 10,884.50/month |
| Fab Space (M Building) | 10,741 | $ 688,417/year | $ 57,368.06/month |
| Lab Space (A Building) | 6,495 | $ 148,828/year | $ 12,402.35/month |
| **Total** | **24,052** | **$ 967,859/year** | **$80,654.91/month** |

Beginning on June 7, 2012 and ending on June 6, 2013, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $ 135,839/year | $ 11,319.88/month |
| Fab Space (M Building) | 10,741 | $ 715,953/year | $ 59,662.79/month |
| Lab Space (A Building) | 6,495 | $ 154,781/year | $ 12,898.44/month |
| **Total** | **24,052** | **$1,006,573/year** | **$83,881.11/month** |

Beginning on June 7, 2013 and ending on June 6, 2014, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 6,816 | $ 141,272/year | $ 11,772.68/month |
| Fab Space (M Building) | 10,741 | $ 744,592/year | $ 62,049.30/month |
| Lab Space (A Building) | 6,495 | $ 160,973/year | $ 13,414.38/month |
| **Total** | **24,052** | **$1,046,836/year** | **$87,236.35/month** |

**Schedule 3**

**EXHIBIT J**

**Additional Rent @ Up to 75wspw MRAM Module Equivalent**

| Item | Additional Rent Amendment Effective Date to June 6, 2010 |
|---|---|
| **Manufacturing Services** | |
| 1. Manufacturing consumables<br>Includes:<br>• Bulk gases and chemicals for up to 75wspw MRAM Module equivalent.<br>[Bulk gases are: Oxygen, nitrogen, helium, argon and hydrogen supplied from factory bulk delivery systems to Tenant-owned equipment.<br>Bulk Chemicals are: Sulfuric acid, hydrogen peroxide, hydrochloric acid, ammonium hydroxide, hydrofluoric acid, isopropyl alcohol, tetramethylammonium hydroxide, PGMEA, ACT930, EKC830, PL4224 slurry, SS25E slurry, W2000b slurry, NOE, Ethylene glycol, Super-Q and NMP supplied from factory bulk delivery systems to Tenant-owned equipment.]<br>• Additional Rent will be pro-rated for consumption exceeding 75wspw MRAM Module equivalent. | $ 4,957/mo |
| 2. Manufacturing support services<br>Includes:<br>• Sustaining support for factory manufacturing execution, equipment integration and analysis systems in CH-FAB<br>[**Note:** Sustaining support does not include Tenant's use of factory manufacturing execution, equipment integration and analysis software.]<br>• Chandler Analytical Lab services (PALAZ TEM, SEM, etc. Maximum 18 samples/mo.)<br>• Failure analysis services provided by Global Yield and Device Lab (Maximum 3 samples/mo.)<br>• Tenant may requisition incidental ("open stock") equipment parts and supplies from CH-FAB with a total value not to exceed $1,000 per month at no charge. ["Open stock" items are: Tubing, tie wraps, fittings, valves, terminals, fuses, wire connectors, screws, heat shrink tubing, washers, nuts, bolts, retaining rings, silencers/mufflers, filter regulators, O-rings.] | $12,846/mo |
| **Items not included:**<br>• Use of factory manufacturing execution, equipment integration and analysis software<br>• Maintenance of Tenant-owned equipment<br>• Shipping costs<br>• Parts ordering and stocking<br>• Operator staffing to run Tenant-owned tools<br>• Specialty gases and chemicals that are not provided as part of factory bulk delivery systems<br>• Product or package reliability, stress or failure analysis services or support<br>• Services performed by CH-FAB machine shop<br>• References to wafer quantities in this exhibit do not constitute a capacity commitment by Landlord<br>The rate for each of the above items will increase on June 7, 2010 (and each anniversary thereafter) of the Lease Term by an amount equal to four percent (4.0%) of the rate for such item for the preceding period. | **Tenant expense** |

**Schedule 1**

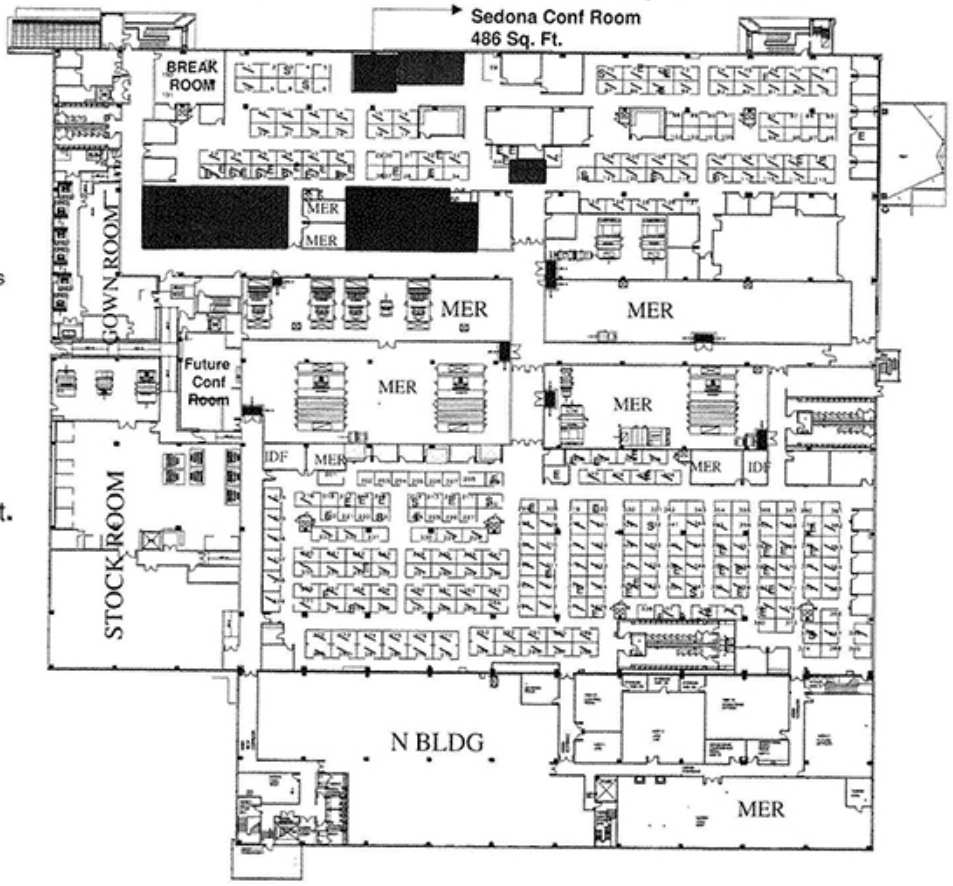
**EXHIBIT C**

**Floor Plan**

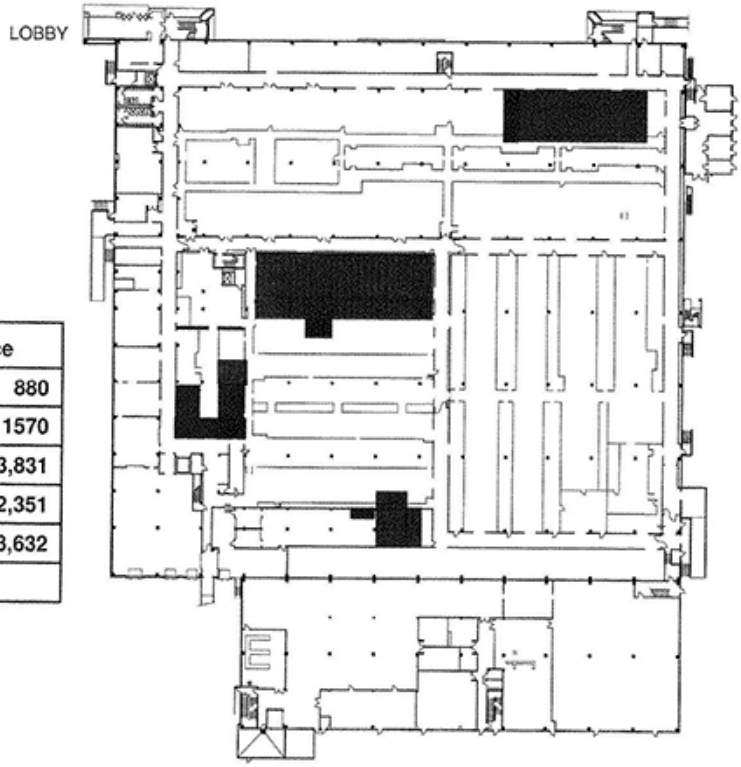
# Office Space – Chandler M Building - Level 2

Office Space
8 Offices
22 Cubes
1 Conf Rm
Adjacent hallways as indicated

Total = 6,816 Sq. Ft.



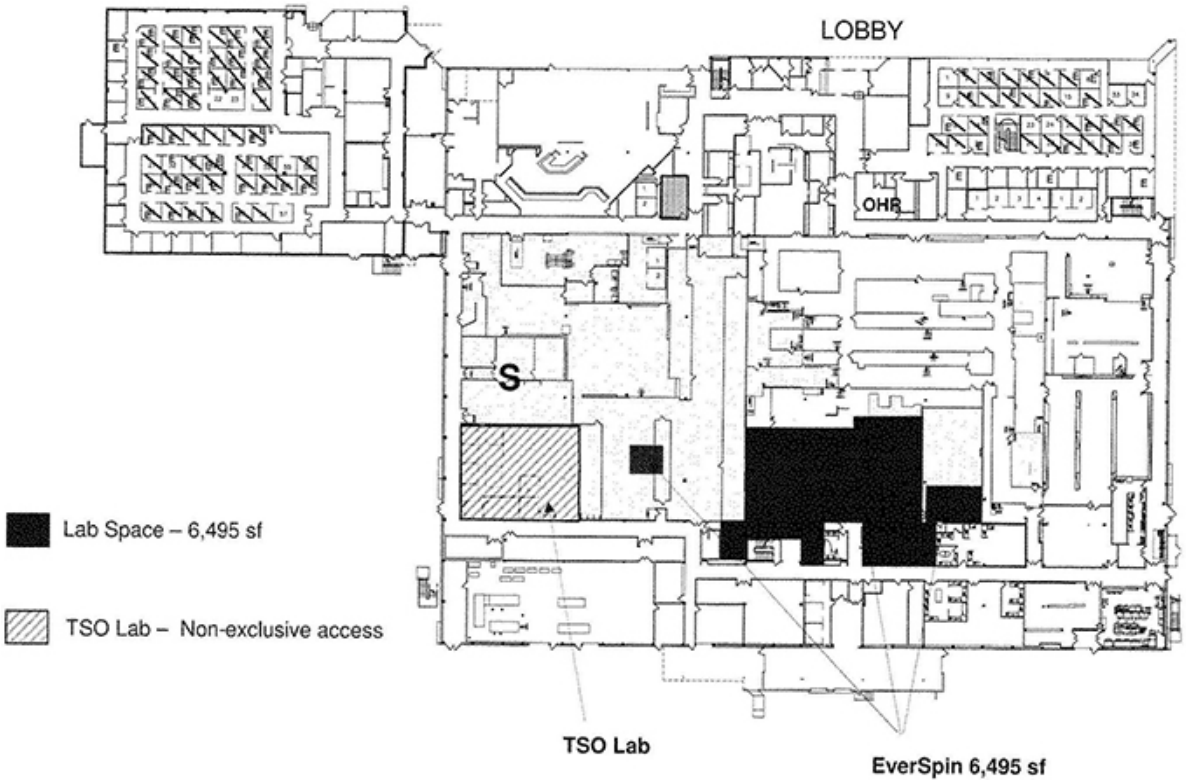
# Fab Space – Chandler M Building - Level 1




Fab Space

| Area | Clean Room | Gray space |
|---|---|---|
| ZB Bay | 95 | 880 |
| CU Bay | 245 | 1570 |
| AM Bay | 1,315 | 3,831 |
| IE Bay | 454 | 2,351 |
| Subtotals | 2,109 | 8,632 |
| Total sf | 10,741 | |

# Lab Space - Chandler A Bldg - Level 1



# AMENDMENT NO. 3 TO LEASE

This **AMENDMENT NO. 3 TO LEASE** ("***Amendment No. 3***"), dated June , 2011, ("***Amendment Effective Date***") is entered into by and between **FREESCALE SEMICONDUCTOR, INC.,** a Delaware corporation ("***Landlord***"), and **EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation ("***Tenant***"), with reference to the following facts:

**A.** Landlord and Tenant are parties to that certain Lease dated as of June 4, 2008 ("***Original Lease***"), as amended by Amendment No. 1 to Lease executed by Tenant on February 2, 2009 ("***Amendment No. 1***") and-Amendment No. 2 to Lease dated March 1, 2010 ("***Amendment No. 2***") (the Original Lease, Amendment No. 1 and Amendment No. 2 are referred to herein collectively as the "***Lease***") pursuant to which Landlord leases to Tenant certain space ("***Premises***") located at 1300 North Alma School Road, Chandler Arizona as further described in the Lease;

**B.** On April 25, 2011, pursuant to Section 1.F of the Original Lease, Tenant delivered to Landlord a written request to contract the Premises; and

**C.** Landlord and Tenant now desire to contract the Premises and modify the Lease effective as of the Amendment Effective Date, on the following terms and conditions.

**NOW, THEREFORE,** in consideration of the above recitals which are hereby incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend the Lease, effective as of the Amendment Effective Date, as follows:

**1. Definitions**. All capitalized terms not otherwise defined herein have the meanings given them in the Original Lease.

**2. Contraction of Premises.** On June 6, 2011 (the "***Contraction Date***"), Tenant shall surrender approximately 6,816 square feet of the Office Space shown as the highlighted area on Schedule 1 attached hereto and incorporated herein (the "**Contraction Space**") in the condition required under Section 8.B of the Original Lease. Subject to the terms of the preceding sentence, Landlord shall accept the surrender of the Contraction Space on the Contraction Date and terminate the Lease with respect to the Contraction Space only, and thereafter neither Tenant nor Landlord shall have any further obligations with respect to the Contraction Space, except for accrued rents to be paid, year-end reconciliations of Additional Rent (including Rental Taxes) under Section 4.A of the Lease, and indemnity obligations which, by their nature, survive termination. Concurrently with Tenant's execution and delivery of this Amendment No. 3, Tenant shall deliver to Landlord an amount equal to $13,120.00 to compensate Landlord for the cost of work necessary to separate the Contraction Space from the balance of the Premises and to reconfigure 252 square feet of storage space in N Building.

**3. Removal of Contraction Option.** Effective as of the Amendment Effective Date, Section 1.F of the Lease, including its subsections (i), (ii), (iii) and (iv), is hereby deleted and replaced with the following:

"F. [Intentionally Left Blank]"

**4. Premises.** Effective as of the Contraction Date, Section 1.A. of the Lease is hereby replaced with the following:

"A. For and in consideration of the covenants and agreements on the part of Tenant contained herein, and under and subject to the terms and conditions hereof, Landlord hereby leases and demises unto tenant those certain premises in portions of the buildings known as A Building, B Building, M Building and N Building (individually, a "**Building**" and collectively with all other buildings located in the Project, the "**Buildings**") which are part of that project owned by Landlord known as "Chandler" (herein the "**Project**") located at 1300 North Alma School Road, Chandler, Arizona 85224 as illustrated on **Exhibit A** attached hereto and hereby made a part hereof, containing 839 square feet of office space in M Building and 252 square feet of storage space in N Building (said 1,091 square feet of space in the aggregate is herein collectively referred to as the "**Offset Space**"), 10,741 square feet of fabrication space in M Building (herein the "**Fab Space**") 6,495 square feet of lab space in A Building (herein the "**Lab Space**") totaling 18,327 square feet of floor area (hereinafter called the "**Premises**") as illustrated on the floor plans contained in **Exhibit C** attached hereto and made a part hereof, together with the right to use certain facilities that are located on the real property legally described in **Exhibit D** attached hereto and made a part hereof (herein the "**Property**") that are provided by Landlord in common to Tenant, Landlord's employees and other third parties such as vendors and suppliers designated by Landlord and are defined below as Common Areas. In addition to the Premises, Landlord hereby grants to Tenant, during the Term of this Lease, at no additional charge, the non-exclusive right to use the space (the "**TSO Space**") designated on **Exhibit C** as the TSO Lab, subject to procedures adopted by Landlord governing such access by Tenant. Tenant may located certain of Tenant's Property (as herein defined) in the ISO Space as previously approved by Landlord.

**5. Floor Plan of the Premises.** Effective as of the Contraction Date, Exhibit C to the Lease is hereby replaced with the new Exhibit C Floor Plan attached as Schedule 2 to this Amendment No. 3.

**6. Early Expiration.** Section 2.B of the Lease as modified by Amendment No. 2) is hereby deleted in its entirety and replaced with the following:

"B. This Lease may be terminated without cause and for convenience by either Landlord or Tenant prior to the scheduled expiration of the Term, provided that the terminating party gives written notice to the other no less than twenty-four (24) months in advance of the proposed date of termination.

**7. Fixed Rent.** Effective as of the Contraction Date, Exhibit E to the Lease (as modified by the Second Amendment) is deleted in its entirety and replaced with the new Exhibit E Fixed Rent Chart attached hereto as Schedule 3 to this Amendment No. 3.

**8. Condition of Premises.** A new Section 5.E is added to the Lease to read as follows:

"E. Tenant shall maintain the Premises in a clean, safe and sanitary condition at all times. In the event that Landlord determines in its sole discretion that the Premises or any portion thereof is not clean, safe and sanitary at any time, then Landlord may (but shall not be obligated to) elect to have such Premises cleaned and to have any of Tenant's personal property or materials removed from the Premises and stored, all at Tenant's sole cost and expense. Tenant shall reimburse Landlord for its cleaning, removal and storage costs within 10 days after written demand. For purposes hereof, "clean, safe and sanitary" shall mean that (i) the Premises is maintained in a neat and orderly manner consistent with a professional office and technical environment, (ii) pathways for ingress, egress and access throughout the Premises are kept clear and free of debris and other

materials, (iii) there is no excessive stacking or build up of stored materials in the Premises, including without limitation no stacks of materials that could potentially block the Building's fire sprinkler system , and (iv) the Premises is in full compliance with fire Code Requirements (as defined in Section 7 of the Lease) at all times."

**9. Project-Wide Protocols.** The procedures and checklist contained in Schedule 3 attached hereto are deemed to be included within the definition of "Project-Wide Protocols", as such term is used in the Lease. Accordingly, said Schedule 4 is hereby included in and incorporated into Exhibit B to the Original Lease.

**10. Deletion of Shared Conference Room.** Effective as of the Contraction Date, Section 55.B of the Lease is hereby deleted and replaced with the following:

"B. [Intentionally Left Blank]"

**11. Brokers.** Tenant hereby represents to Landlord that Tenant has deal with no broker in connection with this Amendment No. 3. Tenant agrees to indemnify and hold Landlord harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment No. 3. Landlord agrees to indemnify and hold Tenant harmless from all claims deny broker claiming to have represented Landlord in connection with this Amendment No. 3.

**12. Miscellaneous.** This Amendment No. 3 sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged an in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment No. 3, the provisions of this Amendment No. 3 shall govern and control. Each signatory of this Amendment No. 3 represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. This Amendment No. 3 may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment No. 3 may be executed in so-called "PDF" format, and each party has the right to rely upon a PDF counterpart or this Amendment No. 3 signed by the other party to the same extent as if such party had received an original counterpart.

[*Remainder of page intentionally left blank: signatures on following page.*]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment No. 3 as of the Amendment Effective Date.

**LANDLORD:**

**FREESCALE SEMICONDUCTOR, INC.,**
a Delaware corporation

By: /s/ David Stasse
Name: David Stasse
Title: Treasurer

Date: 7/20/11

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.,**
a Delaware corporation

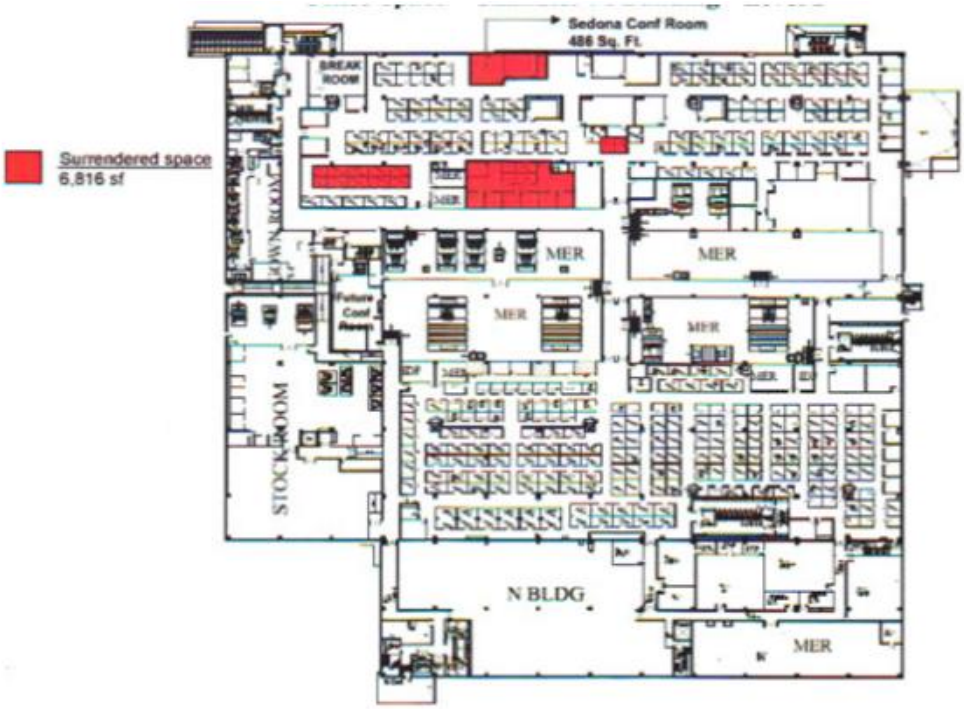
By: /s/ Bob Schuch
Name: BOB SCHUCH
Title: DIR. of FINANCE

Date: 7/13/2011

**Schedule 1**

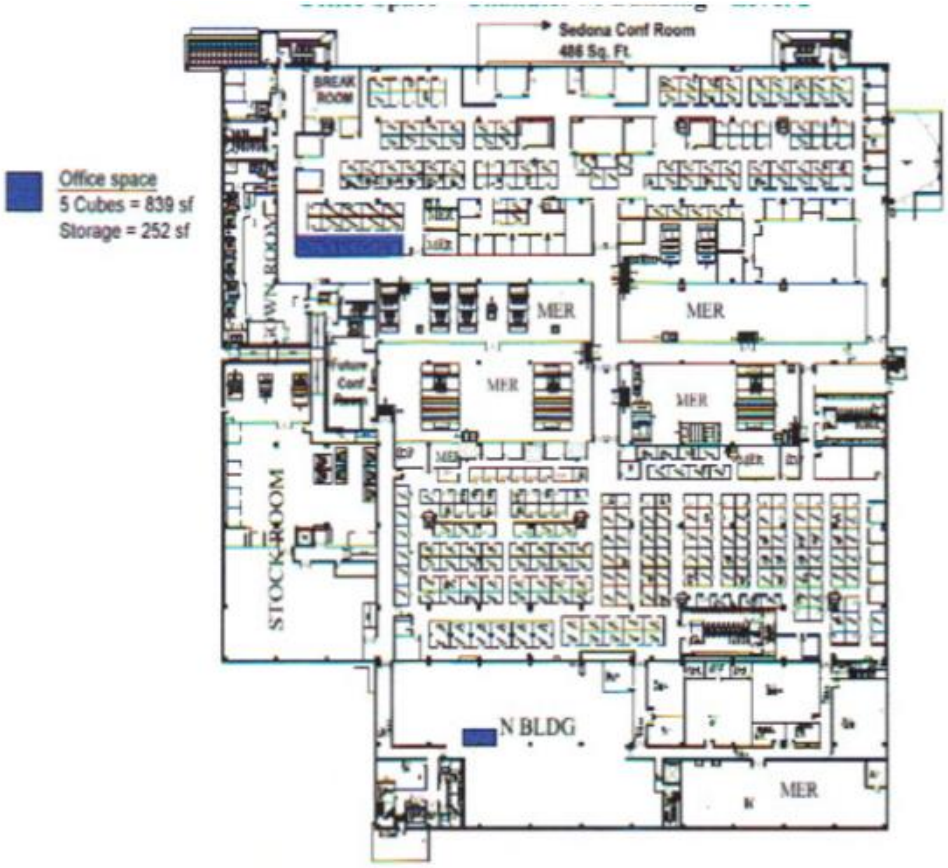
**Contraction Space**

**Office Space – Chandler M Building - Level 2**



**Schedule 2**
**EXHIBIT C**
**Floor Plan**

**Office Space – Chandler M Building - Level 2**

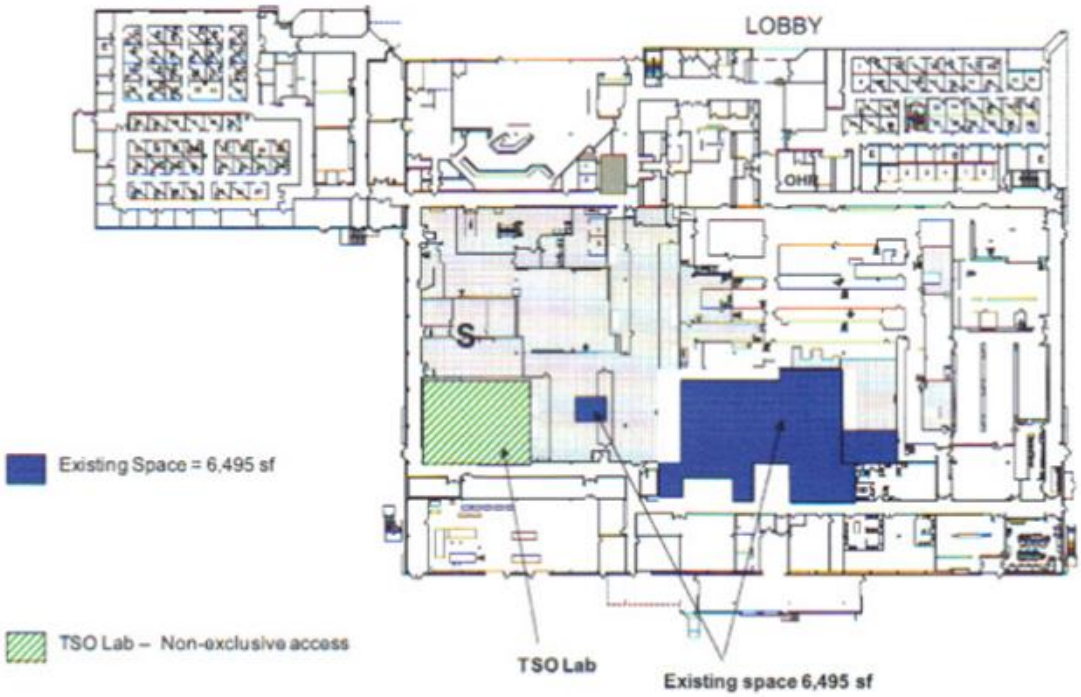


**Fab Space – Chandler M Building - Level 1**


Fab Space

| Area | Clean Room | Gray space |
|---|---|---|
| ZB Bay | 95 | 880 |
| CU Bay | 245 | 1570 |
| AM Bay | 1,315 | 3,831 |
| IE Bay | 454 | 2,351 |
| Subtotals | 2,109 | 8,632 |
| Total sf | 10,741 | |

**Lab Space – Chandler A Bldg - Level 1**



**Schedule 3**

**EXHIBIT E**

**Fixed Rent Chart**

Beginning on June 7, 2011, and ending on June 6, 2012, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 1,091 | $23,601/year | $1,966.71/month |
| Fab Space (M Building) | 10,741 | $688,417/year | $57,368.06/month |
| Lab Space (A Building) | 6,495 | $148,828/year | $12,402.35/month |
| **Total** | **18,327** | **$860,845/year** | **$71,737.12/month** |

Beginning on June 7, 2012, and ending on June 6, 2013, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 1,091 | $24,545/year | $2,045.38/month |
| Fab Space (M Building) | 10,741 | $715,953/year | $59,662.79/month |
| Lab Space (A Building) | 6,495 | $154,781/year | $12,898.44/month |
| **Total** | **18,327** | **$895,279/year** | **$74,606.60/month** |

Beginning on June 7, 2013, and ending on June 6, 2014, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 1,091 | $25,526/year | $2,127.19/month |
| Fab Space (M Building) | 10,741 | $744,592/year | $62,049.30/month |
| Lab Space (A Building) | 6,495 | $160,973/year | $13,414.38/month |
| **Total** | **18,327** | **$931,090/year** | **$77,590.87/month** |

| Chandler Fab,<br>Chandler, AZ | REPORTING NUMBER<br>12MTK10019G | GE-150O | |
|---|---|---|---|
| Chandler Fab 5S Procedures | | Rev E | Page<br>2 of 16 |

TABLE OF CONTENTS

## 1.0 PURPOSE AND SCOPE

1.1 This document describes the guidelines to be used for 5S (Sort, Set, Shine, Standardize and Sustain) in the factory.

1.2 This document applies to all areas located inside Freescale Chandler Fab.

1.2.1 The requirements spelled out in this document are minimums and include all personnel (Freescale employees. contractors, vendors, visitors, etc.) who enter the tab.

## 2.0 REFERENCED DOCUMENTS

### 2.1 Reference Documents Table

| Document Number | Document Title | Location |
|---|---|---|
| 12LITK00015C | (GE-003O) Chandler Fab Safety Procedures | http://chdfabspecs.freescale.net/ |
| 12MTK00021C | (GE-006O) Water Handling Procedures | http://chdfabspecs.freescale.net/ |
| 12111TK00030C | (GE-009O) Chandler Fab Cleanroom Protocol | http://chdfabspecs.freescale.net/ |

## 3.0 EQUIPMENT AND MATERIALS

3.1 Operator station terminal

3.2 Pre saturated 9% IPA wipes

3.3 100% IPA

3.4 Dry wipes

3.5 Label maker

3.6 Plastic engraver

## 4.0 SAFETY PRECAUTIONS

4.1 Follow GE-0030, Chandler Fab Safety Procedures at all times.

**5.0 EQUIPMENT QUALIFICATIONS ANO OPERATING, PROCEDURES**

**5.1 Performing 58 Task For The Bay**

5.1.1 Refer to FRM12MTK10019GSWE01, SWE_5S_BAY_SUSTAIN.

**5.2 Sorting the Bay/Chase**

5.2.1 Remove the following items.

a. Support equipment such as keyboards. monitors. mouse, or tool parts that are not needed.

1. **If tool parts are being staged for a tool:** Use Note Card to identify the following.

a. The name of person to contact for questions

b. The Tool ID the parts are staged for.

c. The date parts were staged.

b. Fab furniture such as tables and WIP racks that are not needed.

c. Clutter from the top of tools. workstations, toolboxes or anywhere in the bay/chase.

d. Miscellaneous or outdated documentation that is not required to perform daily tasks.

e. Any item that is not needed

5.2.2 Store wafers in lot boxes at all times (Refer to GE-006O Wafer Handling Procedures).

5.2.3 Remove any unnecessary items from toolboxes.

5.2.4 Remove any unnecessary items from maintenance/engineering cabinets

**5.3 Setting the Bay/Chase**

5.3.1 Identify and label location for the following items:

a. Pens (holders should not be placed above open wafers).

b. Status card holder in the bay.

c. Ladders, step stools, barricades and brady boys in the chase (except photo and YE).

d. Document station or document holder.

e. Toolboxes in the chase.

f. Maintenance equipment in the chase.

g. Wafer presenters.

h. Slide transfers.

i. Wipe down station.

j. Trash cans.

k. Staged and running lots.

I. Cages that have wheel's.

m. Blade disposal.

n. Spill kits.

o. Vacuum wand chargers and holder's.

p. WIP carts.

q. Hepa vacuums.

r. Maintenance cabinets.

s. Staged lots.

t. Running tots.

u. QuaI/Test lots.

v. Engineering/Hold lots.

v. Items stored in maintenance/engineering cabinets.

53.2 Identify and label location for any item that is needed in the bay/chase.

5.3.3 Place all items needed in their set and labeled location.

**5.4 Performing Shine**

54.1 Wipe down the following items, Out not Wiled to, with clean room wipes saturated with 9% IPA (Refer to GE-130O, Clean Room, Work Area, and Tool Wipe-Down Procedures).

a. Work Area.

b. Work Station.

c. Telephones.

d. WIP racks.

e. Tables.

f. Chairs.

g. Tool faces.

1. Avoid pressing any buttons when wiping.

h. Computers/CIM stations.

i. Tops of resident lot boxes.

j. Support equipment surfaces near work stations.

k. For shelves that slide out, perform the following:

1. Wipe down all walls inside cabinet in a top to bottom motion starting from the back moving forward
2. Wipe down shelf in a left to right motion.
3. Pull out shelf and wipe down slide rails inside cabinet and on the outside of the shelf
4. Continue procedure working down from the top shelf to the bottom shelf.

I. For shelves that do not slide out, perform the following.

1. Wipe clown all walls inside cabinet in a top to bottom motion starling from the back moving forward.
2. Wipe down shelf in a left to right motion.
3. Continue procedure working down from the top shell to the bottom shelf.

m. Tool carts.

n. Toolboxes.

5.4.2 Comply with instructions in FRMTK10019GF02, 5-S SHINE Expectations including General trash removal for bay.

a. Double glove before re-moving trash.

b. Take trash to central trash location.

c. Dispose of double glove after removal of trash.

d. **If General trash appears to be contaminated:** Contact CTI on channel 1B for removal.

5.4.3 Comply with instructions in FRMTK10019GF03, 5-5 Maintenance SHINE Expectations for chase.

a. Double glove before removing trash.

b. Take trash to central trash location.

c. Dispose of double glove after removal of trash.

d. **If General trash appears to be contaminated:** Contact CTI on channel 1B for removal.

5.4.4 Remove any residue on tables, WIP racks, walls, or equipment.

5.4.5 Remove outdated decal stickers from equipment.

5.4.6 Remove any debis on the floor.

5.4.7 Verify all tool panels are in place with no missing screws

a. **If tool panels are not in place or screws are missing:** Return tool panel to tool with all screws in place.

5.4.8 Place used status cards in used status card holder located on wipe down stations.

5.4.9 Verify handwritten notes on phone lists, clean room paper, back of status cards, PVC cards, or laminated documents not intended to be written on.

a. **If handwritten notes are found:** Remove handwritten notes

5.4.10 Replace tattered or worn status cards.

**5.5 Standardizing the Bay/Chase**

5.5.1 Use all capital letters for all labeling.

5.5.2 Use 1” size for tape.

5.5.3 Use Helv1 font type, 0.420 font size and .005 cutting blade for 1”, 2” or 3” H by 6” L hard plastic sign.

5.5.4 Use HeIv1 font type, .890 font size and 0.005 cutting blade for 5” H x 10” L hard plastic sign.

5.6.6 Label tables/WIP box storage using tape.

5.5.6 Label wall using hard plastic sign 1”, 2”, or 3” H x 6” L or 5” H x 10” L unless otherwise noted.

5.5.7 Label shelves using hard plastic sign 1” H x 6” L.

5.5.8 Label WIP racks dedicated to one (1) type of storage with tape along the side rails vertically 6” from the top.

5.5.9 Label each shelf of a WIP rack with a hand plastic signs using tie wraps when used for more than one type of storage.

5.5.10 Refer to FRMTK10019GF01, 5S Label Table for label color, font size, length, and type.

5.5.11 Label fab furniture per Figure 5.1 — Fab Furniture Label Table

| Furniture | Label Name | Label Placement |
|---|---|---|
| Table dedicated to one (1) tool | Tool ID | Center of front lip of table |
| Table dedicated to two (2) tools | Tool ID | Each side of from lip of table |
| Table dedicated to more than two (2) tools | LOADING/UNLOADING | Center of front of table |
| Table dedicated to computer | Computer name “AZ50-XXXX” | Center of front lip of table |
| Table dedicated to engineering computer | ENGINEERING STATION | Center of front lip of table |
| Table tops used for running lots where table is dedicated to one (1) tool | RUNNING or (Location) RUNNING where location is PORT ID, LEFT/RIGHT, REAR/FRONT, BOAT ID, POD ID, STATION ID, or CASS ID | Front lip of table where the running lot is stored |
| WIP box storage where computer is not easily accessible | Computer name “AZ50-XXXX” | Center of front of WIP box storage |
| WIP box storage where the computer is easily accessible | Tool ID | Center of front of WIP box Storage |
| WIP racks or shelf dedicated to one (1) tool | Tool ID STAGED | 6” from top of rack (vertically) for tape or hang from shelf with tie wraps for hard plastic |
| WIP racks or shelf dedicated to more one (1) tool | Eqptype STAGING | 6” from top of rack (vertically) for tape or hang from shelf with tie wraps for hard plastic |
| WIP racks or shelf dedicated to engineering or hold lots | ENG/HOLD | 6” from top rack (vertically) for tape or hang from shelf with tie wraps for hard plastic |
| Shelves under a table used for staged lots where table is dedicated to one or two tools | STAGED | Hang from shelf with tie wraps |
| Shelves under a table used for staged lots where table is dedicated to more than two (2) tools | Tool ID STAGED | Hang from shelf with tie wraps |
| Shelves under a table used for running lots where table is dedicated to one (1) or two (2) tools | RUNNING or (Location) RUNNING where location is PORT ID, LEFT/RIGHT, REAR/FRONT, BOAT ID, POD ID, STATION ID, or CASS ID | Hang from shelf with tie wraps |
| Shelves under a table used for running lots where table Is dedicated to more than two (2) tools | Tool ID RUNNING | Hang from shelf with tie wraps |
| Shelves under a table dedicated to test wafers, dummy wafers, quail wafers | QUAL/TW | Hang from shelf with tie wraps |
| Shelves under a table dedicated to test waters for Diffusion | NAME OF TW NAME OF TW USED BOX BAY TW TRANSFER BOX | Hang from shelf with tie wraps |
| Racks dedicated to Test Wafer Holds | TW HOLD | 6” from top of rock (vertically) for tape or hang from shelf with tie maps for hard plastic |

Figure 5.1 — Fab Furniture Label Table

5 5.12 Label all trash cans/recycle containers with a label on top of the can as well as label behind the can/container on the wall.

a. **If no lid:** Place label on the front of container as well as a label behind the can/container on the wall.

5.5.13 Label wipe down stations with WIPE DOWN STATION directly above the wipe down station on the wall.

5.5.14 Label status card holders with STATUS CARDS directly above the status card holder on the wall.

5.5.15 Label phone with X#### on the front lip of the table or on the wall.

5.5.16 Label ladders with Bay LADDER on the front face of the middle step, on both sides of the ladder, and on the front top center of the stainless steel ladder holder.

5.5.17 Label step ladders with Bay STEP LADDER on both sides of the step ladder and on the front top center of the stainless steel step ladder holder.

5.5.18 Label brady boys with Bay BRADY BOY and a BRADY BOY STORAGE sign on the wall.

5.5.19 Label barricades with Bay BARRICADE on the barricade top rail, on the back top center of the stainless steel holder and a BARRICADE STORAGE sign on wall.

5.5.20 Label barricades/floor brace combination (east tab only) with Bay Barricade on the barricade top rail, on the back top center of the stainless steel holder, the floor brace and a BARRICADE/FLOOR BRACE STORAGE sign on the wall.

5.5.21 Label cages with hard plastic sign tie wrapped to front of cage as well as sign behind the cage on the wall if cage is on wheels.

5.5.22 Label tool box storage locations with TOOL BOX STORAGE.

5.5.23 Label individual tool box with Name and Area by attaching a PVC card using a tie wrap to the handle of the toolbox.

5.5.24 Label common tool box with Area.

5.5.25 Label outside of cabinets with Area Maintenance or Area Engineering.

5.5.25 Label inside of cabinets with specific item stored in that location.

5.5.27 Verify the following items in bay:

a. Status card holder.

b. Wipe down station.

c. Document Station.

d. Job aide.

e. Pen holders.

f. Bar code scan gun holders.

g. **If above items are not in bay:** Submit 5S suggestion at http://chdpwww.am.freescale.net/chdfabie/5s/html/feedback.html

5.5.28 Verify the posted bay champions are current.

a. **If bay champion is not current:** Work with training department to update laminated insert.

5.5.29 Use 5S Label Request Form at http://chdpwww.am.freescale.net/chdfabie/5s/html/label_form/html for label request.

5.5.30 Refer to GE-009O. Chandler Fab Cleanroom Protocol to ensure proper protocol is followed.

5.5.31 Secure racks that hold any lot boxes by performing the following:

a. Verify jam nuts are present on all four (4) feet.

1. **If jam nuts are not present:** Install jam nuts.

b. Verify jam nuts are loose

1. **If jam huts are not loose:** Loosen them.

c. Put rack in place.

d. Adjust feet using gauge or ruler to approximately 5/8” height.

e. Adjust feet to level rack so there is no wobble.

f. Tighten jam nuts.

g. Determine if rack will need to be moved to allow access for maintenance activities.

h. **If WIP rack does not need to move:** Secure rack to floor tile by performing one (1) of the following.

1. Tie wrap both legs of the WIP rack to floor tile.
2. Install locking brackets with under floor nuts on one (1) of the front feet and on the back foot opposite the front.
3. Install J hook threaded rod with nuts on one (1) of the front feet and on the back foot opposite the front.

i. **If WIP rack does need to move, secure rack to floor tile by:** Install fabricated slide in brackets to floor tile ensuring one (1) of the front feet and the back foot opposite the front is secured.

5.5.32 Attach a DO NOT USE tag to WIP racks that are temporarily not secured to a floor tile.

5.5.33 DO NOT remove/rearrange/install any table, wip rack, shelf, etc. in the fab.

a. **If there is a need to move fab furniture:** Contact Industrial Engineering before moving any tab furniture.

5.5.34 Label lot boxes that do not have barcode labels on them using a laminated card or a PVC card.

5.5.35 Attach ENG/HOLD card to any lot placed on an ENG/HOLD rack.

5.5.36 Label all analog gauges for tools including gauges in floor boxes and that can be seen through the face of a tool panel {both in the tab and subfab).

a. Gauges are to be marked at the high and low acceptable operational limits.

b. Markings are to be red pin stripe tape, 1/'8" wide arid approx. ½" long.

c. For gauges not in use: Run a horizontal stripe across the face of the gauge.

5.5.37 Label all flow meters per the following:

a. Flow meters are to be marked at the high and low acceptable operational limits.

b. Markings are to be red pin stripe tape, 1/8" wide and approx. long enough to cover the front half of the flow meter face.

**5.6 Performing 5S Sustaining Audit**

5.6.1 Refer to FRMTK10019GF04, 5S SUSTAINING AUDIT CHECKLIST when performing an audit.

**6.0 MAINTENANCE PROCEDURES**

**6.1 Performing 5S Task For The Chase**

6.6.1 Refer to TMS task M_Z_EQ_WEEKLY_MAINT_5S_AUDIT.

**7.0 TOTAL PRODUCTIVE MANUFACTURING (TPM) TASKS (NONE)**

**8.0 EQUIPMENT PROCESS PROGRAMS (PPIDS) (NONE)**

**9.0 FORMS**

| Form Number | Form Title | Location | Associated w/other 12M (Y/N) |
|---|---|---|---|
| FRMTK10019GF01 | 5S Label Table | http://chdfabspecs.freescale.net/logsheets/12MTK10019G | N |
| FRMTK10019GF02 | 5S SHINE Expectations | http://chdfabspecs.freescale.net/logsheets/12MTK10019G | N |
| FRMTK10019GF03 | 5S Maintenance SHINE Expectations | http://chdfabspecs.freescale.net/logsheets/12MTK10019G | N |
| FRMTK10019GF04 | 5S SUSTAINING AUDIT CHECKUST | http://chdfabspecs.freescale.net/logsheets/12MTK10019G | N |

10.0 STANDARD WORK DOCUMENTS (SWC/SWS/SDR/SWE/WSS/PPM/TRT)

10.1 Standard Work Chart (SWC) (NONE)

10.2 Standard Work Sheet (SWS) (NONE)

10.3 Standard Daily Routine (SDR) (NONE)

10.4 Standard Work Element (SWE)

| Standard Work Number | Standard Work Title | Location | Associated w/other 12M (Y/N) |
|---|---|---|---|
| FRMTK10019GSWE01 | SWE_5S_BAY_SUSTAIN | http://chdfabspecs.freescale.net/WebSW/12MTK10019G | N |

10.5 Work Standard Sheet (WSS) (NONE)

10.6 Paperless Preventive Maintenance (PPM) (NONE)

10.7 Test/Retest (TRT) (NONE)

11.0 OUT-OF-CONTROL ACTION PLANS (OCAPS) (NONE)

12,0 MINI-SPECS (NONE)

13.0 STATISTICAL PROCESS CONTROL (SPC) (NONE)

## 14.0 REVISION SHEET

| Rev | Description of Revision | Originator/ Date Formatted | Reviewer/ Release Date |
|---|---|---|---|
| O | Initial release of Document | A. Fausz 24AUG09 | L. Edwards 08SEP09 |
| A | Updated Section 5.5 to include how to secure WIP racks properly. Added Section 5.6 – Performing 5S sustaining audit. Added the 5S Sustaining Audit checklist as a form to this spec. | A. Fausz 02DEC09 | L. Edwards 08DEC09 |
| B | Added Section 5.5.34, regarding tab furniture and contacting Industrial Engineering | C. Eberson 25JAN10 | L. Edwards 28JAN10 |
| C | Added Section 5.2.3.4 regarding sorting toolboxes and cabinets. Updated Section 5.3.1 to include Staged, Running, Qual. Engineering and Hold lots as well as items in maintenance/engineering cabinets. Added Section 5.5.35 regarding label procedures for qual/test wafer lot boxes. Document Control added reference to Standard Work Documents WWS, PPM, and TRT. | A. Fausz 10JUN10 | L. Edwards 10JUN10 |
| D | Updated Section 5.3, 5.4 and 5.5 – regarding clarification for Set. Shine and Standardization including adding Eng/Hold Card and Gauge guard banding information. | A. Fausz 23NOV10 | K. Greiner 30NOV10 |
| E | Updated Section 5.2.1 for allowing tool parts to be staged with documentation. | A. Fausz 09FEB11 | L. Edwards 14FEB11 |

**5S SUSTAINING AUDIT CHECKLIST**

| | | | |
|---|---|---|---|
| 5S SUSTAINING AUDIT CHECKLIST | | Area: | Date |
| | | Checked by: | |
| | | Checked by: | Observations |
| SORT<br>Only what is necessary | 1 | No unattended open wafers per SOP - Not part of the normal processing for that operation | |
| | 2 | Unused support equipment (keyboards, tools ...) removed | |
| | 3 | No clutter (workstations, tops of tools, tool boxes) | |
| | 4 | No miscellaneous documentation (checklists, maint. manuals) - That is not current or required for the daily tasks. | |
| | 5 | Any item not needed | |
| SET<br>Organize and Label | 1 | Cards, Log books, Lists, Pens, Test wafers, WP racks/work stations labeled and in correct assigned location | |
| | 2 | Tool parts/Tool boxes/Maint Manuals organized and have an assigned location | |
| | 3 | Ladders/step stools/Brady bays in their designated locations | |
| | 4 | Cables neatly tied up per the factory standardized expectations | |
| | 5 | All items in assigned and labeled locations | |
| SHINE<br>Clean tools, work stations, floors | 1 | No tools/ dooms on floor/ tape on tools/walls, outdated decals or stickers (including inside of tools) | |
| | 2 | No visible particles/residues on/in equipment, cart or within the bay | |
| | 3 | Tool panels in place and no missing screws | |
| | 4 | No used cards, wipes, notes left on work stations or hand written phone lists | |
| | 5 | Bay Shine/No Damaged or scratched walls/doors/tools, chairs not torn | |
| STANDARDIZE<br>Bay to bay setup/Labeling/ procedures | 1 | Portable Support equipment, racks and carts meet the specified methods of labeling | |
| | 2 | Wipe stations and trash cans meet the specified requirements for labeling. Equipment IDs labeled correctly | |
| | 3 | WP racks/work stations labeled correctly. WP racks secured to floor | |
| | 4 | Card holder/Document holders labeled correctly | |
| | 5 | Consistent from bay to bay (label covering and size, etc), Job aids posted in bay | |
| | | SAFETY - Safety and protocol | SAFETY |
| | 1 | Safety glasses worn | |
| | 2 | Fire extinguisher/ safety showers labeled and accessible checked and signed by safety/EHS | |
| | 3 | Emergency exits not blocked, trip hazards/uneven floor tiles | |
| | 4 | Chemicals/PPE stored properly/proper waste can contents | |
| | 5 | No safety/process issues | |
| 5S SCORE | | | |

Revision per S.O.P. 4-15

# AMENDMENT NO. 4 TO LEASE

This **AMENDMENT NO. 4 TO LEASE** ("***Amendment No. 4***"), dated June , 2014, ("***Amendment Effective Date***") is entered into by and between **FREESCALE SEMICONDUCTOR, INC.**, a Delaware corporation ("***Landlord***"), and **EVERSPIN TECHNOLOGIES, INC.,** a Delaware corporation ("***Tenant***"), with reference to the following facts:

**A.** Landlord and Tenant are parties to that certain Lease dated as of June 5, 2008 ("***Original Lease***"), as amended by Amendment No. 1 to Lease executed by Tenant on February 2, 2009 ("***Amendment No. 1***") and Amendment No. 2 to Lease dated March 1, 2010 ("***Amendment No. 2***") and Amendment No. 3 to Lease dated July 20, 2011 ("***Amendment No. 3***") (the Original Lease as amended by Amendment No. 1, Amendment No. 2 and Amendment No. 3 is referred to as the "***Lease***") pursuant to which Landlord leases to Tenant certain space ("***Premises***") located at 1300 North Alma School Road, Chandler Arizona as further described in the Lease;

**B.** The parties desire to amend the Lease to extend the term of the Lease through June 10, 2020 and modify certain provisions of the Lease on the following terms and conditions.

**NOW, THEREFORE,** in consideration of the above recitals which are hereby incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree, effective as of the Amendment Effective Date (except as specifically indicated otherwise below), to amend the Lease as follows:

**1. Definitions**. All capitalized terms not otherwise defined herein have the meanings given them in the Lease.

**2. Premises**. Effective as of the first day of the month after System 5 Tester, serial number DE37100313, is removed from ePM Lab Space (the "***Tester Removal Date***"), the first sentence of Section 1.A. of the Lease is amended by replacing the words "6,495 square feet of lab space in A Building (herein the "***Lab Space***") totaling 18,327 square feet of floor area (hereinafter called the "***Premises***")" with "6,209 square feet of lab space in A Building (herein the "***Lab Space***") totaling 18,041 square feet of floor area (hereinafter called the "***Premises***").

**3. Term**. Section 2 of the Lease is hereby replaced with the following: The term of this Lease shall be extended for a period of six (6) years (the "**Term**"), which shall commence on June 6, 2014 (the "**Commencement Date**") and end on June 10, 2020.

**4. Fixed Rent**. Exhibit E to the Lease is deleted in its entirety and replaced with the Exhibit E Fixed Rent Chart attached as Schedule 1 to this Amendment No. 4.

**5. Miscellaneous Other Services**. Exhibit J to the Lease is deleted in its entirety and replaced with the new Exhibit J attached as Schedule 2 to this Amendment No. 4.

**6. Floor Plan of the Premises**. Effective as of the Tester Removal Date, the page of Exhibit C titled "Lab Space – Chandler A Bldg – Level 1" is deleted and replaced with the page attached as Schedule 3 to this Amendment No. 4.

**7. Brokers**. Tenant hereby represents to Landlord that Tenant has deal with no broker in connection with this Amendment No.4. Tenant agrees to indemnify and hold Landlord harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment No. 4. Landlord agrees to indemnify and hold Tenant harmless from all claims of any broker claiming to have represented Landlord in connection with this Amendment No.4.

**8. Miscellaneous**. This Amendment No. 4 sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged an in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment No.4, the provisions of this Amendment No.4 shall govern and control. Each signatory of this Amendment No.4 .represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. This Amendment No. 4 may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment .No. 4 may be executed in so-called "PDF" format, and each party has the right to rely upon a PDF counterpart of this Amendment No. 3 signed by the other party to the same extent as if such party had received an original counterpart.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment No. 4.

**LANDLORD:**

**FREESCALE SEMICONDUCTOR, INC.,**
a Delaware corporation,

By: /s/ David W. Reed
Name: David W. Reed
Its: SVP, FSL OPNS

Date: 09.16.14

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.,**
a Delaware corporation

By: /s/ Bob Schuch
Name: Bob Schuch
Its: Director of Finance

Date: May 30, 2014

**Schedule 1**

**EXHIBIT E**
**Fixed Rent Chart**

Beginning on June 7, 2014, and ending on June 6, 2015, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M and N Building) | 1,091 | $ 26,547.36 | $ 2,212.28/month |
| Fab Space (M Building) | 10,741 | $ 774,375.24/year | $ 64,531.27/month |
| Lab Space* (A Building) | 6,495 | $ 167,411.52/year | $ 13,950.96/month |
| **Total*** | **18,327** | **$968,334.12/year** | **$80,694.51/month** |

The rate for each of the above items will increase on June 7, 2015 (and each anniversary thereafter) of the Lease Term by an amount equal to four percent (4.0%) of the rate for such item for the preceding period.

*On the first day of the month after Tester is removed from ePM Lab Space, (i) Lab Space rentable square feet will be reduced to 6,209, Lab Space annual fixed rent will decrease to $160,192.20 and Lab Space monthly fixed rent will decrease to $13,349.35 and (ii) Total rentable square feet will decrease to 18,041,Total annual fixed rent will decrease to $961,114.80 and Total monthly fixed rent will decrease to $80, 092.90.

By way of example, (not accounting for the removal of the Tester referenced above) beginning on June 7, 2015, and ending on June 6, 2016, the Fixed Rent is:

| Premises | Rentable Square Feet | Annual Fixed Rent | Monthly Fixed Rent |
|---|---|---|---|
| Office Space (M Building) | 1,091 | $ 27,609/year | $ 2,300.77/month |
| Fab Space (M Building) | 10,741 | $ 805,350/year | $ 67,112.52/month |
| Lab Space (A Building) | 6,495 | $ 174,108/year | $ 14,509/month |
| **Total** | **18,327** | **$1,007,067/year** | **$83,922.29/month** |

**Schedule 2**

**EXHIBIT J**
**Additional Rent @ Up to 75wspw MRAM Module Equivalent**

Manufacturing Services

1. Manufacturing consumables — $ 6031/mo

Includes:

• Bulk gases and chemicals for up to 75wspw MRAM Module equivalent.

Bulk gases are: Oxygen, nitrogen, helium, argon and hydrogen supplied from factory bulk delivery systems to Tenant-owned equipment.

Bulk Chemicals are: Sulfuric acid, hydrogen peroxide, hydrochloric acid, ammonium hydroxide, hydrofluoric acid, isopropyl alcohol, tetramethylammonium hydroxide, PGMEA, ACT930, EKC830, PL4224 slurry, SS25E slurry, W2000b slurry, NOB, Ethylene glycol, Super-Q and NMP supplied from factory bulk delivery systems to Tenant-owned equipment

• Additional Rent will be pro-rated for consumption exceeding 75wspw MRAM Module equivalent.

2. Manufacturing support services — $ 19,645/mo

Includes:

• Sustaining support for factory manufacturing execution, equipment integration and analysis systems in CH-FAB

Note: Sustaining support does not include Tenant's use of factory manufacturing execution, equipment integration and analysis software.

• Chandler Analytical Lab services (PALAZ TEM, SEM, etc. Maximum 42 samples/mo.)

• Failure analysis services provided by Global Yield and Device Lab (Maximum 4 samples/mo.)

• Tenant may requisition incidental ("open stock") equipment parts and supplies from CH-FAB with a total value not to exceed $1,000 per month at no charge.

Open stock" items are: Tubing, tie wraps, fittings, valves, terminals, fuses, wire connectors, screws, heat shrink tubing, washers, nuts, bolts, retaining rings, silencers/mufflers, filter regulators, O-rings.

Items not included:

• Use of factory manufacturing execution, equipment integration and analysis software — Tenant expense

• Maintenance of Tenant-owned equipment

• Shipping costs

• Parts ordering and stocking

• Operator staffing to run Tenant-owned tools

• Specialty gases and chemicals that are not provided as part of factory bulk delivery systems

• Product or package reliability, stress or failure analysis services or support

• Services performed by CH-FAB machine shop

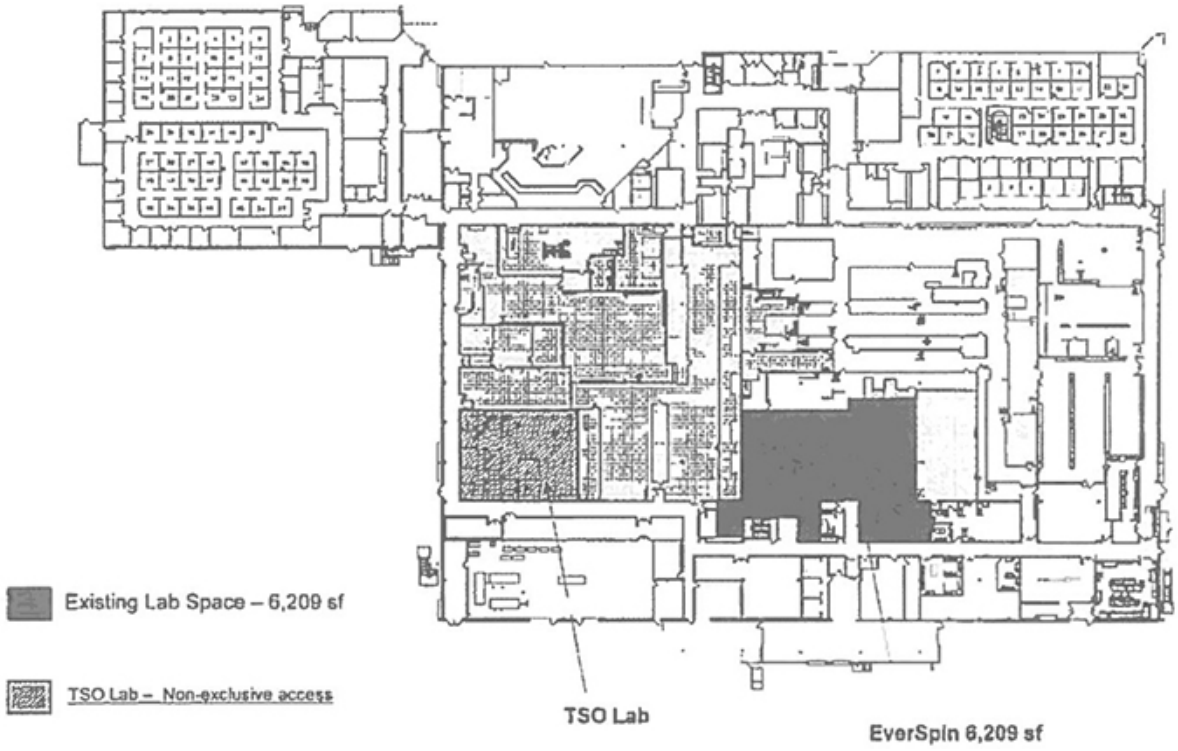
• References to wafer quantities in this exhibit do not constitute a capacity commitment by Landlord

The rate for each of the above items will increase on June 7, 2015 (and each anniversary thereafter) of the Lease Term by an amount equal to four percent (4.0%) of the rate for such item for the preceding period.

**Schedule 3**

**EXHIBIT C**

## Lab Space - Chandler A Bldg - Level 1



**LOAN AND SECURITY AGREEMENT**
**No. V15102**

This Loan and Security Agreement (this "Loan Agreement"), made as of June 5, 2015 by and between Ares Venture Financing, L.P. ("Lender"), with offices at 245 Park Avenue, 44th Floor, New York, NY 10167, and Everspin Technologies, Inc. ("Borrower"), a Delaware corporation with its principal place of business at 1347 N. Alma School Road, Suite 220, Chandler, AZ 85224.

In consideration of the promises set forth herein, Lender and Borrower agree upon the following terms and conditions:

**1. General Definitions**

The following words, terms and /or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof giving effect to the numerical difference:

A. "Account" means any "account," as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and, in any event, shall include all accounts receivable, book debts, rights to payment, and other forms of obligations now owned or hereafter received or acquired by or belonging or owing to Borrower (including under any trade name, style or division thereof), whether or not arising out of goods or software sold or licensed or services rendered by Borrower or from any other transaction (including any such obligation that may be characterized as an account or contract right under the UCC), and all of Borrower's rights in, to and under all purchase orders or receipts now owned or hereafter acquired by it for goods or services, and all of Borrower's rights to any goods represented by any of the foregoing (including unpaid seller's rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), and all monies due or to become due to Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of Borrower), now in existence or hereafter occurring, including the right to receive the proceeds of said purchase orders and contracts, and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

B. "Account Debtor" means any Person obligated on an Account.

C. "Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote five percent (5%) or more of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

D. "Approved Foreign Account Debtor" means any Account Debtor organized in a jurisdiction outside of the United States, approved by Lender in its reasonable discretion, which is not located in a jurisdiction for which support is excluded on the Country Limitation Schedule published each quarter by the Export-Import Bank of the United States at http://www.exim.gov/tools/country/country_limits.html, and for which invoices are sent by Borrower from the United States, and are denominated and paid in US Dollars.

E. "Borrower's Liabilities" means all obligations and liabilities of Borrower to Lender (including without limitation all debts, claims, and indebtedness) whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, whether under this Loan Agreement and/or any promissory note or other instrument issued pursuant hereto or the "Other Agreements" (hereinafter defined), or by oral agreement or operation of law or otherwise, but specifically excluding any obligations and liabilities under the Warrant.

F. "Borrowing Base" means, at any time, eighty-five percent (85%) of Borrower's Eligible Accounts from Accounts based within the United States at such time, together with eighty percent (80%) of Borrower's

Eligible Accounts of any Approved Foreign Account Debtors, minus any Reserves established by Lender. Lender may, in its sole discretion, reduce the advance rate set forth above, adjust Reserves or reduce one or more of the other elements used in computing the Borrowing Base, with any such changes to be effective upon delivery of notice thereof to Borrower.

G. "Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by the Chief Executive Officer or Chief Financial Officer of Borrower, in substantially the form of Exhibit C or another form which is acceptable to Lender in its sole discretion.

H. "Business Day" means a day on which banks are not required or authorized to close in New York City or Chicago, Illinois.

I. "Cash" means all cash, money (as defined in the UCC), currency, and liquid funds, wherever held, in which Borrower now or hereafter acquires any right, title, or interest.

J. "Change of Control" means, at any time, (i) the current shareholders of Borrower cease to beneficially own and control, directly or indirectly on a fully diluted basis, a majority of the economic and voting interests in Borrower's capital stock or other ownership interests or (ii) any Person or group other than the current shareholders of Borrower shall have the right to elect a majority of the seats on Borrower's board of directors; in each case, other than as a result of Borrower's issuance of capital stock for cash **(or conversion of debt)** to venture capital firms, private equity, institutional and strategic investors if Borrower provides Lender with the names of such investors at least **ten** (**10**) days prior to such issuance.

K. "Charges" means all national, federal, state, county, city, municipal and/or other governmental taxes, levies, assessments, charges, liens, claims or encumbrances upon and/or relating to the Collateral, Borrower's Liabilities, Borrower's business, Borrower's ownership and/or use of any of its assets, and/or Borrower's income and/or gross receipts.

L. "Chattel Paper" means any "chattel paper," as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

M. "Cleanup" means all actions required to: (1) clean up, remove, treat or remediate Hazardous Materials in the indoor or outdoor environment; (2) prevent the release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (3) perform pre-remedial studies and investigations and post-remedial monitoring and care; or (4) respond to any government requests for information or documents in any way relating to cleanup, removal, treatment or remediation or potential cleanup, removal, treatment or remediation of Hazardous Materials in the indoor or outdoor environment.

N. "Collateral" has the meaning set forth in Section 5.1.

O. "Copyright License" means any written agreement granting any right to use any Copyright or Copyright registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

P. "Copyrights" means all of the following property, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (i) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States or of any other country; (ii) all registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States or of any other country; (iii) all continuations, renewals or extensions thereof; and (iv) all registrations to be issued under any pending applications.

Q. "Default" means any condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

R. “Deposit Accounts” means any “deposit accounts,” as defined in the UCC, and in any event includes any checking account, savings account, or certificate of deposit now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

S. “Documents” means any “documents,” as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

T. “Eligible Accounts” means, at any time, the Accounts of Borrower arising in the ordinary course of business with respect to goods or software sold or licensed or services rendered by Borrower, including, without limitation, monthly subscription license payments, perpetual license payments, professional services billings and support and training billings which Lender determines in its reasonable discretion are eligible as the basis for the extension of Revolving Advances, hereunder. Without limiting Lender’s discretion provided herein, Eligible Accounts shall not include any Account:

(a) which is not subject to a first priority perfected security interest in favor of Lender;

(b) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the United States or (ii) is not organized under applicable law of the United States or any state of the United States other than Accounts (x) covered by credit insurance satisfactory to Lender, less any deductible, or (y) supported by letter(s) of credit advised through and acceptable to Lender in its discretion, unless, in either case, such Account is owed by an Approved Foreign Account Debtor;

(c) which is unpaid more than ninety (90) days after the date of the original invoice therefor (or sixty (60) days after the date of the original invoice therefor in respect of Accounts of any Approved Foreign Account Debtors);

(d) which is owed by an Account Debtor for which more than twenty percent (20%) of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) above;

(e) which is owed by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to Borrower exceeds twenty percent (20%) of the aggregate Accounts;

(f) with respect to which any covenant, representation, or warranty contained in this Loan Agreement or in any Other Agreement has been breached or is not true;

(g) which (i) is not evidenced by an invoice or other documentation satisfactory to Lender which has been sent to the Account Debtor, (ii) represents a progress billing, (iii) represents obligations that do not arise from final sales or which are otherwise contingent upon Borrower’s completion of any further performance, (iv) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (v) relates to payments of interest;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been fully performed by Borrower or if such Account was invoiced more than once;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent; (vi) ceased operation of its business or (vii) sold all or substantially all of its assets;

(k) which, if owed by any Account Debtor which is a distributor, is payable by any Person other than such Account Debtor;

(l) which is owed in any currency other than U.S. dollars;

(m) which is owed by the government of the United States, or any department, agency, public corporation, or instrumentality thereof (unless the Federal Assignment of Claims Act procedures for giving notice of Lender's security interest in such government Accounts are satisfied to Lender's reasonable satisfaction);

(n) which is owed by any Affiliate, employee, officer, director, agent or stockholder of Borrower or any of its Affiliates;

(o) which, for any Account Debtor, exceeds a credit limit determined by Lender in its reasonable discretion, to the extent of such excess;

(p) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which Borrower is indebted, but only to the extent of such indebtedness or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(q) which is subject to any counterclaim, deduction, defense, setoff or dispute, but only to the extent of such counterclaim, deduction, defense, setoff or dispute;

(r) which is evidenced by any promissory note, chattel paper or instrument;

(s) which is owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit Borrower to seek judicial enforcement in such jurisdiction of payment of such Account, unless Borrower has filed such report or qualified to do business in such jurisdiction;

(t) with respect to which Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account which was partially paid and Borrower created a new receivable for the unpaid portion of such Account;

(u) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System;

(v) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than Borrower has or has had an ownership interest in such goods, or which indicates any party other than Borrower as payee or remittance party;

(w) which was created on cash on delivery terms; or

(x) which Lender determines may not be paid by reason of the Account Debtor's inability to pay or which Lender otherwise determines is unacceptable for any other reason in its reasonable discretion.

If an Account which was previously an Eligible Account ceases to be an Eligible Account hereunder, Borrower shall notify Lender thereof on and at the time of submission to Lender of the next Borrowing Base Certificate. In determining the amount of an Eligible Account, the face amount of an Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits or credits pending or of which the Account Debtor is permitted to avail itself under the credit terms provided to such Account Debtor, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by Borrower to reduce the amount of such Account. Standards of eligibility may be made more or less restrictive from time to time solely by Lender in its sole discretion after consultation with Borrower, with any such changes to be effective three (3) days after delivery of notice thereof to Borrower.

U. “Environmental Claim” means any claim, action, cause of action, investigation or notice (written or oral) by any Person alleging potential liability (including, without limitation, an obligation to conduct a Cleanup or potential liability for investigatory costs, Cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence or release of any Hazardous Materials at any location, whether or not owned, leased or operated by Borrower or any of its Subsidiaries, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

V. “Environmental Laws” means all federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment, including, without limitation, laws relating to releases or threatened releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, disposal, transport or handling of Hazardous Materials, laws and regulations with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials and laws relating to the management or use of natural resources.

W. “Equipment” means any “equipment”, as defined in the UCC, and in any event shall include but not be limited to computers and peripherals, laboratory equipment, manufacturing equipment, networking equipment, switching and backbone equipment, servers and routers and other hardware including disk drives and laser printers, office furniture, fixtures and office equipment, test and other equipment, and software, and all accessions, additions, attachments, accessories and improvements thereof and all replacements and/or substitutions therefore and all proceeds and products thereof.

X. “Event of Default” has the meaning set forth in Section 8.1.

Y. “Financials” means those financial statements described in Section 7.3.

Z. “Fixtures” means any “fixtures,” as defined in the UCC, together with all right, title and interest of Borrower in and to all extensions, improvements, betterments, accessions, renewals, substitutes, and replacements of, and all additions and appurtenances to any of the foregoing property, and all conversions of the security constituted thereby, immediately upon any acquisition or release thereof or any such conversion, as the case may be, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

AA. **“GAAP” means generally accepted accounting principles in the United States, in effect from time to time, consistently applied.**

BB. “General Intangibles” means any “general intangibles,” as defined in the UCC, and, in any event, shall include all right, title and interest which Borrower may now or hereafter have in or under any rights to payment; payment intangibles; software; proprietary or confidential information; business records and materials; customer lists; interests in partnerships, joint ventures, business associations, corporations, and limited liability companies; permits; claims in or under insurance policies (including unearned premiums and retrospective premium adjustments); and rights to receive tax refunds and other payments and rights of indemnification now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

CC. “Goods” means any “goods,” as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

DD. “Hazardous Materials” means all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.

EE. “Instruments” means any “instrument,” as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

FF. “Intellectual Property” means all Copyrights; Trademarks; Patents; and Licenses; and applications therefor and reissues, extensions, or renewals thereof; and goodwill associated with any of the foregoing; together with rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

GG. “Inventory” means any “inventory,” as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, and, in any event, shall include all Goods and other personal property that are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process or materials used or consumed or to be used or consumed in Borrower’s business, or the processing, packaging, promotion, delivery or shipping of the same, and all finished goods, whether or not the same is in transit or in the constructive, actual or exclusive possession of Borrower or is held by others for Borrower’s account, including all property covered by purchase orders and contracts with suppliers and all Goods billed and held by suppliers and all such property that may be in the possession or custody of any carriers, forwarding agents, truckers, warehousemen, vendors, selling agents or other Persons.

HH. “Investment Property” means all “investment property,” as defined in the UCC, and in any event includes any certificated security, uncertificated security, money market funds, bonds, mutual funds, and U.S. Treasury bills or notes, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

II. “Letter of Credit Rights” means any “letter of credit rights,” as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest, including any right to payment or performance under any letter of credit.

JJ. “Libor” means the rate of interest which is identified and normally published by Bloomberg Professional Service Page BBAM 1 as the offered rate for loans in United States dollars for the applicable Interest Period under the caption British Bankers Association Eurodollar Rates as of 11:00 a.m. (London time), on the second full Business Day next preceding the first day of such Interest Period (unless such date is not a Business Day, in which event the next succeeding Business Day will be used). If Bloomberg Professional Service no longer reports the Eurodollar Rate, the British Bankers Association is no longer making eurodollar rates available, or the Lender determines in good faith that the rate so reported no longer accurately reflects the rate available to the Lender in the London Interbank Market or if such index no longer exists or if Page BBAM 1 no longer exists or accurately reflects the rate available to the Lender in the London Interbank Market, the Lender may select a replacement index or replacement page, as the case may be. For purposes hereof, the Interest Period shall be three (3) months.

KK. “License” means any Copyright License, Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest and any renewals or extensions thereof.

LL. “Loan” has the meaning set forth in Section 2.2.

MM. “Material Adverse Effect” means a material adverse effect upon (i) the business operations, properties, assets, business prospects, results of operations or financial condition of Borrower, (ii) the prospect of repayment of any portion of Borrower’s Liabilities, when due, (iii) the validity, perfection, value or priority of

Lender's security interest in the Collateral, (iv) the enforceability of any material provision of this Loan Agreement or any Other Agreement or (v) the ability of Lender to enforce its rights and remedies under this Loan Agreement or any Other Agreement.

NN. "Material Investor" means any venture capital, private equity, institutional or strategic investor now or hereafter holding or having the ability to control ten percent (10%) or more of the voting securities of Borrower and its Affiliates.

OO. "Material Investor Event" means that (i) any Material Investor shall sell, transfer or otherwise assign the majority of its interest in Borrower to an unaffiliated passive investor, and such Material Investor is not replaced at such time by an existing or new, active Material Investor which is a venture capital, private equity, institutional or strategic investor having comparable experience and assets under management, as determined by Lender's in its reasonable discretion, (ii) Borrower's Material Investors shall fail to fund Borrower in the amounts and in the timeframe necessary to enable Borrower to satisfy Borrower's Liabilities as they become due and payable, or (iii) any Material Investor shall have its representative resign from the Board of Directors of Borrower and such Material Investor does not replace the representative director within seventy-five (75) days.

PP. "Other Agreements" means all agreements, instruments and documents, including, without limitation, the Warrants, any notes, guaranties, letters of credit, mortgages, deeds of trust, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, warrants, account pledge and control agreements, fee arrangements, financing statements and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf and/or for the benefit of Borrower and delivered to Lender.

QQ. "Patent License" means any written agreement granting any right with respect to any invention on which a Patent is in existence or a Patent application is pending, in which agreement Borrower now holds or hereafter acquires any interest.

RR. "Patents" means all of the following property, now owned or hereafter acquired by Borrower: (a) all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, continuations, continuations-in-part or extensions thereof; (c) all petty patents, divisionals, and patents of addition; and (d) all patents to be issued under any such applications.

SS. "Permitted Debt" means (i) Borrower's indebtedness to Lender under this Loan Agreement or any of the Other Agreements; (ii) indebtedness to trade creditors incurred in the ordinary course of business on ordinary trade terms and accrued expenses incurred in the ordinary course of business; **(iii) other indebtedness for equipment financing in an aggregate outstanding principal amount not to exceed $500,000 at any time; (iv)** any extension, renewal or refinancing of the indebtedness described in (ii**i)** above, provided that the principal amount of, and interest rate on, such indebtedness may not be increased; (v) reimbursement obligations of Borrower to Silicon Valley Bank ("SVB") in respect of a credit card facility (not to exceed $150,000 in the aggregate), a letter of credit facility in favor of Taiwan Semiconductor Manufacturing Corporation (not to exceed $200,000) and a foreign exchange facility (not to exceed $25,000); or (vi) unsecured, subordinated indebtedness of Borrower, subject to a subordination agreement satisfactory to Lender in its discretion from new or existing stockholders or strategic investors or partners.

TT. **"**Permitted Joint Ventures**"** means any agreement or arrangement for the development, manufacture and distribution of technology, processes and products, including (i) licenses of Intellectual Property, (ii) agreements pursuant to which Borrower is obligated to purchase or pay for minimum amounts of product, (iii) agreements under which tools and other equipment is consigned or lent to a third party for the production or testing of Borrower**'**s products, (iv) agreements for the sale of inventory at lower prices than would otherwise apply where Borrower derives other benefits under such agreements, (v) agreements under which Borrower and a third party allocate employees or resources to develop technology or other assets for the benefit of each of Borrower and such third party, (vi) agreements under which a third party pays Borrower money in connection with a project and Borrower spends that money to complete the project, as long as the net outlay by Borrower of cash does not exceed

the amount of the original contribution; and (vii) joint venture agreements, as long as (A) in all cases Borrower's Board of Directors has approved such agreement or arrangement, and consummation of such transaction will not result in a Change of Control, and, (B) in the event Borrower or its Subsidiary is required to contribute Cash to such joint venture, (I) at the time of entering such joint venture, Borrower shows the amount of Cash on its balance sheet exceeds the amount of Cash required to fund its operations for the next succeeding 6 months (as determined by Borrower's Board of Directors in its reasonable discretion, based upon Borrower's historical cash burn and any reasonably anticipated changes thereto over such period), (II) the amount of Cash required from Borrower or its Subsidiaries in connection with such joint venture does not exceed $500,000, and (III) the amount of Cash required to be contributed by Borrower or its Subsidiaries in connection all joint ventures does not exceed $1.5 million in the aggregate.

UU. "Permitted Liens" means all (i) Charges for amounts not yet delinquent or being contested in good faith by appropriate proceedings and for which adequate reserves have been made in accordance with GAAP; (ii) statutory liens of landlords, carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet delinquent or that are being contested in good faith by appropriate proceedings being diligently conducted and for which Borrower maintains adequate reserves in accordance with GAAP; (iii) liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder; (iv) the following deposits, to the extent made in the ordinary course of business: deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure statutory obligations (other than liens arising under ERISA or environmental liens) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds; (v) banker's liens, rights of setoff and similar liens arising by operation of law on deposits made in the ordinary course of business, provided such liens do not arise in respect of borrowed money; (vi) non-exclusive licenses and sublicenses granted by Borrower or any of its Subsidiaries in the ordinary course of business; and (vii) liens arising in connection with indebtedness described in clause (iii) or (iv) of the definition of Permitted Debt on any Equipment (and any accessions, attachments, replacements or improvements thereon) which was acquired or financed by Borrower or any of its Subsidiaries to secure the purchase price of such Equipment, provided that the lien is confined solely to the Equipment so acquired or financed, and improvements thereon and the proceeds thereof; and (viii) liens arising in connection with indebtedness described in clause (v) of the definition of Permitted Debt provided that the liens in favor of SVB are capped at $375,000 and are subject to an intercreditor between Lender and SVB, satisfactory to Lender in its reasonable discretion.

VV. "Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or government (whether national, federal, state, county, city, municipal or otherwise, including without limitation, any instrumentality, division, agency, body or department thereof).

WW. "Prime Rate" for each month means the rate of interest per annum quoted by The Wall Street Journal as the "Prime Rate" in the United States or if The Wall Street Journal ceases to quote such rate, the rate of interest per annum published by the Federal Reserve Board in Federal Reserve Statistical Release H-15 (519) (Selected Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein or any similar release by the Federal Reserve Board (as determined by Lender). Any change in the Prime Rate hereunder due to a change in the reference rate shall be effective on the effective date of such change in the reference rate.

XX. "Proceeds" means "proceeds," as defined in the UCC.

YY. "Receivables" means (i) all of Borrower's Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, letters of credit, proceeds of any letter of credit, and Letter of Credit Rights, and (ii) all customer lists, software, and business records related thereto.

ZZ. "Reserves" means all reserves which Lender deems necessary, in its sole discretion, to maintain (including, without limitation, reserves for accrued and unpaid interest on Borrower's Liabilities, reserves for rent at locations leased by Borrower and for consignee's, warehousemen's and bailee's charges, reserves for dilution of

Accounts, reserves for direct and contingent obligations owed to third parties, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation and reserves for taxes, fees, assessments, and other governmental charges) with respect to Borrower or the Collateral.

AAA. "Revolving Advance" has the meaning set forth in Section 2.1(b).

BBB. "Revolving Commitment" means the commitment, if any, of Lender to make Revolving Advances hereunder, subject to the terms hereof, as such commitment may be reduced from time to time pursuant to Section 4.3 or Section 8.2. The initial amount of Lender's Revolving Commitment is Four Million Dollars ($4,000,000).

CCC. "Revolving Loan" means, at any time, all Revolving Advances outstanding at such time.

DDD. "Revolving Loan Termination Date" means the earliest of (a) June 5, 2017, (b) the date of termination of the Revolving Commitments pursuant to Section 4.3 and (c) the date on which Borrower's Liabilities become due and payable pursuant to Section 8.2; provided, however, that Lender in its sole discretion may extend such Revolving Loan Termination Date for such additional one year periods as may be agreed by Borrower and Lender upon written request of Borrower, which shall be delivered not less than sixty (60) days prior to the then existing Revolving Loan Termination Date.

EEE. "**Securities Account"** means any "securities account" as defined in the UCC, and in any event includes any account to which a financial asset is or may be credited in accordance with an agreement under which the Person maintaining the account undertakes to treat the Person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

FFF. "Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

GGG. "Supporting Obligations" means any "supporting obligations," as defined in the UCC, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

HHH. "Term Loan" has the meaning set forth in Section 2.1(a).

III. "Terminal Payment" shall mean an amount which is One Hundred Eighty Thousand Dollars ($180,000).

JJJ. "Trademark License" means any written agreement granting any right to use any Trademark or Trademark registration, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest.

KKK. "Trademarks" means all of the following property, now owned or hereafter acquired by Borrower or in which Borrower now holds or hereafter acquires any interest: (a) all trademarks, tradenames, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, and designs of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, (b) all reissues, extensions or renewals thereof, and (c) all rights in World Wide Web addresses, uniform resource locators and domain names and applications and registrations therefor.

LLL. “UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York, provided that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interest granted hereunder in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in other jurisdiction(s), then “UCC” means the Uniform Commercial Code as in effect on or after the date hereof in such other jurisdiction(s) for the purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection, or priority or availability of such remedy.

MMM. “Warrant” has the meaning set forth in Section 2.5(b).

**2. The Loans**

2.1(a) Term Loan. On the terms and subject to the conditions contained in this Loan Agreement, including those listed in Section 2.5, Lender shall loan to Borrower on or prior to June 5, 2015, a term loan (the “Term Loan”) in the amount of Eight Million Dollars ($8,000,000.00), the proceeds of which are to be used to repay in full all of Borrower’s outstanding indebtedness to Silicon Valley Bank and for working capital. This is not a revolving line of credit and Borrower may not repay and re-borrow the amounts advanced or to be advanced under this Section 2.1(a). The Term Loan shall be repaid as follows: (i) commencing on the first Business Day of the first month after funding, fifteen (15) monthly payments of interest only (paid in arrears), then (ii) commencing on the first Business Day of the sixteenth month after the date of funding such tranche, thirty-three (33) equal monthly payments of principal in the amount of $242,424.24 each, together with accrued interest thereon (paid in arrears), then (vi) on the first Business Day of the forty-eighth month after the date of funding, the Terminal Payment. All such payments are to be made on the first Business Day of each month commencing on the first Business Day of the month following the date of such borrowing.

(b) Revolving Loan. On the terms and subject to the conditions contained in this Loan Agreement, Lender agrees to make revolving advances to Borrower (each, a “Revolving Advance”) from time to time on any Business Day during the period from the date hereof until the Revolving Loan Termination Date in an aggregate principal amount at any time outstanding for all such Revolving Advances not to exceed the lesser of (x) the Revolving Commitment at such time and (y) the Borrowing Base at such time. Each borrowing of a Revolving Advance shall be made on notice (substantially in the form of Exhibit B hereto) given by Borrower to Lender not later than 9:00 a.m. (prevailing Chicago time) not less than five (5) Business Days prior to start of the calendar month in which such proposed borrowing would occur. Each borrowing of a Revolving Advance shall be in an aggregate amount of not less than Two Hundred Fifty Thousand Dollars ($250,000). Borrower may not borrow more than two (2) Revolving Advances in any calendar month. Subject to the terms and conditions contained herein, the Revolving Loan repaid may be reborrowed by Borrower under this Section 2.1(b).Borrower shall repay the entire unpaid principal amount of the Revolving Loan, plus any fees and interest thereon, in full on the Revolving Loan Termination Date.

2.2 Evidence and Nature of Loans. The Term Loan and each Revolving Advance to be made by Lender to Borrower pursuant to this Loan Agreement (each, a “Loan”) will be evidenced by one or more promissory notes (in form and substance satisfactory to Lender) to be executed and delivered by Borrower to Lender before or concurrently with Lender’s disbursement of such Loan to or for the account of Borrower.

2.3 Use of Proceeds. Borrower warrants and represents to Lender that Borrower shall use the proceeds of each Loan and any advances made pursuant to the Other Agreements solely for legal and proper corporate purposes (duly authorized by its Board of Directors) and consistent with all applicable laws and statutes.

2.4 Direction to Remit. Borrower hereby authorizes and directs Lender to disburse, for and on behalf of Borrower and for Borrower’s account, the proceeds of the Loan made by Lender to Borrower pursuant to this Loan Agreement to such Person or Persons as an officer or director of Borrower shall direct, whether in writing or orally.

2.5 Conditions Precedent. (a) The following conditions precedent must be met before each Loan is made hereunder: (i) No event, condition or change that has had, or could reasonably be expected to have, a Material Adverse Effect shall have occurred; (ii) The representations and warranties contained in this Loan Agreement and in the Other Agreements shall be true and correct on and as of the date of such Loan (except for representations and

warranties which speak to another date, which shall be true and correct as of such date); (iii) As of the date of such Loan, no Event of Default or Default shall exist or would result from the making of such Loan; (iv) As a condition to each Revolving Advance, a Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as Lender may reasonably request, shall have been delivered to Lender; and (v) Such other conditions precedent as Lender may reasonably impose upon Borrower from time to time.

(b) In addition, the following conditions precedent must be met before the initial Loan is made hereunder:(i) Payment of all fees required under this Loan Agreement or the Other Agreements; (ii) Receipt by Lender of satisfactory release documents from all conflicting secured creditors **(other than holders of Permitted Liens);** (iii) Receipt by Lender of appropriate filings and other means of perfecting its security interest in the Collateral, including but not limited to specific assignments of Collateral consisting of instruments or evidenced by titles; (iv) Lender shall have received copies of the certificates and evidences of insurance contemplated under Section 5.6 and the Financials described in Section 7.3; (v) Receipt by Lender of such proof of free and clear ownership of the Collateral, as may be reasonably requested by Lender; (vi) Execution by Borrower and applicable financial institution(s) of any required account control agreements for the benefit of Lender; (vii) Delivery by Borrower of a satisfactory executed Borrowing Base Certificate as of a recent date; (viii) Delivery by Borrower of a satisfactory landlord waiver duly executed and delivered by Borrower's Chandler, Arizona landlord; (ix) Receipt by Lender of a side letter, in form and substance satisfactory to Lender, in respect of various representations, warranties and covenants of Borrower required in connection with Lender's status as a Small Business Investment Company ("SBIC") under the regulations of the U.S. Small Business Administration ("SBA"); (x) Receipt by Lender of a Warrant to purchase 480,000 shares of Borrower's Series B Preferred Stock at a purchase price of $1.00 per share in form and substance satisfactory to Lender (the "Warrant"); (xi) Receipt by Lender of an intercreditor executed and delivered by SVB in respect of indebtedness described in clause (v) of the definition of Permitted Debt and the Permitted Liens related thereto, in form and substance satisfactory to Lender in its reasonable discretion; and (xii) Delivery by Borrower of a legal opinion of counsel to Borrower relating to this Loan Agreement and the Other Agreements in form and substance reasonably satisfactory to Lender.

2.6 Payments and Taxes. All payments made by Borrower under this Loan Agreement or any Other Agreement shall be made free and clear of and without deduction for all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto) other than any taxes imposed on or measured by Lender's overall net income and franchise taxes imposed on it (in lieu of net income taxes), by a jurisdiction (or any political subdivision thereof) as a result of Lender being organized or resident, conducting business (other than a business deemed to arise from Lender having executed, delivered or performed its obligations or received a payment under, or enforced, or otherwise with respect to, this Loan Agreement or any Other Agreement) or having its principal office in such jurisdiction ("Indemnified Taxes"). If any Indemnified Taxes shall be required by law to be withheld or deducted from or in respect of any sum payable under this Loan Agreement or any Other Agreement to Lender (w) an additional amount shall be payable as may be necessary so that, after making all required withholdings or deductions (including withholdings or deductions applicable to additional sums payable under this Section) Lender receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (x) Borrower shall make such withholdings or deductions, (y) Borrower shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with applicable law and (z) Borrower shall deliver to Lender evidence of such payment. If Borrower fails to pay any Indemnified Taxes when due to the appropriate taxing authority or fails to remit to Lender the required evidence of payment, Borrower shall further indemnify Lender for any incremental taxes, interest, costs or penalties that may become payable by Lender as a result of any such failure. In addition, the Borrower shall pay any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant governmental authority in accordance with applicable law. Borrower's obligation hereunder shall survive the termination of this Loan Agreement. Each Lender that is not organized under the laws of the United States of America or any state thereof (a "Non-U.S. Lender") shall: (i) deliver to Borrower two copies of either (A) in the case of Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", United States Internal Revenue Service Form W-8BEN (together with a certificate representing that such Non-U.S. Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of Borrower and

is not a controlled foreign corporation related to Borrower (within the meaning of Section 864(d)(4) of the Code)), or (B) Internal Revenue Service Form W-8BEN or Form W-8ECI, in each case properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, U.S. federal withholding tax on payments by Borrower under this Agreement; and (ii) deliver to Borrower two further copies of any such form or certification (or any applicable successor form) promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver. Each Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to Borrower, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided, that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender. Borrower shall make all payments hereunder in recognition of such exemption or reduction in rate based on the documentation set forth above.

**3. Interest, Fees and Repayment**

3.1 Interest. Each Revolving Advance shall bear interest payable monthly in arrears on the first Business Day of each month calculated on the basis of a 360 day year and actual days elapsed at a rate equal to Prime Rate plus 375 basis points per annum. The Term Loan shall bear interest payable monthly in arrears on the first Business Day of each month, calculated on the basis of a 360 day year and actual days elapsed at a rate equal to the interest rate specified in the related note (the "Term Loan Interest Rate") , which rate shall be fixed quarterly at the time of the advance and each succeeding 3-month anniversary of the date of such advance and equal to the sum of (i) 775 basis points plus (ii) Libor; provided however, that such Term Loan Interest Rate shall not be less than 8.75% per annum. In no event shall interest accrue or be payable in connection with any Loan in an amount in excess of that permitted under applicable law. If the note(s) so provide, the interest thereunder may be precomputed for the period ending when payments thereunder are due and on the assumption that all payments will be made on their respective due dates. Payments due under any note and not made by their scheduled due date for a period in excess of two (2) Business Days thereafter shall be overdue and shall be subject to a service charge in an amount equal to five percent (5%) of the delinquent amount, but not more than the maximum rate permitted by law, whichever is less. In addition, and notwithstanding the forgoing, during the continuance of an Event of Default all outstanding Borrower's Liabilities in respect of the Loans shall bear interest (payable on demand) at a rate that is five percent (5%) per annum in excess of the rate of interest applicable to such Loans and other Borrower's Liabilities from time to time.

3.2 Fees.

(a) Commitment Fee. Borrower agrees to pay to Lender a commitment fee (the "Revolver Commitment Fee") equal to one percent (1.0%) per annum on the total amount of the Revolving Commitment, payable on the date hereof (for the period from the date hereof through June 5, 2016), and annually thereafter (if such facility is renewed in the sole discretion of the Lender) on the annual anniversary hereof. In addition, Borrower agrees to pay an origination fee in the amount of Fifty Thousand Dollars ($50,000) in respect of the Term Loan, payable on the date hereof.

(b) Field Audit Fees. Borrower agrees to pay to Lender its expenses incurred in connection with a semi-annual field audit of Borrower (not to exceed $15,000 annually), payable in accordance with Section 9.5, until the Borrower's Liabilities are paid in full, such auditor to be selected by Lender in its sole discretion.

(c) Due Diligence Fee. Borrower agrees to pay to Lender a fee of Forty Thousand Dollars ($40,000) to cover due diligence and other costs and expenses incurred in connection with the origination of the Loan (which shall not include the audit fee noted in Section 3.2(b)), of which Lender acknowledges receipt of $40,000.

(d) Fees Earned. All fees payable hereunder shall be fully earned and nonrefundable when due and payable hereunder.

3.3 Repayment. Borrower's Liabilities are absolute and unconditional and are not subject to counterclaim, set-off or rights of rescission. All costs, fees and expenses payable pursuant to this Loan Agreement or any of the Other Agreements shall be payable by Borrower to Lender or to such other Person or Persons designated by Lender, on demand. All amounts payable to Lender hereunder shall be made by wire or other form of electronic payment and shall be received by 2:00 p.m. (prevailing New York time) at Lender's principal place of business specified at the beginning of this Loan Agreement or at such other place or places as Lender may designate in writing to Borrower. All payments to Persons other than Lender shall be payable at such place or places as Lender designates in writing to Borrower.

3.4 Application of Payments. Provided that an Event of Default does not exist, the application of payments received by Lender pursuant to this Loan Agreement shall be applied first to all late charges, fees and expenses then due and payable; second to interest then due and payable hereunder; third to the principal of the Term Loan then due and payable, fourth to the principal of the Revolving Advances then outstanding, fifth to the remaining principal of the Term Loan then outstanding together with unpaid interest accrued thereon and finally, to any other Borrower's Liabilities then outstanding. During the continuance of an Event of Default, Lender shall have the continuing and exclusive right to apply all such payments received by Lender to any portion of Borrower's Liabilities, including to any of Borrower's Liabilities arising under any of the Other Agreements. Solely for the purpose of computing interest earned by Lender, payments received by Lender shall be applied as aforesaid on the Business Day of receipt by Lender, provided that any payment received after 2:00 p.m. (prevailing New York time) shall be deemed received the following Business Day.

3.5 Accuracy of Statements. Each statement of account by Lender delivered to Borrower relating to Borrower's Liabilities shall be presumed correct and accurate (absent manifest error) and shall constitute an account stated between Borrower and Lender unless thereafter waived in writing by Lender, in Lender's discretion. Any objection to the statement that Borrower may have must be delivered to Lender, by registered or certified mail, within thirty (30) days after Borrower's receipt of said statement.

## 4. Term and Prepayment

4.1 Term. This Loan Agreement shall be in effect until the indefeasible payment in full to Lender of all Borrower's Liabilities (other than inchoate indemnity or reimbursement obligations). Except as provided below, Borrower has no right to prepay Borrower's Liabilities.

4.2 Mandatory Prepayment of Revolving Loan. If the aggregate outstanding principal amount of the Revolving Advances at any time exceeds the lesser of (A) the Revolving Commitment or (B) the Borrowing Base, Borrower shall promptly, but not later than three (3) Business Days, prepay the Revolving Loan in an amount equal to such excess.

4.3 Voluntary Prepayment and Commitment Reduction. (a) Borrower may upon at least 5 Business Days' written notice to Lender, prepay without premium or penalty all or any portion of the Revolving Loan principal, together with the accrued interest on such prepaid principal, in whole or in part at any time; provided, that (i) each partial prepayment shall be an aggregate principal amount not less than $Five Hundred Thousand Dollars ($500,000) and (ii) no voluntary prepayment of the Revolving Loan may be made within the first fifteen (15) days after the date of a Revolving Advance. Upon the giving of such notice of prepayment, the principal amount of Revolving Loan specified to be prepaid, together with accrued but unpaid interest, fees and expenses, shall become due and payable on the date specified for such prepayment.

(b) Borrower may, upon at least thirty (30) days' written notice to Lender**,** terminate in whole or reduce in part the unused portion of the Revolving Commitment; provided, however, that (i) each partial reduction shall be in an aggregate amount of not less than Five Hundred Thousand Dollars ($500,000) and (ii) Borrower shall not reduce the Revolving Commitment if, after giving effect to any concurrent prepayment of the Revolving Loan in accordance with Section 4.3(a), the aggregate unpaid principal amount of the Revolving Advances would exceed the lesser of (A) the Revolving Commitment or (B) the Borrowing Base.

(c) Borrower may, upon at least ten (10) days prior written notice to Lender (stating the proposed date of prepayment, which date shall then be the due date for such Loan), prepay the outstanding principal amount of the

Term Loan then outstanding in whole, but not in part by paying to Lender, in immediately available funds, an amount equal to the sum of (i) the outstanding principal amount of the Term Loan then outstanding, (ii) all accrued and unpaid interest, fees and expenses on the Term Loan through the date of prepayment, (iii) (A) if such prepayment is made on or prior to last day of the eighteenth month after the date of the Term Loan, a prepayment premium equal to three percent (3%) of the principal amount being prepaid; and (B) if such prepayment is made after the eighteenth month after the date of the Term Loan but on or prior to the maturity date of the Term Loan, a prepayment premium equal to one percent (1%) of the principal amount being prepaid, and (iv) the Terminal Payment relating to the principal amount of the Term Loan to be prepaid. The prepayment premium specified herein shall be payable whether such prepayment is voluntary or upon acceleration.

**5. Collateral and Security**

5.1 Grant of Security Interest. To further secure to Lender the prompt full and faithful payment and performance of Borrower's Liabilities and the prompt, full and complete performance by Borrower of each of its covenants and duties under this Loan Agreement and the Other Agreements (other than the Warrant), Borrower grants to Lender, a valid, first priority continuing security interest in and lien upon all of the following (except as to assets or property with Permitted Liens, upon which a lien which may be other than a first priority lien is granted), whether now owned or hereafter acquired and wherever located:

(i) All Receivables;

(ii) All Equipment;

(iii) All Fixtures;

(iv) All General Intangibles;

(v) All Inventory;

(vi) All Investment Property;

(vii) All Deposit Accounts and Securities Accounts;

(viii) All Cash;

(ix) All Documents;

(x) All Proceeds from the sale, transfer or other disposition of Intellectual Property;

(xi) All other Goods and tangible and intangible personal property of Borrower other than Intellectual Property, whether now or hereafter owned or existing, leased, consigned by or to, or acquired by, Borrower and wherever located; and

(xii) to the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing and all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located and all products and proceeds of the foregoing including without limitation proceeds of insurance policies insuring the foregoing and all books and records with respect thereto;

(all of the foregoing personal property is hereinafter sometimes individually and sometimes collectively referred to as "Collateral"). Notwithstanding anything herein contained or construed to the contrary, Borrower is not granting to Lender, and Lender is not receiving from Borrower, any grant of a security interest in (i) any of the outstanding capital stock or other equity interests of any directly owned Subsidiary of Borrower organized under the laws of any jurisdiction other than the United States, any State thereof or the District of Columbia in excess of sixty-five percent

(65%) of the voting power of all classes of such capital stock or other equity interests of such Subsidiary entitled to vote or (ii) any of Borrower's now owned or hereafter acquired Intellectual Property (other than a security interest in the Proceeds from the sale, transfer or other disposition of Intellectual Property); provided, however, that software, firmware and operating systems that cannot be removed from the Collateral without rendering the Collateral inoperable shall be deemed to be part of the "Collateral". Borrower shall make appropriate entries upon its financial statements and its books and records disclosing Lender's security interest in the Collateral.

Borrower hereby further agrees that, except as expressly permitted herein, including with respect to Permitted Liens, Borrower shall not hereafter grant a security interest in or pledge of its Intellectual Property to any other party.

5.2 Further Assurances. (a) Borrower shall execute and/or deliver to Lender, at any time and from time to time hereafter at the request of Lender, all agreements, instruments, UCC financing statements (or other required perfection instruments), documents and other written matter (hereinafter individually and/or collectively, referred to as "Additional Documentation") that Lender reasonably may request, in a form and substance reasonably acceptable to Lender, to perfect and maintain Lender's security interest in the Collateral and to consummate the transactions contemplated in or by this Loan Agreement and the Other Agreements. Borrower, irrevocably, (a) hereby makes, constitutes and appoints Lender (and all Persons designated by Lender for that purpose) as Borrower's true and lawful attorney (and agent-in-fact) to sign the name of Borrower on the Additional Documentation and to deliver the Additional Documentation to such Persons as Lender, in its reasonable discretion, may elect, (b) authorizes completion and filing of any such Additional Documentation by Lender or its agents, whether paper or electronic, (c) hereby ratifies and confirms the completion and filing of Additional Documentation by Lender or its agent, paper or electronic, occurring prior to the date hereof, and (d) declares that Borrower has the present intention to authenticate and process any such Additional Documentation, whether paper or electronic, and whether or not completed and filed by Lender or its agents after the date hereof.

(b) To the extent requested, Borrower shall deliver to Lender all closing certificates, corporate documents, evidence of authorization, forms and information required by the SBA, including without limitation SBA Forms 480 and 652. With reasonable promptness, Borrower shall provide Lender such other business or financial data as Lender may reasonably request, including without limitation all forms and information requested or required by SBA as a result of Lender being an SBIC.

5.3 Inspection of Collateral. Lender (by any of its officers, employees and/or agents) shall have the right, at any time or times during Borrower's usual business hours, to inspect the Collateral and all related records (and the premises upon which it is located) and to verify the amount and condition of or any other and all financial records and matters whether or not relating to the Collateral. During the continuance of an Event of Default, all costs, fees and expenses incurred by Lender, or for which Lender has become obligated, in connection with such inspection and/or verification shall be payable by Borrower to Lender. Borrower shall use commercially reasonable efforts to cause its employees and agents to cooperate with Lender in all inspections.

5.4 Controlled Accounts; Proceeds of Collateral. (a) Borrower shall deliver, or cause to be delivered to Lender an account control agreement in form and substance reasonably satisfactory to Lender and duly authorized, executed and delivered by Borrower and each bank or financial institution where Borrower maintains a deposit or securities account (each a "Controlled Account"); ~~provided, however, that Lender will not exercise its right to control amounts in a Controlled Account unless an Event of Default has occurred and is continuing~~.

(b) All proceeds arising from the disposition of any Collateral by Borrower shall be deposited in a Controlled Account within one (1) Business Day after receipt by Borrower. Nothing in this Section limits the restrictions on disposition of Collateral set forth elsewhere in this Loan Agreement.

5.5 Third Party Claims. Lender, in its sole discretion, without waiving or releasing any obligation, liability or duty of Borrower under this Loan Agreement or the Other Agreements or any Event of Default, may (but shall be under no obligation to) at any time or times hereafter, pay, acquire and/or accept an assignment of any security interest, lien, encumbrance or claim asserted (other than Permitted Liens) by any Person against the Collateral. All sums paid by Lender in respect thereof and all costs, fees and expenses, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto incurred by Lender on account thereof shall be payable by Borrower to Lender upon demand.

5.6 Insurance. Borrower shall procure and maintain at its own expense the following minimum insurance coverages which shall be provided by insurance carriers with an AM Best rating of A, Class X or as otherwise acceptable to Lender and with such deductibles and exclusions as approved by Lender: (1) All risk property damage insurance covering the Collateral which shall include but not be limited to fire and extended coverage and where applicable mechanical breakdown and electrical malfunction, and which shall be written in amount not less than the current replacement cost, and (2) Commercial general liability insurance which may include excess liability insurance written on occurrence basis with a limit of not less than $1,000,000, and (3) Workers' compensation insurance in accordance with statutory limits and employers' liability coverage which may include excess liability in an amount not less than One Million Dollars ($1,000,000). Any insurance carried and maintained in accordance with this Loan Agreement by Borrower shall be endorsed to provide that: (i) Lender shall be additional insured and loss payee with respect to the property insurance described in subsection (1) of the prior paragraph (and such insurance shall provide that the interest of Lender shall not be invalidated by any act or neglect of Lender, Borrower or other Person), and Lender shall be an additional insured with respect to the liability insurance described in subsection (2) of the prior paragraph; and (ii) The insurers thereunder waive all rights of subrogation against Lender, any right of setoff and counterclaim and any other right to deduction due to outstanding premiums, whether by attachment or otherwise; and (iii) Such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of Lender; and (iv) Inasmuch as such policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements (other than the limits of liability) shall operate in the same manner as if there were a separate policy covering each insured. Borrower, irrevocably, appoints Lender as Borrower's true and lawful attorney (and agent-in fact) for the purpose of making, settling and adjusting claims under such policies, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies and for making all determinations and decisions with respect to such policies, and such appointment will be immediately effective upon the occurrence and during the continuance of an Event of Default.

On or before the initial funding by Lender hereunder, and at each policy anniversary date, Borrower shall arrange to furnish Lender with appropriate Certificates of Insurance. Such Certificates of Insurance shall be executed by each insurer or by an authorized representative of each insurer, and shall identify insurers, the type of insurance, the insurance limits and the policy term and shall specifically list the special endorsements (i) through (v) above.

In case of the failure to procure or maintain such insurance, Lender shall have the right, but not the obligation, to obtain such insurance and any premium paid by Lender shall be immediately due and payable by Borrower to Lender. The maintenance of any policy or policies of insurance pursuant to this Section shall not limit any obligation or liability of Borrower pursuant to any other Sections or provisions of this Loan Agreement.

5.7 Charges on Collateral. Borrower shall not permit any Charges (other than Permitted Liens) to arise, or to remain, and Borrower shall pay promptly when due, and discharge, such Charges. If Borrower, at any time or times hereafter, fails to pay such Charges when due or to obtain such discharges, Borrower shall so advise Lender thereof in writing. Lender may, without waiving or releasing any obligation or liability of Borrower hereunder or any Event of Default, in its sole discretion, at any time or times thereafter, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which Lender deems advisable. All sums so paid by Lender and any expenses, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable by Borrower to Lender upon demand.

5.8 UCC Filing Authorization. Borrower hereby authorizes Lender and its counsel and other representatives to file, at any time on or after the date hereof, UCC financing statements and continuation statements, and amendments to financing statements, in any jurisdictions and with any filing offices as Lender may determine, in its sole discretion, are necessary or advisable to perfect the security interests granted to Lender hereunder and under the Other Agreements. Such financing statements may describe the Collateral in the same manner as described herein or therein or may contain an indication or description of Collateral that describes such property in any other manner as Lender may determine is necessary or advisable to ensure the perfection of the security interest in the Collateral.

5.9 Accounts. So long as no Event of Default has occurred and is continuing, subject to Section 7.4, Borrower may settle, adjust or compromise any claim, offset, counterclaim or dispute with any Account Debtor. At any time that an Event of Default has occurred and is continuing, Lender may, at its option, notify Borrower that Lender intends to have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with Account Debtors or grant any credits, discounts or allowances and on and after such notice from Lender to Borrower, Lender shall have such exclusive right.

## 6. Warranties and Representations

6.1 Borrower Representations. Borrower warrants and represents to Lender, as of the date hereof and as of the date of any Loan made hereunder, and agrees and covenants to Lender that:

(a) Borrower is and at all times hereafter shall be (i) a Person having that legal name and organizational structure as set forth above, duly organized and existing and in good standing under the laws of the state of its organization as set forth above and (ii) qualified or licensed to do business in all other states in which the laws require Borrower to be so qualified and/or licensed, except in such states where the failure to be so qualified or licensed would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower is duly authorized and empowered to enter into, execute, deliver and perform this Loan Agreement and the Other Agreements and the execution, delivery and/or performance by Borrower of this Loan Agreement and the Other Agreements, and the use by Borrower of the proceeds of the Loans hereunder, shall not, by the lapse of time, the giving of notice or otherwise, conflict with or constitute a violation of any applicable law (including, without limitation, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof) or a breach of any provision contained in Borrower's organizational documents or contained in any agreement, instrument or document to which Borrower is now or hereafter a party or by which it is or may become bound or give rise to or result in any default thereunder.

(c) This Loan Agreement is (and when executed or delivered, each Other Agreement will be) the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles (whether enforcement is sought in equity or at law).

(d) Except as disclosed to Lender in writing prior to the date hereof, there are no actions or proceedings which are pending, or to its knowledge threatened, against Borrower which could reasonably be expected to have a Material Adverse Effect. Borrower is not in breach of or a party to any contract or agreement or subject to any charge, restriction, judgment, decree or order which has or could reasonably be expected to have a Material Adverse Effect, nor is Borrower in default with respect to any indenture, security agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which it is a party or by which it is bound;

(e) Borrower has and is in good standing with respect to all licenses, patents, copyrights, trademarks, trade names, governmental permits, certificates, consents and franchises necessary to continue to conduct its business as previously conducted by it and to own or lease and operate its properties as now owned or leased by it except, in each case, where failure to be in good standing or to obtain such permits, certificates, consents or franchises could not reasonably be expected to have a Material Adverse Effect;

(f) The financial statements delivered by Borrower to Lender prior to the date hereof and the Financials delivered by Borrower to Lender pursuant to Section 7.3 fairly and accurately present the assets, liabilities and financial conditions and results of operations of Borrower as of the dates and for the periods stated therein and have been prepared in accordance with GAAP (subject to, in the case of interim financial statements, the absence of footnotes and normal year-end adjustments in connection with the audited financial statements for the periods covered by such interim financial statements), and no event, condition or change that has had, or could reasonably be expected to have, a Material Adverse Effect has occurred since the date of this Loan Agreement;

(g) As to the Accounts and other Collateral, (i) Borrower has and at all times hereafter shall have good, indefeasible and merchantable title to and ownership of the Collateral and the Accounts described and/or listed on any certificate or schedule relating to the Accounts delivered to Lender, free and clear of all liens, claims, security interests and encumbrances except those of Lender and Permitted Liens; (ii) the Collateral shall be kept and/or maintained solely at the addresses identified in writing to Lender; (iii) Borrower, immediately on demand by Lender, shall deliver to Lender all evidence of ownership of, including without limitation, vendor invoices and

proofs of payment thereof, certificates of title to and applications for title to, any Collateral; (iv) Borrower shall keep and maintain the Collateral in good operating condition and repair, ordinary wear and tear excepted, and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved; and (v) Borrower shall not permit any such items to become a fixture to real estate or accession to any other Person's personal property.

(h) As to Lender's security interest, (i) Lender's security interest in the Collateral is now and at all times hereafter shall be perfected and have a first priority (subject to Permitted Liens); (ii) the offices and/or locations where Borrower keeps the Collateral and Borrower's books and records concerning the Collateral are at the locations identified to Lender in writing and Borrower shall not remove such books and records and/or the Collateral therefrom to any other location unless Borrower gives Lender written notice thereof at least thirty (30) days prior thereto and the same is within the contiguous forty-eight (48) states of the United States of America; and (iii) the addresses identified to Lender in writing as Borrower's chief executive office and principal place(s) of business are Borrower's sole offices and place(s) of business, and Borrower, by written notice delivered to Lender at least thirty (30) days prior thereto, shall advise Lender of any change thereto.

(i) Borrower is not an "investment company" or a company "controlled" by an "investment company", as such terms are defined in the Investment Company Act of 1940.

(j) All income and other tax returns and reports required to be filed by Borrower have been timely filed, and all taxes shown on such tax returns to be due and payable and all other assessments, fees and governmental charges upon Borrower and its properties, assets, income, businesses and franchises have been paid when due and payable, except to the extent that such taxes, assessments, charges or claims (i) are being contested in good faith by appropriate proceedings (promptly instituted and diligently conducted) so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor and (ii) such proceeding shall stay the attachment, sale, disposition, foreclosure or forfeiture of any asset of Borrower in connection with any such contested tax, assessment, charge or claim. All necessary and appropriate estimated payments (including any interest and penalties) in respect of assessed tax liability under Borrower's state and federal tax returns have been made on a timely basis.

(k) As of the date hereof and of each Loan (i) the sum of Borrower's debt (including contingent liabilities) does not exceed the present fair saleable value of Borrower's present assets; (ii) Borrower's capital is not unreasonably small in relation to its business as it exists and as is contemplated at such time; and (iii) Borrower has not incurred and does not intend to incur, or believe that it will incur, debts beyond its ability to pay such debts as they become due.

(l) No information furnished to Lender by or on behalf of Borrower for use in connection with the transactions contemplated hereby contains or will contain, any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made. There are no facts known to Borrower that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(m) Borrower has provided to Lender on or prior to the date hereof a schedule that correctly identifies the ownership interest (including all options, warrants and other rights to acquire capital stock) of Borrower and each of its Subsidiaries as of the date hereof.

(i) Borrower (A) has been and is in compliance in all material respects with all applicable Environmental Laws; (B) has not received any communication, whether from a governmental authority or otherwise, alleging that Borrower is not in such compliance, which noncompliance could reasonably be expected to have a Material Adverse Effect, and there are no past or present actions, activities, circumstances conditions, events or incidents that may prevent or interfere with such compliance in the future; (ii) there is no Environmental Claim pending or, to the best knowledge of Borrower, threatened against Borrower or against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law and

which could reasonably be expected to have a Material Adverse Effect; and (iii) there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, threatened release or presence of any Hazardous Material, which could reasonably be expected to form the basis of any Environmental Claim against Borrower or, to the best knowledge of Borrower, against any Person whose liability for any Environmental Claim Borrower has or may have retained or assumed either contractually or by operation of law and which could reasonably be expected to have a Material Adverse Effect.

(ii) Borrower is an "operating company" within the meaning of the regulations of the United States Department of Labor included within 29 CFR Section 2510.3-101 (the "DOL Regulations") or is in compliance with such other exception as may be available under such regulations to prevent the assets of Borrower from being treated as the assets of any employee benefit plan for purposes of the DOL Regulations and (ii) neither Borrower nor any Subsidiary of Borrower maintains or is obligated to make contributions to any employee benefit plan that is subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute ("ERISA").

**7. Affirmative and Negative Covenants**

7.1 Affirmative Covenants. Borrower shall, and shall cause each of its Subsidiaries to: (a) preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business, (b) pay all income and other taxes and assessments imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, except for those that are being contested in good faith and for which adequate reserves are maintained in accordance with GAAP and such proceeding shall stay the attachment, sale, disposition, foreclosure or forfeiture of any asset of Borrower in connection with any such contested tax, assessment, charge or claim, (c) comply in all material respects with the requirements of all applicable laws, rules, regulations and orders of any governmental authority, (d) keep adequate books of record and account, in which complete entries shall be made of all financial transactions and the assets and of its business, (e) on or prior to June 5, 2015 and promptly after the establishment of any new facilities or co-host locations, deliver to Lender duly executed landlord or collateral access agreements, in form and substance satisfactory to Lender, for all premises (including offices and co-host locations) at which any Collateral having aggregate value in excess of $25,000 is located (other than (i) locations in the Republic of China at which Borrower has Collateral with an aggregate net book value not to exceed $110,000) and (ii) Borrower's offices in Chandler, Arizona for which a landlord agreement was delivered to Lender on or prior to the date hereof) and (f) promptly take all necessary Cleanup action on, under or affecting any property owned, leased or operated by Borrower in accordance with all laws and the policies, orders and directives of all federal, state and local governmental authorities, and conduct and complete such Cleanup action in material compliance with all applicable Environmental Laws.

7.2 Negative Covenants Borrower shall not, and shall not permit any of its Subsidiaries to: (a) grant a security interest in, assign, sell or transfer any of the Collateral or any of its Intellectual Property to any Person or permit, grant, or suffer or permit a lien, claim or encumbrance upon any of the Collateral or Intellectual Property, except for (i) Permitted Liens, (ii) Permitted Joint Ventures, or (iii) the sale of Inventory and obsolete or unneeded Equipment in the ordinary course of business, or upon Lender's prior written consent; (b) permit or suffer any Charges to attach to or affect any of the Collateral (other than Permitted Liens); (c) permit or suffer any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of any of the Collateral; (d) merge or consolidate with or acquire any Person; (e) make an equity investment in, or a loan, advance or capital contribution to, any Person, other than travel advances to employees in the ordinary course of business and investments in newly-formed Subsidiaries with the consent of Lender; (f) incur or permit or suffer to exist any indebtedness for borrowed money or for the deferred purchase price for property or services (other than Permitted Debt); (g) voluntarily prepay any indebtedness prior to its scheduled maturity other than pursuant to the terms hereof; (h) make or pay (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Borrower or (ii) any redemption, retirement or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Borrower or any outstanding warrants, options or other rights to acquire such shares;

provided, however, that this restriction shall not apply to the repurchase of shares of Borrower's common stock from employees, directors and other Persons performing services for Borrower pursuant to agreements under which Borrower has the option to repurchase such shares upon the termination of such Person's services for Borrower, provided that (A) at the time of any such repurchase, and after giving effect thereto, no Event of Default exists and (B) the aggregate cash paid in connection with such repurchases during any calendar year during the term hereof does not exceed $50,000; (i) enter into any transaction with any Affiliate or any other transaction (including, without limitation, any sale of assets) not in the ordinary course of its business other than Permitted Joint Ventures; (j) make any change in any of its business objectives, purposes and operations, such that Borrower ceases to generate a majority of its revenue from the development, design, sale and licensing of its MRAM and Spin-Torque MRAM technologies and all other related new generation technologies; (k) without thirty (30) days' prior written notice to Lender, make any change in its legal name or state of formation or organization; (l) adopt or otherwise become obligated to contribute to any employee benefit plan that is subject to Title IV of ERISA; (m) guarantee the indebtedness of any Subsidiary, Affiliate or distributor; or (n) take any action or fail to take an action if, as a result of such action or inaction, Borrower would fail to qualify as an "operating company" within the meaning of the DOL Regulations or otherwise comply with such other exception as may be available under such regulations to prevent the assets of Borrower from being treated as the assets of any employee benefit plan for purposes of the DOL Regulations.

7.3 Covenants Regarding Financial Statements. Borrower shall cause to be furnished to Lender, (i) the unaudited annual financial statements of Borrower no later than 90 days following the related fiscal year end and the unqualified, audited fiscal year end financial statements of Borrower (which shall not contain any "going concern" exception or any exception relating to scope of review) no later than 180 days after the related fiscal year end, (ii) no later than 30 days after the related month end, the internally prepared monthly financial statements of Borrower, certified by Borrower's Director of Finance (or other authorized representative of Borrower acceptable to Lender), each containing consolidated and consolidating profit and loss statements for the month then ended and for Borrower's fiscal year to date, consolidated and consolidating balance sheets as at the last day of such month and a consolidated statement of cash flows for the month then ended and for Borrower's fiscal year to date, each of which will be presented in a trending monthly format with fiscal year to date subtotals, (iii) summary monthly bank statements, no later than 30 days after the related month end, reflecting month-end cash balances, (iv) a monthly Compliance and Disclosure Certificate, substantially in the form of Exhibit A attached hereto, (v) promptly upon Borrower's Board of Directors approval thereof, copies of Borrower's annual operating plan and any revisions thereto; (vi) copies of general business update materials provided to Borrower's Board of Directors in connection with regular and special meetings thereof (excluding any materials subject to attorney-client privilege and attorney work-product in connection with litigation involving Borrower); and (vii) such other financial and business information of Borrower as Lender may reasonably require, including pipeline reports, design win and sales data, revenue breakout data, product status reports and such other financial and operating performance data as is provided to its outside investors or commercial lenders and, if applicable, required to be provided to shareholders by the Securities and Exchange Commission. Each financial statement to be furnished to Lender must be prepared in accordance with GAAP, except for normal year-end adjustments and the absence of footnotes in unaudited interim financial statements. Borrower also agrees to promptly provide to Lender notice of, and such other data and information (financial and otherwise) at any time and from time to time relating to, any legal actions or proceedings pending, or to its knowledge, threatened against Borrower or the occurrence of any event or change that has, or could reasonably be expected to have, a Material Adverse Effect. Financial statements may be delivered via electronic mail to Lender.

7.4 Covenants Relating to Accounts. (a) As soon as available but in any event within fifteen (15) days of the end of each calendar month and at such other times as may be requested by Lender as of the period then ended, Borrower shall deliver to Lender (i) a Borrowing Base Certificate and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base as Lender may reasonably request, (ii) a detailed aging of Accounts (A) including all invoices aged by invoice date and due date (with an explanation of the terms offered) and (B) reconciled to the Borrowing Base Certificate delivered as of such date, prepared in a manner reasonably acceptable to Lender, together with a summary specifying the name, address, and balance due for each Account Debtor; (iii) a worksheet of calculations prepared by Borrower to determine Eligible Accounts, detailing the Accounts excluded from Eligible Accounts and the reason for such exclusion; and (iv) a reconciliation of Accounts between the amounts shown in Borrower's general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above.

(b) Borrower may not grant any credit, discount, allowance or extension, or enter into any agreement for any of the foregoing with Account Debtors, except for credits, discounts, allowances or extensions made or given in the ordinary course of Borrower's business in accordance with Borrower's historic credit and collection practices and policies as of the date hereof without Lender's prior written consent.

(c) Lender shall have the right at any time or times, in the name of a nominee of Lender (or, during the continuance of an Event of Default, in the name of Lender), to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, facsimile transmission or otherwise.

7.5 Indemnification and Liability. Borrower shall indemnify and hold Lender and Lender's directors, officers, employees and agents harmless from and against all claims, debts, liabilities, demands, obligations, actions, causes of action, penalties, reasonable costs and expenses (including reasonable attorneys' fees), of every nature, character and description, which Lender may sustain or incur based upon or arising out of the Collateral, any Borrower's Liabilities, any relationship or agreement between Lender and Borrower, or any other matter, cause or thing whatsoever occurred, done, omitted or suffered to be done by Lender relating to Borrower or Borrower's Liabilities (except any such actual damage amounts sustained or incurred by Borrower as the result of the gross negligence or willful misconduct of Lender). If any third-party suit or proceeding is instituted by or against Lender with respect to any Collateral or relating to Borrower, Borrower shall, without expense to Lender, make available Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Lender may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding. Borrower's obligation hereunder shall survive termination of this Loan Agreement.

## 8. Default

8.1 Events of Default. The occurrence of any one of the following events shall constitute a default ("Event of Default"): (a) if Borrower fails to pay any principal of any Loans when due and payable or fails to pay any other Borrower's Liabilities within two (2) Business Days after the same are due and payable; (b) if any representation, warranty, financial statement, statement, report or certificate made, deemed made or delivered by Borrower, or any of its officers, employees or agents, to Lender is not true and correct when made, deemed made or delivered; (c) if Borrower fails or neglects to perform, keep or observe any term, provision, condition or covenant contained in this Loan Agreement or in the Other Agreements which is required to be performed, kept or observed by Borrower, other than the payment of Borrower's Liabilities, and, in the case of any covenant contained in Section 7.1, the same is not cured within fifteen (15) days; (d) if any of the Collateral or any other of Borrower's other material assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, and such attachment, seizure, writ, warrant or levy is not removed within fifteen (15) days, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors; (e) [Reserved.]; (f) if a petition under the Bankruptcy Code or any similar law or regulation shall be filed by or against Borrower and, in the case of any involuntary proceeding, such proceeding shall continue undismissed or unstayed for thirty (30) days, or if Borrower shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by Borrower for its dissolution or liquidation; (g) if Borrower is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs and such injunction, restraint or other court-ordered impediment to conducting business continues for fifteen (15) days; (h) if an application is made by Borrower or any Person for the appointment of a receiver, trustee or custodian for the Collateral or any other of Borrower's assets and, in the case of any application made by any Person other than Borrower, such application is not dismissed within fifteen (15) days; (i) if a notice of lien or Charges (other than with respect to Permitted Liens) are filed of record with respect to any of the Collateral by any Person; (j) if any Change of Control shall occur; (k) if any money judgment, writ or warrant of attachment or similar process (if not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and such judgment, writ or warrant of attachment or similar process shall remain unsatisfied and unstayed for a period of fifteen (15) days; (l) this Loan Agreement or any Other Agreement shall for any reason fail or cease to be valid and binding on, or enforceable against, Borrower or any other party thereto or Borrower shall so assert; (m) this Loan Agreement or any Other Agreement shall for any reason cease to be in full force and effect or cease to create a valid and enforceable lien and security interest on any Collateral purported to be covered thereby or any such lien and security interest shall fail or cease to be a perfected and first priority lien and security interest (subject to Permitted Liens); (n) if Borrower is in default (i) in the payment of any of Borrower's debt to Lender under any Other Agreement; or (ii) in the payment of any debt to any Person other than Lender in excess of $50,000

or, in the case of clause (i) or (ii), any other event shall occur or condition shall exist under any agreement or instrument relating to any such debt and such default, condition or event gives the holders of such debt (or any agent or trustee on their behalf) the then current right to accelerate such indebtedness; (o) Borrower changes the nature of its business such that it ceases to generate a majority of its revenue from the development, design, sale and licensing of its MRAM and Spin-Torque MRAM technologies and all other related new generation technologies; (p) any of the Chief Executive Officer, Director of Finance, Vice President – Technology and Research, or Vice President – Manufacturing and Process Technology is terminated, resigns or is no longer actively involved in the day-to-day management of Borrower and Borrower's Board of Directors fails to designate an interim replacement promptly and fails to appoint a permanent replacement having comparable experience within one hundred twenty (120) days (which period may be extended by Lender in thirty day increments not to exceed a total of 180 days in the aggregate in its reasonable discretion (such consent not to be unreasonably withheld), provided Borrower demonstrates that it is diligently pursuing a replacement); (q) a Material Investor Event occurs; (r) Borrower becomes engaged in litigation or regulatory proceedings which is reasonably likely to be adversely determined and, if adversely determined, would reasonably likely have a Material Adverse Effect; (s) Borrower fails to be in compliance in all material respects with established regulatory requirements for its material Intellectual Property or operations, or its technology proves ineffective in all respects; (t) Borrower, or its Subsidiaries, has its registration effectiveness for any material Intellectual Property (now existing or hereafter developed) cancelled by a governmental authority with jurisdiction thereover or is determined to infringe the rights of third parties in a manner that would reasonably be expected to have a Material Adverse Effect; or (u) a Material Adverse Effect upon the Intellectual Property of Borrower, taken as a whole, occurs. Borrower shall provide written notice of any events or circumstances which would give rise to an Event of Default under this Section 8.1 promptly (but in no event more than one (1) Business Day) after becoming aware of such events or circumstances. Failure of Borrower to give such notice promptly shall constitute an Event of Default.

8.2 Lender's Rights and Remedies. Upon an Event of Default under Section 8.1(f), without notice by Lender to, or demand by Lender of, Borrower, all Borrower's Liabilities shall be automatically accelerated and shall be due and payable forthwith and the Revolving Commitment and any other commitments to provide any financing hereunder shall automatically terminate, and upon any other Event of Default, without notice by Lender, to or demand by Lender of, Borrower, Lender may accelerate all Borrower's Liabilities and same shall be due and payable forthwith and/or Lender may terminate the Revolving Commitment and any other commitments to provide any financing hereunder. Lender may, in its sole discretion: (a) exercise any one or more of the rights and remedies accruing to a lender under the UCC or other applicable law of the relevant state or states or other applicable jurisdiction, and in equity, and under any other instrument or agreement now or in the future entered into between Lender and Borrower, including under this Loan Agreement and the Other Agreements; (b) enter, with or without process of law and without breach of the peace, any premises where the Collateral or the books and records of Borrower related thereto is or may be located, and without charge or liability to Lender therefor seize and remove the Collateral (and copies of Borrower's books and records relating to the Collateral) from said premises and/or remain upon said premises and use the same (together with said books and records) for the purpose of collecting, preparing and disposing of the Collateral; (c) sell, lease, license or otherwise dispose of the Collateral or any part thereof by one or more contracts at one or more public or private sales for cash or credit, provided, however, that Borrower shall be credited with the net proceeds of such sale(s) only when such proceeds are actually received by Lender; and (d) require Borrower to assemble the Collateral and make it available to Lender at a place or places to be designated by Lender which is reasonably convenient to Lender and Borrower.

In addition, at any time an Event of Default exists, Lender may, in its discretion, enforce Borrower's rights against any Account Debtor, secondary obligor or other obligor in respect of any of the Accounts. Without limiting the generality of the foregoing, at any time or times that an Event of Default exists, Lender may, in its discretion, at such time or times (1) notify Account Debtors, secondary obligors or other obligors in respect thereof that the Accounts have been assigned to Lender and that Lender has a security interest therein and Lender may direct Account Debtors, secondary obligors and other obligors to make payment of Accounts directly to Lender, (2) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, all Accounts or other obligations included in the Collateral and thereby discharge or release the Account Debtor or any secondary obligors or other obligors in respect thereof without affecting any of Borrower's Liabilities, (3) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and Lender shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (4) take whatever other action Lender may deem

necessary or desirable for the protection of its interests. At any time that an Event of Default exists, at Lender's request, all invoices and statements sent to any Account Debtor shall state that the Accounts and such other obligations have been assigned to Lender and are payable directly and only to Lender and Borrower shall deliver to Lender such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Lender may require.

All of Lender's rights and remedies under this Loan Agreement and the Other Agreements are cumulative and non-exclusive. Exercise or partial exercise by Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Lender from subsequent exercise or partial exercise of any other rights or remedies. Lender agrees to give notice of any sale to Borrower at least ten (10) days prior to any public sale or at least ten (10) days before the time after which any private sale may be held. Borrower agrees that Lender may purchase any such Collateral (including by way of credit bid), and may postpone or adjourn any such sale from time to time by an announcement at the time and place of sale or by announcement at the time and place of such postponed or adjourned sale, without being required to give a new notice of sale. Borrower agrees that Lender has no obligation to preserve rights against prior parties to the Collateral.

8.3 Power of Attorney. Borrower grants to Lender an irrevocable power of attorney coupled with an interest (in addition to such other powers of attorney granted to Lender elsewhere in this Loan Agreement), authorizing and permitting Lender at any time during the continuance of an Event of Default, at its option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to execute on behalf of Borrower any Additional Documentation, or such other instruments or documents as may be reasonably necessary in order to exercise a right of Borrower or Lender, including but not limited to the execution of any proof of claim in bankruptcy, any notice of lien, claim of mechanic's or other lien, or assignment or satisfaction of mechanic's or other lien, or to take control in any manner of any cash or non-cash proceeds of Collateral and take any action or pay any sum required of Borrower pursuant to this Loan Agreement and any Other Agreement. In no event shall Lender's rights under the foregoing power of attorney or any of Lender's other rights under this Loan Agreement be deemed to indicate that Lender is in control of Borrower's business, management or properties.

## 9. General Provisions

9.1 Notices. All notices, demands or other communications required or permitted to be given or delivered under or by reason of the provisions hereof shall be in writing and shall be deemed to have been given when (i) delivered personally to the recipient, (ii) sent via facsimile transmission, (iii) the next Business Day after having been sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) four (4) Business Days after having been mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties hereunder at their respective addresses and transmission numbers indicated on the signature page hereof, or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party.

9.2 Severability. If any court of competent jurisdiction holds any provision of this Loan Agreement to be void or unenforceable, such defect shall not affect the remainder of this Loan Agreement, which shall continue in full force and effect.

9.3 Integration; Modification. This Loan Agreement, the Other Agreements and such other written agreements, documents and instruments as may be executed in connection herewith or pursuant hereto are the final, entire and complete agreement between Borrower and Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Loan Agreement and the Other Agreements. There are no oral understandings, representations or agreements between the parties which are not set forth in this Loan Agreement or the Other Agreements or in other written instruments, documents or agreements signed by the parties in connection herewith. If any provision contained in this Loan Agreement is in conflict with, or inconsistent with, any provision in the Other Agreements, the provision contained in this Loan Agreement shall govern and control, it being the intent of the parties, however, that the terms of each of the Loan Agreement and the Other Agreements shall remain in full force and effect. This Loan Agreement and the Other Agreements may not be modified, altered or amended except by an agreement in writing signed by Borrower and Lender.

9.4 Time of Essence. Time is of the essence in the performance by Borrower of each and every obligation under this Loan Agreement.

9.5 Attorneys' Fees and Other Costs. Borrower shall reimburse Lender for all out-of-pocket costs and expenses, including but not limited to reasonable attorneys' fees and all filing, recording, search, title insurance, appraisal, audit, and other reasonable costs incurred by Lender in connection with any amendment or waiver to this Loan Agreement or any Other Agreement; seeking to enforce any of its rights hereunder against Borrower or the Collateral, including in bankruptcy; enforcing Lender's security interest in the Collateral, and representing Lender in all such matters. Borrower's obligation hereunder shall survive termination of this Loan Agreement.

9.6 Benefit of Agreement; Assignment. The provisions of this Loan Agreement shall be binding upon and inure to the benefit of the respective successors, assigns and representatives of Borrower and Lender; provided, however, that Borrower may not assign or transfer any of its rights or obligations under this Loan Agreement without Lender's prior written consent, and any prohibited assignment shall be void. Borrower hereby consents to Lender's sale, assignment, pledge, transfer or other disposition, at any time and from time to time hereafter, of this Loan Agreement, or the Other Agreements, or of any portion thereof, including without limitation Lender's rights, titles, interests, remedies, powers and/or duties. Borrower hereby acknowledges that Lender and its Affiliates may securitize the Loans (a "Securitization") through the pledge of the Loans as collateral security for loans to Lender or its Affiliates or through the sale of the Loans or the issuance of direct or indirect interests in the Loans to their controlled Affiliates, which loans to Lender or its Affiliates or direct or indirect interests will be rated by Moody's, S&P or one or more other rating agencies. Borrower shall, to the extent commercially reasonable, cooperate with Lender and its Affiliates to effect any and all Securitizations. Notwithstanding the foregoing, no such Securitization shall release Lender from any of its obligations hereunder or substitute any pledgee, secured party or any other party to such Securitization for Lender as a party hereto. Borrower shall establish and maintain a record of ownership (the "Register") in which it agrees to register by book entry Lender's and each initial and subsequent assignee's interest in each Loan, and in the right to receive any payments hereunder and any assignment of any such interest. Notwithstanding anything to the contrary contained in this Loan Agreement, the Loans (including the notes in respect of such Loans) are registered obligations and the right, title, and interest of Lender and its assignees in and to such Loans shall be transferable upon notation of such transfer in the Register, pursuant to Borrower's obligation above. In no event is any note to be considered a bearer instrument or bearer obligation. This Section shall be construed so that the Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related regulations (or any successor provisions of the Code or such regulations).

9.7 Joint and Several Liability. If Borrower consists of more than one Person, their liability shall be joint and several, and the compromise of any claim with, or the release of, any Borrower shall not constitute a compromise with, or a release of, any other Borrower.

9.8 Headings; Interpretation. Section headings are only used in this Loan Agreement for convenience. The term "including", whenever used in this Loan Agreement, shall mean "including but not limited to". This Loan Agreement has been fully reviewed and negotiated between the parties and no uncertainty or ambiguity in any term or provision of this Loan Agreement shall be construed strictly against Lender or Borrower under any rule of construction or otherwise.

9.9 Interest Laws. Notwithstanding any provision to the contrary contained in this Loan Agreement or any Other Agreement, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by applicable law ("Excess Interest"). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Loan Agreement or in any Other Agreement, then in such event: (1) the provisions of this subsection shall govern and control; (2) Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder or under any Other Agreement shall be, at such Lender's option, (a) applied as a credit against the outstanding principal balance of Borrower's Liabilities or accrued and unpaid interest (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein or in any Other Agreement shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the "Maximum Rate"), and this Loan Agreement and the Other Agreements shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest.

9.10 No Implied Waivers. Lender's failure at any time or times to exercise any rights or remedies or to require strict performance by Borrower of any provision of this Loan Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith and all rights and remedies shall continue in full force and effect until all Borrower's Liabilities have been fully and indefeasibly paid and performed. Any suspension or waiver by Lender of an Event of Default shall not suspend, waive or affect any other Event of Default, whether the same is prior or subsequent thereto and whether of the same or of a different type. No waiver by Lender of any Event of Default or of any of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Loan Agreement or the Other Agreements shall be effective unless specifically waived by an instrument in writing signed by an officer of Lender.

9.11 Acceptance by Lender. This Loan Agreement shall become effective upon acceptance by Lender, in writing, at its principal place of business as set forth above. If so accepted by Lender, this Loan Agreement and the Other Agreements shall be deemed to have been made at said place of business.

9.12 Increased Costs. If due to any change in law there shall be: (a) any increase in the cost to Lender or its parent of making or maintaining the Loans; (b) any increase in the amount of capital required or maintained, or expected to be maintained, by Lender or its parent and the amount of such capital is increased by or based upon the existence of the Loans outstanding hereunder; or (c) any decrease in the effective rate of return on the capital of Lender or its parent of making or maintaining the Loans, then within 5 days after demand by Lender, Borrower shall pay to Lender such additional amount or amounts as will compensate Lender or its parent therefor, it being understood and agreed, however, that Lender shall not be entitled to such compensation as a result of Lender's compliance with, or pursuant to any request or directive to comply with, any such applicable law as in effect on the date hereof. Upon determining in good faith that any additional amounts will be payable pursuant to this Section, Lender will, as promptly as practicable upon ascertaining knowledge thereof, give written notice thereof to Borrower, which notice shall set forth in reasonable detail the basis of the calculation of such additional amounts, which statement shall be conclusive for all purposes in the absence of manifest error. The failure to give any such notice, with respect to a particular event, within the time frame specified herein, shall not release or diminish any of Borrower's obligations to pay additional amounts pursuant to this Section for amounts accrued or incurred after the date of such notice with respect to such event. If any change in law shall make it unlawful for Lender to continue to maintain the Loans, or for Borrower to comply with its obligations in respect of the Loans, Borrower shall forthwith, upon Lender's demand, prepay the Loans in full, together with accrued interest thereon and payment of any compensation required pursuant to this Section. Lender shall submit to Borrower a written statement setting forth the basis for determining such amounts, which statement shall be conclusive for all purposes in the absence of manifest error.

9.13 LAW AND VENUE. THIS LOAN AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF NEW YORK. BORROWER CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS. BORROWER WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST BORROWER BY LENDER OR TO ASSERT THAT ANY ACTION INSTITUTED BY LENDER OR BORROWER IN SUCH COURT IS AN IMPROPER VENUE OR SUCH ACTION SHOULD BE TRANSFERRED TO A MORE CONVENIENT FORUM.

9.14 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO, THIS LOAN AGREEMENT AND THE OTHER AGREEMENTS WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

9.15 USA Patriot Act. Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Patriot Act. Borrower agrees to provide all such information to Lender upon request by Lender at any time.

9.16 CONFIDENTIALITY. (a) The provisions of this Loan Agreement and the Other Agreements shall be held in confidence by Borrower and Lender and shall not be publicized or disclosed in any manner whatsoever; provided, however, that Borrower and Lender may disclose this Loan Agreement and the Other Agreements in confidence to their respective attorneys, accountants, auditors, insurers, tax preparers, and financial advisors, and insofar as such disclosure may be necessary to enforce its terms or as otherwise required by law.

(b) In handling any confidential information, Lender and all employees and agents of Lender shall exercise the same degree of care that Lender exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Loan Agreement except that disclosure of such information may be made (i) to the subsidiaries or Affiliates of Lender in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Loans, provided that they have entered into a comparable confidentiality agreement in favor of Borrower and have delivered a copy to Borrower, (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order (provided, however, that to the extent permitted Lender shall use commercially reasonable efforts to provide Borrower with notice of its intent to disclose any confidential information in accordance with this clause (iii), so as to allow Borrower to obtain a protective order or similar court protection), (iv) as may be required in connection with the examination, audit or similar investigation of Lender, and (v) as Lender may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (x) is generally available to the public or was known to Lender when disclosed by Borrower, or generally available to the public after disclosure to Lender through no fault of Lender; (y) is disclosed to Lender by a third party, provided Lender does not have actual knowledge that such third party is prohibited from disclosing such information; or (z) is developed by Lender without reference to the confidential information of Borrower.

**[Signature Page Follows]**

**In Witness Whereof**, this Loan and Security Agreement has been duly executed as of the day and year first above written.

| **Borrower:** | |
|---|---|
| **Borrower:** | **EVERSPIN TECHNOLOGIES, INC.** |
| **By:** | **/s/ Jeff Winzeler** |
| **Name:** | **Jeff Winzeler** |
| **Title:** | **CFO** |
| **Address for Notices:** | **1347 N. Alma School Road**<br>**Suite 220**<br>**Chandler, AZ 85224** |
| **Telephone:** | **480 347 1099** |
| **Facsimile:** | **480 347 1175** |

| **Accepted By:** | |
|---|---|
| **Lender:** | **ARES VENTURE FINANCING, L.P.** |
| **By:** | **Ares Venture Finance GP, LLC,**<br>**Its General Partner** |
| **By:** | |
| **Name:** | |
| **Title:** | |
| **Address for Notices:** | **One North Wacker Drive, 48th Floor**<br>**Chicago, IL 60606**<br>**Attention: Legal Department** |
| **Telephone** | **312-252-7500** |
| **Facsimile:** | **312-252-7501** |

**EXHIBIT A**

**Officer's Compliance and Disclosure Certificate**
(attachment to monthly financial reports)

Reference is hereby made to the Loan and Security Agreement (together with all instruments, documents and agreements entered into in connection therewith, the "Loan Documents") by and between Ares Venture Financing, L.P. ("Lender ") and Everspin Technologies, Inc. ("Borrower"). Capitalized terms used herein without definition have the meanings assigned to them in the Loan Documents. The undersigned, _____, hereby certifies to Lender that he/she is the duly elected and acting _____ of Borrower and that:

(i) FINANCIAL STATEMENTS - General. The attached financial statements fairly reflect the financial condition of Borrower in all material respects in accordance with GAAP, except as disclosed on the attached Schedule of Financial Statement Exceptions (if none, so state on said Schedule) and there has been no material adverse change in the assets, liabilities or financial condition of Borrower since ____ __, 201_;

(ii) FINANCIAL STATEMENTS – Off-Balance Sheet. All material financial obligations and contingent obligations of Borrower not otherwise listed and itemized on the attached financial statements, are disclosed on the attached Schedule of Financial Statement Exceptions, including but not limited to material off-balance sheet leasing obligations, and guarantees of financial obligations of Borrower, its affiliates, subsidiaries, officers and related parties (if none, so state on said Schedule);

(iii) FINANCIAL STATEMENTS – Related Party Transactions. All material related party transactions, including but not limited to loans, receivables or payables due to/from Borrower's officers or employees, affiliates, subsidiaries, or other related parties, are disclosed on the attached Schedule of Financial Statement Exceptions (if none, so state on said Schedule);

(iv) ACCOUNTS. All Deposit Accounts and Securities Accounts maintained by Borrower are Controlled Accounts. There are no Deposit Accounts or Securities Accounts maintained by Borrower for which an account control agreement among Borrower, Lender and the relevant financial institution.

(v) COMPLIANCE WITH APPLICABLE LAW. Except as noted on the attached Schedule of Compliance Issues, there are no material events whereby Borrower or, to the knowledge of Borrower, Borrower's directors, employees, affiliates, subsidiaries or other related parties are acting or conducting business contrary to applicable local, state, or national laws in the country or countries in which said parties are conducting business;

(vi) ABSENCE OF DEFAULT. Except as noted on the attached Schedule of Compliance Issues, no Default or Event of Default exists on the date hereof;

(vii) LITIGATION/REGULATORY MATTERS. There are no actions, suits or proceedings pending or, to the knowledge of Borrower and the undersigned, threatened against or affecting Borrower in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect (separately or in the aggregate) on the ability of Borrower to perform its obligations under the any of Loan Documents. Borrower is involved in such litigation and other disputes as are listed on the attached Schedule of Compliance Issues (if none, so state on said Schedule); and

(viii) OFFICERS. Except as noted on the attached Schedule of Compliance Issues, none of the officers designated in Section 8.1(p) of the Loan Agreement has resigned, been terminated or is no longer actively involved in the day to day management of Borrower.

The undersigned has executed this certificate as of _____, 201_.

Signature: /s/ Jeff Winzeler_____
By (printed name and title): Jeff Winzeler, CFO_____

SCHEDULE OF FINANCIAL STATEMENT EXCEPTIONS

| Category of Disclosure | Financial Date | Comments (if none, state “none”) |
|---|---|---|
| General Exceptions: | | |
| Off-Balance Sheet: | | |
| Related Party Transactions: | | |

SCHEDULE OF COMPLIANCE ISSUES

| Parties Involved | Date of filing/incident | Nature of Dispute or Issue (if none, state “none)” |
|---|---|---|
| Compliance Issues: | | |
| Litigation Issues: | | |
| Officer Issues: | | |

Signatory Initials: /s/ JW

**EXHIBIT B**

**FUNDING REQUEST NO. __**
**FOR**
**LOAN AND SECURITY AGREEMENT NO. V15102**
**BY AND BETWEEN**
**ARES VENTURE FINANCE, L.P., AS LENDER**
**AND**
**EVERSPIN TECHNOLOGIES, INC., AS BORROWER**

Borrower hereby requests an advance under the terms of the above described Loan and Security Agreement (the "Loan Agreement") in the original principal amount of _____ Dollars ($_____).

Borrower hereby acknowledges and agrees that (a) no event, condition or change that has had, or could reasonably be expected to have, a Material Adverse Effect has occurred, (b) the representations and warranties contained in the Loan Agreement are true and correct in all material respects on and as of the date hereof (except for representations and warranties which speak to another date, which are true and correct as of such date), (c) as of the date hereof, no Default or Event of Default exists or will result from the making of the advance requested hereby, and (d) all Conditions Precedent to the making of this advance by Lender set forth in the Loan Agreement either have been satisfied or will be satisfied as a result of Lender making this advance.

The advance requested hereby shall be secured by the Collateral, as defined in the Loan Agreement.

The undersigned certifies that the undersigned is a duly authorized signatory of Borrower, and that as such the undersigned is authorized to execute this request on behalf of Borrower.

**Everspin Technologies, Inc.**

By: /s/ Jeff Winzeler
Name: Jeff Winzeler
Its: CFO

Date: _____

**EXHIBIT C**

**BORROWING BASE CERTIFICATE**
**FOR**
**LOAN AND SECURITY AGREEMENT NO. V15102**
**BY AND BETWEEN**
**ARES VENTURE FINANCE, L.P., AS LENDER**
**AND**
**EVERSPIN TECHNOLOGIES, INC., AS BORROWER**

**Exhibit 10.11**

**AMENDMENT TO**
**LOAN AND SECURITY AGREEMENT**

This Amendment to Loan and Security Agreement (this "Amendment"), dated as of January 29, 2016, by and between Ares Venture Finance, L.P. ("Lender"), and Everspin Technologies, Inc. ("Borrower").

**RECITALS**

A. Lender has provided one or more credit facilities or arrangements to Borrower pursuant to that certain Loan and Security Agreement by and between Lender and Borrower, dated as of June 5, 2015 (the "Loan Agreement"), and in connection therewith, Borrower has granted to Lender a first priority security interest in the Collateral. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

B. The Loan Agreement restricts certain transactions by Borrower including Borrower's incurrence of additional indebtedness (other than Permitted Debt) and the granting of additional liens (other than Permitted Liens) on the Collateral.

C. Borrower desires to enter into a subordinated secured convertible bridge note for the benefit of various bridge lenders, dated on or around the date hereof, pursuant to which Borrower will incur additional indebtedness that is secured by the Collateral (the "Bridge Note").

D. Borrower has requested that Lender agree to consent to such transactions and amend certain terms of the Loan Agreement, each as provided herein.

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

1. Amendments to Loan Agreement.

a. Amendments to Section 1 of the Loan Agreement.

(i) Clause SS of Section 1 of the Loan Agreement is hereby amended to insert a new clause (vii) of the definition of "Permitted Debt" to read as follows:

"or (vii) indebtedness to various bridge lenders incurred pursuant to the subordinated secured convertible promissory note, dated January [ ], 2016 (the "Subordinated Debt"); provided that, such Subordinated Debt is on the terms and conditions disclosed by Borrower to Lender and is subordinated to the payment in full of all obligations of Borrower to Lender under this Loan Agreement pursuant to the terms and conditions of a subordination agreement between Lender and such bridge lenders, satisfactory to Lender in its sole discretion."

(ii) Clause UU of Section 1 of the Loan Agreement is hereby amended to insert a new clause (ix) of the definition of "Permitted Liens" to read as follows:

"and (ix) liens securing the Subordinated Debt described in clause (vii) of the definition of Permitted Debt; provided that, the liens securing the indebtedness owed to such bridge lenders are fully subordinated to the liens securing the payment obligations of Borrower to Lender under this Loan Agreement."

2. Acknowledgements. Borrower acknowledges that, as of the date hereof and on and after giving effect to this Amendment, there are no Defaults or Events of Default that have occurred and which are continuing under the Loan Agreement. Borrower further acknowledges that any breach of this Amendment constitutes an Event of Default under the Loan Agreement.

3. Conditions to Effectiveness. The effectiveness of this Amendment shall be subject to satisfaction of each of the following conditions:

a. Lender and each of the bridge lenders which are holders of Subordinated Debt shall have executed and delivered the Subordination Agreement; and

b. Borrower shall deliver to Lender a Documentation Fee, in the amount of $15,000, which shall be due and payable on the date hereof (which fee shall be earned when due and payable and shall not be refundable in whole or in part).

4. Effect of Amendment. Except as expressly modified hereby, the terms and conditions of the Loan Agreement remain in full force and effect. This Amendment may be executed in one or more counterparts (including by facsimile), each of which shall for all purposes be deemed to be an original and all of which shall constitute the same document.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to its laws of conflicts).

[Remainder of page is intentionally blank.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the parties hereto as of the date first above written.

**Ares Venture Finance, L.P.**
**By: Ares Venture Finance GP, LLC, its General Partner**

By: /s/ Scott Lem
Name: Scott Lem
Title: Authorized Signatory

**Everspin Technologies, Inc.**

By: /s/ Jeff Winzeler
Name: Jeff Winzeler
Title: Chief Financial Officer

**Exhibit 10.12**

**SECOND AMENDMENT TO**
**LOAN AND SECURITY AGREEMENT**

This Second Amendment to Loan and Security Agreement (this "Amendment"), dated as of August 1, 2016, by and between Ares Venture Finance, L.P. ("Lender"), and Everspin Technologies, Inc. ("Borrower").

**RECITALS**

A. Lender has provided one or more credit facilities or arrangements to Borrower pursuant to that certain Loan and Security Agreement by and between Lender and Borrower, dated as of June 5, 2015 (the "Loan Agreement"), and in connection therewith, Borrower has granted to Lender a first priority security interest in the Collateral. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

B. The Loan Agreement restricts certain transactions by Borrower including Borrower's incurrence of additional indebtedness (other than Permitted Debt) and the granting of additional liens (other than Permitted Liens) on the Collateral.

C. Borrower desires to enter into a subordinated secured convertible bridge note for the benefit of various bridge lenders, dated on or around the date hereof, pursuant to which Borrower will incur additional indebtedness that is secured by the Collateral (the "Bridge Note").

D. Borrower has requested that Lender agree to consent to such transactions and amend certain terms of the Loan Agreement, each as provided herein.

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

1. Amendments to Loan Agreement.

a. Amendments to Section 1 of the Loan Agreement.

(i) Clause SS of Section 1 of the Loan Agreement is hereby amended to replace clause (vii) of the definition of "Permitted Debt" in its entirety to read as follows:

"or (vii) indebtedness to various bridge lenders incurred pursuant to the subordinated secured convertible promissory note, dated January 29, 2016 and pursuant to the subordinated secured convertible promissory note, dated July [ ], 2016 (the "Subordinated Debt"); provided that, such Subordinated Debt is on the terms and conditions disclosed by Borrower to Lender and is subordinated to the payment in full of all obligations of Borrower to Lender under this Loan Agreement pursuant to the terms and conditions of a subordination agreement between Lender and such bridge lenders, satisfactory to Lender in its sole discretion."

2. Acknowledgements. Borrower acknowledges that, as of the date hereof and on and after giving effect to this Amendment, there are no Defaults or Events of Default that have occurred and which are continuing under the Loan Agreement. Borrower further acknowledges that any breach of this Amendment constitutes an Event of Default under the Loan Agreement.

3. Conditions to Effectiveness. The effectiveness of this Amendment shall be subject to satisfaction of each of the following conditions:

a. Lender and each of the bridge lenders which are holders of Subordinated Debt shall have executed and delivered the Subordination Agreement; and

b. Borrower shall deliver to Lender a Documentation Fee, in the amount of $7,500, which shall be due and payable on the date hereof (which fee shall be earned when due and payable and shall not be refundable in whole or in part).

4. Effect of Amendment. Except as expressly modified hereby, the terms and conditions of the Loan Agreement remain in full force and effect. This Amendment may be executed in one or more counterparts (including by facsimile), each of which shall for all purposes be deemed to be an original and all of which shall constitute the same document.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to its laws of conflicts).

[Remainder of page is intentionally blank.]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the parties hereto as of the date first above written.

**Ares Venture Finance, L.P.**
**By: Ares Venture Finance GP, LLC, its General Partner**

By: /s/ Scott Lem
Name: Scott Lem
Title: Authorized Signatory

**Everspin Technologies, Inc.**

By: /s/ Phillip LoPresti
Name: Phillip LoPresti
Title: Chief Executive Officer

**EXECUTIVE EMPLOYMENT AGREEMENT**
**for**
**Terry Hulett**

This Executive Employment Agreement ("**Agreement**"), made between Everspin Technologies, Inc. (the "**Company**") and **Terry Hulett** ("**Executive**") (collectively, the "**Parties**"), is effective as of **April 25, 2016**.

**WHEREAS**, Executive has been performing services for the Company pursuant to the terms of an offer letter from the Company dated September 18, 2013 (the **"Offer Letter"**); and

**WHEREAS**, the Company desires for Executive to continue providing services to the Company, and Executive is willing to continue such employment by the Company, on the amended and restated terms and conditions set forth in this Agreement, which terms shall replace and supersede the terms of the Offer Letter in their entirety;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Employment by the Company.**

**1.1 Position.** Executive shall continue to serve as the Company's **Vice President, Storage Solutions**. During Executive's employment with the Company, Executive will devote Executive's best efforts and substantially all of Executive's business time and attention to the business of the Company, except for approved vacation periods and reasonable periods of illness or other incapacities permitted by the Company's general employment policies.

**1.2 Duties and Location.** Executive shall continue to perform such duties as are required by the Company's President and Chief Executive Officer, to whom Executive will report. Executive's primary work location shall continue to be the Company's headquarters in Chandler, Arizona. The Company reserves the right to reasonably require Executive to perform Executive's duties at places other than Executive's primary office location from time to time, and to require reasonable business travel. The Company may modify Executive's job title and duties as it deems necessary and appropriate in light of the Company's needs and interests from time to time.

**1.3 Policies and Procedures.** The employment relationship between the Parties shall continue to be governed by the general employment policies and practices of the Company, except that when the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

**2. Compensation.**

**2.1 Salary.** For services to be rendered hereunder, Executive shall continue to receive a base salary at the rate of two hundred thirteen thousand two hundred thirteen dollars (**$**213,213) per year (the "**Base Salary**"), subject to standard payroll deductions and withholdings and payable in accordance with the Company's regular payroll schedule. Effective upon the Company's initial public offering of its common stock, Executive's Base Salary shall be increased to two hundred twenty five thousand dollars **($**225,000) per year. Thereafter, Executive's Base Salary shall be reviewed by the Board of Directors (the **"Board"**) for possible adjustment annually.

**2.2 Bonus.** Executive will be eligible for an annual discretionary bonus of up to 25% of Executive's Base Salary. Executive's annual target bonus percentage, whether Executive receives an annual bonus for any given year, and the amount of any such annual bonus, will be determined by the Board in its sole discretion based upon the Company's and Executive's achievement of objectives and milestones to be determined on an annual basis by the Board in consultation with Executive. Bonuses are generally paid by March 15 following the applicable bonus year, and Executive must be an active employee on the date any Annual Bonus is paid in order to earn any such Annual Bonus. Executive will not be eligible for, and will not earn, any Annual Bonus (including a prorated bonus) if Executive's employment terminates for any reason before the date Annual Bonuses are paid.

**2.3 Standard Company Benefits.** Executive shall continue to be entitled to participate in all employee benefit programs for which Executive is eligible under the terms and conditions of the benefit plans that may be in effect from time to time. The Company reserves the right to cancel or change the benefit plans or programs it offers to its employees at any time.

**2.4 Expenses.** The Company will reimburse Executive for reasonable travel, entertainment or other expenses incurred by Executive in furtherance or in connection with the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy and requirements of the Internal Revenue Service as in effect from time to time.

**2.5 Equity.** Executive has been granted options to purchase shares of the Company's Common Stock (the "**Options**"), the terms of which shall continue to be governed in all respects by the governing plan documents, grant notices and stock option agreements. Executive shall be eligible to receive further stock grants and/or stock option awards in the sole discretion of the Board.

**3. Termination of Employment; Severance.**

**3.1 At-Will Employment.** Executive's employment relationship is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause or advance notice.

**3.2 Termination Without Cause; Resignation for Good Reason.**

**(i)** The Company may terminate Executive's employment with the Company at any time without Cause (as defined below). Further, Executive may resign at any time for Good Reason (as defined below).

**(ii)** In the event Executive's employment with the Company is terminated by the Company without Cause, or Executive resigns for Good Reason, then provided such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a "**Separation from Service**"), and provided Executive remains in compliance with all contractual obligations to the Company, then the Company shall provide Executive with the following severance benefits, subject to the terms and conditions set forth in Section 4:

**(a)** The Company shall pay Executive severance in the form of continuation of Executive's Base Salary for six (6) months after the date of Executive's Separation from Service. These salary continuation payments will be paid on the Company's regular payroll schedule, subject to standard deductions and withholdings, over the six (6) month period following Executive's Separation from Service; *provided, however, that* no payments will be made prior to the 60th day following Executive's Separation from Service. On the 60th day following Executive's Separation from Service, the Company will pay Executive in a lump sum the salary continuation payments that Executive would have received on or prior to such date under the original schedule with the balance of the cash severance being paid as originally scheduled.

**(b)** Provided that Executive timely elects continued coverage under COBRA, the Company shall pay Executive's COBRA premiums to continue Executive's coverage (including coverage for eligible dependents, if applicable) ("**COBRA Premiums**") through the period (the "**COBRA Premium Period**") starting on the Executive's Separation from Service and ending on the earliest to occur of: (i) six (6) months following Executive's Separation from Service; (ii) the date Executive becomes eligible for group health insurance coverage through a new employer; or (iii) the date Executive ceases to be eligible for COBRA continuation coverage for any reason, including plan termination. In the event Executive becomes covered under another employer's group health plan or otherwise cease to be eligible for COBRA during the COBRA Premium Period, Executive must immediately notify the Company of such event. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA Premiums without a substantial risk of violating applicable law, the Company instead shall pay to Executive, on the first day of each calendar month remaining in the COBRA Premium Period, a fully taxable cash payment equal to the applicable COBRA premiums for that month, subject to applicable tax withholdings, which Executive may, but is not obligated to, use toward the cost of COBRA premiums.

**(c)** The vesting of Executive's Options shall be accelerated such that the shares subject to the Options that would have vested in the six (6) month period following Executive's Separation from Service shall be deemed immediately vested and exercisable as of Executive's last day of employment; *provided, however, that* if Executive's termination without Cause or resignation for Good Reason occurs within twelve (12) months following the effective date of a Change in Control (as defined below), then the Company will accelerate the vesting of the Options such that 50% of the shares subject to the Options will vest and be immediately exercisable.

**3.3 Termination for Cause; Resignation Without Good Reason; Death or Disability.**

**(i)** The Company may terminate Executive's employment with the Company at any time for Cause. Further, Executive may resign at any time without Good Reason. Executive's employment with the Company may also be terminated due to Executive's death or disability.

**(ii)** If Executive resigns without Good Reason, or the Company terminates Executive's employment for Cause, or upon Executive's death or disability, then (i) Executive will no longer vest in the Options, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned), and (c) Executive will not be entitled to any severance benefits, including (without limitation) the Severance, COBRA Premiums, Special Cash Payments or Accelerated Vesting. In addition, Executive shall resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**4. Conditions to Receipt of Severance Benefits.** Executive's receipt of the severance benefits described in Section 3.2 is contingent upon Executive signing and not revoking a separation agreement and release of claims in a form reasonably satisfactory to the Company (the "**Separation Agreement**"). No severance benefits will be paid or provided until the Separation Agreement becomes effective. Executive shall also resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**5. Section 409A.** It is intended that all of the severance benefits and other payments payable under this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Internal Revenue Code Section 409A provided under Treasury Regulations 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9), and this Agreement will be construed to the greatest extent possible as consistent with those provisions, and to the extent no so exempt, this Agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)),

Executive's right to receive any installment payments under this Agreement (whether severance payments, reimbursements or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, if Executive is deemed by the Company at the time of Executive's Separation from Service to be a "specified employee" for purposes of Code Section 409A(a)(2)(B)(i), and if any of the payments upon Separation from Service set forth herein and/or under any other agreement with the Company are deemed to be "deferred compensation", then to the extent delayed commencement of any portion of such payments is required in order to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, such payments shall not be provided to Executive prior to the earliest of (i) the expiration of the six-month period measured from the date of Executive's Separation from Service with the Company, (ii) the date of Executive's death or (iii) such earlier date as permitted under Section 409A without the imposition of adverse taxation. Upon the first business day following the expiration of such applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Paragraph shall be paid in a lump sum to Executive, and any remaining payments due shall be paid as otherwise provided herein or in the applicable agreement. No interest shall be due on any amounts so deferred.

**6. Definitions.**

**6.1 Cause.** For purposes of this Agreement, **"Cause"** for termination of Executive's employment will mean: (a) commission of any felony or crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (b) attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (c) intentional, material violation of any contract or agreement between Executive and the Company or of any statutory duty owed to the Company; (d) unauthorized use or disclosure of the Company's confidential information or trade secrets; or (e) gross misconduct.

**6.2 Good Reason.** For purposes of this Agreement, Executive shall have "**Good Reason**" for resignation from employment with the Company if any of the following actions are taken by the Company or a successor corporation or entity without Executive's prior written consent: (a) a material reduction in Executive's base salary, which the Parties agree is a reduction of at least 10% of Executive's Base Salary (unless pursuant to a salary reduction program applicable generally to the Company's similarly situated employees); (b) a material reduction in Executive's duties (including responsibilities and/or authorities), *provided, however, that* a change in job position (including a change in title) shall not be deemed a "material reduction" in and of itself unless Executive's new duties are materially reduced from the prior duties; or (c) relocation of Executive's principal place of employment to a place that increases Executive's one-way commute by more than thirty-five (35) miles as compared to Executive's principal place of employment immediately prior to such relocation. In order to resign for Good Reason, Executive must provide written notice to the Board within 30 days

after the first occurrence of the event giving rise to Good Reason setting forth the basis for Executive's resignation, allow the Company at least 30 days from receipt of such written notice to cure such event, and if such event is not reasonably cured within such period, Executive must resign from all positions Executive then holds with the Company not later than 30 days after the expiration of the cure period.

**6.3 Change of Control.** For purposes of this Agreement, **"Change of Control"** shall be as defined in the Everspin 2008 Equity Incentive Plan.

**7. Proprietary Information Obligations.** Executive shall remain bound by the terms of the Employee Proprietary Information and Inventions Assignment Agreement that Executive previously executed.

**8. Outside Activities During Employment.**

**8.1 Non-Company Business.** Except with the prior written consent of the Board, Executive will not during Executive's employment with the Company undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor. Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's duties hereunder.

**8.2 No Adverse Interests.** Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise.

**9. Dispute Resolution.** To ensure timely and economical resolution of any disputes that may arise in connection with Executive's employment with the Company, as a condition of Executive's employment, Executive and the Company hereby agree that any and all claims, disputes or controversies of any nature whatsoever arising out of, or relating to, this letter, or its interpretation, enforcement, breach, performance or execution, Executive's employment with the Company, or the termination of such employment, shall be resolved, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted before a single arbitrator by the American Arbitration Association ("**AAA**") under the then-applicable AAA employment arbitration rules (which can be found at http://www.adr.org/). The arbitration shall take place in Phoenix, Arizona; *provided, however, that* if the arbitrator determines there will be an undue hardship to Executive to have the arbitration in such location, the arbitrator will choose an alternative appropriate location. **Executive and the Company each acknowledge that by agreeing to this arbitration procedure, both Executive and the Company waive the right to resolve any such dispute, claim or demand through a trial by jury or judge or by administrative proceeding.** Executive will have the right to be represented by legal counsel at Executive's expense at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the

arbitrator's essential findings and conclusions on which the award is based. The arbitrator, and not a court, shall also be authorized to determine whether the provisions of this paragraph apply to a dispute, controversy, or claim sought to be resolved in accordance with these arbitration procedures. The Company shall pay all costs and fees in excess of the amount of court fees that Executive would be required to incur if the dispute were filed or decided in a court of law. Nothing in this Agreement is intended to prevent either Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration.

**10. General Provisions.**

**10.1 Notices.** Any notices provided must be in writing and will be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight carrier, to the Company at its primary office location and to Executive at the address as listed on the Company payroll.

**10.2 Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction to the extent possible in keeping with the intent of the parties.

**10.3 Waiver.** Any waiver of any breach of any provisions of this Agreement must be in writing to be effective, and it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

**10.4 Complete Agreement.** This Agreement constitutes the entire agreement between Executive and the Company with regard to this subject matter and is the complete, final, and exclusive embodiment of the Parties' agreement with regard to this subject matter. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations, including (without limitation) the Offer Letter. It is entered into without reliance on any promise or representation other than those expressly contained herein, and it cannot be modified or amended except in a writing signed by a duly authorized officer of the Company.

**10.5 Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

**10.6 Headings.** The headings of the paragraphs hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**10.7 Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company, which shall not be withheld unreasonably.

**10.8 Tax Withholding and Indemnification.** All payments and awards contemplated or made pursuant to this Agreement will be subject to withholdings of applicable taxes in compliance with all relevant laws and regulations of all appropriate government authorities. Executive acknowledges and agrees that the Company has neither made any assurances nor any guarantees concerning the tax treatment of any payments or awards contemplated by or made pursuant to this Agreement. Executive has had the opportunity to retain a tax and financial advisor and fully understands the tax and economic consequences of all payments and awards made pursuant to the Agreement.

**10.9 Choice of Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of the State of Arizona.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first written above.

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Phillip LoPresti

**Phillip LoPresti**
**President and Chief Executive Officer**

**EXECUTIVE**

/s/ Terry Hulett

**Terry Hulett**

# EXECUTIVE EMPLOYMENT AGREEMENT
# for
# Phillip LoPresti

This Executive Employment Agreement ("**Agreement**"), made between Everspin Technologies, Inc. (the "**Company**") and **Phillip LoPresti** ("**Executive**") (collectively, the "**Parties**"), is effective as of **April 25, 2016**.

**WHEREAS**, Executive has been performing services for the Company pursuant to the terms of an offer letter from the Company dated May 20, 2010 (the **"Offer Letter"**); and

**WHEREAS**, the Company desires for Executive to continue providing services to the Company, and Executive is willing to continue such employment by the Company, on the amended and restated terms and conditions set forth in this Agreement, which terms shall replace and supersede the terms of the Offer Letter in their entirety;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Employment by the Company.**

**1.1 Position.** Executive shall continue to serve as the Company's **President and Chief Executive Officer**. During Executive's employment with the Company, Executive will devote Executive's best efforts and substantially all of Executive's business time and attention to the business of the Company, except for approved vacation periods and reasonable periods of illness or other incapacities permitted by the Company's general employment policies.

**1.2 Duties and Location.** Executive shall continue to perform such duties as are required by the Company's Board of Directors (the **"Board"**), to whom Executive will report. Executive's primary work location shall continue to be the Company's headquarters in Chandler, Arizona. The Company reserves the right to reasonably require Executive to perform Executive's duties at places other than Executive's primary office location from time to time, and to require reasonable business travel. The Company may modify Executive's job title and duties as it deems necessary and appropriate in light of the Company's needs and interests from time to time.

**1.3 Policies and Procedures.** The employment relationship between the Parties shall continue to be governed by the general employment policies and practices of the Company, except that when the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

**2. Compensation.**

**2.1 Salary.** For services to be rendered hereunder, Executive shall continue to receive a base salary at the rate of two hundred seventy five thousand dollars ($275,000) per year (the "**Base Salary**"), subject to standard payroll deductions and withholdings and payable in accordance with the Company's regular payroll schedule. Effective upon the Company's initial public offering of its common stock, Executive's Base Salary shall be increased to three hundred thousand dollars ($300,000) per year. Thereafter, Executive's Base Salary shall be reviewed by the Board for possible adjustment annually.

**2.2 Bonus.** Executive will be eligible for an annual discretionary bonus of up to 50% of Executive's Base Salary. Executive's annual target bonus percentage, whether Executive receives an annual bonus for any given year, and the amount of any such annual bonus, will be determined by the Board in its sole discretion based upon the Company's and Executive's achievement of objectives and milestones to be determined on an annual basis by the Board in consultation with Executive. Bonuses are generally paid by March 15 following the applicable bonus year, and Executive must be an active employee on the date any Annual Bonus is paid in order to earn any such Annual Bonus. Executive will not be eligible for, and will not earn, any Annual Bonus (including a prorated bonus) if Executive's employment terminates for any reason before the date Annual Bonuses are paid.

**2.3 Standard Company Benefits.** Executive shall continue to be entitled to participate in all employee benefit programs for which Executive is eligible under the terms and conditions of the benefit plans that may be in effect from time to time. The Company reserves the right to cancel or change the benefit plans or programs it offers to its employees at any time.

**2.4 Expenses.** The Company will reimburse Executive for reasonable travel, entertainment or other expenses incurred by Executive in furtherance or in connection with the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy and requirements of the Internal Revenue Service as in effect from time to time.

**2.5 Equity.** Executive has been granted options to purchase shares of the Company's Common Stock (the "**Options**"), the terms of which shall continue to be governed in all respects by the governing plan documents, grant notices and stock option agreements. Executive shall be eligible to receive further stock grants and/or stock option awards in the sole discretion of the Board.

**3. Termination of Employment; Severance.**

**3.1 At-Will Employment.** Executive's employment relationship is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause or advance notice.

**3.2 Termination Without Cause; Resignation for Good Reason.**

**(i)** The Company may terminate Executive's employment with the Company at any time without Cause (as defined below). Further, Executive may resign at any time for Good Reason (as defined below).

**(ii)** In the event Executive's employment with the Company is terminated by the Company without Cause, or Executive resigns for Good Reason, then provided such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a "**Separation from Service**"), and provided Executive remains in compliance with all contractual obligations to the Company, then the Company shall provide Executive with the following severance benefits, subject to the terms and conditions set forth in Section 4:

**(a)** The Company shall pay Executive severance in the form of continuation of Executive's Base Salary for six (6) months after the date of Executive's Separation from Service. These salary continuation payments will be paid on the Company's regular payroll schedule, subject to standard deductions and withholdings, over the six (6) month period following Executive's Separation from Service; *provided, however, that* no payments will be made prior to the 60th day following Executive's Separation from Service. On the 60th day following Executive's Separation from Service, the Company will pay Executive in a lump sum the salary continuation payments that Executive would have received on or prior to such date under the original schedule with the balance of the cash severance being paid as originally scheduled.

**(b)** Provided that Executive timely elects continued coverage under COBRA, the Company shall pay Executive's COBRA premiums to continue Executive's coverage (including coverage for eligible dependents, if applicable) ("**COBRA Premiums**") through the period (the "**COBRA Premium Period**") starting on the Executive's Separation from Service and ending on the earliest to occur of: (i) six (6) months following Executive's Separation from Service; (ii) the date Executive becomes eligible for group health insurance coverage through a new employer; or (iii) the date Executive ceases to be eligible for COBRA continuation coverage for any reason, including plan termination. In the event Executive becomes covered under another employer's group health plan or otherwise cease to be eligible for COBRA during the COBRA Premium Period, Executive must immediately notify the Company of such event. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA Premiums without a substantial risk of violating applicable law, the Company instead shall pay to Executive, on the first day of each calendar month remaining in the COBRA Premium Period, a fully taxable cash payment equal to the applicable COBRA premiums for that month, subject to applicable tax withholdings, which Executive may, but is not obligated to, use toward the cost of COBRA premiums.

**(c)** The vesting of Executive's Options shall be accelerated such that the shares subject to the Options that would have vested in the six (6) month period following Executive's Separation from Service shall be deemed immediately vested and exercisable as of Executive's last day of employment; *provided, however, that* if Executive's termination without Cause or resignation for Good Reason occurs within eighteen (18) months following the effective date of a Change in Control (as defined below), then the Company will accelerate the vesting of the Options such that 100% of the shares subject to the Options will vest and be immediately exercisable.

**3.3 Termination for Cause; Resignation Without Good Reason; Death or Disability.**

**(i)** The Company may terminate Executive's employment with the Company at any time for Cause. Further, Executive may resign at any time without Good Reason. Executive's employment with the Company may also be terminated due to Executive's death or disability.

**(ii)** If Executive resigns without Good Reason, or the Company terminates Executive's employment for Cause, or upon Executive's death or disability, then (i) Executive will no longer vest in the Options, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned), and (c) Executive will not be entitled to any severance benefits, including (without limitation) the Severance, COBRA Premiums, Special Cash Payments or Accelerated Vesting. In addition, Executive shall resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**4. Conditions to Receipt of Severance Benefits.** Executive's receipt of the severance benefits described in Section 3.2 is contingent upon Executive signing and not revoking a separation agreement and release of claims in a form reasonably satisfactory to the Company (the "**Separation Agreement**"). No severance benefits will be paid or provided until the Separation Agreement becomes effective. Executive shall also resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**5. Section 409A.** It is intended that all of the severance benefits and other payments payable under this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Internal Revenue Code Section 409A provided under Treasury Regulations 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9), and this Agreement will be construed to the greatest extent possible as consistent with those provisions, and to the extent no so exempt, this Agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)),

Executive's right to receive any installment payments under this Agreement (whether severance payments, reimbursements or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, if Executive is deemed by the Company at the time of Executive's Separation from Service to be a "specified employee" for purposes of Code Section 409A(a)(2)(B)(i), and if any of the payments upon Separation from Service set forth herein and/or under any other agreement with the Company are deemed to be "deferred compensation", then to the extent delayed commencement of any portion of such payments is required in order to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, such payments shall not be provided to Executive prior to the earliest of (i) the expiration of the six-month period measured from the date of Executive's Separation from Service with the Company, (ii) the date of Executive's death or (iii) such earlier date as permitted under Section 409A without the imposition of adverse taxation. Upon the first business day following the expiration of such applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Paragraph shall be paid in a lump sum to Executive, and any remaining payments due shall be paid as otherwise provided herein or in the applicable agreement. No interest shall be due on any amounts so deferred.

**6. Definitions.**

**6.1 Cause.** For purposes of this Agreement, **"Cause"** for termination of Executive's employment will mean: (a) commission of any felony or crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (b) attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (c) intentional, material violation of any contract or agreement between Executive and the Company or of any statutory duty owed to the Company; (d) unauthorized use or disclosure of the Company's confidential information or trade secrets; or (e) gross misconduct.

**6.2 Good Reason.** For purposes of this Agreement, Executive shall have "**Good Reason**" for resignation from employment with the Company if any of the following actions are taken by the Company or a successor corporation or entity without Executive's prior written consent: (a) a material reduction in Executive's base salary, which the Parties agree is a reduction of at least 10% of Executive's Base Salary (unless pursuant to a salary reduction program applicable generally to the Company's similarly situated employees); (b) a material reduction in Executive's duties (including responsibilities and/or authorities), *provided, however, that* a change in job position (including a change in title) shall not be deemed a "material reduction" in and of itself unless Executive's new duties are materially reduced from the prior duties; or (c) relocation of Executive's principal place of employment to a place that increases Executive's one-way commute by more than thirty-five (35) miles as compared to Executive's principal place of employment immediately prior to such relocation. In order to resign for Good Reason, Executive must provide written notice to the Board within 30 days

after the first occurrence of the event giving rise to Good Reason setting forth the basis for Executive's resignation, allow the Company at least 30 days from receipt of such written notice to cure such event, and if such event is not reasonably cured within such period, Executive must resign from all positions Executive then holds with the Company not later than 30 days after the expiration of the cure period.

**6.3 Change of Control.** For purposes of this Agreement, **"Change of Control"** shall be as defined in the Everspin 2008 Equity Incentive Plan.

**7. Proprietary Information Obligations.** Executive shall remain bound by the terms of the Employee Proprietary Information and Inventions Assignment Agreement that Executive previously executed.

**8. Outside Activities During Employment.**

**8.1 Non-Company Business.** Except with the prior written consent of the Board, Executive will not during Executive's employment with the Company undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor. Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's duties hereunder.

**8.2 No Adverse Interests.** Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise.

**9. Dispute Resolution.** To ensure timely and economical resolution of any disputes that may arise in connection with Executive's employment with the Company, as a condition of Executive's employment, Executive and the Company hereby agree that any and all claims, disputes or controversies of any nature whatsoever arising out of, or relating to, this letter, or its interpretation, enforcement, breach, performance or execution, Executive's employment with the Company, or the termination of such employment, shall be resolved, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted before a single arbitrator by the American Arbitration Association ("**AAA**") under the then-applicable AAA employment arbitration rules (which can be found at http://www.adr.org/). The arbitration shall take place in Phoenix, Arizona; *provided, however, that* if the arbitrator determines there will be an undue hardship to Executive to have the arbitration in such location, the arbitrator will choose an alternative appropriate location. **Executive and the Company each acknowledge that by agreeing to this arbitration procedure, both Executive and the Company waive the right to resolve any such dispute, claim or demand through a trial by jury or judge or by administrative proceeding.** Executive will have the right to be represented by legal counsel at Executive's expense at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the

arbitrator's essential findings and conclusions on which the award is based. The arbitrator, and not a court, shall also be authorized to determine whether the provisions of this paragraph apply to a dispute, controversy, or claim sought to be resolved in accordance with these arbitration procedures. The Company shall pay all costs and fees in excess of the amount of court fees that Executive would be required to incur if the dispute were filed or decided in a court of law. Nothing in this Agreement is intended to prevent either Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration.

**10. General Provisions.**

**10.1 Notices.** Any notices provided must be in writing and will be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight carrier, to the Company at its primary office location and to Executive at the address as listed on the Company payroll.

**10.2 Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction to the extent possible in keeping with the intent of the parties.

**10.3 Waiver.** Any waiver of any breach of any provisions of this Agreement must be in writing to be effective, and it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

**10.4 Complete Agreement.** This Agreement constitutes the entire agreement between Executive and the Company with regard to this subject matter and is the complete, final, and exclusive embodiment of the Parties' agreement with regard to this subject matter. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations, including (without limitation) the Offer Letter. It is entered into without reliance on any promise or representation other than those expressly contained herein, and it cannot be modified or amended except in a writing signed by a duly authorized officer of the Company.

**10.5 Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

**10.6 Headings.** The headings of the paragraphs hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**10.7 Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company, which shall not be withheld unreasonably.

**10.8 Tax Withholding and Indemnification.** All payments and awards contemplated or made pursuant to this Agreement will be subject to withholdings of applicable taxes in compliance with all relevant laws and regulations of all appropriate government authorities. Executive acknowledges and agrees that the Company has neither made any assurances nor any guarantees concerning the tax treatment of any payments or awards contemplated by or made pursuant to this Agreement. Executive has had the opportunity to retain a tax and financial advisor and fully understands the tax and economic consequences of all payments and awards made pursuant to the Agreement.

**10.9 Choice of Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of the State of Arizona.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first written above.

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Stephen Socolof
**Stephen Socolof**
**Member, Board of Directors**

**EXECUTIVE**

/s/ Phillip LoPresti
**Phillip LoPresti**

**EXECUTIVE EMPLOYMENT AGREEMENT**
**for**
**Scott Sewell**

This Executive Employment Agreement ("**Agreement**"), made between Everspin Technologies, Inc. (the "**Company**") and **Scott Sewell** ("**Executive**") (collectively, the "**Parties**"), is effective as of **April 25, 2016**.

**WHEREAS**, Executive has been performing services for the Company pursuant to the terms of an offer letter from the Company dated August 6, 2010(the **"Offer Letter"**); and

**WHEREAS**, the Company desires for Executive to continue providing services to the Company, and Executive is willing to continue such employment by the Company, on the amended and restated terms and conditions set forth in this Agreement, which terms shall replace and supersede the terms of the Offer Letter in their entirety;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Employment by the Company.**

**1.1 Position.** Executive shall continue to serve as the Company's **Vice President, Worldwide Sales and Marketing**. During Executive's employment with the Company, Executive will devote Executive's best efforts and substantially all of Executive's business time and attention to the business of the Company, except for approved vacation periods and reasonable periods of illness or other incapacities permitted by the Company's general employment policies.

**1.2 Duties and Location.** Executive shall continue to perform such duties as are required by the Company's President and Chief Executive Officer, to whom Executive will report. Executive's primary work location shall continue to be the Company's headquarters in Chandler, Arizona. The Company reserves the right to reasonably require Executive to perform Executive's duties at places other than Executive's primary office location from time to time, and to require reasonable business travel. The Company may modify Executive's job title and duties as it deems necessary and appropriate in light of the Company's needs and interests from time to time.

**1.3 Policies and Procedures.** The employment relationship between the Parties shall continue to be governed by the general employment policies and practices of the Company, except that when the terms of this Agreement differ from or are in conflict with the Company's general employment policies or practices, this Agreement shall control.

**2. Compensation.**

**2.1 Salary.** For services to be rendered hereunder, Executive shall continue to receive a base salary at the rate of one hundred ninety seven thousand nine hundred twenty dollars (**$**197,920) per year (the "**Base Salary**"), subject to standard payroll deductions and withholdings and payable in accordance with the Company's regular payroll schedule. Effective upon the Company's initial public offering of its common stock, Executive's Base Salary shall be increased to two hundred thousand dollars (**$**200,000) per year. Thereafter, Executive's Base Salary shall be reviewed by the Board of Directors (the **"Board"**) for possible adjustment annually.

**2.2 Bonus.** Executive will be eligible to participate in the Everspin Sales Bonus and Incentive Plan with a target payout of eighty five thousand dollars ($85,000) and a maximum payout of one hundred thousand dollars ($100,000). Performance will be measured quarterly and paid out semi-annually. Executive's final bonus amount will be determined by the Board in its sole discretion based upon the Company's and Executive's achievement of objectives and milestones to be determined on an annual basis by the Board in consultation with Executive. Executive will not be eligible for, and will not earn, any bonus (including a prorated bonus) if Executive's employment terminates for any reason before the date bonuses are paid.

**2.3 Standard Company Benefits.** Executive shall continue to be entitled to participate in all employee benefit programs for which Executive is eligible under the terms and conditions of the benefit plans that may be in effect from time to time. The Company reserves the right to cancel or change the benefit plans or programs it offers to its employees at any time.

**2.4 Expenses.** The Company will reimburse Executive for reasonable travel, entertainment or other expenses incurred by Executive in furtherance or in connection with the performance of Executive's duties hereunder, in accordance with the Company's expense reimbursement policy and requirements of the Internal Revenue Service as in effect from time to time.

**2.5 Equity.** Executive has been granted options to purchase shares of the Company's Common Stock (the "**Options**"), the terms of which shall continue to be governed in all respects by the governing plan documents, grant notices and stock option agreements. Executive shall be eligible to receive further stock grants and/or stock option awards in the sole discretion of the Board.

**3. Termination of Employment; Severance.**

**3.1 At-Will Employment.** Executive's employment relationship is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause or advance notice.

**3.2 Termination Without Cause; Resignation for Good Reason.**

**(i)** The Company may terminate Executive's employment with the Company at any time without Cause (as defined below). Further, Executive may resign at any time for Good Reason (as defined below).

**(ii)** In the event Executive's employment with the Company is terminated by the Company without Cause, or Executive resigns for Good Reason, then provided such termination constitutes a "separation from service" (as defined under Treasury Regulation Section 1.409A-1(h), without regard to any alternative definition thereunder, a "**Separation from Service**"), and provided Executive remains in compliance with all contractual obligations to the Company, then the Company shall provide Executive with the following severance benefits, subject to the terms and conditions set forth in Section 4:

**(a)** The Company shall pay Executive severance in the form of continuation of Executive's Base Salary for six (6) months after the date of Executive's Separation from Service. These salary continuation payments will be paid on the Company's regular payroll schedule, subject to standard deductions and withholdings, over the six (6) month period following Executive's Separation from Service; *provided, however, that* no payments will be made prior to the 60th day following Executive's Separation from Service. On the 60th day following Executive's Separation from Service, the Company will pay Executive in a lump sum the salary continuation payments that Executive would have received on or prior to such date under the original schedule with the balance of the cash severance being paid as originally scheduled.

**(b)** Provided that Executive timely elects continued coverage under COBRA, the Company shall pay Executive's COBRA premiums to continue Executive's coverage (including coverage for eligible dependents, if applicable) ("**COBRA Premiums**") through the period (the "**COBRA Premium Period**") starting on the Executive's Separation from Service and ending on the earliest to occur of: (i) six (6) months following Executive's Separation from Service; (ii) the date Executive becomes eligible for group health insurance coverage through a new employer; or (iii) the date Executive ceases to be eligible for COBRA continuation coverage for any reason, including plan termination. In the event Executive becomes covered under another employer's group health plan or otherwise cease to be eligible for COBRA during the COBRA Premium Period, Executive must immediately notify the Company of such event. Notwithstanding the foregoing, if the Company determines, in its sole discretion, that it cannot pay the COBRA Premiums without a substantial risk of violating applicable law, the Company instead shall pay to Executive, on the first day of each calendar month remaining in the COBRA Premium Period, a fully taxable cash payment equal to the applicable COBRA premiums for that month, subject to applicable tax withholdings, which Executive may, but is not obligated to, use toward the cost of COBRA premiums.

**(c)** The vesting of Executive's Options shall be accelerated such that the shares subject to the Options that would have vested in the six (6) month period following Executive's Separation from Service shall be deemed immediately vested and exercisable as of Executive's last day of employment; *provided, however, that*

if Executive's termination without Cause or resignation for Good Reason occurs within twelve (12) months following the effective date of a Change in Control (as defined below), then the Company will accelerate the vesting of the Options such that 100% of the shares subject to the Options will vest and be immediately exercisable.

**3.3 Termination for Cause; Resignation Without Good Reason; Death or Disability.**

**(i)** The Company may terminate Executive's employment with the Company at any time for Cause. Further, Executive may resign at any time without Good Reason. Executive's employment with the Company may also be terminated due to Executive's death or disability.

**(ii)** If Executive resigns without Good Reason, or the Company terminates Executive's employment for Cause, or upon Executive's death or disability, then (i) Executive will no longer vest in the Options, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned), and (c) Executive will not be entitled to any severance benefits, including (without limitation) the Severance, COBRA Premiums, Special Cash Payments or Accelerated Vesting. In addition, Executive shall resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**4. Conditions to Receipt of Severance Benefits.** Executive's receipt of the severance benefits described in Section 3.2 is contingent upon Executive signing and not revoking a separation agreement and release of claims in a form reasonably satisfactory to the Company (the "**Separation Agreement**"). No severance benefits will be paid or provided until the Separation Agreement becomes effective. Executive shall also resign from all positions and terminate any relationships as an employee, advisor, officer or director with the Company and any of its affiliates, each effective on the date of termination.

**5. Section 409A.** It is intended that all of the severance benefits and other payments payable under this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Internal Revenue Code Section 409A provided under Treasury Regulations 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9), and this Agreement will be construed to the greatest extent possible as consistent with those provisions, and to the extent no so exempt, this Agreement (and any definitions hereunder) will be construed in a manner that complies with Section 409A. For purposes of Code Section 409A (including, without limitation, for purposes of Treasury Regulation Section 1.409A-2(b)(2)(iii)), Executive's right to receive any installment payments under this Agreement (whether severance payments, reimbursements or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, if Executive is deemed by the Company at the time of Executive's Separation from Service to be a "specified

employee" for purposes of Code Section 409A(a)(2)(B)(i), and if any of the payments upon Separation from Service set forth herein and/or under any other agreement with the Company are deemed to be "deferred compensation", then to the extent delayed commencement of any portion of such payments is required in order to avoid a prohibited distribution under Code Section 409A(a)(2)(B)(i) and the related adverse taxation under Section 409A, such payments shall not be provided to Executive prior to the earliest of (i) the expiration of the six-month period measured from the date of Executive's Separation from Service with the Company, (ii) the date of Executive's death or (iii) such earlier date as permitted under Section 409A without the imposition of adverse taxation. Upon the first business day following the expiration of such applicable Code Section 409A(a)(2)(B)(i) period, all payments deferred pursuant to this Paragraph shall be paid in a lump sum to Executive, and any remaining payments due shall be paid as otherwise provided herein or in the applicable agreement. No interest shall be due on any amounts so deferred.

**6. Definitions.**

**6.1 Cause.** For purposes of this Agreement, **"Cause"** for termination of Executive's employment will mean: (a) commission of any felony or crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (b) attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (c) intentional, material violation of any contract or agreement between Executive and the Company or of any statutory duty owed to the Company; (d) unauthorized use or disclosure of the Company's confidential information or trade secrets; or (e) gross misconduct.

**6.2 Good Reason.** For purposes of this Agreement, Executive shall have "**Good Reason**" for resignation from employment with the Company if any of the following actions are taken by the Company or a successor corporation or entity without Executive's prior written consent: (a) a material reduction in Executive's base salary, which the Parties agree is a reduction of at least 10% of Executive's Base Salary (unless pursuant to a salary reduction program applicable generally to the Company's similarly situated employees); (b) a material reduction in Executive's duties (including responsibilities and/or authorities), *provided, however, that* a change in job position (including a change in title) shall not be deemed a "material reduction" in and of itself unless Executive's new duties are materially reduced from the prior duties; or (c) relocation of Executive's principal place of employment to a place that increases Executive's one-way commute by more than thirty-five (35) miles as compared to Executive's principal place of employment immediately prior to such relocation. In order to resign for Good Reason, Executive must provide written notice to the Board within 30 days after the first occurrence of the event giving rise to Good Reason setting forth the basis for Executive's resignation, allow the Company at least 30 days from receipt of such written notice to cure such event, and if such event is not reasonably cured within such period, Executive must resign from all positions Executive then holds with the Company not later than 30 days after the expiration of the cure period.

**6.3 Change of Control.** For purposes of this Agreement, **"Change of Control"** shall be as defined in the Everspin 2008 Equity Incentive Plan.

**7. Proprietary Information Obligations.** Executive shall remain bound by the terms of the Employee Proprietary Information and Inventions Assignment Agreement that Executive previously executed.

**8. Outside Activities During Employment.**

**8.1 Non-Company Business.** Except with the prior written consent of the Board, Executive will not during Executive's employment with the Company undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor. Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's duties hereunder.

**8.2 No Adverse Interests.** Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise.

**9. Dispute Resolution.** To ensure timely and economical resolution of any disputes that may arise in connection with Executive's employment with the Company, as a condition of Executive's employment, Executive and the Company hereby agree that any and all claims, disputes or controversies of any nature whatsoever arising out of, or relating to, this letter, or its interpretation, enforcement, breach, performance or execution, Executive's employment with the Company, or the termination of such employment, shall be resolved, to the fullest extent permitted by law, by final, binding and confidential arbitration conducted before a single arbitrator by the American Arbitration Association ("**AAA**") under the then-applicable AAA employment arbitration rules (which can be found at http://www.adr.org/). The arbitration shall take place in Phoenix, Arizona; *provided, however, that* if the arbitrator determines there will be an undue hardship to Executive to have the arbitration in such location, the arbitrator will choose an alternative appropriate location. **Executive and the Company each acknowledge that by agreeing to this arbitration procedure, both Executive and the Company waive the right to resolve any such dispute, claim or demand through a trial by jury or judge or by administrative proceeding.** Executive will have the right to be represented by legal counsel at Executive's expense at any arbitration proceeding. The arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be available under applicable law in a court proceeding; and (ii) issue a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, awarded as to each claim, the reasons for the award, and the arbitrator's essential findings and conclusions on which the award is based. The arbitrator, and not a court, shall also be authorized to determine whether the provisions of this paragraph apply to a dispute, controversy, or claim sought to be resolved in accordance with these arbitration procedures. The Company shall pay all costs and fees in excess of the amount of court fees that Executive would be required to incur if the dispute were filed

or decided in a court of law. Nothing in this Agreement is intended to prevent either Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration.

**10. General Provisions.**

**10.1 Notices.** Any notices provided must be in writing and will be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight carrier, to the Company at its primary office location and to Executive at the address as listed on the Company payroll.

**10.2 Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction to the extent possible in keeping with the intent of the parties.

**10.3 Waiver.** Any waiver of any breach of any provisions of this Agreement must be in writing to be effective, and it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

**10.4 Complete Agreement.** This Agreement constitutes the entire agreement between Executive and the Company with regard to this subject matter and is the complete, final, and exclusive embodiment of the Parties' agreement with regard to this subject matter. This Agreement is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations, including (without limitation) the Offer Letter. It is entered into without reliance on any promise or representation other than those expressly contained herein, and it cannot be modified or amended except in a writing signed by a duly authorized officer of the Company.

**10.5 Counterparts.** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

**10.6 Headings.** The headings of the paragraphs hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

**10.7 Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company, which shall not be withheld unreasonably.

**10.8 Tax Withholding and Indemnification.** All payments and awards contemplated or made pursuant to this Agreement will be subject to withholdings of applicable taxes in compliance with all relevant laws and regulations of all appropriate government authorities. Executive acknowledges and agrees that the Company has neither made any assurances nor any guarantees concerning the tax treatment of any payments or awards contemplated by or made pursuant to this Agreement. Executive has had the opportunity to retain a tax and financial advisor and fully understands the tax and economic consequences of all payments and awards made pursuant to the Agreement.

**10.9 Choice of Law.** All questions concerning the construction, validity and interpretation of this Agreement will be governed by the laws of the State of Arizona.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first written above.

**EVERSPIN TECHNOLOGIES, INC.**

By: /s/ Phillip LoPresti
**Phillip Lopresti**
**President and Chief Executive Officer**

**EXECUTIVE**

/s/ Scott Sewell
**Scott Sewell**

**Exhibit 10.16**

**OFFICE LEASE AGREEMENT**

Jutland 4141 Investments, Ltd
DBA Chandler Office Center

and

Everspin Technologies, Inc.
(Tenant)

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**OFFICE LEASE AGREEMENT**

THIS OFFICE LEASE AGREEMENT ("Lease") is made this January 7th day of January, 2011, by and between JUTLAND 4141 INVESTMENTS, LTD., dba Chandler Office Center (the "Landlord") and EVERSPIN TECHNOLOGIES, INC. (the "Tenant").

WITNESSETH, that for good and valuable consideration, the Landlord hereby leases to the Tenant, and the Tenant hereby leases from the Landlord, the Premises (defined herein) upon all upon the following terms and conditions:

ARTICLE I - FUNDAMENTAL LEASE PROVISIONS

§1.01 Landlord. Jutland 4141 Investments, Ltd., dba Chandler Office Center a California Limited Partnership

§1.02 Tenant. Everspin Technologies, Inc., a Delaware corporation

§1.03 Premises. That certain commercial space currently identified as located in the City of Chandler, County of Maricopa, State of Arizona, containing approximately 8,464 rentable square feet in Suite # 220. The Premises are shown in Exhibit A.

§1.04 Building. That certain commercial building currently identified as located at 1347 North Alma School Road, City of Chandler, County of Maricopa, State of Arizona,

§1.05 Project. Those three certain commercial buildings currently identified as located at 1347 North Alma School Road, 1351 North Alma School Road, and 1331 North Alma School Road, City of Chandler, County of Maricopa, State of Arizona,

§1.06 Lease Term. 89 full calendar months

§1.07 Commencement Date. The date when all of the following have occurred: (i) all of the Improvements to Premises be constructed by Landlord have been substantially completed in accordance with Exhibit B, (ii) a certificate of occupancy and/or a conditional use permit or other such document has been issued for the Premises by the applicable governing authority, if required, and (iii) Landlord has delivered the Premises to Tenant. "Substantial completion" shall be defined as completion of all Improvements to Premises subject only to the completion of minor punch-list items that do not interfere with Tenant's use and occupancy of the Premises

§1.08 Expiration Date. The day immediately prior to the 89 month anniversary of the Commencement Date; provided that if the Commencement Date is not the first day of a calendar month, the Expiration Date shall be the last day of the calendar month in which the 89 month anniversary of the Commencement Date occurs

§1.09 Rent Commencement Date. The day immediately prior to the five month anniversary of the Commencement Date; provided that if the Commencement Date is not the first day of a calendar month, the Rent Commencement Date shall be the last day of the calendar month in which the five month anniversary of the Commencement Date occurs.

§1.10 Base Rent. Month 01 shall mean the first full calendar month of the Lease Term plus any partial calendar month in which the Commencement date occurs.

Months 01-05: $00.00 per rentable sq. ft., full service.
Months 06-17: $15.00 per rentable sq. ft., full service
Months 18-29: $16.00 per rentable sq. ft., full service
Months 30-41: $17.00 per rentable sq. ft., full service
Months 42-53: $18.00 per rentable sq. ft., full service
Months 54-65: $19.00 per rentable sq. ft., full service
Months 66-77: $20.00 per rentable sq. ft., full service
Months 78-89: $21.00 per rentable sq. ft., full service
*plus all applicable taxes

§1.11 Sales Tax. In addition to Rent, Tenant agrees to pay any excise, privilege or Sales Taxes, either state, local or federal, or any tax levied on the rental or the receipt thereof (not including net income taxes).

§1.12 Annual Rent Increases. Increases will be per square foot per annum and payable monthly according to the rental schedule in Section 1.08 above.

§1.13 Base Year. 2011.

§1.14 Percentage of Operating Costs. For Building Operating Costs, a li-action, the numerator of which is the total rentable area of the Premises and the denominator of which is the total rentable area of the Building. For Project Operating Costs, a fraction, the numerator of which is the total rentable area of the Premises and the denominator of which is the total rentable area of the Project.

§1.15 Addresses for Notices.

| | |
|---|---|
| Landlord: | Jutland 4141 Investments, Ltd.<br>dba Chandler Office Center<br>1347 North Alma School Road Suite #210<br>Chandler, AZ |
| Tenant: | Premises |
| With a copy to: | Snell & Wilmer L.L.P.<br>One Arizona Center<br>Phoenix, AZ 85004-2202<br>Attn: Dan Mahoney |

§1.16 Permitted Use. The primary use of the Premises shall be general office use.

§1.17 Security Deposit. $16,500.

§1.18 Credit Enhancement. See Article VIII.

## ARTICLE II - TERM

§2.01 Term. This Lease shall begin on the Commencement Date. In the event that the Tenant enters into occupancy of the Premises prior to the Commencement Date for the purpose of constructing improvements or installing fixtures therein (and without conducting business therein), then all terms of this Lease except those regarding the payment of rent and other charges shall apply to such occupancy.

§2.02 Confirmation. Landlord shall, within 30 days after the commencement of the Term, forward to Tenant in writing the actual dates of the Commencement Date and the expiration of the Term and Tenant shall countersign the document.

§2.03 Surrender. The Tenant shall at the expiration of the Term or any earlier termination of this Lease (a) promptly surrender to the Landlord possession of the Premises, including any fixtures or other improvements which under the provisions of this Lease are property of the Landlord, all in good order and repair (ordinary wear and tear excepted) and broom clean, (b) remove from the Premises the Tenant's signs, goods and effects and any machinery, trade fixtures and equipment used in conducting the Tenant's trade or business and not owned by the Landlord located at the Premises or the Building and (c) repair any damage to the Premises or the Building caused by such removal. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to remove any wiring or cabling serving the Premises.

§2.04 Holding Over. If the Tenant continues to occupy the Premises beyond the expiration or of the Term or any earlier termination of this Lease and Landlord consents to such continuation, such occupancy shall be a month to month tenancy subject to all of the other terms and conditions contained in this Lease, except that the Base Monthly Rent payable during the period of such occupancy shall be equal to one and one-quarter times (125%) the amount of the Base Monthly Rent which was last in effect during the Term. Nothing in the foregoing shall be deemed in any way to limit or impair the Landlord's right to immediately evict the Tenant or exercise its other rights and remedies under the provisions of this Lease or applicable law, including the collection of consequential and other damages, on account of the Tenant's occupancy of the Premises without having obtained Landlord's prior consent.

## ARTICLE III - RENT

§3.01 Base Rent. Tenant shall pay a minimum annual rental in each one-year period during the Term hereof which shall be referred to hereinafter as "Base Rent." Base Rent shall be calculated and increased for each such year as set forth in the Fundamental Lease Provisions.

§3.02 Operating Costs. Tenant shall be obligated to pay to Landlord a share of the operating costs and expenses incurred in connection with the Project as follows:

(A) Tenant shall pay to Landlord in each year or part year during the Term a proportionate share of the amount, if any, by which the Operating Costs (defined below) applicable to the Project in each such year or part year exceeds the Operating Costs allocable pro rata to the Project in the Base Year (defined below). No Operating Costs shall be due during the Base Year.

(B) For these purposes, the fraction used in determining the Tenant's proportionate share of such items shall be the Pro Rata Share set forth in the Fundamental Lease Provisions. Notwithstanding the foregoing, in calculating the Tenant's Pro Rata Share of Operating Costs for any year, Landlord shall have the right to calculate such charges on the basis of the Building or the entire Project with respect to any of such Costs, provided that in making such calculations, the denominator used in determining the Tenant's Pro Rata Share shall include the total rentable square footage of the Building or the total rentable square footage in the entire Project, respectively.

(C) The Base Year shall be the calendar year as defined in section 1.13 above.

(D) The "Operating Costs" shall mean all expenses, costs and disbursements of every kind and nature incurred in connection with the ownership, management, maintenance, repair, replacement and operation of the Building and Project, including but not limited to the following: (1) cost of any utilities 'which are not submetered directly to tenant spaces; (2) cost of repairs and general maintenance to the Building, (3) costs of repairs, replacements and general maintenance to the parking areas, all sidewalks and other common facilities, and all other improvements at the Project. For purposes of this provision, Operating Costs shall not include (a) the cost of capital improvements (except as expressly provided above), (b) the costs of tenant improvements within tenant spaces, (c) ground rent or debt service, (d) depreciation, (e) expenses incurred in leasing, obtaining new tenants or leasing commissions, (f) accounting or legal services (g) costs or expenses for which Landlord is or will be reimbursed or indemnified (whether by an insurer, condemnor, tenant or otherwise), should Landlord be reimbursed, Landlord will credit reimbursement back to Tenant, (h) cost of correcting any applicable building or fire code violation(s) or violations of any other applicable law relating to the Project, and/or the cost of any penalty or fine incurred for noncompliance with the same, if such violation exists as of the Commencement Date and Landlord is deemed responsible for the violation; or (i) costs for entertainment or building promotional expenses.

(E) In addition to the above-listed expense exclusions, Landlord has agreed that in no event will the total controllable Operating Costs passed through to Tenant in any year be greater than five percent (5%) more than such expenses passed through to Tenant during the prior year ("Expense Cap"). For purposes of this Section, "controllable Operating Costs" shall include all Operating Costs other than taxes, utilities and insurance. Calculation of the Expense Cap shall be done on a cumulative basis from the Base Year.

§3.03 When Due and Payable.

(A) All rental obligations set forth in the foregoing provisions and elsewhere in this Lease, except for Base Rent, shall be referred to hereinafter as "Additional Rent." All Base Rent and Additional Rent are sometimes hereinafter together referred to as "Rent."

(B) The Base Rent for each year (or part thereof) during the Term shall be due and payable in 12 consecutive, equal monthly installments, in advance, on the first day of each calendar month during the Term, provided that the installment of Rent for the first full calendar month of the Term shall be due upon execution of this Lease.

(C) Tenant shall pay all Additional Rent within 30 days after being billed therefor by Landlord. However, Landlord may, at its discretion, (a) make from time to time during the Term a reasonable estimate of the Additional Rent which may become due for any year, (b) require the Tenant to pay to the Landlord such Additional Rent in equal installments at the time and in the manner that the Tenant is required hereunder to pay monthly installments of Base Rent, and (c) at the Landlord's reasonable discretion, increase or decrease from time to time during such year the amount initially estimated for such year, all by giving the Tenant written notice thereof. In such event, the Landlord shall cause the actual amount of such Additional Rent to be calculated, and the Tenant or the Landlord shall within 30 days pay to the other the amount of any deficiency or overpayment, whichever the case may be.

(D) Landlord shall have the right to apply any payment of Rent by Tenant to any amounts outstanding in any order at Landlord's sole discretion. Acceptance by Landlord of any partial payment of Rent shall not be deemed a waiver or satisfaction of the Tenant's obligation to timely pay when due all remaining amounts of Rent hereunder, which shall remain due in their entirety according to the terms of this Lease.

§3.04 Proration. All items of Rent shall be prorated for any month during the Term which is not a full calendar month or in which two different rental rates are applicable. If only part of any calendar year falls within the Term, the amount computed as Additional Rent for such calendar year under the foregoing provisions of this section shall be appropriately prorated, but the expiration of the Term before the end of a calendar year shall not limit the Tenant's obligation hereunder to pay the prorated portion of Additional Rent applicable to that portion of such calendar year falling within the Term.

§3.05 Late Payment. Each such payment of Rent shall be made promptly when due, without any demand, deduction or setoff whatsoever, at the place directed by Landlord. Any payment of Rent not made when due (subject to a 5 clay grace period), shall be subject to a late payment charge, for each occurrence of delinquency, of 5% of the amount overdue and payable. This late payment charge shall be in addition to the interest provided for above and shall be due and payable with the next succeeding Rent payment. The obligation to pay Rent shall survive termination of this Lease.

§3.06 Security Deposit. Upon signing this Lease, Tenant shall deposit with the Landlord the Security Deposit, which shall be retained by the Landlord as security for the Tenant's payment of Rent and performance of all of its other obligations under the provisions of this Lease. On the occurrence of an Event of Default (as defined herein), the Landlord shall be entitled, at its sole discretion, to (i) apply any or all of such sum in payment of any Rent then due and unpaid, any expense incurred by the Landlord in curing any such default, and/or any damages incurred by the Landlord by reason of such default (including but not limited to attorneys' fees), in which event Tenant shall immediately restore the amount so applied, and/or (ii) to retain any or all of such sum in liquidation of any or all damages suffered by the Landlord by reason of such default. However, the foregoing shall not serve in any event to limit the rights, remedies and damages accruing to Landlord under Article XIII or any other provision of this Lease on account of default by Tenant. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

§3.07 If Tenant's actual Percentage of Operating Costs for a given year exceeds the estimated payments made by Tenant for such year, Tenant shall pay to Landlord the deficiency within 30 days following, receipt of notice to Tenant of the amount due and a statement of accounting for such expenses. If Tenant's estimated payments for a given year exceed Tenant's actual Percentage of Operating Costs for such year, Tenant shall be entitled to offset the excess against the next rental payments due to Landlord under this Lease if the Lease is still in effect. If the Lease has terminated, any such excess shall be refunded to Tenant at the same time that Landlord issues its statement of accounting to Tenant. Landlord will notify Tenant by March 1 of each year with the Tenants actual Pro-Rata share of Operating Costs.

§3.08 The amount of actual Operating Costs for the Base Year shall be determined by dividing the greater of (A) (i) Operating Costs actually paid or incurred by Landlord for the Base Year or (ii) Operating Costs that would have been paid or incurred if 95% of the rentable area of the Project were occupied for the Base Year by (B) the rentable area of the Project.

§3.09 Landlord shall maintain books and records of all Operating Costs and shall permit Tenant to audit Landlord's statements for any annual period no earlier than April 1 of the following year for any previous calendar year and provided that Tenant has paid actual Percentage of Operating Costs in any previous year during Tenants lease term. If Tenant elects to audit such books and records, Landlord shall reasonably cooperate with Tenant, and any deficiency or overpayment disclosed by such audit shall be promptly paid or refunded the case may be. To the extent that an audit discloses calculation errors or misstatements which affect prior years, an expense adjustment will be made which will reflect all years affected by such errors. If any such audit discloses that the total Operating Costs billed to Tenant were overstated by more than 5% of the total actual Operating Costs, Landlord shall reimburse Tenant for the reasonable costs of such audit.

## ARTICLE IV - USE OF PREMISES

§4.01 Use. Tenant shall only use the Premises for the Permitted Use, and for no other use or purpose. Tenant shall be permitted to change its trade name to another affiliated entity Trade Name with the prior written approval of Landlord whose approval will not be unreasonably withheld.

§4.02 Laws. Tenant shall comply with any and all federal, state and local laws, ordinances and regulations, including but not limited to the Americans With Disabilities Act, applicable to the Premises, to the Tenant's use of the Premises or to any common areas of the Project, and Tenant shall make any changes or improvements to the Premises required thereby, subject to §6.03 hereof.

§4.03 Common Areas & Parking. The Landlord hereby grants to the Tenant a non-exclusive license to use all other common areas of the Building and the surrounding grounds on which the Building is located which are manifestly designed and intended for common use by the occupants of the Building, all for pedestrian ingress and egress to and from the Premises.

Such license shall be exercised in common with the Landlord and other tenants and their respective employees and invitees and in accordance with the Rules and Regulations promulgated from time to time pursuant to the provisions of Article XII. In addition, such non-exclusive license shall include the Parking Spaces, and Tenant shall pay the Parking Charges, if any, subject to section 17.15 below, as Additional Rent, on a monthly basis at the times and in the manner that all other Additional Rent is paid hereunder. At all times, Landlord shall have the right to rearrange, improve, reduce, replace or otherwise alter the parking areas and any other common areas at the Project, as well as any utility or mechanical systems and equipment at the Premises, Building or Project., provided that Landlord shall not permanently obstruct access to the Premises (beyond reasonable obstructions arising during the construction process) in making any such changes to the common areas, systems or equipment.

§4.04 Right of Entry. Landlord and its agents and contractors shall be entitled to enter the Premises at any time (a) to inspect the Premises, (b) to exhibit the Premises to any existing or prospective purchaser, tenant or mortgagee thereof, (c) to make any alteration, improvement or repair to the Building or the Premises, or (d) for any other purpose relating to the operation or maintenance of the Project, all provided that the Landlord shall (1) give the Tenant at least 24 hours' prior notice of its intention to enter the Premises (unless doing so is impractical or unreasonable because of emergency), and (2) use reasonable efforts to avoid interfering with the Tenant's use and enjoyment thereof.

## ARTICLE V - INSURANCE/INDEMNIFICATION

§5.01 Tenant's Insurance. The Tenant shall procure and maintain, at its expense and throughout the Term, the following insurance:

(a) Lessee shall, at Lessee's expense, obtain and keep in force during the term of this Lease a policy of Commercial General Liability insurance utilizing an Insurance Services Office standard form with Broad Form General Liability Endorsement, or equivalent, in an amount of not less than $1,000,000 per occurrence of bodily Injury and property damage combined and shall insure Lessee with Lessor as an additional insured against liability arising out of the use, occupancy or maintenance of the Premises. Compliance with the above requirement shall not, however, limit the liability of Lessee hereunder.

(b) Lessee shall, at Lessee's expense, obtain and keep In force during the term of this Lease for the benefit of Lessee, replacement cost fire and extended coverage insurance, with vandalism and malicious mischief, sprinkler leakage endorsements, in an amount sufficient to cover not less than 100% of the full replacement cost, as the same may exist from time to time, of all of Lessee's personal property, fixtures, equipment and tenant improvements.

(c) Business income and interruption insurance with limits of at least 100% of Tenant's gross profit for a 12 month period.

Each liability insurance policy described above (except employer's liability policies) shall name Landlord, Landlord's agent and advisor, Landlord's property manager, and any Mortgagees (defined in §13.01 below), and expressly including any trustees, directors, officers, employees or agents of any such entities, all as additional insureds. Each property

insurance policy described above shall name Landlord as loss payee with respect to any permanently affixed improvements and betterments to the Premises. All such policies shall (i) be issued by insurers licensed to do business in the state in which the Project is located, (ii) be issued by insurers with a current rating of "A-" "VII" or better in Best's Insurance Reports, (iii) be primary without right of contribution from any of Landlord's insurance, (iv) be written on an occurrence (and not claims-made) basis, and (v) be uncancellable without at least 30 days' prior written notice to the Landlord and any Mortgagee (10 days for non-payment of premiums). At least 15 days before the Commencement Date (or, if earlier, the date Tenant first enters into the Premises for any reason), Tenant shall deliver to the Landlord certificates of insurance satisfactory to Landlord for each such policy required above.

Within 10 days after any such policy expires, Tenant shall deliver to the Landlord a certificate of renewal evidencing replacement of the policy. The limits of insurance required by this Lease or as otherwise carried by Tenant shall not limit the liability of Tenant or relieve Tenant of any obligations under this Lease, except to the extent provided in any waiver of subrogation contained in this Lease. Tenant shall have sole responsibility for payment of all deductibles.

§5.02 Landlord's Insurance. The Landlord shall maintain throughout the Term all-risk or fire and extended coverage insurance upon the Building in an amount equal to the greater of the full replacement cost or the amount required by the Mortgagee. The premiums for such insurance and of each endorsement thereto shall be deemed to be part of the Operating Costs a share of which is to be paid by Tenant as Additional Rent hereunder. Furthermore, Tenant shall pay, as Additional Rent and as billed by Landlord, the entire amount of any increase in premiums for any insurance obtained by Landlord that occurs solely due to the particular use of the Premises by Tenant.

§5.03 Waiver of Subrogation. Notwithstanding anything to the contrary in this Lease, Landlord and Tenant each waives all rights to recovery, claims or causes of action against the other and the other's agents, trustees, officers, directors and employees on account of any loss or damage which may occur to the Premises, the Project or any improvements thereto or to any personal property of such party to the extent such loss or damage is caused by a peril which is required to be insured against under this Lease, regardless of the cause or origin (including negligence of the other party). Landlord and Tenant each covenants to the other that, to the fullest extent permitted by law, no insurer shall hold any right of subrogation against the other party. Tenant covenants to Landlord that all policies of insurance maintained by Tenant respecting property damage shall permit such waiver of subrogation, and Tenant agrees to advise all of its insurers in writing of the waiver.

§5.04 Indemnification. Except for items subject to Article 14 below, Tenant hereby agrees to indemnify and hold Landlord and Landlord's agents and advisors harmless from and against any cost, damage, claim, liability or expense (including attorney's fees) incurred by or claimed against Landlord, directly or indirectly, as a result of or liability for any injury (including death) or damage to any person or property whatsoever, other than that caused by the gross negligence or willful misconduct of Landlord, its agents, servants and employees: (a) occurring on or at the Premises; or (b) occurring as a result of any act, neglect, fault or omission to act on the part of Tenant, its agents, contractors, employees, or invitees. Furthermore, Tenant hereby releases and absolves Landlord from any liability for theft, damage or other loss, regardless of the cause or reason, in connection with any furniture, fixtures, machinery, equipment, inventory, any vehicles in the parking areas, or other personal property of any kind, belonging to Tenant or to any of its employees, agents, invitees or licensees.

ARTICLE VI - IMPROVEMENTS TO PREMISES

§6.01 Initial Improvements. Certain improvements shall be constructed in the Premises by Landlord as described in Exhibit B hereto (the "Space Improvements") for the purpose of initially preparing the Premises for occupancy by Tenant. Prior to the Commencement Date, any work performed by Tenant or any fixtures or personal property moved into the Premises shall be at Tenant's own risk. Landlord shall use commercially reasonable efforts to complete such improvements on or before the Commencement Date set forth in the Fundamental Lease Provisions, but Landlord shall have no liability to the Tenant hereunder if prevented from doing so for any reason whatsoever, including but not limited to strike or other labor troubles, governmental restrictions, failure or shortage of utility service, national or local emergency, accident, flood, fire or other casualty, adverse weather condition, other act of God, inability to obtain a building permit or a certificate of occupancy, or any other cause beyond the Landlord's reasonable control. In such event, the Commencement Date and expiration date of the Term shall be postponed for a period equaling the length of such delay. If any delay in completion of the Space Improvements or in delivering possession of the Premises is deemed to be caused by Landlord's gross negligence and as a result, the Initial Improvements are not completed by July 31, 2011, Tenant shall have the right to cancel this Lease and have no other obligations hereto. However, if any delay in completion of the Space Improvements or in delivering possession of the Premises to Tenant are caused by Tenant, including Tenant's requesting changes in the Space Improvements which delay completion thereof, then Tenant shall commence all of its obligations hereunder (including the payments of Rent), and all terms herein shall be effective and binding, on that date reasonably calculated by Landlord or its contractor as the date on which Landlord would have substantially completed the Space Improvements if not for such delay.

§6.02 As-is Condition. Except for any work described in Exhibit B which is to be performed by Landlord, Tenant acknowledges and agrees that the Premises shall be leased hereunder "as-is, where-is" without warranty as to physical condition, environmental condition, zoning, suitability for a particular purpose or any other matter whatsoever.

§6.03 Tenant's Alterations. The Tenant shall not make any alteration, addition or improvement to the Premises, whether structural or nonstructural and including any signs or other items which may be visible from the exterior of the Premises, without the Landlord's prior written consent. If the Landlord consents to any such proposed alteration, addition or improvement, it shall be made at the Tenant's sole expense (and the Tenant shall hold the Landlord harmless from any cost incurred on account thereof), and at such time and in such manner as to not unreasonably interfere with the use and enjoyment of the remainder of the Project by any other tenant or other person. All such alterations and improvements shall comply in all respects with any and all applicable federal, state and local laws, ordinances and regulations, including but not limited to the Americans With Disabilities Act and regulations promulgated thereunder. In addition, if and to the extent required by Landlord, Tenant shall remove any alterations or improvements to the Premises, whether deemed a part of the real 'property and thereby owned by Landlord or otherwise, and Tenant shall repair any damage

resulting from such removal, all at Tenant's expense. Furthermore, Tenant shall indemnify Landlord from all damages, losses or liability arising from such alterations or improvements, or the construction or removal thereof, by Tenant or by any other party other than Landlord. Without securing Landlord's prior consent, Tenant shall be permitted to hang pictures and shelving and perform other similar minor decorating activities and to perform non-structural alterations, which alterations do not require the acquisition of a building permit, provided that Tenant complies with all pertinent building code, fire, safety and other such governmental regulations.

§6.04 Mechanics' Liens. The Tenant shall (a) immediately bond or have released any mechanics', materialman's or other lien filed or claimed against any or all of the Premises, the Building, or any other property owned or leased by the Landlord by reason of labor or materials provided for the Tenant or any of its contractors or subcontractors, or otherwise arising out of the Tenant's use or occupancy of the Premises, and (b) defend, indemnify and hold harmless the Landlord against and from any and all liability or expense (including but not limited to attorneys' fees) incurred by the Landlord on account of any such lien or claim. Failure by Tenant to discharge the lien or post bond (which under law would prevent foreclosure or execution under the lien) within ten (10) days after demand by Landlord, shall be a default by Tenant under this Lease and, in addition to Landlord's other rights and remedies, Landlord may take any action necessary to discharge the lien.

§6.05 Fixtures. Any and all improvements, repairs, alterations or other property attached to, used in connection with or otherwise installed within the Premises by the Landlord or the Tenant shall, immediately on the completion of their installation, become the Landlord's property without payment therefor by the Landlord. However, upon the expiration of the Term, Tenant shall have the right to remove any furniture, inventory and equipment which is not affixed to the Premises or paid for by Landlord through improvement allowances or otherwise.

## ARTICLE VII - UTILITIES & MAINTENANCE

§7.01 Ordinary Services. During the Business Hours, Landlord shall provide heating and air-conditioning to the Premises, in the appropriate seasons of the year, as necessary tin Landlord's judgment) for the normal use and occupancy of the Premises. In addition, Landlord shall provide (a) electricity and water suitable for the use of the Premises in accordance with the provisions of §4.01, (b) automatic elevator service within the Building and (c) janitorial service and trash removal service. All such services shall be an Operating Cost of the Building for which Tenant pays their Percentage above the Base Year as defined in Article III above. "Business Hours" shall mean 7:00 a.m. to 6:00 p.m. Monday through Friday and closed on Saturday, Sunday and Building observed holidays, but Tenant shall have access at all times. Building Hours shall be subject to change by Landlord with sufficient notice of the new Business Hours provided in writing to Tenant, however, in no event shall the Building Hours begin later then 9:00am or end earlier than 5:00pm Monday through Friday and Building observed holidays.

§7.02 Extraordinary Services. The Landlord shall not be obligated to provide to or for the benefit of the Premises any of the services referred to in the provisions of §7.01 above other than during the Business Hours referred to therein. lf the Tenant requests such services to be continued during extended hours, Tenant shall pay to the Landlord as Additional Rent the amount from time to time charged by the Landlord for such extended service, such amount to be calculated as a function of the costs to provide such services during extended hours and the number of tenants sharing same at the time requested.

§7.03 Excessive Use. The Tenant shall not, without first obtaining the Landlord's written consent thereto, install within the Premises any machinery, appliances or equipment which uses electrical current in excess of that which is standard for the Building, and Tenant shall pay as Additional Rent the additional expense incurred by the Landlord as a result of any of the foregoing, including that resulting from any installation of such equipment. The Landlord shall have the right from time to time, using sub-meters or other methods, to measure the consumption of electricity or other utilities upon the Premises. In the event Landlord determines Tenant is consuming a disproportionate amount of electricity or other utilities at the Premises in relation to other tenants, and regardless of whether such determination is reached by submetering or other methods, Tenant shall pay Landlord (a) within 30 days after billing, the out-of-pocket costs of installing submeters, and (b) on a monthly basis, as Additional Rent, the cost of all such electricity or other utilities consumed at the Premises as indicated by the submeter(s) in excess of Base Year costs for electricity.

§7.04 Maintenance by Tenant. The Tenant shall at all times maintain the Premises, and all elements thereof, in good, clean and safe repair and condition.

§7.05 Maintenance by Landlord. The Landlord shall furnish, supply and maintain in good order and repair (a) the roof and other structural portions of the exterior of the Building, (b) the common areas of the Building, and (c) the base building heating, ventilating and air-conditioning facilities.

§7.06 Interruption. The Landlord shall have no liability to the Tenant on account of any failure, modification or interruption of electricity, water or other utility or HVAC or other service or interruption in access to the Premises, but in any such event Landlord shall take reasonable steps to provide for the resumption of such service or access to the extent the same is within Landlord's control. In addition, Landlord shall not be liable to the Tenant for any disruption to Tenant's business which occurs as a result of any repairs, replacements, improvements or alterations that take place within the Premises. However, during any such repairs, replacements, improvements or alterations, Landlord shall take reasonable steps to minimize the disruption. If any failure to provide services or utilities continues for more than two consecutive business days and materially interferes with Tenant's conduct of business in or use and operation of the Premises, Tenant shall be entitled to an equitable abatement of rent for such period of time as the interruption is in effect.

## ARTICLE VIII - FINANCIAL INFORMATION

§8.01 Financial Reporting. Tenant shall deliver to Landlord quarterly financial statements within 30 days of the close of each calendar quarter or, if applicable, within 30 days after Tenant's unrestricted cash position falls below $2,000,000.00, in each case, as prepared by Tenant in its customary financial reporting to Tenant's lender. Such financial statements shall include a calculation of Tenants unrestricted cash position. Unless otherwise agreed to in writing by Tenant, Landlord agrees:

(A) except as required by law, to keep all Tenant financial statements confidential and not to disclose or reveal such financial statements to any person other than those employed by Landlord or on its behalf who are actively and directly participating in the evaluation of Tenant's unrestricted cash position and to cause those persons to observe the terms of this Section; and

(B) not to use Tenant financial statements for any purpose, other than in connection with evaluation of Tenant's unrestricted cash position.

In the event that Landlord is requested pursuant to, or required by, applicable law or regulation or by legal process to disclose any Tenant financial statements, Landlord agrees that it will provide Tenant with prompt notice of such request(s). Without prejudice to the rights and remedies otherwise available to Tenant, Tenant will be entitled to equitable relief by way of injunction if Landlord or any of its employees, agents, consultants or representatives breach or threaten to breach any of the provisions of this Section.

§8.02 Credit Event. If Tenant's unrestricted cash position falls below $2,000,000.00 as indicated in any Tenant financial statement (a "Credit Event"), Landlord may deliver notice of such Credit Event (the "Credit Notice") to Tenant demanding that Tenant either provide evidence that Tenant's unrestricted cash position is greater than or equal to $2,000,000.00 or Tenant provide the Credit Enhancement (defined below). Such Credit Event shall be deemed an Event of Default if, within 90 days of delivery of the Credit Notice, (a) Tenant's does not provide subsequent financial statements indicating an unrestricted cash position greater than or equal to $2,000,000.00 or (b) Tenant does not provide the Credit Enhancement (defined below) to Landlord.

§8.03 Credit Enhancement. The "Credit Enhancement" shall mean a Letter of Credit from an FDIC approved financial institution in an amount equal to product of twelve multiplied by the monthly Base Rent amount as of delivery of the Credit Notice. Such Credit Enhancement shall be to the benefit of Landlord which Landlord may draw upon in the event an Event of Default has occurred and is continuing beyond any applicable cure period under the Lease. The Credit Enhancement shall remain in effect until Tenant delivers two consecutive quarterly financial statements indicating that Tenant's unrestricted cash position is greater than or equal to $2,000,000.00. Following such delivery of consecutive financial statements, Landlord shall return the Credit Enhancement to Tenant. Such Credit Enhancement shall provide that Landlord may draw on the Credit Enhancement by furnishing a sight draft in the amount demanded together with a statement certified by Landlord that (1) an Event of Default has occurred and is continuing under the Lease, or Landlord is barred by any applicable, bankruptcy or creditors' rights law from declaring an Event of Default has occurred, and (2) Landlord is entitled to the requested amount as either payment of any sum in default or as reimbursement for any sum which Landlord was required to spend by reason of default by Tenant under this Lease. The Credit Enhancement shall be valid for at least one (1) year and Tenant shall cause the Credit Enhancement to be renewed no later than thirty (30) days prior to its expiration date and any renewal shall be for at least one (1) year. If Tenant fails to renew an expiring Credit Enhancement (and furnish Landlord the renewal document) at least thirty (30) days prior to an expiration, Landlord, with not less than ten (10) days prior written notice to Tenant, shall be entitled thereafter to draw upon the Credit Enhancement in the full amount of the Credit

Enhancement (unless a renewal or replacement Credit Enhancement is provided during said ten (10) day period) in which event Landlord shall retain said money as a cash security deposit hereunder. Tenant acknowledges and agrees that Landlord may collaterally assign the Credit Enhancement to Landlord's Mortgagee and such Mortgagee will have the same rights to draw on the Credit Enhancement as Landlord has pursuant to this Lease. Any draw or other action in regard to the Credit Enhancement taken by Landlord's Mortgagee shall be deemed, for purposes of this Lease, as a draw or other action taken by Landlord. Landlord shall assign the Credit Enhancement to any successor in interest to Landlord's interest in this Lease.

## ARTICLE IX - CASUALTIES

§9.01 General. If the Premises are damaged by fire or other casualty during the Term, then the following shall apply:

(A) The Landlord shall restore the Premises with reasonable promptness, taking into account the time required by the Landlord to effect a settlement with, and to procure any insurance proceeds from, any insurer against such casualty, to substantially the same condition as existed immediately before such casualty. Landlord may temporarily enter and possess any or all of the Premises for such purpose. The Landlord shall not be obligated to repair, restore or replace any fixture, improvement, alteration, furniture or other property owned or installed by the Tenant.

(B) The times for commencement and completion of any such restoration shall be extended for the period of any delay arising due to force majeure causes beyond the Landlord's control. If the Landlord undertakes to restore the Premises, but such restoration cannot be accomplished within 90 days after the date of casualty, as determined by estimate of Landlord upon such casualty, then Tenant may terminate this lease by giving written notice thereof to the Landlord within 15 days after receipt of such estimate from Landlord.

(C) From the time of such casualty to the completion of restoration as described above, Tenant's rental obligations shall be abated proportionately from that portion of the Premises which is rendered untenantable as a result of the casualty.

§9.02 Substantial Destruction. Anything contained in the foregoing provisions of this section to the contrary notwithstanding:

(A) If during the Term the Building is so damaged by fire or other casualty that (a) either the Premises or the Building are rendered substantially unfit for occupancy, as reasonably determined by the Landlord, or (b) the Building is damaged to the extent that the Landlord elects to demolish the Building, or if any mortgagee or lender requires that any or all of the insurance proceeds issued on account thereof be used to retire any or all of the debt secured by its mortgage, then in any such case the Landlord may elect to terminate this Lease as of the date of such casualty by giving written notice thereof to the Tenant within 60 days after such date; and

(B) In such event, (1) the Tenant shall pay to the Landlord the Base Rent and any Additional Rent payable by the Tenant hereunder and accrued through the date of such casualty, (2) the Landlord shall repay to the Tenant any and all prepaid Rent for periods beyond such casualty, and (3) the Landlord may enter upon and repossess the Premises without further notice provided that Tenant is given a reasonable time to remove its property from the Premises.

§9.03 Tenant's Negligence. Anything contained in any provision of this Lease to the contrary notwithstanding, if any such damage to the Premises, the Building or Project are caused by or result from the gross negligence or willful misconduct of the Tenant or any of its employees, contractors, agents or licensees, then (a) the Rent shall not be abated or apportioned as aforesaid, and (b) the Tenant shall pay to the Landlord upon demand, as Additional Rent, the cost of any repairs and restoration made or to be made as a result of such damage, except if and to the extent that such costs are covered under Landlord's property insurance.

## ARTICLE X - CONDEMNATION

§10.01 Right to Award. If any or all of the Premises are taken by the exercise of any power of eminent domain or are conveyed to or at the direction of any governmental entity under a threat of any such taking (each of which a "Condemnation"), the Landlord shall be entitled to collect from the condemning authority thereunder the entire amount of any award or consideration for such conveyance, without deduction therefrom for any leasehold or other estate held by the Tenant under this Lease. The Landlord shall be entitled to conduct any condemnation proceeding and any settlement connected therewith free of interference from the Tenant, and the Tenant hereby waives any right which it has to participate therein. However, the Tenant may seek, in a separate proceeding, a separate award on account of any damages or costs incurred by the Tenant as a result of any such Condemnation, so long as such separate award in no way diminishes any award or payment which the Landlord would otherwise receive as a result of such Condemnation.

§10.02 Effect of Condemnation. If (a) all of the Premises are covered by a Condemnation, or (b) any part of the Premises is covered by a Condemnation and the remainder is insufficient for the reasonable operation of the Tenant's business, or (c) any of the Buildings is covered by a Condemnation and, in the Landlord's reasonable opinion, it would be impractical to restore the remainder thereof, or (d) any of the rest of the Project is covered by a Condemnation and, in the Landlord's reasonable opinion, it would be impractical to continue to operate the remainder of the Project thereafter, then, in any such event, the Term shall terminate on the date on which possession of the property covered by such Condemnation is taken by the condemning authority thereunder, and all Rent (including any Additional Rent and other charges payable hereunder) shall be apportioned and paid to such date. If there is a Condemnation and the Term does not terminate pursuant to the foregoing provisions of this subsection, the operation and effect of this Lease shall be unaffected by such Condemnation, except that the Base Rent shall be reduced in proportion to the square footage of floor area, if any, o F the Premises covered by such Condemnation.

§10.03 Interruption. If there is a Condemnation, the Landlord shall have no liability to the Tenant on account of any (a) interruption of the Tenant's business upon the Premises, (b) diminution in the Tenant's ability to use the Premises, or (c) other injury or damage sustained by the Tenant as a result of such Condemnation.

## ARTICLE XI - ASSIGNMENT/SUBLETTING

§11.01 Actions Covered. Any assignment by Tenant of this Lease or its rights hereunder, any subletting of the Premises and any license, mortgage, pledge or other transfer of any part of the Premises or any of Tenant's interests therein or under this Lease shall all be referred to hereinafter as a "Transfer." Furthermore, the sale, assignment or other transfer of any direct or indirect controlling interest in the Tenant (if a corporation), the sale, assignment or other transfer of any general partnership interest in Tenant (if a partnership), the sale, assignment or other transfer of any managing membership interest in Tenant (if a limited liability company), the sale of substantially all of Tenant's assets, and the merger or consolidation of Tenant into another organization or the reorganization or dissolution of Tenant, after which Tenant shall not be the surviving corporation or partnership, shall each be considered a "Transfer" for the purposes of this Lease.

§11.02 Restrictions. Tenant shall not Transfer this Lease or the Premises without first obtaining the Landlord's prior written consent thereto, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that Tenant proposes any Transfer, Tenant shall notify Landlord in writing at least 30 days before the date on which the Transfer is to be effective and, as included with such notice, furnish Landlord with (i) the name of the entity receiving such Transfer (the "Transferee"), (ii) a detailed description of the business of the Transferee, (iii) audited financial statements of the Transferee, (iii) all written agreements governing the Transfer, (iv) any other information reasonably requested by the Landlord with respect to the Transfer or the Transferee, and (v) an amount, to be established, for Landlord's costs to be incurred in connection with the review and processing of such documentation. Landlord shall respond to Tenant's request for approval or disapproval of the Transfer within 20 days after Landlord receives the request and all documents and information required above.

§11.03 Liability to Landlord. Tenant hereby agrees that notwithstanding anything in this Lease to the contrary, and regardless of whether or not Landlord's consent is required hereunder, no Transfer shall be valid or effective unless and until the Transferee agrees in a written document, in form and substance satisfactory to Landlord, that the Transferee shall (1) in the case of a subletting of any part of the Premises, observe and perform all duties, obligations and liabilities of the Tenant under the terms of this Lease as such terms relate to the space subleased, or (2) in the case of all other Transfers, observe and perform all duties, obligations and liabilities of the Tenant under the terms of this Lease. In addition, no Transfer of any kind, regardless of whether or not Landlord's consent thereto is required hereunder, shall serve to relieve or release the Tenant in any way from full and direct liability for the timely performance of all of the Tenant's duties and obligations under this Lease.

§11.04 Excess Rents. In the event that Tenant effects any Transfer and at any time receives rent and/or other consideration on a periodic basis which exceeds that which Tenant is obligated to pay to Landlord hereunder, Tenant shall pay to Landlord fifty percent (50%) of such excess rent or other consideration when and as received by Tenant, however, not later than 30 days after receipt of such excess consideration.

§11.05 Permitted Transfers. Notwithstanding any provision in this Lease to the contrary, Tenant shall have the right to assign this Lease or sublet all or a portion of the Premises without Landlord's consent to any corporation or business entity which controls, is controlled by or is under common control with Tenant, or to a corporation or other business entity resulting from a merger or consolidation with Tenant, or to any person or entity which acquires substantially all of the Tenant's business assets in the State where the Premises are located as a going concern. Tenant shall be required to notify Landlord in writing within 30 days of such assignment or sublet and the basic terms of such arrangement.

§11.06 Landlord's Transfers. Landlord shall have the unrestricted right to assign or transfer its interest in this Lease to purchasers of the Building, to holders of mortgages or deeds of trust on the Building, or to any other party, in which event Landlord shall be released from all duties, obligations and liabilities arising hereunder after the assignment or transfer becomes effective.

## ARTICLE XII - RULES & REGULATIONS

§12.01 Landlord's Rules. The Landlord shall have the right to impose and subsequently modify, from time to time and at its sole discretion, reasonable rules and regulations (hereinafter referred to as the "Rules and Regulations," attached as "Exhibit C") having uniform applicability to all tenants of the Building (subject to the provisions of their respective leases) and governing their use and enjoyment of the Building and the remainder of the Project, including all parking areas. The Tenant and its agents, employees, invitees and licensees shall comply with such Rules and Regulations. Any rules or regulations the application of which would conflict with any provisions of this Lease or with any rights granted to Tenant hereunder will be deemed waived as to Tenant to the extent necessary to protect Tenant's interests hereunder.

## ARTICLE XIII - MORTGAGE LENDERS

§13.01 Subordination. This Lease shall be subject and subordinate to the lien, operation and effect of each mortgage, deed of trust, ground lease and/or other similar instrument covering any or all of the Premises or the Project, and each renewal, modification or extension thereof (each of which referred to as a "Mortgage"), all automatically and without the necessity of any further action by either party hereto, provided, however, that in the event the beneficiary under any such Mortgage (referred to as a "Mortgagee") succeeds to the interest of Landlord hereunder through foreclosure or otherwise, such Mortgagee shall honor this Lease and not disturb Tenant in its possession of the Premises except upon an Event of Default (defined in § 14.01 below). In addition, Tenant shall attorn to any such Mortgagee and agrees that such Mortgagee shall not be liable to Tenant for any defaults by Landlord under this Lease or for any other event occurring prior to such Mortgagee's succeeding to the interest of Landlord hereunder; provided, that if such defaults continue following Mortgagee succeeding to Landlord's interest, Tenant may give notice of such defaults to Mortgagee as successor Landlord and if not rectified within 30 days, Mortgagee shall be responsible for the continuing defaults.

§13.02 Written Agreement. The Tenant shall, within 15 days after request by the Landlord or any Mortgagee, execute, acknowledge and deliver such further instrument as is reasonably acceptable to Tenant, Landlord and Mortgagee to acknowledge the rights of the parties described in §l 3.01 above and providing such other information and certifications as is reasonably requested. Any Mortgagee may at any time subordinate the lien of its Mortgage to the

operation and effect of this Lease without obtaining the Tenant's consent thereto, in which event this Lease shall be deemed to be senior to such Mortgage without regard to their respective dates of execution, delivery and/or recordation among the land records of the jurisdiction in which the Project is located.

§13.03 Estoppel Certificate. The Tenant shall from time to time, within 15 calendar days after request by the Landlord or any Mortgagee, execute, acknowledge and deliver to the Landlord (or, at the Landlord's request, to any existing or prospective purchaser, assignee or Mortgagee) a written certification (a) that this Lease is unmodified and in full force and effect (or, if there has been any modification, stating the nature of such modification), (b) as to the dates to which the Base Rent and any Additional Rent and other charges arising hereunder have been paid, (c) as to the amount of any prepaid Rent or any credit due to the Tenant hereunder, (d) that the Tenant has accepted possession of the Premises and all improvements thereto are as required hereunder, and the date on which the Term commenced, (e) as to whether, to Tenant's actual knowledge, the Landlord or the Tenant is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default), and (f) as to any other fact or condition reasonably requested by the Landlord or such other party. Any such certificate may be relied upon by the Landlord and any such other party to whom the certificate is directed.

§13.04 SNDA. Landlord represents that as of the execution of this Lease, the only holder of a lien of any kind on the Project that is superior to this Lease (including, without limitation, any lessor under a ground lease) is Berkadia Commercial Mortgage LLC. Within 60 days following the Commencement Date, Landlord will deliver to Tenant a commercially reasonable non-disturbance agreement executed by such superior lien holder agreeing in substance that, so long as Tenant is not in default under the terms of this Lease, its tenancy and all of its rights hereunder will not be disturbed throughout the term of this Lease and any extensions thereof. Said non-disturbance agreement shall be of form and content used and accepted by Berkadia Commercial Mortgage LLC.

## ARTICLE XIV - DEFAULT AND REMEDIES

§14.01 Defaults. As used in the provisions of this Lease, each of the following events shall constitute, and is hereinafter referred to as, an "Event of Default" if such event continues following the grace periods described below:

(A) If the Tenant fails to (1) pay any Rent or any other sum which it is obligated to pay by any provision of this Lease, when and as due and payable hereunder, or (2) perform any of its other obligations under the provisions of this Lease; or

(B) If the Tenant or any guarantor of this Lease (1) applies for or consents to the appointment of a receiver, trustee or liquidator of the Tenant or of all or a substantial part of its assets, (2) is subject to a petition in bankruptcy, (3) admits in writing its inability to pay its debts as they come due, (4) makes an assignment for the benefit of its creditors, (5) files a petition or an answer seeking a reorganization or an arrangement with creditors, or seeks to take advantage of any insolvency law, (6) voluntarily performs any other act of bankruptcy, or (7) files an answer admitting the material allegations of a petition filed against the Tenant in any bankruptcy, reorganization or insolvency proceeding; or

(C) If the Tenant fails to assume possession and occupancy of the Premises within 15 days after the Commencement Date, or if thereafter the Tenant vacates or abandons the Premises for more than 15 continuous days.

§14.02 Grace Period. Anything contained in the provisions of this article to the contrary notwithstanding, on the occurrence of an Event of Default, the Landlord shall not exercise any right or remedy which it holds under any provision of this Lease or applicable law unless and until:

(A) The Landlord has given written notice thereof to the Tenant, and

(B) The Tenant has failed, (1) if such Event of Default consists of a failure to pay money, to pay all of such money within 5 days after such notice, or (2) if such Event of Default consists of something other than a failure to pay money, to fully cure such Event of Default within 30 days after such notice or, if such Event of Default cannot be cured within 30 days and Tenant commences to cure same within 15 days, to fully cure such Event of Default within a commercially reasonable time period.

(C) No such notice shall be required, and the Tenant shall be entitled to no such grace period, (1) in any emergency situation in which the Landlord acts to cure such Event of Default pursuant to the provisions of subsection (B) in §14.03 below, or (2) if the Tenant has substantially terminated or is in the process of substantially terminating its continuous occupancy and use of the Premises, or (3) in the case of any Event of Default enumerated in the provisions of subsection (B), items (1), (3), (4), (5), (6) or (7) in §14.01 above.

§14.03 Remedies. Upon the occurrence of any Event of Default, the Landlord may (subject to § 14.02 above) take any or all of the following actions:

(A) Sell at public or private sale all or any part of the fixtures, equipment, inventory and other property belonging to Tenant and in which the Landlord has a lien by grant from Tenant, statute or otherwise, at which sale Landlord shall have the right to become the purchaser upon being the highest bidder, and apply the proceeds of such sale, first, to the payment of all costs and expenses of seizing and storing such property and conducting the sale (including all attorneys' fees), second, toward the payment of any indebtedness, including (without limitation) that for Rent, which may be or may become due from Tenant to Landlord, and, third, to pay Tenant any surplus remaining after all indebtedness of Tenant to Landlord including expenses has been fully paid;

(B) Perform on behalf of and at the expense of Tenant any obligation of Tenant under this Lease which Tenant has failed to perform, without prior notice to Tenant, the total cost of which by Landlord shall be deemed Additional Rent and shall be payable by Tenant to Landlord upon demand.;

(C) With or without terminating this Lease and the tenancy created hereby, re-enter the Premises with or without court action or summary proceedings, remove Tenant and all other persons and property from the Premises, and store any such property in a public warehouse or elsewhere at the costs of and for the account of Tenant, all without resort to legal process and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby;

(D) With or without terminating this Lease, and from time to time, make such improvements, alterations and repairs as may be necessary in order to relet the Premises, and relet he Premises or any part thereof upon such term or terms (which may be for a term extending beyond the term of this Lease) at such rental or rentals and upon such other terms and conditions (which may include concessions, free rent and/or improvements) as Landlord in its sole discretion may deem advisable; and, upon each such reletting, all rentals received by Landlord shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of all costs and expenses of such reletting (including but not limited to brokerage fees, attorneys' fees and costs of improvements, alterations and repairs), third, to the payment of all Rent due and unpaid hereunder, and the balance, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder;

(E) Enforce any provision of the Lease or any other agreement between the parties by injunction, temporary restraining order or other similar equitable remedy, to which the Tenant hereby expressly consents and agrees; and/or

(F) Exercise any other legal or equitable right or remedy which it may have by law or otherwise.

No reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding that Landlord may have re-leased the Premises without termination, Landlord may at anytime thereafter elect to terminate this Lease for any previous default. If the Premises or any part thereof is re-leased, Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet the Premises or any failure by Landlord to collect any rent due upon such reletting. No action taken by the Landlord under the provisions of this section shall operate as a waiver of any right which the Landlord would otherwise have against the Tenant for the Rent hereby reserved or otherwise, and the Tenant shall at all times remain responsible to the Landlord for any loss and/or damage suffered by the Landlord by reason of any Event of Default.

§14.04 Damages. Upon any Event of Default, Tenant shall remain liable to the Landlord for the following amounts: (a) any Rent of any kind whatsoever which may have become due with respect to the period in the Term which has already expired, (b) all Rent which becomes due during the remainder of the Term less the actual net rent collected by Landlord from successor Tenant(s) for the Premises of which such collections will be reimbursed to Tenant upon receipt, (c) all unamortized costs, fees and expenses incurred by Landlord for leasing commissions, construction and other build-out, design and permitting costs for any replacement tenant incurred during the term of this Lease in the event Tenant does not complete the full term of the Lease and (d) all costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder,

including but not limited to attorneys' fees and court costs. All such amounts shall be due and payable immediately upon demand by Landlord and shall bear interest at 15% per annum until paid. Furthermore, at Landlord's option, Tenant shall be obligated to pay, in lieu of item (b) above in this § 14.04, an amount (the "Substitute Amount") which is equal to (i) the present value (calculated using a rate equal to the yield on the 10-year United States Treasury as most recently published in the Wall Street Journal at the time of such calculation) of all Rent which would become due during the remainder of the Term, including all Additional Rent which shall be deemed to continue and increase over such remainder of the Term at the average rate of increase occurring over the then-expired portion of the Term, with such present value to be determined by discounting at an annual rate of interest which is equal to the bond-equivalent yield for the most recent auction of U.S. Treasury Bills with a 1-year maturity less (ii) the actual net rent collected by Landlord from successor Tenant for the Premises for the remainder of the Term. Any suit or action brought by Landlord to collect any such liquidated damages shall not in any manner prejudice any other rights or remedies of Landlord hereunder.

§14.05 Landlord's Lien. Tenant hereby acknowledges Landlord's statutory lien in Arizona Revised Statutes §33-362.

§14.05 Landlord Default. Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations or breaches any of its covenants contained in this Lease and (unless another time limit is elsewhere in this Lease specifically provided) the default continues for a period of 30 days after written demand for performance is given by Tenant, or if the default is of such a character as to require more than 30 days to cure and Landlord shall fail to commence said cure promptly and use reasonable diligence in working to complete such cure.

§14.06 Waiver of Jury Trial. All parties hereto, ,both the Landlord and Tenant as principals and any guarantors, hereby release and waive any and all rights provided by law to a trial by jury in any court or other legal proceeding initiated to enforce the terms of this Lease, involving any such parties, or connected in any other manner with this Lease.

§14.07 Tenant Intellectual Property. All intellectual property of Tenant (collectively, "Tenant's Property") shall be and shall remain the property of Tenant. Landlord hereby releases and waives any lien, statutory or otherwise, that Landlord may have with respect to such Tenant's Property.

## ARTICLE XV - QUIET ENJOYMENT

§15.01 Covenant. Landlord hereby covenants that the Tenant, on paying the Rent and performing the covenants set forth herein, shall peaceably and quietly hold and enjoy throughout the Term the Premises and such rights as the Tenant may hold hereunder with respect to the remainder of the Project.

## ARTICLE XVI - NOTICES

§16.01 Notices. Any notice, demand or other communication to be provided hereunder to a party hereto shall be (a) in writing, (b) deemed to have been given (i) 3 days after being sent in the United States registered or certified mails, postage prepaid, return receipt requested (ii) one day after being sent by overnight courier, or (iii) immediately upon its actual delivery, and (c) addressed to each respective party at the Notice Address for such party set forth in the Fundamental Lease Provisions.

## ARTICLE XVII - GENERAL

§17.01 Entire Agreement. This Lease represents the entire agreement between the parties hereto as to the subject matter hereof and supersedes all prior written or oral negotiations, representations, warranties, statements or agreements between the parties hereto as to the same.

§17.02 Amendment. This Lease may be amended by and only by a written instrument executed and delivered by each party hereto.

§17.03 Applicable Law. This Lease shall be given effect and construed by application of the law of the state in which the Project is located.

§17.04 Waiver. The Landlord shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing, and no delay or omission by the Landlord in exercising any such right shall be deemed to be a waiver of its future exercise. No such waiver as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right.

§17.05 Time of Essence. Time shall be of the essence of this Lease.

§17.06 Headings. The headings of the articles, subsections, paragraphs and subparagraphs hereof are provided herein only for convenience of reference and shall not be considered in construing their contents.

§17.07 Severability. No determination by any court, governmental body or otherwise that any provision of this lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of any other such provision or such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

§17.08 Successors and Assigns. This Lease shall be fully binding upon the parties hereto and each of their respective successors and assigns. Whenever two or more parties constitute the Tenant, all such parties shall be jointly and severally liable for performing the Tenant’s obligations hereunder.

§17.09 Commissions. Each party hereto hereby represents and warrants to the other that in connection with the leasing of the Premises hereunder, the party so representing and warranting has not dealt with any real estate broker, agent or finder, except for the Broker of Record. Each party hereto shall indemnify the other against any inaccuracy in such party’s representation.

§17.10 Recordation. This Lease may not be recorded among the land records or among any other public records, without the Landlord’s prior written consent.

§17.11 Liability Limitation. Neither Landlord nor any trustee, director, officer, employee, representative, asset manager, investment advisor or agent of Landlord, nor any of their respective successors and assigns, shall be personally liable in any connection with this Lease, and Tenant shall resort solely to the Building for the payment to Tenant of any claim or for any performance by Landlord hereunder.

§17.12 Authority. Tenant, as well as any entities and/or individuals executing this Lease on behalf of Tenant, represent and warrant to Landlord that the execution, delivery and performance of this Lease have been duly authorized by all required corporate, partnership or other action on the part of Tenant, and this Lease constitutes the valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

§17.13 Exhibits. Each exhibit, addendum or other attachment hereto is hereby made a part of this Lease having the full force of all other provisions herein.

§17.14 Tenant Improvements. Per Exhibit B “Space Improvements”.

§17.15 Parking. The parking ratio of the building is approximately 4.1:1000. Landlord shall provide the Tenant with ten (10) covered reserved parking space at no additional charge for the term of the lease. All uncovered unreserved spaces shall be available on a first come, first serve basis. Additional surface covered parking stalls may be available to Tenant at a charge of $35.00 per stall per month on a first come first serve basis.

§17.16 Signage. Landlord at Landlord’s sole cost shall provide Tenant the following building signage:

a.) Tenant’s name and suite number on suite entrance

b.) Building Directory signage

c.) (1) plaque on one newly constructed monument sign, subject to city and HOA approval and pursuant to provisions stated in §6.01 under Article VI. “Improvements to Premises”

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, each party hereto has executed this Lease under seal on the day and year written first above.

LANDLORD:

JUTLAND 4141 INVESTMENTS, LTD.

By: Authorized Agent

By: /s/ Graeme Gabriel
Name: Graeme Gabriel
Title: Authorized Representative
Date: 1/18/11

Witness

STATE OF _____ )
COUNTY OF _____ )

The foregoing instrument was acknowledged before me, a notary public, this ____ day of _____, 2010, by _____, as _____, of _____, Authorized Agent of Jutland 4141 Investments, Ltd., a California limited partnership, on behalf of the partnership

Notary Public

My Commission Expires:

_____

EXHIBIT A

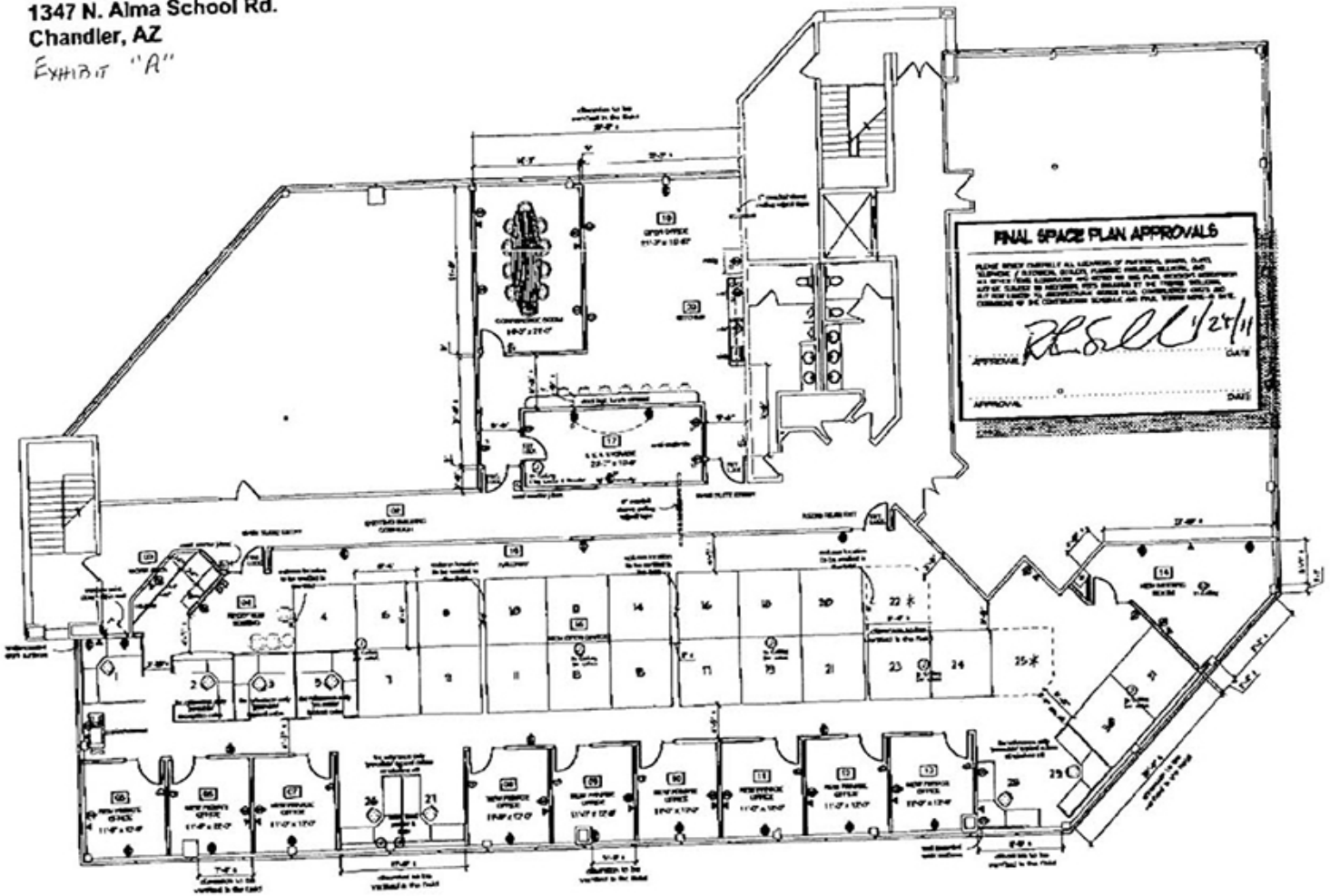
FLOOR PLAN OF PREMISES

25.

# Everspin Technologies

**Chandler Office Center**
**1347 N. Alma School Rd.**
**Chandler, AZ**

EXHIBIT "A"




Doerr Design Associates, LLC
623-582-9034 - office
623-581-7584 - fax
jamesdoerr@doerrdesign.com

01/17/2011

EXHIBIT B

SPACE IMPROVEMENTS

27.

**EVERSPIN**

**EXHIBIT "B"**

Cubicles (31 purchased by the landlord)
Flooring (VCT tile, Antistatic Floor and Carpet) Demo of existing walls, ceiling tiles and flooring Millwork
Plumbing
HVAC adjustments
Painting
Sprinkler head adjustments
Electrical demo and new installation
New interior walls, doors and side lights
Window blinds as needed
New ceiling tiles and grid as needed

Subject to change: Items listed could vary per City of Chandler codes and agreed to tenant suite plan from the architect, James Doerr.

**AGREED AND ACCEPTED:**

_____
By

_____
Its

_____
Date

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego }

On January 18, 2011 (Date) before me, M. L. Lucus, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Graeme Gabriel (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. L. Lucus (Signature of Notary Public)

M. L. LUCUS
Commission # 1914409
Notary Public - California
San Diego County
My Comm. Expires Dec 23, 2014

Place Notary Seal Above

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Office Lease Agreement

Document Date: January 7, 2011 Number of Pages: 26

Signer(s) Other Than Named Above: Philip LoPresti

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

TENANT:

EVERSPIN TECHNOLOGIES, INC.

By: Phillip LoPresti

Witness

Name: Phillip LoPresti
Title: President & CEO
Date: 1/7/11

STATE OF Arizona )
)ss.
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me, a notary public, this 7 day of January 2010, by Kathy Hagberg, as Executive Asst, of Everspin Technologies, Inc., a Delaware corporation, ~~on behalf of~~ the corporation.

Kathy Hagberg
Notary Public

My Commission Expires:
8/31/2012

KATHY HAGBERG
NOTARY PUBLIC
MARICOPA COUNTY, ARIZONA
MY COMM. EXPIRES 8-31-2012

EXHIBIT C

RULES AND REGULATIONS

1. Neither the whole nor any part of the sidewalks, plaza areas, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building shall be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the premises of such tenant.

2. Building standard suite entrance signs to Premises shall be placed thereon by a contractor designated by Landlord at Landlord's expense. Names to be replaced on or removed from directories should be furnished to the manager in writing on Tenant's letterhead. All replacement directory strips will be at the expense of the Tenant. Landlord will determine size and uniformity of strips.

3. No awning, canopy, sign or other projection shall be attached to the outside walls or windows of the Building without Landlord's prior written consent. No curtain, blind, shade, or screen (other than those furnished by Landlord as building standard) shall be attached to, hung in or used in connection with any window or door of the premises of any tenant.

4. No tenant shall mark, paint, drill into, or in any way deface any part of the Building or its premises. No boring, cutting, or stringing of wires shall be permitted. No nails, hooks or screws shall be driven or inserted in any part of the Building, except by the Building maintenance personnel, nor shall any part be defaced by Tenant. All nail holes are to be patched and repaired in Tenant's suite by Tenant upon vacating the Premises. Landlord will allow tenant to hang pictures with screws or wall anchors.

5. No tenant shall make, or permit to be made, any unseemly or disturbing noises (whether by the use of any musical instrument, radio, television or other audio device) or allow any unreasonable odors to emanate from its space, nor shall any tenant unreasonably annoy, disturb or interfere with other tenants or occupants of the Building or neighboring buildings.

6. No change shall be made in door locks, including the addition of locks, without Landlord's prior written consent. Landlord will allow tenant to have the locks changed when tenant moves in. Upon lock change, Tenant shall supply Landlord with a duplicate key for Landlord emergency access. Each tenant must upon the termination of its tenancy restore to Landlord all keys to offices and toilet rooms either furnished to, or otherwise procured by, such tenant. In the event of the loss of any keys during the Term, Tenant shall pay Landlord the reasonable cost of replacement keys.

7. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally, including, without limitation, the right to exclude from the Building, except during the hours the Building is open to the public, all persons who do not present suitable identification satisfactory to Landlord.

8. Each tenant, before closing and leaving its premises at any time, shall see that all entrance doors are locked and that all electrical appliances are turned off. Suite and entrance doors shall remain closed at all times. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before the Tenant or the Tenant's employees leave the Building, and that all electricity, gas and air conditioning shall likewise be carefully shut off, so as to prevent waste or damage, where controlled by Tenant.

9. No premises shall be used, or permitted to be used, for lodging or sleeping or for any illegal purpose.

10. Canvassing, soliciting and peddling in the Building are prohibited.

11. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by Tenant of any merchandise or materials which require use of stairways, elevators or movement through Building entrance or lobby shall be restricted to hours designated by Landlord. All such movement shall be under supervision of Landlord and in the manner agreed between Tenant and Landlord by pre-arrangement before performance. Such pre-arrangement initiated by Tenant will include determination by Landlord and subject to its decision and control, as to the concerns which may prohibit any article, equipment or any other item from being brought into the Building. There shall not be used in the Building by any tenant or their agents or contractors, in the delivery or receipt of merchandise, freight or other matter, any hand trucks or other means of conveyance, except those equipped with rubber tires, rubber side guards, and such other safeguards as Landlord may require.

12. No animals of any kind shall be brought into or kept about the Building by any tenant except assistance animals.

13. No tenant shall place, or permit to be placed, on any part of the floor or floors of its premises a load exceeding the floor load per square foot which such floor was designed to carry and which is allowed by law. The Landlord shall have the power to prescribe the weight and position of such safes or other objects which shall, if considered necessary by the Landlord, be required to be supported by such additional materials placed on the floor as the Landlord may direct, and at the expense of the Tenant.

14. No vending machines shall be permitted to be placed or installed in any part of the Building or premises by any tenant without the prior written consent of Landlord. Landlord reserves the right to place or install vending machines in any of the common areas of the Building.

15. No plumbing or electrical fixtures shall be installed by any tenant without the prior written consent of Landlord.

16. All Tenants shall adhere to and obey all such parking control measures as may be placed into effect by the Landlord through the use of signs, identifying decals or other instructions. Bicycles, motorcycles or any other type of vehicle shall not be brought into the lobby or elevators of the Building or into the premises of any tenant.

17. Tenant will refer all contractors, contractor's representatives and installation technicians, rendering any services on or to the premises for tenant, to Landlord for Landlord's approval and supervision before performance of any service. This provision shall apply to all

work performed in the Building, including installation of telephones, telegraph equipment, electrical devices and attachments and any installation of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building. Such approval, if given, shall in no way make Landlord a party to any contract between tenant and any such contractor, and Landlord shall have no liability therefor.

18. No trash or other objects shall be placed in the public corridors or sidewalks of the Building. Plumbing fixtures and appliances shall be used only for purposes for which constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by Tenant, its employees, agents, visitors or licensees shall be paid by Tenant, and Landlord shall not in any case be responsible therefor.

19. Landlord does not clean or maintain suite finishes which are non-standard, such as kitchens, bathrooms, wallpaper, special lights, etc. Landlord shall have no obligation to repair, re-stretch, or replace carpeting, but will spot-clean and sweep carpeting as part of any janitorial services required to be furnished by Landlord under the Lease. Tenants shall not cause unnecessary labor by reason of carelessness or indifference in the preservation of good order and cleanliness. The work of the janitor or cleaning personnel shall not be hindered by Tenant after 5:30 p.m., and such work may be done at any time when the offices are vacant. The windows, doors and fixtures may be cleaned at any time without interruption of purpose for which the Premises are let. Tenant shall provide adequate waste and rubbish receptacles, cabinets, bookcases, map cases, etc. necessary to prevent unreasonable hardship to Landlord in discharging its obligation regarding cleaning service. Boxes should be broken down to fit into containers.

20. All holiday decorations and other temporary or special decorations must be flame-retardant. No live Christmas trees or candles are to be used throughout the Building. No decorations should be hung on the exterior windows or on exterior suite doors.

21. There shall be no smoking permitted in the Building.

22. Tenants and Tenant’s visitors and invitees are permitted to park in designated spaces only. Parking hours are the same as Business hours. Landlord reserves the right to change reserved and leased parking spaces at its sole discretion. Violations of the following rules may result in towing from the Project at the owner’s expense:

a. Vehicles are not to exceed 2 miles per hour speed limit in the garage.

b. Mechanical repairs to vehicles are not permitted on the Project.

c. Oversized vehicles are not permitted at the Project.

d. No parking in fire lands, loading zones or any other areas not designated as a parking space.

e. Vehicles that leak excessive fluids will be required to protect the parking surface.

23. Landlord reserves the right, at any time and from time to time, to rescind, alter, or waive, in whole or in part, or to add to any of these Rules and Regulations when it is deemed necessary, desirable or proper, in Landlord's judgment, for its best interest or for the best interests of all tenants.

24. Violations of these Rules and Regulations, or any amendments thereof or additions thereto, constitute a default of this Lease if Tenant fails to cure such violation within 48 hours of issuance of Landlord's written notice of such violation.


**COMMERCIAL INDUSTRIAL LEASE AGREEMENT**

**PRINCIPAL LIFE INSURANCE COMPANY, AN IOWA CORPORATION, LANDLORD**

**AND**

**EVERSPIN TECHNOLOGIES, INC. TENANT**

**FOR THE PREMISES LOCATED AT:**

**STONELAKE 1**
**4030 WEST BRAKER LANE, SUITE 100**
**AUSTIN, TEXAS 78759**

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**Square Feet** **5,002**
**Address:** **Stonelake 1**
**4030 W. Braker Lane**
**Suite 100**
**Austin, TX 78759**

**LEASE AGREEMENT**

This Lease Agreement (this "Lease") is entered into by PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation ("Landlord"), and EVERSPIN TECHNOLOGIES, INC., a Delaware corporation ("Tenant"). The terms referenced in the Basic Lease Information above are hereby incorporated herein by this reference.

BASIC LEASE INFORMATION

| | |
|---|---|
| Effective Date: | May 18, 2012. |
| Tenant: | Everspin Technologies, Inc. |
| Tenant's Address: | Everspin, Technologies, Inc.<br>4030 West Braker Lane, Suite 100<br>Austin, TX 78759 |
| Tenant's Contact: | Bob Schuch, Director of Finance |
| Landlord: | Principal Life Insurance Company, an Iowa corporation |
| Landlord's Address: | PRINCIPAL LIFE INSURANCE COMPANY<br>801 Grand Ave.<br>Des Moines, Iowa 50392-1370<br>Attn: Commercial Real Estate Equities, Central States Region |
| With a copy to: | Stream Realty Partners, L.P.<br>400 W. 15th Street, Suite 1250<br>Austin, TX 78701<br>Attn: Property Manager of Stonelake |
| Payments: | All Rent payments shall be sent to:<br>Principal Life Insurance Co.<br>P. O. Box 310300<br>Property: 010110<br>Des Moines, Iowa 50331-0300 |
| Building: | The "Building" shall mean the building and improvements located at 4030 West Braker Lane, Building 1, in Austin, Travis County, Texas. |
| Premises: | Approximately 5,002 rentable square feet as outlined on the plan attached to this Lease as Exhibit "A" and whose street address is 4030 West Braker Lane, Building 1, Suite 100, Austin, TX 78759. |
| Original Term: | Fifty-one (51) full calendar months (and any partial month, if applicable), beginning on the Commencement Date and ending on the Expiration Date. |

| | |
|---|---|
| Commencement Date: | The later of (i) June 1, 2012, or (ii) Substantial Completion of Landlord's Work (as those terms are defined in Exhibit B attached hereto). |
| Expiration Date: | The last day of the fifty-first (51st) full calendar month following the Commencement Date. |
| Security Deposit: | Five Thousand Two and No/100ths Dollars ($5,002.00). |
| Rent: | |

| Months | Base Rent PSF/Mo. | Monthly Rent |
|---|---|---|
| Months 1-3 | $ 0.85 | $ 0.00* |
| Months 4-12 | $ 0.85 | $ 4,251.70 |
| Months 13-24 | $ 0.90 | $ 4,501.80 |
| Months 25-36 | $ 0.95 | $ 4,751.90 |
| Months 37- 51 | $ 1.00 | $ 5,002.00 |

* If the Commencement Date is other than the first day of a calendar month, then the first and last months of the abatement period shall be prorated so that Tenant receives three (3) months of abatement. Such abatement shall apply solely to payment of the monthly installments of Base Rent and Operating Expenses (including, without limitation, Taxes), but shall not be applicable to any other charges, expenses or costs payable by Tenant under this Lease. Landlord and Tenant agree that the abatement of rental and other payments contained in this Section is conditional and is made by Landlord in reliance upon Tenant's faithful and continued performance of the terms, conditions and covenants of this Lease and the payment of all monies due Landlord hereunder. In the event that Tenant defaults under the terms and conditions of the Lease beyond any applicable notice and cure period, the unamortized portion of all conditionally abated rental shall become fully liquidated and immediately due and payable (without limitation and in addition to any and all other rights and remedies available to Landlord provided herein or at law and in equity).

| | | |
|---|---|---|
| Electricity: | Tenant shall pay for all electrical charges used in the Premises, which charges are not subject to any base year or abatement. | |
| Amount Due on Lease Execution | Initial Monthly Base Rent | $ 4,251.70 |
| | Initial Monthly Escrows (subject to adjustment) | $ 1,900.76 |
| | Security Deposit | $ 5,002.00 |
| | Total Initial Payment | $ 11,154.46 |
| Permitted Use: | Only for general office uses in keeping with the first-class nature of the Building and for no other purpose without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. The Premises shall not be used for any use, which is disreputable. No retail sales may be made from the Premises. | |
| Tenant's Proportionate Share: | 23.31%, which is the percentage obtained by dividing the rentable square feet in the applicable Premises by the rentable square feet in the applicable Building (which contains approximately 21,460 rentable square feet of space). | |
| Guarantor: | None | |
| Brokers: | Landlord's Broker: Stream Realty Partners, L.P.<br>Tenant's Broker: Aquila Commercial, LLC | |

**1. PREMISES, TERM, INITIAL IMPROVEMENTS, ACCEPTANCE OF PREMISES.**

**1.1 Premises**. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises as more fully depicted on the floor plan attached as Exhibit A-1, subject to the terms and conditions in this Lease. The Premises are part of the Building located on the real property described on Exhibit A (the "**Land**"). All references to "Building" shall individually and collectively refer to all buildings and Parking Areas (herein defined) on the Land, now and during the lease Term (defined below), unless the context otherwise requires. "**Common Areas**" will mean all areas, space, facilities, and equipment (whether or not located within the Building) made available by Landlord for the common and joint use of Landlord, Tenant, and others designated by Landlord using or occupying space in the Building or on the Land to the extent that the Common Areas are not expressly made a part of the Premises, and are made available for the use of all tenants in the Building. Landlord hereby grants Tenant a non-exclusive right to use the Common Areas during the lease Term in common with others designated by Landlord, subject to the terms and conditions of this Lease, including, without limitation, the restrictions on intended use and the Rules and Regulations (defined below).

**1.2 Term**. The lease Term shall begin on the Commencement Date, and end on the Expiration Date ("**Original Term**"). The Original Term, together with any renewals and extensions, shall be referred to collectively as the "Term." Following Substantial Completion (defined in Exhibit B), Landlord and Tenant shall execute an instrument specifying the Commencement Date and the Expiration Date of the Original Term. If Tenant occupies the Premises without executing an instrument specifying the Commencement Date and Expiration Date, Tenant shall be deemed to have accepted the Premises for all purposes and the Commencement Date shall be deemed to have occurred on the earlier to occur of: (i) actual occupancy; (ii) the Commencement Date set forth in Section 1.2, or (iii) the date Tenant commences doing business at the Premises if Landlord consents to an early occupancy as set forth in this Lease. Notwithstanding the foregoing, Tenant shall have the right to enter the Premises a minimum of two (2) weeks prior to the Commencement Date to install furniture and fixtures, as further described in Exhibit B, Item 5, contained herein, so long as Tenant does not interfere with any work to be performed by Landlord.

**1.3 Initial Improvements**. If an Exhibit B is attached to this Lease, Landlord shall construct in the Premises the improvements (the "**Initial Improvements**" as defined in Exhibit B) described on the plans and specifications referenced on **Exhibit B**.

**1.4 Tenant's Acceptance of Premises**. By occupying the Premises, Tenant accepts the Premises in its "**AS-IS, WHERE IS**", subject to any latent defects of which Tenant notifies Landlord within one year after the Commencement Date with all faults condition as of the date of Tenant's occupancy, subject to completion of punch-lists, if any, relating to the Initial Improvements, if an **Exhibit B** is attached. If an **Exhibit B** is not attached, then Tenant accepts the Premises in its "**AS-IS, WHERE IS**", subject to any latent defects of which Tenant notifies Landlord within one year after the Commencement Date with all faults condition as of the date of Tenant's occupancy, and Landlord shall have no obligation to perform or pay for any repair or other work, other than as set forth in this Lease.

**2. RENT AND SECURITY DEPOSIT.**

**2.1** Rent; No Right of Offset. The Base Rent, the Additional Rent and all other payments and reimbursements required to be made by Tenant under this Lease, including any sums due under the attached **Exhibit B** shall constitute "**Rent**." Tenant shall make each payment of the following items of Rent when due, without prior notice, demand, deduction or offset.

**2.2 Base Rent**. The first monthly installment of Base Rent, plus the other monthly charges set forth in Section 2.3, shall be due on the date Tenant signs the Lease. Monthly installments of Base Rent shall then be due on the first day of each calendar month following the Commencement Date. If the Term begins on a day other than the first day of a month or ends on a day other than the last day of a month, the Base Rent and Additional Rent for each partial month shall be prorated.

**2.3 Additional Rent**. On the same day that Base Rent is due, Tenant shall pay as "**Additional Rent**" Tenant's Proportionate Share of all costs incurred in operating and maintaining the Land, Building and Common Areas (collectively "**Operating Expenses**"). Tenant also shall pay as "**Additional Rent**" Tenant's Proportionate Share of Taxes (defined in Section 3) and all late fees incurred by Tenant.

**2.3.1** Operating Expenses.

**2.3.1.1** Operating Expenses Inclusions. Operating Expenses shall include all expenses and disbursements of every kind which Landlord incurs, pays or becomes obligated to pay in connection with the ownership, management, operation and maintenance of the Building (including the associated Parking Areas as herein defined) and Land including, but not limited to, the following: (1) Taxes (defined below) and the reasonable cost of any tax consultant employed to assist Landlord In determining the fair tax valuation of the Building and Land; (2) the cost of all utilities which are not billed separately to a tenant of the Building for above-building standard utility consumption; (3) the cost of insurance; (4) the cost of repairs, replacement, property management fees (provided that management fees shall not exceed 4% of gross revenues from the Building) and expenses, landscape maintenance and replacement, security service (if provided), sewer service (if provided), trash service (if provided); (5) the cost of dues, assessments, and other charges applicable to the Land payable to any property or community owner association under restrictive covenants or deed restrictions to which the Premises are subject; (6) the cost of any labor-saving or energy-saving device or other equipment installed in the Building or on the Land, amortized over a period together with an amount equal to interest at an amortization rate on the unamortized balance, which calculation shall be reasonably determined by Landlord in accordance with generally accepted accounting practices; (7) alterations, additions, and improvements made by Landlord to comply with Law (defined below) for which compliance is not required as of the Effective Date; and (8) wages and salaries of personnel up to and including the level of Property Manager, such costs shall be reasonably allocated to reflect time such employees are devoted to the Building (versus other buildings). Any Operating Expenses that are common to some or all of the buildings in the Stonelake project may be equitably apportioned to the Building. For the purpose of determining Tenant's Proportionate Share of Operating Expenses, "controllable" Operating Expenses shall not increase by more than five percent (5%) per year on a cumulative and compounded basis (for example, if controllable Operating Expenses are $3.00 / rsf in year one, then they shall not exceed $3.15 in year two, $3.31 in year three, $3.48 in year four and so on). It is understood and agreed that controllable Operating Expenses shall not include snow, ice and trash removal, utility expenses, taxes, management fees that are based on a percentage of revenue or expenses (to the extent such percent is not increased), insurance premiums, extraordinary repairs, costs incurred to comply with any governmental requirements for which compliance was not required as of the Effective Date, and any other cost beyond the reasonable control of Landlord except those costs for services which Landlord self-performs. The foregoing cap shall not be applicable miring the first year of the term during any extension or renewal of this Lease (i.e., such cap shall be "reset" during any extension or renewal of this Lease).

**2.3.1.2** Operating Expense Exclusions. Operating Expenses shall not include the following (1) any loan costs for interest, amortization, or other payments on loans to Landlord; (2) expenses incurred in leasing or procuring tenants, including, but not limited to leasing commissions, advertising expenses and expenses for renovating of space for new tenants; (3) legal expenses other than those incurred for the general benefit of the Building's tenants, (4) allowances, concessions, and other costs of renovating or otherwise improving space (except for Common Areas) for occupants of the Building or vacant space in the Building; (5) federal income taxes imposed on or measured by the income of Landlord from the operation of the Building; (6) rents due under ground leases; (7) costs incurred in selling, syndicating, financing, mortgaging, or hypothecating any of Landlord's interests in the Building, (8) wages and salaries of personnel above the level of Property Manager; (9) the cost to replace the roof and structure (repairs and maintenance of roof and structure are allowable to the extent provided in Item 6 of Section 2.3.1.1 above);(10) costs incurred and reimbursed to Landlord due to violation by any tenant of the terms and conditions of any lease or other rental arrangement covering space in the Stonelake project or any portion thereof; (11) any costs, fines and penalties incurred due to violations by Landlord or any other tenant of the Stonelake project, or their respective agents, employees or contractors, of any governmental rule or authority; (12) reserves; (13) new building artwork (season decorations and flower arrangements are allowable), (14) political contributions, (15) charitable contribution, (16) any costs incurred by Landlord in connection with the abatement of Hazardous Materials, (17) any costs incurred related to maintaining Landlord's existence as an entity; (18) the cost of any repairs occasioned by eminent domain, whether or not covered by the eminent domain award, and the cost of any repairs to the extent paid for by proceeds of insurance; (19) costs or fees relating to the defense of Landlord's title to or interest in the Stonelake project; (20) costs incurred by Landlord in connection with construction of the Building or any portion thereof and related facilities or the correction of latent defects in construction of the Building or any portion thereof; (21) costs incurred in providing services which are separately invoiced and charged to Tenant and/or other tenants of the building or Stonelake project; (22) all items and services and goods for which Tenant or any other tenant, occupant, person or other party (including by way of insurance proceeds or warranties) reimburses Landlord or pays third parties; and (23) replacement of the roof and structure.

**2.3.1.3 Operating Expense Calculation and Notices**. The initial monthly payments for Operating Expenses shall be calculated by taking 1/12 of Landlord's estimate of Tenant's Proportionate Share of Operating Expenses for a particular calendar year (or any portion of a year as determined by Landlord). The initial monthly payments are estimates only, and shall be increased or decreased annually to reflect the projected actual Operating Expenses for a particular year. If Landlord fails to give Tenant notice of its estimate of Tenant's Proportionate Share of Operating Expenses in accordance with this subsection for any calendar year, then Tenant shall continue making Additional Rent payments in accordance with the estimate for the previous calendar year until a new estimate is provided by Landlord. If during any year Landlord determines that, because of an unexpected increase in Operating Expenses or other reasons, Landlord's estimate of Operating Expenses was too low, then Landlord shall have the right to give a new statement of the estimated Proportionate Share of Operating Expenses due from Tenant for the applicable calendar year or the balance of the estimated amount and to bill Tenant for any deficiencies which have accrued during the calendar year or any portion of the year, and Tenant shall then make monthly payments based on the new statement. Within a reasonable time after the end of each calendar year and the Expiration Date, Landlord shall prepare and deliver to Tenant a statement showing Tenant's actual Proportionate Share of Operating Expenses for the applicable calendar year, provided that with respect to the calendar year in which the Expiration Date occurs, (1) that the calendar year shall be deemed to have commenced on January 1 of that year and ended on the Expiration Date (the "Final Calendar Year") and (2) Landlord shall have the right to estimate the actual Operating Expenses allocable to the Final Calendar Year. Unless Tenant makes written exception to any item within sixty (60) days after Landlord furnishes its annual statement ("Final Statement") of Tenant's Additional Rent, the statement shall be considered as final and accepted by Tenant. If Tenant's total monthly payments of its Proportionate Share for the applicable calendar year are more than Tenant's actual Proportionate Share of Operating Expenses, then Landlord shall retain the excess and credit the amount against Tenant's future Additional Rent payments. With respect to the Final Calendar Year, Landlord shall pay to Tenant the amount of all excess payments, less any additional amounts then owed to Landlord within thirty (30) days following the date on which Landlord furnishes Landlord's Final Statement of Tenant's Additional Rent. If Tenant's total monthly payments of its Proportionate Share of Operating Expenses for any year are less than Tenant's actual Proportionate Share of Operating Expenses for that year, Tenant shall pay the difference to Landlord within thirty (30) days after Landlord's request for payment. There shall be no duplication of costs for reimbursements in calculating Operating Expenses.

Tenant shall have the right to conduct a Tenant's Review, as hereinafter defined, at Tenant's sole cost and expense (including, without limitation, photocopy and delivery charges), upon thirty (30) days' prior written notice to Landlord. "Tenant's Review" shall mean a review of Landlord's books and records relating to (and only relating to) the Operating Expenses payable by Tenant hereunder for the most recently completed calendar year (as reflected on Landlord's Final Statement) by a Certified Public Accountant ("CPA") reasonably satisfactory to Landlord. Tenant must elect to perform a Tenant's Review by written notice of such election received by Landlord within sixty (60) days following Tenant's receipt of Landlord's Final Statement for the most recently completed calendar year. In the event that Tenant fails to make such election in the required time and manner required or fails to diligently perform such Tenant's Review to completion, then Landlord's calculation of Operating Expenses shall be final and binding on Tenant. Tenant hereby acknowledges and agrees that even if it has elected to conduct a Tenant's Review, Tenant shall nonetheless pay all Operating Expenses to Landlord, subject to readjustment. Tenant further acknowledges that Landlord's books and records relating to the Building may not be copied in any manner, are confidential, and may only be reviewed at a location reasonably designated by Landlord; but Landlord will make such records available within the metropolitan area in which the Premises is located. Tenant shall provide to Landlord a copy of Tenant's Review as soon as reasonably possible after the date of such Review. If Tenant's Review reflects a reimbursement owing to Tenant by Landlord, and if Landlord disagrees with Tenant's Review, then Tenant and Landlord shall jointly appoint an auditor to conduct a review ("Independent Review"), which Independent Review shall be deemed binding and conclusive on both Landlord and Tenant. If the Independent Review results in a reimbursement owing to Tenant equal to five percent (5%) or more of the amounts reflected in the Final Statement, the costs of the Tenant's Review and independent Review shall be paid by Landlord. Under no circumstances shall Tenant conduct a review of Landlord's books and records whereby the auditor operates on a contingency fee or similar payment arrangement. Any such reviewer must sign a commercially reasonable non-disclosure, non-solicitation, and confidentiality agreement.

**2.3.1.4** Grossed-Up Operating Expenses. If during any year the Building is less than one hundred percent (100%) occupied, then, for purposes calculating Tenant's Proportionate Share of Operating Expenses for year, the amount of Operating expenses that fluctuates with Building occupancy shall be "grossed-up" to the amount which, in Landlord's reasonable estimation, it would have been had the Building been one hundred percent (100%) occupied for that entire year. In the event that Landlord, in calculating the Operating Expenses of the Building,

"grosses-up" the Operating Expenses that fluctuate with Building occupancy incurred during the year in question, then Landlord agrees that the "gross-up" of Expenses shall be limited to Operating Expenses that fluctuate with Building occupancy and the following items of Operating Expenses shall not be adjusted in the "gross-up" calculation: (1) Taxes, (2) amortized capital improvements costs, (3) insurance premiums, (4) landscaping expenses, and (5) any other fixed-cost items that are not subject to fluctuation based on occupancy. By way of example and not limitation, janitorial expenses and utility costs are subject to this grossing up clause (and real estate taxes are not grossed up).

**2.3.2** Late Fee. If any Rent or other payment required of Tenant under this Lease is not paid when due, Landlord may charge Tenant, and Tenant shall pay upon demand a fee equal to five percent of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. All such fees shall be Additional Rent. Tenant shall be entitled to written notice and a five (5) day cure period on one occasion during any twelve (12) month period before the late fee is assessed.

**2.4** Initial Monthly Rent. The amounts of the Initial monthly Base Rent and Additional Rent for Tenant's Proportionate Share of Operating Expenses and Taxes are set forth in the Summary of Lease Terms.

**2.5** Security Deposit. Tenant shall deposit the Security Deposit with Landlord on the date this Lease is executed by Tenant, which shall be held by Landlord to secure Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages for an Event of Default (defined below). Landlord may use any portion of the Security Deposit to satisfy Tenant's unperformed obligations under this Lease, to reimburse Landlord for performing any such obligations or to compensate Landlord for its damages arising from Tenant's failure to perform its obligations, without prejudice to any of Landlord's other remedies. If so used, Tenant shall, upon request, pay Landlord an amount that will restore the Security Deposit to its original amount. The Security Deposit shall be Landlord's property. Tenant shall not be entitled to interest on any security deposit amount and Landlord may commingle such Security Deposit with any other of its funds. Tenant agrees that it will not assign or encumber or attempt to assign or encumber the monies deposited with Landlord as the Security Deposit and that Landlord and its successors and assigns shall not be bound by any such actual or attempted assignment or encumbrance. The unused portion of the Security Deposit will be returned to Tenant within forty-five (45) days after the later of the Expiration Date or the date on which Tenant surrenders the Premises, provided that Tenant has fully and timely performed its obligations under this Lease.

## 3. TAXES

**3.1** Real Property Taxes. The term "Taxes" shall include all taxes, margin taxes, assessments and governmental charges that accrue against the Premises, the Land, and the Building, whether federal, state, county, or municipal, and whether imposed by taxing or management districts or authorities presently existing or hereafter created. Landlord shall pay the Taxes, and Tenant shall pay Landlord for Tenant's Proportionate Share of the Taxes. If, during the Term, there is levied, assessed or imposed on Landlord a capital levy or other tax directly on the Rent; or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon the Rent; then all such taxes, assessments, levies or charges, or any part so measured or based, shall be included within the term "Taxes." If the Building is occupied by more than one tenant and the cost of any improvements constructed in the Premises for Tenant is disproportionately higher than the cost of improvements constructed in the premises of other tenants of the Building, then Landlord may require that Tenant pay the amount of Taxes attributable to such improvements in addition to its Proportionate Share of other Taxes. In determining whether the cost of any improvements constructed in the Premises for Tenant is disproportionately higher than the cost of improvements constructed in the premises of other tenants of the Building, Landlord will consider factors including, but not limited to, the following: (1) percentage of office finish of the Premises, (2) levels of office finish, (3) and other differing and distinguishing factors between the improvements constructed in the Tenant's Premises and the improvements constructed in the premises of other tenants which Landlord reasonably determines impact the assessed value of the Taxes.

**3.2** Personal Property Taxes. Tenant shall before delinquency pay all taxes and assessments levied or assessed against any personal property, trade fixtures or alterations placed in or about the Premises; and upon Landlord's request, deliver to it receipts from the applicable taxing authority or other evidence acceptable to Landlord to verify that the taxes have been paid. If any such taxes are levied or assessed against Landlord or its property, and (1) Landlord pays them or (2) the assessed value of Landlord's property is increased and Landlord

pays the increased taxes, then Tenant shall pay to Landlord the amount of all such taxes within ten (10) days after Landlord's request for payment. All such amounts shall bear interest from the date paid by Landlord to the applicable taxing authority until reimbursed by Tenant at the rate set forth in Section 24.13.

**4. LANDLORD'S MAINTENANCE AND REPAIR OBLIGATIONS**.

**4.1** General. This Lease is intended to be a net lease. Landlord's maintenance obligations shall be limited to only the maintenance, repair and replacement of the Building's roof, foundation, and any common areas, including but not limited to the elevators, lobbies and restrooms, maintenance of the Land (including but not limited to the maintenance and replacement of landscaping, Parking Areas, and sidewalks) and maintenance of the structural members of the exterior walls (collectively the "Building's Structure and Common Areas "). Landlord shall not be responsible for: (1) any such maintenance until Tenant delivers to Landlord written notice of the need for maintenance, or (2) non-structural repairs to interior columns of the Building located within the Premises. The Building's Structure and Common Areas do not include skylights, windows, glass or plate glass, doors, special storefronts or office entries, all of which shall be maintained by Tenant. Except for maintaining the Building's Structure and Common Areas, Landlord shall not be required to maintain or repair at Landlord's expense any other portion of the Premises, except for those repairs needed due to Landlord's willful misconduct or negligence. Landlord shall maintain and repair the Building in a manner consistent with other comparable buildings in the Austin market. LANDLORD'S LIABILITY FOR ANY DEFECTS, REPAIRS, REPLACEMENT OR MAINTENANCE FOR WHICH LANDLORD IS RESPONSIBLE UNDER THIS LEASE SHALL BE LIMITED TO THE COST OF PERFORMING SUCH WORK. Any above Building-standard services supplied by Landlord to or for the benefit of Tenant shall be paid by Tenant in addition to Operating Expenses.

**5. TENANT'S MAINTENANCE AND REPAIR OBLIGATIONS**

**5.1** Tenant's Maintenance of the Premises. Tenant shall maintain all parts of the Premises except for maintenance work for which Landlord is expressly responsible for under Section 4 in good condition and shall promptly make all necessary repairs and replacements to the Premises. All repairs and replacements performed by or on behalf of Tenant shall be performed in a good and workmanlike manner acceptable in all respects to Landlord, and in accordance with Landlord's standards applicable to alterations or improvements performed by Tenant.

**5.2** Tenant's Maintenance of the Common Areas. Tenant shall pay its Proportionate Share for Landlord to maintain the Common Areas, including, without limitation, the Parking Areas, truck courts, driveways, alleys and grounds surrounding the Premises in a clean and sanitary condition, consistent with the reasonable operation of a first-class office/warehouse building. Tenant's maintenance obligations shall specifically exclude, the prompt maintenance, repair and replacement of (1) the exterior of the Building, including painting, (2) the irrigation sprinkler systems and sewage lines, and (3) any other items reasonably associated with the foregoing. Tenant shall repair and pay for any damage caused by a Tenant Party (defined below) or caused by any failure by Tenant to perform obligations under this Lease. Tenant and any Tenant Party shall not do anything that would inhibit or prevent other tenants' use and enjoyment of the Common Areas. Tenant shall be responsible only for maintenance of all interior improvements to the Premises (excluding all exterior walls) but including interior lights, HVAC equipment serving the Premises, and all other interior fixtures and improvements.

**5.3** HVAC System. Landlord shall deliver the HVAC System, as hereinafter defined, as well as the Building systems servicing the Premises, to Tenant in good working order and repair. Tenant shall maintain, the heating, air conditioning and ventilation equipment and system and the hot water equipment (collectively the "HVAC System") in good repair and condition and in accordance with Law and with the equipment manufacturers' suggested operation/maintenance service program. Such obligation shall include the replacement of all equipment necessary to maintain the HVAC System servicing the Premises in good working order. Within thirty (30) days after the Commencement Date, Tenant shall deliver to Landlord copies of contracts entered into by Tenant for regularly scheduled preventive maintenance and service contracts for the HVAC System, each contract in a form and substance and with a contractor reasonably acceptable to Landlord. At least fourteen (14) days before the Expiration Date, the earlier termination of this Lease, or the termination of Tenant's right to possess the Premises, Tenant shall deliver to Landlord a certificate from an engineer reasonably acceptable to Landlord certifying that the HVAC System is then in good repair and working order.

Landlord will warrant all HVAC systems for a period of six (6) months following the Commencement Date and shall be responsible for any and all repair/replacement (but not Tenant's quarterly maintenance charges) costs during such period (except for damage caused by Tenant's failure to properly maintain the HVAC system or the negligence of Tenant or its agents, employees or contractors). In the event that the HVAC unit servicing the Premises requires replacement at any time during the Term after such six month period, as evidenced by a written report from Tenant's service provider, Tenant shall reimburse Landlord for the portion of the replacement cost for such existing HVAC Unit (the "Replacement Cost") equal to the product obtained by multiplying the Replacement Cost by a fraction, the numerator of which shall be the number of days subsequent to the installation of such unit until and including the last day of the Term, and the denominator of which shall be 3,650 (which is the number of days in a ten year useful life for such unit). Such replacement must also be due to ordinary wear and tear (and not due to any misuse or abuse of the unit by Tenant or failure of Tenant to properly maintain the unit). All such replacements will be subject to Landlord's written approval of the same. Tenant shall pay Tenant's portion of such Replacement Costs as Additional Rent on a monthly basis based amortized at a 9% annual rate of interest over the remainder of the term of this Lease.

**5.4** Landlord's Optional Performance of Tenant's Obligations. Landlord has the right, but not the obligation, to perform or provide any maintenance, repairs or replacements to be performed by Tenant under Section 5 and to provide any utility service that Tenant is required to provide under Section 8 below, upon ten (10) days prior written notice to Tenant. If Tenant fails to perform or provide any maintenance, repairs or replacements to be performed by Tenant under Section 5 or to provide any utility service which Tenant is required to provide under Section 8 below, and should Landlord elect to do so after the notice period set forth in the preceding sentence, then Tenant shall reimburse Landlord for all expenses and costs incurred by Landlord in performing Tenant's obligations plus an additional five percent such amount to compensate Landlord for the overhead and administrative costs relating to the performance of all such obligations. All such amounts owing pursuant to this Section 5 shall be deemed Rent under this Lease, which Tenant shall pay Landlord within ten (10) days after Landlord's request for payment.

**6. ALTERATIONS BY TENANT.**

**6.1** No Tenant Alterations. Tenant shall not make any changes, modifications, alterations, additions or improvements to the Premises, or install any heat or cold generating equipment, or other equipment, machinery or devices in the Premises or any other part of the Building without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Provided that (i) Tenant is not then in default beyond any applicable notice, cure or grace period, (ii) Tenant provides prior written notice to Landlord of the proposed work, (iii) Tenant complies with all laws, insurance requirements and lien covenants, (iv) the proposed work is decorative and does not affect the Building's structure or the electrical, mechanical, plumbing, or life/safety systems of the Building, and (vi) no building permit (or similar permit) is required, and (vi) the aggregate (per project) cost of such work does not exceed $1,000.00, then Landlord's consent shall not be required.

**6.2** Requirements for Landlord's Written Consent. Landlord shall not be required to notify Tenant of whether it consents to any alterations until it has received plans and specifications (if required) which are reasonably detailed to allow construction of the work depicted in them to be performed in a good and workmanlike manner, and Landlord has had a reasonable opportunity to review them. Without in any way limiting Landlord's rights to refuse its consent to Tenant's proposed alterations, if Landlord consents in writing to Tenant's proposed alterations, then Landlord's consent shall be conditioned without limitation on all of the following: (1) Landlord's approval of the contractor making the alterations and approving each contractor's insurance coverage provided in connection with the alterations, (2) Landlord's supervision of the installation, (3) Landlord's approval of final plans and specifications for the alterations, (4) the appropriate governmental agency, if any, having final and complete plans and specifications for such work, and (5) Landlord's determination of whether any alterations to the Premises, or installations of any equipment would do any of the following: (i) affect structural or load bearing portions of the Premises or the Building, (ii) result in a material increase of electrical usage above the normal type of amount of electrical current to be provided by Landlord, (iii) impact mechanical, electrical or plumbing systems in the Premises or the Building, (iv) negatively affect areas of the Premises that can be viewed from Common Areas, or (v) violate any provision in Sections 13 or 26 of this Lease or Exhibit B, attached hereto. If the alterations will affect the Building's Structure and Common Areas, HVAC System, or mechanical, electrical, or plumbing systems, then the plans and specifications must be prepared by a licensed engineer. Landlord's approval of any plans and specifications shall not be a representation that the plans or the work depicted in them will comply with any applicable Law (defined below) or be adequate for any purpose, but shall merely be

Landlord's consent to Tenant's installation of the alterations. Landlord shall have the right, but not the obligation, to periodically inspect the work in the Premises with 24 hours prior written notice to Tenant and may require changes in the method or quality of the work if Tenant has not complied with the provisions hereof. If Landlord's consent is granted, any such Alterations shall be made at Tenant's sole cost and expense.

**6.3** Tenant's Obligations. Upon completion of any Alteration, Tenant shall deliver to Landlord accurate, reproducible "as-built" plans. If Tenant has not delivered to Landlord the as-built drawings within thirty (30) days of completion of the alterations, Landlord may contract for production of as-built drawings at Tenant's sole cost and expense by providing Tenant five (5) business days written notice of Landlord's intent to contract for such drawings. Tenant shall reimburse Landlord for such costs within ten (10) days of Landlord's request for payment. All work performed by Tenant in the Premises, including work relating to the alterations or their repair, shall be performed in a good and workmanlike manner in accordance with Law (defined below) and with Landlord's and Landlord's insurance carriers' specifications and requirements.

**6.4** Ownership of Alterations. Upon the Expiration Date or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the condition existing at the time Tenant took possession of the Premises, except for: (1) ordinary wear and tear, (2) damage that Landlord has the obligation to repair under the terms of this Lease, (3) all changes, modifications, alterations, additions or improvements that Tenant does not have the obligation to remove under the terms of this Section 6.4, and (4) damage by casualty. Except as provided below, all changes, modifications, alterations, additions or improvements and property at the Premises (including wall to wall carpeting, paneling or other wall covering and any other surface material attached to or affixed to the floor, wall or ceiling of the Premises) will remain in and be surrendered with the Premises upon the Expiration Date or earlier termination of this Lease, and Tenant waives all rights to any payment, reimbursement or compensation for the property that must remain at the Premises in accordance with this subsection. Tenant must, however, remove from the Premises prior to the Expiration Date or earlier termination of this Lease any changes, modifications, alterations, additions or improvements that Landlord has designated for removal at the time of Landlord's written approval of such changes, modifications, alterations additions or improvements. Tenant shall only have to remove alterations for which Landlord notifies Tenant of such removal at the time of Landlord's approval. Tenant shall not be required to remove from the Premises any of the changes, modifications, alterations, additions or improvements that are contemplated in Exhibit "B" or those that do not require Landlord's approval. Tenant must promptly repair any damage to the Premises caused by its removal of personal property changes, modifications, alterations, additions or improvements.

**6.5** Trade Fixtures. Tenant may erect shelves, bins, machinery and trade fixtures provided that such items (I) do not alter the basic character of the Premises or the Building; (2) do not overload or damage the same; and (3) may be removed without damage to the Premises. Unless Landlord specifies in writing otherwise, all alterations, additions, and improvements shall be Landlord's property when installed and remaining in the Premises on the Expiration Date. Tenant shall have the right to remove trade fixtures, etc. upon the expiration or earlier termination of the Lease provided that Tenant repair any damage caused by such removal.

**6.6** Construction Management Fee. In connection with any such Alteration, Tenant shall pay to Landlord a "Construction Management Fee" of five percent (5%) of all costs incurred for such work.

**7. SIGNS**.

**7.1** Premises' Exterior. Tenant shall not without Landlord's prior written consent (1) make any changes to the exterior of the Premises or the Building, (2) install any exterior lights, decorations, balloons, flags, pennants, banners or paintings, (3) erect or install any signs, windows, blinds, draperies, window treatments, bars, security installations, or door lettering, decals, window or glass-front stickers, placards, decorations or advertising media of any type that is visible from the exterior of the Premises. As to (3) only, such consent shall not be unreasonably withheld, delayed or conditioned.

**7.2** Requirements for Landlord's Written Consent. Landlord shall not be required to notify Tenant in writing of whether it consents to any sign until Landlord (1) has received detailed, to-scale drawings specifying the design, material composition, color scheme, and method of installation, and (2) has had ten (10) days to review them. Notwithstanding the foregoing, Landlord shall not unreasonably withhold its consent.

**7.3** Sign Requirements. Signs and lettering will generally be as reflected in Exhibit E, if applicable. Tenant shall erect any signs in accordance with the plans and specifications, in a good and workmanlike manner, in accordance with all Laws and architectural guidelines in effect for the area in which the Building is located and will obtain all requisite approvals (the "Sign Requirements"), and in a manner so as not to unreasonably interfere with the use of the Building grounds while such construction is taking place; thereafter, Tenant shall maintain the sign in a good, clean, and safe condition in accordance with the Sign Requirements.

**7.4** Sign Removal. After the Expiration Date or earlier termination of this Lease or after Tenant's right to possess the Premises has been terminated pursuant to Section 20, Landlord may require that Tenant remove the sign by delivering to Tenant written notice within thirty (30) days after the termination of the Lease. If Landlord so requests, Tenant shall within ten (10) days after Tenant's receipt of the notice remove the sign, repair all damage caused by the sign and its installation and removal, and restore the Building to its condition before the installation of the sign including, but not limited to, making the following restoration and repair work: hole punching, electrical work, and repair of Building exterior discoloration or fading made noticeable by removal of the signage. If Tenant fails timely to remove the sign and perform the repair work, Landlord may, without compensation to Tenant, (1) use the sign, or (2) at Tenant's expense, remove the sign, perform the related restoration and repair work, and dispose of the sign in any manner Landlord deems appropriate.

**8. UTILITIES**. Tenant shall obtain and pay for all electricity, heat, telephone, used at the Premises, together with any taxes, penalties, surcharges, maintenance charges, and similar charges pertaining to Tenant's use of the Premises. Tenant shall heat the Premises as necessary to prevent any freeze damage to the Premises or any portion. Tenant's use of electric current shall at no time exceed the capacity of the feeders or lines to the Building or the risers or wiring installation of the Building or the Premises. Landlord may, at Tenant's expense, separately meter and bill Tenant directly for its use of any such utility service, in which case the amount separately billed to Tenant for Building standard utility service shall not be duplicated in Tenant's obligation to pay Additional Rent under Section 2.3. Landlord shall not be liable for any interruption or failure of utility service to the Premises, unless such interruption is the result of Landlord's gross negligence or willful misconduct, and Tenant shall not be entitled to any abatement or reduction of Rent by reason of any interruption or failure of utilities or other services to the Premises. Any interruption or failure in any utility or service shall not be construed as an eviction, constructive or actual of Tenant or as a breach of the implied warranty of suitability, and shall not relieve Tenant from the obligation to perform any covenant or agreement under this Lease. In no event shall Landlord be liable for damage to persons or property, including, without limitation, business interruption, damages, or shall Landlord be in default under this Lease, as a result of any such interruption or failure. All amounts due from Tenant under this Section 8 shall be payable within ten (10) days after Landlord's request for payment.

Notwithstanding anything to the contrary contained in this Section 8, if an interruption or termination of utility service results from the gross negligence or willful misconduct of Landlord or any of its employees, agents or contractors and continues for at three (3) business days after such interruption or cessation, Rent shall thereafter be abated for the period which commences on the fourth (4th) business day of such interruption or cessation and ends on the date such utility service is restored.

**9. INSURANCE BY TENANT**. Tenant shall, during the Lease Term, procure at its expense and keep in force the following insurance:

**9.1** Tenant's Liability Insurance. Commercial general liability insurance against any and all claims for bodily injury and property damage occurring in, or about the Premises arising out of Tenant's use and occupancy of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence with a Two Million Dollar ($2,000,000) aggregate limit and excess umbrella liability insurance in the amount of One Million Dollars ($1,000,000). Such liability insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this lease.

**9.2** Tenant's Property Insurance. Personal property insuring all equipment, trade fixtures, inventory, fixtures, and personal property located on or in the Premises for perils covered by the causes of loss—special form (all risk) and in addition, coverage for flood, wind, earthquake, terrorism and boiler and machinery (if applicable). Such insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing.

**9.3** Business Interruption Insurance. Business interruption and extra expense insurance in such amounts to reimburse Tenant for direct or indirect loss attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Building as result of such perils.

**9.4** Workers' Compensation/Employers Liability Insurance. To the extent required in the State of Texas, workers' compensation insurance in accordance with statutory law.

**9.5** Increase in Coverage. Following the initial term of this Lease and on not more than one (1) occasion during any three (3) year period thereafter, Landlord may, by notice to Tenant, require an increase in policy limits or require that Tenant carry other forms of insurance; provided that the same are commercially reasonable and in keeping with the insurance requirements of owners of similar properties in the applicable submarket in which the Premises is located.

**9.6** General Requirements. The policies required to be maintained by Tenant shall be with companies rated A- X or better by A.M. Best. Insurers shall be licensed to do business in the state in which the Premises are located and domiciled in the USA. Any deductible amounts under any insurance policies required hereunder shall not exceed $10,000, unless Tenant has a tangible net worth in excess of $10,000,000 as evidenced by financial statements supplied to Landlord. Certificates of insurance (certified copies of the policies may be required) shall be delivered to Landlord prior to the Commencement Date and annually thereafter at least thirty (30) days prior to the policy expiration date, which shall identify Landlord, Landlord's property management company and any applicable lender as additional insureds. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord as required by this Lease. Each policy of insurance shall require that the insurer shall use their best efforts to provide notification to Landlord at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

**9.7** Failure to Maintain. In the event Tenant does not purchase the insurance required by this lease or keep the same in full force and effect, Landlord may, but shall not be obligated to purchase the necessary insurance and pay the premium, after five (10) days written notification to Tenant of Landlord's intention. The Tenant shall repay to Landlord, as additional rent, the amount so paid promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorneys' fees) and damages which Landlord may sustain by reason of the failure to Tenant to obtain and maintain such insurance.

**9.8** Landlord's Insurance. Landlord shall keep in force during the Term insurance in such other amounts and coverages as Landlord or its lenders and/or beneficiaries deem appropriate and commercially reasonable. Without limitation to the generality of the foregoing, Landlord shall keep in full force and effect insurance in at least the following minimum types and levels:

**(1)** Fire, extended coverage and vandalism and malicious mischief insurance insuring the Building and related improvements;

**(2)** A commercially reasonable policy of Commercial General Liability insurance with limits substantially consistent with similar buildings in the applicable submarket; and

**(3)** Such other insurance as Landlord deems necessary in its sole and absolute discretion.

All insurance policies shall be issued in the names of Landlord and Landlord's lender, and any other party reasonably designated by Landlord as an additional insured, as their interests appear. The insurance policies shall provide that any proceeds shall be made payable to Landlord, or to the holders of mortgages or deeds of trust encumbering Landlord's interest in the Premises or Project, or to any other party reasonably designated by Landlord as an additional insured, as their interests shall appear. All insurance premiums for Landlord's insurance shall be included in Operating Expenses.

**10. SUBROGATION OF RIGHTS OF RECOVERY**. Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property, to the extent that such loss or damage is insured by an insurance policy (or in the event either party elects to self insure any property coverage required) required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party. The provisions of this clause shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible.

**11. CASUALTY DAMAGE**.

**11.1** Total Destruction. Tenant immediately shall give written notice to Landlord of any damage to the Premises, the Building, or the Land. If the Premises, the Building, or the Land are totally destroyed by an insured peril, or so damaged by an insured peril that, in Landlord's insurance appraiser's estimation, rebuilding or repairs cannot be substantially completed (exclusive of leasehold improvements Tenant makes) within one-hundred and eighty (180) days after the date of Landlord's actual knowledge of the damage, then Landlord may terminate this Lease by delivering to Tenant written notice of termination within thirty (30) days after the damage. If the Premises, the Building, or the Land are totally destroyed by an insured peril, or so damaged by an insured peril that, in Landlord's appraiser's estimation, rebuilding or repairs cannot be substantially completed (exclusive of leasehold improvements Tenant makes) within one-hundred and eighty (180) days after the date of Landlord's actual knowledge of the damage, then Landlord may, at its expense, relocate Tenant to space reasonably comparable to the Premises, at no increased financial obligation to the Tenant, provided that Landlord notifies Tenant of its intention to do so in a written notice delivered to Tenant within thirty (30) days after the damage. Such relocation may be for a portion of the remaining Term or the entire Term. Landlord shall complete any such relocation within ninety (90) days after Landlord has delivered such written notice to Tenant.

If the Premises, the Building, or the Land are totally destroyed by an insured peril, or so damaged by an insured peril that, in Landlord's estimation, rebuilding or repairs cannot be substantially completed (exclusive of leasehold improvements Tenant makes) within one-hundred and eighty (180) after the date of Landlord's actual knowledge of the damage, and if Landlord does not elect to relocate Tenant following such damage to the Premises or the Building, and a Tenant Party did not cause such damage, then Tenant may terminate this Lease by delivering to Landlord written notice of termination within fifteen (15) days following the date on which Landlord notifies Tenant in writing of the estimated time for the restoration. Notwithstanding the foregoing, Tenant may not terminate the Lease if a Tenant Party caused the damage.

In either event, the Rent shall be abated during the unexpired portion of this Lease, effective upon the date the damage occurred. Time is of the essence with respect to the delivery of all notices of damage and termination. Notwithstanding the foregoing, the Rent shall not be abated if a Tenant Party caused the damage or if Tenant falls to keep in force the insurance describes in Section 9 above, except to the extent that Landlord actually receives proceeds from rental interruption insurance applicable this Lease.

**11.2** Restoration of Premises. Subject to Section 11.3, if this Lease is not terminated under Section 11.1, (or if the Building or the Premises are damaged but not totally destroyed by any insured peril, and in Landlord's estimation, rebuilding or repairs can be substantially completed within one-hundred and eighty (180) days after the date of Landlord's actual knowledge of such damage, in which event this Lease shall not terminate), then Landlord shall restore the Premises to substantially its previous condition, except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, other improvements, or personal property required to be covered by Tenant's insurance under Section 9. If the Premises are untenantable, in whole or in part, during the period beginning on the date the damage occurred and ending on the date of substantial completion of Landlord's repair or restoration work (the "**Repair Period**"), then the rent for that period shall be reduced to such extent as may be fair and reasonable under the circumstances and the Term shall be extended by the number of days in the Repair Period, provided that the Rent shall be abated only to the extent Landlord is compensated for all Rent amounts by the insurance described in Section 9 above. Notwithstanding the foregoing, the Rent shall not be abated if Tenant Party caused the damage or if Tenant fails to keep in force the insurance described in Section 9 above.

**11.3** Insurance. If the Premises are destroyed or substantially damaged by any peril not covered by the insurance maintained by Landlord or any Landlord's Mortgagee (defined below) requires that insurance proceeds be applied to the indebtedness secured by its Mortgage (defined below) or to the Primary Lease (defined below) obligations, or the insurance proceeds available to Landlord to restore the building are insufficient in Landlord's opinion, then Landlord may terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days of the later of the date upon which any destruction or damage incurred, or the date upon which Landlord learns there are not enough insurance proceeds, or Landlord learns of any such requirement by any Landlord's Mortgagee, as applicable. In the event Landlord terminates the Lease, all rights and obligations hereunder shall cease and terminate, except for any liabilities of Tenant, which accrued before the Lease terminates.

**12. LIABILITY, INDEMNIFICATION, AND NEGLIGENCE**.

**12.1 TENANT'S INDEMNITY OF LANDLORD. SUBJECT TO SECTION 12.2 TENANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 24.1) FROM AND AGAINST ALL FINES, SUITS, LOSSES, COSTS, LIABILITIES, CLAIMS, DEMANDS, ACTIONS AND JUDGMENTS OF EVERY KIND OR CHARACTER (1) ARISING FROM TENANT'S FAILURE TO PERFORM ITS COVENANTS UNDER THIS LEASE, (2) RECOVERED FROM OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES ON ACCOUNT OF ANY LOSS (DEFINED BELOW IN SECTION 12.2) TO THE EXTENT THAT ANY SUCH LOSS MAY BE INCIDENT TO, ARISE OUT OF, OR BE CAUSED. WHOLLY OR IN PART, BY A TENANT PARTY (DEFINED BELOW IN SECTION 24.1) OR ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER OR WITH A TENANT PARTY'S EXPRESS OR IMPLIED INVITATION OR PERMISSION, (3) ARISING FROM OR OUT OF TENANT'S OCCUPANCY OR USE OF THE PREMISES, OR (4) ARISING FROM THE NEGLIGENCE, OF TENANT OR ITS AGENTS, EMPLOYEES, SUBLESSEES, ASSIGNEES OR CONTRACTORS. INDEMNIFICATION OF THE INDEMNIFIED PARTIES BY TENANT SHALL NOT APPLY TO THE EXTENT SUCH LOSS DAMAGE, OR INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PARTIES OR THE BREACH OF THIS LEASE BY LANDLORD.**

**12.2 LIABILITY. THE INDEMNIFIED PARTIES (AS DEFINED IN SECTION 24.1) SHALL NOT BE LIABLE TO THE TENANT PARTIES FOR ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS OR THE DAMAGE TO OR THEFT, DESTRUCTION, LOSS, OR LOSS OF USE OF ANY PROPERTY OR INCONVENIENCE (COLLECTIVELY AND INDIVIDUALLY A "LOSS") CAUSED BY CASUALTY, THEFT, FIRE, THIRD PARTIES, REPAIR, OR FAILURE TO REPAIR, OR ALTERATION OF ANY PART OF THIS BUILDING, OR ANY OTHER CAUSE, UNLESS DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY, IN WHOLE OR IN PART.**

**12.3 LANDLORD'S INDEMNITY OF TENANT. SUBJECT TO APPLICABLE WAIVERS OF SUBROGATION, OTHER WAIVERS AND LIMITATIONS ON LIABILITY, LANDLORD SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TENANT PARTIES FROM AND AGAINST ALL FINES, SUITS, LOSSES, COSTS, LIABILITIES, CLAIMS, DEMANDS, ACTIONS AND JUDGMENTS OF EVERY KIND OR CHARACTER, TO THE EXTENT CAUSED BY (1) THE BREACH OF THIS LEASE BY LANDLORD, OR (2) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ANY OTHER INDEMNIFIED PARTY. INDEMNIFICATION OF THE TENANT PARTIES BY LANDLORD SHALL NOT APPLY TO THE EXTENT SUCH LOSS, DAMAGE, OR INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE TENANT PARTIES**.

**12.4** Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Lease.

**13. USE; COMPLIANCE WITH LAWS; PARKING**.

**13.1** Permitted Use. The Premises shall, subject to the remaining provisions of this Section, be used only for receiving, storing, shipping and selling products, materials and merchandise made or distributed by Tenant, and for no other purpose without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. No retail sales may be made from the Premises. The Premises shall not be used for any use which is disreputable, and no part of the Premises shall be used as an escort service, a massage parlor or spa, blood bank, abortion clinic, or for the sale, distribution or display (electronically or otherwise) of materials or merchandise of a pornographic nature or merchandise generally sold in an adult book or adult videotape store (which are defined as stores in which any portion of the inventory is not available for sale or rental to children under 18 years

old because such inventory explicitly details with or depicts human sexuality). Tenant shall not sell, display, transmit or distribute (electronically or otherwise) materials or merchandise of a pornographic nature or merchandise generally sold in an adult book or adult video tape store (as defined above). Tenant shall not use the Premises as living or sleeping quarters or a residence. Tenant shall not use the Premises to receive, store or handle any product, material or merchandise that is explosive or highly inflammable or hazardous or would violate any provision in Section 26. Outside storage, including without limitation, storage in non-operative or stationary trucks, trailers and other vehicles, and vehicle maintenance or repair is prohibited without Landlord's prior written consent. Tenant shall keep the Premises neat and clean at all times. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, light, noise or vibrations to emanate from the Premises; nor commit, suffer or permit any waste in or upon the Premises; nor at any time sell, purchase or give away or permit the sale, purchase or gift of food in any form by or to any of Tenant's agents or employees or other parties in the Premises except through vending machines in employees' lunch or rest areas within the Premises for use by Tenant's employees only; nor take any other action that would constitute a public or private nuisance or would disturb the quiet enjoyment of any other tenant of the Building, or unreasonably interfere with, or endanger Landlord or any other person; nor permit the Premises to be used for any purpose or in any manner that would (1) void the insurance thereon, (2) increase the insurance risk, (3) violate any Law (defined below) including, but not limited to, any zoning ordinance, or (4) be dangerous to life, limb or property. Tenant shall pay to Landlord on demand any increase in the cost of any insurance on the Premises or the Building incurred by Landlord, which is caused by Tenant's use of the Premises, and acceptance of such payment shall not constitute a waiver of any of Landlord's other rights or remedies nor a waiver of Tenant's duty to comply herewith.

**13.2** Compliance with Laws. Tenant shall be solely responsible for satisfying itself and Landlord that the Permitted Use will comply with all applicable Laws. Tenant shall, at its sole cost and expense, be responsible for complying with all Laws (defined below) and Rules and Regulations (defined below) applicable to the use, occupancy, and condition of the Premises. Tenant shall promptly correct any violation of a Law, or Rules or Regulations with respect to the Premises. Tenant shall comply with any direction of any governmental authority having jurisdiction which imposes any duty upon Tenant or Landlord with respect to the Premises, Building, and/or Land, or with respect to the occupancy or use thereof.

**13.3** Compliance with Rules and Regulations. Tenant will comply with such rules and regulations (the "Rules and Regulations") generally applying to tenants in the Building as may be adopted from time to time by Landlord and enforced uniformly and without prejudice for the management, cleanliness of, and the preservation of good order and protection of the Premises, the Building and the Land. A current copy of the Rules and Regulations applicable to the Building is attached hereto as Exhibit D. All such Rules and Regulations are hereby made a part hereof. All changes and amendments to the Rules and Regulations sent by Landlord to Tenant in writing and conforming to the foregoing standards shall be carried out and observed by Tenant. Landlord hereby reserves all rights necessary to implement and enforce the Rules and Regulations and each and every provision of this Lease.

Landlord and Tenant acknowledge that in accordance with the provisions of the Americans with Disabilities Act (the "ADA"), responsibility for compliance with the terms and conditions of Title III of the ADA may be allocated as between Landlord and Tenant. Notwithstanding anything to the contrary contained in the Lease, Landlord and Tenant agree that the responsibility for compliance with the ADA shall be allocated as follows: (i) Tenant shall be responsible for compliance with the provisions of Title III of the ADA with respect to existing conditions within the Premises (including, without limitation, the entry and doors thereto) during the Term and the construction by Tenant of alterations within the Premises and (ii) Landlord shall be responsible for compliance with the provisions of Title III of the ADA with respect to the Initial Improvements and Landlord's Work, the exterior of the Building, Parking Areas, sidewalks and hallways, and the areas appurtenant thereto, together with all other Common Areas of the Building not included within the Premises. Landlord and Tenant each agree to indemnify and hold each other harmless from and against any claims, damages, costs, and liabilities arising out of Landlord's or Tenant's failure, as the case may be, to comply with Title III of the ADA as set forth above, which indemnification obligation shall survive the expiration or termination of this Lease. Landlord and Tenant each agree that the allocation of responsibility for ADA compliance shall not require Landlord or Tenant to supervise, monitor, or otherwise review the compliance activities of the other with respect to its assumed responsibilities for ADA compliance as set forth herein.

**13.4** Parking. Tenant and its employees, agents and invitees shall have the non-exclusive right to use, in common with others, of any parking areas associated with the Building which Landlord has designated for such use (the "Parking Areas"), subject to (1) such Rules and Regulations (as defined herein) as Landlord may promulgate from time to time and (2) rights of ingress and egress of other tenants and their employees, agents and invitees. Landlord does not reserve or allocate parking spaces at the Premises nor guarantee its availability on a daily basis. However, in no instance shall Tenant allow its employees, agents and invitees to occupy more spaces in the Parking Areas that exceed the ratio of four (4) parking spaces per 1,000 rentable square feet of the Premises. Tenant shall take reasonable measures to ensure that its employees, agents and invitees do not occupy more than the above referenced quantity of parking. Landlord shall take reasonable efforts to ensure that such ratio is available for use by Tenant. Tenant shall only permit parking by its employees, agents or invitees of appropriate vehicles in appropriate designated Parking Areas. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties.

**14. INSPECTION; ACCESS AND RIGHT OF ENTRY; NEW CONSTRUCTION**. Without being deemed or construed as committing an actual or constructive eviction of Tenant and without abatement of Rent, Landlord and Landlord's agents and representatives may enter the Premises during business hours, with twenty-four (24) hours prior notice, to inspect the Premises; to make such repairs as may be required or permitted under this Lease; to perform any unperformed obligations of Tenant hereunder; and to show the Premises to prospective purchasers, mortgagees, ground lessors, and, during the last six (6) months of the Term, tenants. Tenant hereby waives any claim for damages for any injury or inconvenience or interference with Tenant's business, and any loss of occupancy or quiet enjoyment of the Premises. Landlord shall have the right to use any and all means which Landlord may deem proper to enter the Premises in an emergency without liability therefor. During the last six (6) months of the Term, Landlord may erect a sign on the Building indicating that the Premises are available for lease. Tenant shall notify Landlord in writing of its intention to vacate the Premises at least thirty (30) days before Tenant will vacate the Premises (in order to accommodate the Joint Inspection as set forth in Section 17.1 below); such notice shall specify the date on which Tenant intends to vacate the Premises (the "Vacation Date"). Furthermore, Landlord hereby reserves the right and at all times shall have the right to repair, change, redecorate, alter, improve, modify, renovate, enclose or make additions to any part of the Building, Building's Structure and Common Areas or the Land, to enclose and/or change the arrangement and/or location of driveways or Parking Areas or landscaping or other Common Areas; and to construct new improvements on adjacent parcels of land, all, Tenant agrees, without having committed an actual or constructive eviction of Tenant or breach of the implied warranty of suitability and without an abatement of Rent (the "Reserved Right"). When exercising the Reserved Right, Landlord will use reasonable efforts not to unreasonably interfere with Tenant's use and occupancy of the Premises.

**15. ASSIGNMENT AND SUBLETTING**.

**15.1** Transfers. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, (1) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (2) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization, (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant, (4) sublet any portion of the Premises, (5) grant any license, concession, or other right of occupancy of any portion of the Premises, or (6) permit the use of the Premises by any parties other than Tenant (any of the events listed in Sections 15.1 (1) through (6) being a "Transfer"). If Tenant requests Landlord's consent to a Transfer, then Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer, copies of the proposed documentation, and the following information about the proposed transferee: name and address; reasonably satisfactory information about its business and business history; its proposed use of the Premises; and financial and other credit information sufficient to enable Landlord to determine the proposed transferee's creditworthiness and character.

**15.2** Landlord's Written Consent Requirements. In determining whether Landlord shall consent to any proposed assignment or subletting of the Premises, Landlord may consider any factors, including, without limitation, the following: provided that the proposed transferee (1) has creditworthiness reasonably acceptable to Landlord (and Tenant has supplied to Landlord reasonably detailed financial statements to Landlord), (2) has a good reputation in the business community, (3) is not negotiating for competing space within the complex of which the Premises is a part, (4) will use the Premises consistent with the permitted use allowed under the Lease which shall not be environmentally harmful as agreed to in Section 26 of this Lease. In addition, the Transfer shall not constitute a violation

of the Employee Retirement Income Security Act of 1974, as amended (ERISA). In the event the proposed transferee does not meet all the above factors, then Landlord may withhold its consent in its sole discretion. Tenant shall reimburse Landlord for its reasonable attorneys' fees and other expenses incurred in connection with considering any request for its consent to a Transfer, which such costs in total shall not exceed Three Thousand Dollars ($3,000) per transaction, in addition to a fee of Five Hundred Dollars ($500.00) which Tenant will submit to Landlord along with its written request for review of the proposed assignment or subletting, regardless of whether Landlord subsequently grants its approval of the proposed assignment or subletting.

**15.3** Obligations of Tenant and Proposed Transferee. If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord a written agreement, in a form satisfactory to Landlord, whereby the proposed transferee expressly assumes the Tenant's obligations hereunder (however, in the event of transfer of less than all of the space In the Premises the proposed transferee shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer, and only to the extent of the rent it has agreed to pay Tenant). Landlord's consent to a Transfer shall not release Tenant from performing its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable. No such Transfer shall constitute a novation. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. If a default occurs while the Premises or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against Tenant's Rent obligations. Tenant authorizes its transferees to make payments of Rent directly to Landlord upon receipt of notice from Landlord to do so. If Landlord should fail to notify Tenant in writing of its decision within the thirty (30) day period after Landlord's receipt of Tenant's written request for Landlord's consent to a Transfer, then Landlord shall be deemed to have refused to consent to the proposed Transfer and to have elected to keep this Lease in full force and effect; provided, however, Tenant may thereafter send a second written request to transfer (which will include a copy of the first request) and if Landlord fails to respond within five (5) business days following receipt thereof, Landlord will be deemed to have granted its consent.

**15.4** Landlord's Recapture Right. This Section 15.4 shall not apply to either Permitted Transfers or to subleases of less than substantially all of the Premises. Within thirty (30) days after Landlord's receipt of Tenant's submission of Tenant's written request for Landlord's consent to a Transfer, Landlord shall have the option (without limiting Landlord's other rights under this Lease) of terminating this Lease (or, as to a subletting or assignment, terminate this Lease as to the portion of the Premises proposed to be sublet or assigned) as of the latter of either: upon thirty (30) days notice or the date the proposed Transfer was to be effective. If Landlord terminates this Lease as to all or any portion of the Premises, then this Lease shall cease for such portion of the Premises and Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer. Thereafter, Landlord may lease all or such portion of the Premises to the prospective transferee (or to any other person or entity) without liability to Tenant.

**15.5** Excess Rent. Notwithstanding anything to the contrary contained in Section 15 of this Lease, Tenant hereby assigns, transfers and conveys fifty percent (50%) of any excess consideration, after accounting for brokerage fees, legal fees, tenant finish out dollars and free rent concessions and marketing expenses, received by Tenant under any Transfer, which is in excess of the Rent payable by Tenant under this Lease, and Tenant shall hold such amounts in trust for Landlord and pay them to Landlord within thirty (30) days after receipt. The above excess consideration shall be limited in subleases. Landlord should not be entitled to any excess consideration resulting from an assignment which might be profit to Tenant as part of the larger transaction.

Notwithstanding anything contained in this Section 15 or elsewhere in this Lease to the contrary, Tenant may, so long as Tenant is not in default hereunder beyond any applicable notice and cure period and upon at least thirty (30) days' prior written notice to Landlord, but without the prior written consent of Landlord, assign or transfer its interest in this Lease, or sublet the Premises or any part thereof, to the following "Permitted Transferees": (i) the purchaser of all or substantially all of Tenant's assets, (ii) any corporation, limited partnership, limited liability partnership, limited liability company, or other business entity in which, with which or to which Tenant, or its successors or assigns, is merged, consolidated or sold, in accordance with applicable statutory provisions and other laws governing merger, consolidation and sale of business entities, (iii) any entity which controls Tenant, is controlled by Tenant or is under common control with Tenant, or (iv) any individual, corporation, limited partnership, limited liability partnership, limited liability company or other business entity that subleases, licenses, concessions or otherwise occupies or uses not

more than fifty percent (50%) of the Premises (each of the foregoing transfers being referred to herein individually as a "Permitted Transfer", and collectively as "Permitted Transfers"). With respect to this Lease "control" and the corresponding terms "controlled by" and "under common control with" shall mean ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation or other majority equity and controlling interest if not a corporation or the possession of power, directly or indirectly, to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities or interests, by statute, according to the provisions of a contract, or otherwise. Notwithstanding the foregoing, Landlord's consent will be required (but not unreasonably withheld) if any of the foregoing will result in the Tenant under this Lease having a tangible net worth of less than that of Tenant immediately prior to such transfer (and Tenant shall provide financial statements (pro forma) evidencing that the same is not the case).

**16. CONDEMNATION**. If more than fifty percent of the Premises is taken for any public or quasi-public use by right of eminent domain or private purchase in lieu thereof (a "Taking"), and the Taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, either party may terminate this Lease by delivering to the other written notice thereof within thirty (30) days after the Taking, in which case Rent shall be abated during the unexpired portion of the Term, effective on the date of such Taking. If (1) less than fifty percent of the Premises are subject to a Taking or (2) more than fifty percent of the Premises are subject to a Taking, but the Taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which they were released to Tenant, then neither party may terminate this Lease, but the Rent payable during the unexpired portion of the Term shall be reduced to such extent as may be fair and reasonable under the circumstances. All compensation awarded for any Taking shall be the property of Landlord, and Tenant hereby assigns any interest it may have in any such award to Landlord; however, Landlord shall have no interest in any separate award made to Tenant (which does not reduce Landlord's award) for loss of Tenant's business or goodwill, for the taking of Tenant's trade fixtures, or on account of Tenant's moving and relocation expenses and depreciation to and removal of Tenant's physical personal property, if a separate award for such items is made to Tenant.

**17. SURRENDER AND REDELIVERY OF PREMISES; HOLDING OVER**.

**17.1** Surrender and Redelivery of Premises. No act by Landlord shall be an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid, unless it is in writing and signed by Landlord. Tenant's delivery of the keys or access cards to Property Manager or any agent or employee of Landlord shall not operate as a termination of this Lease or a surrender of the Premises.

**17.1.1** Joint Inspection. At least thirty (30) days before the Vacation Date, Tenant shall arrange to meet with Landlord for a joint inspection of the Premises. After such inspection, Landlord shall prepare a list of items that Tenant must perform before the Vacation Date. If Tenant fails to arrange for such inspection, then Landlord may conduct such inspection and Landlord's determination of the work Tenant is required to perform before the Vacation Date shall be conclusive. If Tenant fails to perform such work before the Vacation Date, then Landlord may perform such work at Tenant's cost. Tenant shall pay all cost incurred by Landlord in performing such work within ten (10) days after Landlord's request thereof.

**17.1.2** Tenant's Payment Obligations. Tenant shall also, prior to vacating the Premises, pay to Landlord the amount, as reasonably estimated by Landlord, of Tenant's obligation hereunder for Operating Expenses for the year in which the Term ends. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant hereunder, with Tenant being liable for any additional costs therefor upon demand by Landlord or with any excess to be returned to Tenant after all such obligations have been determined and satisfied as the case may be. Any Security Deposit held by Landlord may be credited against the amount due by Tenant under this Section 17.

**17.1.3** Condition of Premises. After the Expiration Date or earlier termination of this Lease, or the termination of Tenant's right to possess the Premises, Tenant shall (1) deliver to Landlord the Premises in a safe, "broom clean," neat, sanitary, and operational condition with all improvements and alterations as set forth in Section 6.4 located thereon in good repair and condition, subject to the exclusions set forth in Section 6.4, and with the HVAC System, lights and light fixtures (including ballasts), and overhead doors and related equipment in good working order, (2) deliver to Landlord the Premises with steam cleaned carpets and with concrete floors in the warehouse and

manufacturing areas which have been sealed, (3) deliver to Landlord all keys and parking and access cards to the Premises, and (4) remove all signage placed on the Premises, the Building, or the Land by or at Tenant's request. All fixtures, alterations, additions and improvements (whether temporary or permanent) shall be Landlord's property and shall remain on the Premises, except as provided in the next two sentences. Provided that Tenant has performed all of its obligations hereunder, Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises by Tenant (but Tenant shall not remove any such item which was paid for, in whole or in part, by Landlord). Additionally, Tenant shall remove such alterations, additions, improvements, fixtures, equipment, wiring, furniture, trade fixtures and other property as Landlord may request, provided such request is made within forty-five (45) days after the Expiration Date or earlier termination of this Lease. All items not so removed shall, at the sole option of Landlord, be deemed abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items, and Tenant shall pay for the costs incurred by Landlord in connection therewith. All work required of Tenant under this Section 17 shall be coordinated with Landlord and be done in a good and workmanlike manner, in accordance with all Laws (defined below), and so as not to damage the Building or unreasonably interfere with other tenants' use of their premises. Tenant shall, at its expense, repair all damage caused by any work performed by Tenant under this Section 17, provided that in the case of alterations or improvements that Tenant is required to remove, Tenant shall restore the Premises to the condition existing prior to the installation of such alterations, subject to the exclusions set forth in Section 6.4. If Tenant fails to perform work under this Section 17, Tenant shall pay all costs incurred by Landlord in performing such work within ten (10) after Landlord's request thereof.

**17.2** Holding Over. If a Tenant Party fails to vacate the Premises after the Expiration Date or earlier termination of this Lease, then a Tenant Party's possession of the Premises shall constitute and be construed as a tenancy at will only, subject, however, to all of the terms, provisions, covenants and agreements on the part of Tenant under this Lease, and such Tenant Party shall be subject to immediate eviction and removal; Tenant or any such Tenant Party covenants and agrees to pay Landlord, in addition to the other Rent due hereunder, if any, as Rent for the period of such holdover a prorated daily Base Rent equal to the sum of one hundred fifty percent (150%) of the daily Base Rent plus one hundred percent (100%) of the Additional Rent, both payable during the last month of the Term. Tenant's possession of the Premises after the Expiration Date or earlier termination of this Lease shall immediately constitute an Event of Default under Section 19.5 herein. The Rent during such holdover period shall be payable to Landlord from time to time on demand; provided, however, if no demand is made during a particular month, holdover rent accruing during such month shall be paid in accordance with the provisions of this Section 17. Tenant will vacate the Premises and deliver same to Landlord immediately upon Tenant's receipt of notice from Landlord to so vacate. No holding over by a Tenant Party (whether with or without the consent of Landlord), and no payments of money by Tenant to Landlord after the end of the Term, shall operate to reinstate, continue or extend the Term, and no extension of this Term shall be valid unless evidenced by a writing signed by both Landlord and Tenant. No payments of money by Tenant (other than the holdover rent accruing during such holdover period paid in accordance with the provisions of this Section 17) to Landlord after the Expiration Date or earlier termination of this Lease shall constitute full payment of Rent under the terms of this Lease. Tenant shall be liable for all damages resulting from a Tenant Party's unauthorized holding over.

**18. QUIET ENJOYMENT**. Provided Tenant has fully performed its obligations under this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through or under Landlord, but not otherwise, subject, however, to all of the provisions of this Lease and all Laws (defined below), liens, encumbrances and restrictive covenants to which the Land is subject. Landlord shall not be responsible for the acts or omissions of any other tenant or third party that may interfere with Tenant's use and enjoyment of the Premises.

**19. EVENTS OF DEFAULT**. The occurrence of any of the following events shall constitute an "**Event of Default**" under this Lease:

**19.1** Monetary Default; Failure to Pay Rent. Tenant fails to pay Rent when due or any payment or reimbursement required under this Lease when due, and in either case such failure continues for a period of five (5) business days from the date such payment was due; provided, however, Tenant shall be entitled to written notice and five (5) business day cure period on two (2) occasions during any twelve (12) month period, not to exceed a total of five (5) such notices and cure periods, before Tenant shall be deemed to be in default.

**19.2** Bankruptcy; Insolvency. The filing of a petition by or against Tenant (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any debtor relief law; (3) for the appointment of a liquidator, receiver, trustee, custodian, or similar official for all or substantially all of Tenant's property or for Tenant's interest in this Lease; or (4) for reorganization or modification of Tenant's capital structure (however, if any such petition is filed against Tenant, then the filing of such petition shall not constitute an Event of Default, unless it is not dismissed within 90 days after the filing thereof).

**19.3** Vacation; Failure to Continuously Operate. Tenant (1) vacates all or a substantial portion of the Premises or (2) fails to continuously operate its business at the Premises for the permitted use set forth herein. However, Tenant shall be allowed to cease operations in the Building without causing and Event of Default, provided that Tenant: (1) delivers to Landlord a written notice of a forwarding address where Landlord can provide required notice under this Lease, (2) maintains its regularly scheduled HVAC maintenance program as required in Section 5.3 herein, (3) and preventative maintenance agreements with vendors reasonably approved by the Landlord to maintain the interior of the Premises, including the mechanical, electrical, and plumbing systems in a clean and adequate condition, (4) promptly upon demand reimburses Landlord for any increases in Landlord's insurance attributable to Tenant's vacation of the Premises (and Landlord supplies to Tenant advance notice of such increase along with a written statement from the applicable insurer regarding evidencing that the increase is due to the vacancy), and (5) no Event of Default by Tenant exists with respect to any of the terms, covenants and conditions, hereof, including the timely payment of all Rent to Landlord when due or any payment or reimbursement required under this Lease.

**19.4** Liens; Encumbrances. Tenant fails to discharge any lien placed upon the Premises in violation of Section 23 within ten (10) days after any Rich lien or encumbrance is filed against the Premises.

**19.5** Non-Monetary Default; Failure to Perform. Tenant fails to comply with any term, provision or covenant of this Lease (other than those listed in this Section 19), and such failure continues for fifteen (15) days after Tenant's receipt of written notice by Landlord to Tenant of such failure (except in connection with any failure which cannot be remedied or cured within said fifteen (15) day period, in which event the time within which to cure such failure shall be extended for such time as shall be necessary to cure the same, but only if Tenant, within such fifteen (15) day period, shall promptly commence and thereafter proceed diligently and continuously to cure such failure).

**20. REMEDIES**.

**20.1** During the continuance of any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by Law, take any of the following actions:

**20.1.1** Terminate the Lease. Terminate this Lease by giving Tenant written notice thereof, in which event, Tenant shall pay to Landlord the sum of (1) all Rent accrued hereunder through the date of termination, (2) all amounts due under Section 20.2, and (3) an amount equal to (i) the total Rent that Tenant would have been required to pay for the remainder of the Term, discounted to present value at a per annum rate equal to the "Prime Rate" as published on the date this Lease is terminated by The Wall Street Journal, Southwest Edition, in its listing of "Money Rates", minus (ii) that portion of the present fair rental value of the Premises for the residue of the Term that Landlord will have the benefit of (similarly discounted), taking into to consideration marketing time, improvement time, whether Landlord has alternative space available (Landlord not being obligated to lease the Premises before leasing other available space), customary rental abatement concessions, and other relevant factors (Tenant shall have the burden of proof with respect to the fair rental value of the Premises for such time period); or

**20.1.2** Terminate Tenant's Right of Possession. Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under Section 20.2, and (3) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period. Landlord shall use commercially reasonable efforts (consistent with applicable law) to mitigate its damages after an Event of Default by Tenant; provided, however, Landlord does not guaranty that any such mitigation efforts shall be successful. Further, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building, and Tenant's obligations hereunder shall not be diminished because of Landlord's

failure to relet the Premises or to collect Rent due for a reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Actions to collect amounts due by Tenant to Landlord under this subsection may be brought from time to time on one or more occasions, without the necessity of Landlord waiting until the Expiration Date of this Lease. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to exclude or dispossess Tenant of the Premises shall be deemed to be taken under this subsection. If Landlord elects to proceed under this Section 20.1.2, it may at any time elect to terminate this Lease under Section 20.1.1; or

**20.1.3** Lock Out. Additionally, without notice, Landlord may alter locks or other security devices at the Premises to deprive Tenant of access thereto, and Landlord shall not be required to provide a new key or right of access to Tenant. This Lease supersedes Section 93.002 of the Texas Property Code to the extent of any conflict.

**20.2** Landlord's Other Rights and Remedies. During the continuance of any Event of Default, Tenant shall pay to Landlord all reasonable costs incurred by Landlord (including reasonable court costs and attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing any storing Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant, (4) reletting all or any part of the Premises (including pro-rated brokerage commissions, pro-rated cost of tenant finish work, and other costs incidental to such reletting), (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses. Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. Landlord's receipt of Rent with knowledge of any default by Tenant hereunder shall not be a waiver of such default, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless set forth in writing and signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term or violation of any other term. If Landlord repossesses the Premises pursuant to the authority herein granted, then Landlord shall have the right to (i) keep in place and use or (ii) remove and store, at Tenant's expense, all of the furniture, trade fixtures, equipment and other personal property in the Premises, including that which is owned by or leased to Tenant at all times before any repossession thereof by any lessor thereof or third party having a lien thereon. Landlord may relinquish possession of all or any portion of such furniture, trade fixtures, equipment and other property to any person (a "Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, trade fixtures, equipment or other property without the necessity on the part of Landlord to inquire into the authenticity or legality of the instrument. Landlord may, at its option and without prejudice to or waiver of any rights it may have, (a) escort Tenant to the premises to retrieve any personal belongings of Tenant and/or its employees or (b) obtain a list from Tenant of the personal property of Tenant and/or its employees, and make such property available to Tenant and/or Tenant's employees; however, Tenant first shall pay in cash all costs and estimated expenses to be incurred in connection with the removal of such property and making it available. The rights of Landlord herein stated in this Section 20 are cumulative and in addition to any and all other rights that Landlord has or may hereafter have at law or in equity, and Tenant hereby agrees that the rights herein granted Landlord are commercially reasonable.

**20.3** Landlord's Recapture Right. After Tenant's vacation of all or a substantial part of the Premises and a resulting Event of Default under Section 19.3, Landlord shall have the option (without limiting Landlord's other rights under this Lease) of terminating this Lease upon written notice to the Tenant. If Landlord terminates this Lease as to all or any portion of the Premises, then this Lease shall cease for such portion of the Premises and Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the Landlord's termination. Thereafter Landlord's termination will be without liability to Tenant.

**21. LANDLORD'S DEFAULT AND LIMITATIONS OF LIABILITY**.

**21.1 DEFAULTS BY LANDLORD**. If Landlord fails to perform any of its obligations hereunder within thirty (30) days (or such longer period as may reasonably be required) after written notice from Tenant specifying such failure, Tenant's exclusive and sole remedy shall be an action for damages. Tenant is granted no contractual right of termination by the Lease, except to the extent and only to the extent set forth in Section 11.1 and 16.

**21.2 LIMITATIONS ON LANDLORD'S LIABILITY. THE LIABILITY OF LANDLORD TO A TENANT PARTY FOR ANY DEFAULT BY LANDLORD, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES. IN NO EVENT SHALL LANDLORD BE LIABLE TO A TENANT PARTY FOR CONSEQUENTIAL OR SPECIAL DAMAGES BY REASON OF A FAILURE TO PERFORM (OR A DEFAULT) BY LANDLORD HEREUNDER OR OTHERWISE. EXCEPT FOR CLAIMS WHICH MAY BE COVERED BY INSURANCE IF A TENANT PARTY SHALL RECOVER A MONEY JUDGMENT AGAINST LANDLORD, THE TENANT PARTY AGREES THAT SUCH MONEY JUDGMENT SHALL BE SATISFIED SOLELY BY LANDLORD'S INTEREST IN THE PREMISES AND BUILDING, AS THE SAME MAY THEN BE ENCUMBERED, AND LANDLORD, ITS AFFILIATES, PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS AND EMPLOYEES SHALL NOT BE LIABLE OTHERWISE FOR ANY OTHER CLAIM ARISING OUT OF OR RELATING TO THIS LEASE.**

**LANDLORD SHALL NOT BE LIABLE TO A TENANT PARTY FOR ANY CLAIMS, ACTIONS, DEMANDS, COSTS, EXPENSES, DAMAGE, OR LIABILITY OF ANY KIND ARISING FROM THE USE, OCCUPANCY OR ENJOYMENT OF THE PREMISES BY A TENANT PARTY AS A RESULT OF ANY LOSS OR DAMAGE TO PROPERTY OF TENANT OR OF OTHERS LOCATED IN THE PREMISES OR THE BUILDING BY REASON OF THEFT OR BURGLARY.**

**21.3** Examination of Lease; No Contract Until Execution by Parties. Submission by Landlord of this instrument to Tenant for examination or signature does not constitute a reservation of or option for lease. This Lease will be effective as a lease or otherwise only upon execution by both Landlord and Tenant. If Tenant is a corporation (including any form of professional association), limited liability company, partnership (general or limited), or other form of organization other than an individual, then each individual executing this Lease on behalf of Tenant hereby covenants, warrants and represents: (1) that such individual is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with the organizational documents of Tenant; (2) that this Lease is binding upon Tenant; (3) that Tenant is duly organized and legally existing in the state of its organization, and is qualified to do business in the State of Texas; (4) that upon request, Tenant will provide Landlord with true and correct copies of all organizational documents of Tenant, and any amendments thereto; and (5) that the execution and delivery of this Lease by Tenant will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which Tenant is a party or by which Tenant may be bound. If Tenant is a form of organization other than an individual, Tenant will, prior to the Commencement Date, deliver to Landlord written documentation reasonably satisfactory to Landlord evidencing the authority of an authorized representative of Tenant to enter into the Lease and bind Tenant to all of the obligations of Tenant under the Lease.

**22. MORTGAGES.**

**22.1** Lease Subordinate to Mortgage. This Lease shall be subordinate to any deed of trust, mortgage or other security instrument (a "**Mortgage**"), and any ground lease, master lease, or primary lease (a "**Primary Lease**") that now or hereafter covers any portion of the Premises (the mortgagee under any Mortgage or the lessor under any Primary Lease is referred to herein as "**Landlord's Mortgagee**"), and to increases, renewals, modifications, consolidations, replacements, and extensions thereof. However, any landlord's Mortgagee may elect to subordinate its Mortgage or Primary Lease (as the case may be) to this Lease by delivering written notice thereof to Tenant. The provisions of this Section 22 shall be self-operative and no further instrument shall be required to effect such subordination; however, Tenant shall from time to time but not more than once per year, within thirty (30) days after request therefor, execute any instruments that may be required by any Landlord's Mortgagee to evidence the subordination of this Lease to any such Mortgage or Primary Lease. Following a the second written notice to Tenant and a three (3) business day cure period, and in addition to Landlord's other available remedies, Tenant shall pay Landlord a late fee of One Hundred Dollars ($100.00) per day for each day such instruments are not returned past said three (3) business day period. Furthermore, Tenant shall be liable to Landlord for any and all damages caused by Tenant's delinquency which results in delays to the closing of such mortgage or other financing activity.

**22.2** Attornment. Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request. Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgage a reasonable opportunity to perform Landlord's obligations hereunder.

**22.3** No Landlord's Mortgagee's Liability. Notwithstanding any such attornment or subordination of a Mortgage or Primary Lease to this Lease, the Landlord's Mortgagee shall not be liable for any acts of any previous landlord, shall not be obligated to install the initial improvements, and shall not be bound by any amendment to which it did not consent in writing nor any payment of Rent made more than one month in advance.

**23. ENCUMBRANCES**.

**23.1** No Liens. Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind Landlord's property or the interest of Landlord or Tenant in the Premises or to charge the rent for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant shall timely pay or cause to be paid all sums due for any labor performed or materials furnished in connection with any work performed on the Premises by or at the request of Tenant. Notwithstanding the foregoing, Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises, Building or Land.

**23.2** Landlord's Rights. In the event that Tenant shall not, within ten (10) days following notification to Tenant of the imposition of any such lien, cause the same to be released of record by payment or the posting of a bond in amount, form and substance acceptable to Landlord, Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of or defense against the claim giving rise to such lien. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Building or the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Landlord in the Building, Land or the Premises. Nothing in this Section 23 modifies an Event of Default under Section 19.4 herein.

**24. MISCELLANEOUS**.

**24.1** Laws; Affiliate; Tenant Party. Words of any gender used in this Lease shall include any other gender, and words in the singular shall include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way affect the interpretation of this Lease. The following terms shall have the following meanings: "**Laws**" shall mean all federal, state, and local laws, zoning ordinances, municipal regulations, rules and regulations; all court orders, governmental directives, and governmental orders, all Environmental Laws (as defined below), all applicable laws, regulations and building codes governing nondiscrimination accommodations and commercial facilities, and all restrictive covenants affecting the Property, and "**Law**" shall mean any of the foregoing; "**Affiliate**" shall mean any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with the party in question; "**Tenant Party**" or collectively the "**Tenant Parties**" shall include Tenant, any assignees claiming by, through, or under Tenant, any subtenants claiming, by, through, or under Tenant, and any of their respective agents, contractors, employees, and invitees; and "**Indemnified Parties**" shall include Landlord, its successors, assigns, agents, employees, contractors, Property Manager, partners, directors, officers and affiliates.

**24.2** Joint and Several Liability. If there is more than one Tenant, then the obligations hereunder imposed upon Tenant shall be joint and several, whether or not Tenant's obligations arise during the Original Term of this Lease, during any renewal or extension or a holdover term or thereafter.

**24.3** Landlord's Assignment; Authority of Tenant. Landlord may transfer and assign, in whole or in part, its rights and obligations in the Building, Land, or Premises that are the subject to this Lease, in which case Landlord shall have no further liability hereunder provided such transferee assumes Landlord's obligations under this Lease in writing.

**24.4** Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, the party taking the action shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental actions or inactions or laws, regulations, or restrictions, or any other cause of any kind whatsoever which are beyond the control of such acting party; provided, however, in no event shall the foregoing apply to the financial obligations of Tenant under this Lease, including, without limitation, Tenant's obligation to promptly pay Base Rent, Additional Rent, reimbursements or any other amount payable to Landlord as well as Tenant's obligation to maintain insurance hereunder.

**24.5** Certificate of Occupancy; Financial Statements; Estoppel Certificates. Prior to Tenant's occupancy of the Premises, Tenant shall obtain and deliver to Landlord a Certificate of Occupancy for the Premises from the appropriate governmental authority. Tenant shall, from time to time but not more than once every six (6) months, within ten (10) business days after request of Landlord, deliver to the Landlord or Landlord's designee, the most recently compiled financial statements for Tenant, evidence reasonably satisfactory to Landlord that Tenant has performed its obligations under this Lease (including evidence of the payment of the Security Deposit), and an estoppel certificate stating that this Lease is in full effect, the date to which Rent has been paid, the unexpired Term and such other factual matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish the above-described items in a timely fashion is a material inducement for Landlord's execution of this Lease. Following the second written notice to Tenant and a three (3) business day cure period, and in addition to Landlord's other available remedies, Tenant shall pay Landlord a late fee of One Hundred Dollars ($100.00) per day for each day such estoppel certificate is not returned past said three (3) day period. Furthermore, Tenant shall be liable to Landlord for any and all damages caused by Tenant's delinquency which results from Tenant's failure to execute such estoppel certificate.

**24.6** Entire Agreement. This Lease, together with all Exhibits and Riders attached hereto, constitutes the entire agreement of the Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease are of no effect. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

**24.7** Survival of Tenant's Indemnities and Obligations. Each indemnity agreement and hold harmless agreement contained herein shall survive the expiration or termination of the Lease. Additionally, all obligations of Tenant hereunder not fully performed by the end of the Term shall survive, including, without limitation, all payment obligations with respect to Taxes and insurance and all obligations concerning the condition and repair of the Premises.

**24.8** Intentionally Omitted.

**24.9** Severability. If any provision of this Lease is illegal, invalid or unenforceable, then the remainder of this Lease shall not be affected thereby.

**24.10** Effective Date. All references in this Lease to "**Effective Date**" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.

**24.11** Brokerage Commissions. Landlord and Tenant each warrant to the other that they have no dealt with any broker or agent other than the Brokers identified above and that they know of no broker or agent who are or might be entitled to a commission in connection with this Lease. **TENANT AND LANDLORD SHALL EACH INDEMNIFY THE OTHER AGAINST ALL COSTS, ATTORNEYS' FEES, AND OTHER LIABILITIES FOR COMMISSIONS OR OTHER COMPENSATION CLAIMED BY ANY BROKER OR AGENT CLAIMING THE SAME BY, THROUGH OR UNDER TENANT OR LANDLORD, RESPECTIVELY**.

**24.12** Confidentiality. The business terms and conditions of this Lease are confidential and Tenant shall not disclose the terms of this Lease to any other tenant or occupant (or prospective tenant or occupant) of the Building (or associated business park) or their real estate broker or agents.

**24.13** Interest. Tenant shall pay interest on all past-due Rent from the date due until paid at the maximum lawful rate. In no event, however, shall the charges permitted under this Section 24.13 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest.

**24.14** Time. Time is of the essence in this Lease and in each and all of the provisions hereof. Whenever a period of days is specified in this Lease, such period shall refer to calendar days unless otherwise expressly stated in this Lease.

**24.15** Attorneys' Fees. In the event of the filing of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action (including, without limitation, all costs of appeal) and such amount shall be included in any judgment rendered in such proceeding.

**24.16** Choice of Law and Exclusive Venue. **THIS LEASE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCEPT AS SUCH LAWS ARE PREEMPTED BY APPLICABLE FEDERAL LAW, WITHOUT REGARD TO ANY CONFLICT OF LAWS, RULE OR PRINCIPLE WHICH MIGHT REFER THE CONSTRUCTION OR ENFORCEMENT OF THIS LEASE TO THE LAWS OF ANOTHER JURISDICTION. JURISDICTION AND VENUE FOR ANY ACTION HEREUNDER SHALL BE EXCLUSIVELY IN AUSTIN, TRAVIS COUNTY, TEXAS, EITHER IN TEXAS STATE DISTRICT COURT OR IN FEDERAL DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION**.

**24.17** Waiver of Right to Trial By Jury. **TENANT AND LANDLORD EACH: (1) AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS LEASE OR THE RELATIONSHIP BETWEEN THE PARTIES AS TENANT AND LANDLORD THAT CAN BE TRIED BY A JURY; AND (2) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL**.

**24.18** Waiver of Right to File Tax Protest. **WITH RESPECT TO THE BUILDING OR ANY PORTION THEREOF, TENANT HEREBY WAIVES ALL RIGHTS UNDER SECTIONS 41.413 AND 42.015 OF THE TEXAS TAX CODE OR ANY SIMILAR OR CORRESPONDING LAW: (1) TO PROTEST A DETERMINATION OF APPRAISED VALUE OR TO APPEAL AN ORDER DETERMINING A PROTEST; AND (2) TO RECEIVE NOTICES OF REAPPRAISALS**.

**24.19 OFAC Compliance.**

(a) Tenant represents and warrants that: (1) To the best of Tenant's knowledge, after reasonable inquiry, Tenant and each person or entity owning an interest in Tenant is: (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and; (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (2) None of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined); (3) No Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly); (4) None of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and; (5) Tenant has implemented procedures, and will consistently apply those procedures to ensure the foregoing representations and warranties remain true and correct at all times.

(b) Tenant covenants and agrees: (1) To comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect; (2) To immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer be true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached; (3) To not knowingly use funds from any "Prohibited Person" (as such term is

defined in the September 24, 2001 Executive Order blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make an payment due to Landlord under the Lease, and (4) At the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant's compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant's inclusion on the List at any time during the Lease Term shall be a material default of the Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of the Lease.

(d) Tenant shall also require and shall take reasonable measures to ensure compliance with the requirement that no person who owns any other direct interest in the Tenant is or shall be listed on any of the Lists or is an Embargoed Person. The term Embargoed Person means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq.. and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law ("Embargoed Person"). This Subsection (d) shall not apply to any person to the extent that such person's interest in the Tenant is through a U.S. Publicly-Traded Entity. As used in this Agreement, U.S. Publicly-Traded Entity means a Person, other than an individual, whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a person ("U.S. Publicly-Traded Entity").

**24.20** National Electric Code. At all times during the term of this Lease, Tenant shall ensure that all wiring and cabling that it installs within the Premises or Building complies with all provisions of local fire and safety codes, as well as with the National Electric Code. Further, upon the expiration or sooner termination of the Term, Tenant shall remove all wiring and cabling within the Premises and the Building (including the plenums, risers and rooftop) placed there by or at the direction of Tenant, unless excused in writing by Landlord. Without limitation to the remedies available to Landlord in the event that Tenant fails to comply with the terms and conditions of this subsection, Tenant shall forfeit such sums from the Security Deposit (or otherwise pay to Landlord) an amount that Landlord reasonably believes necessary for the removal and disposal of any such wires and cabling.

**25. NOTICES**. Each provision of this instrument or of any applicable Laws and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment hereunder shall be deemed to be complied with, when and if, the following steps are taken:

**25.1** Rent Payments to Landlord. All Rent shall be payable to Landlord at the address for Landlord set forth above or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay Rent shall not be deemed satisfied until such Rent has been actually received by Landlord.

**25.2** Payments to Tenant. All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address set forth above, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

**25.3** Written Notices. Any written notice or document required or permitted to delivered hereunder shall be deemed to be delivered upon the earlier to occur of (1) tender of delivery (in the case of hand-delivered notice), (2) deposit in the United States Mail, postage prepaid, Certified Mail, or (3) receipt by facsimile transmission followed by a confirmatory letter, in each case, addressed to the parties hereto at the respective addresses set out above, or at such other address as they have theretofore specified by written notice delivered in accordance herewith. If Landlord has attempted to deliver notice to Tenant at Tenant's address reflected on Landlord's books but such notice was returned or acceptance thereof was refused, then Landlord may post such notice in or on the Premises, which notice shall be deemed delivered to Tenant upon the posting thereof.

**25.4** Multiplicity. If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of a notice specifying an individual at a specific address within the continental United States for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notices given in accordance with the provisions of Section 25 to the same effect as if each had received such notice.

**26. HAZARDOUS WASTE**.

**26.1** Definitions. For purposes of this Lease, "**Hazardous or Toxic Materials**" shall mean all materials, substances, wastes and chemicals classified, defined, listed or regulated as, or containing, a "hazardous substance" "hazardous waste," "toxic substance," "pollutant," "contaminant," "oil," "hazardous material," "solid waste," and/or "regulated substance" under any Environmental Law, but excluding office cleaning and supplies described in Section 26.3. As used herein, the term "**Environmental Laws**" shall mean any and all statutes, rules, regulations, ordinances, orders, permits, licenses, and other applicable legal requirements, relating directly or indirectly to human health or safety or the environment, or the presence, handling, treatment, storage, disposal, recycling, reporting, remediation, investigation, or monitoring of hazardous or toxic materials. Notwithstanding the foregoing this clause acknowledges that numerous building materials and standard office products and supplies contain materials, which may or may not be inherent in their makeup, which are or contain hazardous substances. Therefore, the lease will be interpreted fairly and reasonably by all Parties in a manner consistent with sound judgment and reasonableness and in accordance with standard and reasonable consulting engineering office practices.

**26.2** Prohibited Uses. Tenant shall not incorporate into, use, release, conduct any activity that will produce, or otherwise place or dispose of at, in, under or near the Premises, the Building or the Land any Hazardous or Toxic Materials. Tenant shall not (1) occupy or use the Premises, nor permit any portion of the Premises to be occupied or used (i) except in compliance with all Laws, ordinances, governmental or municipal regulations, and orders, including without limitation Environmental Laws, or (ii) in a manner which may be dangerous to life, limb or property, (2) cause or permit anything to be done which would in any way increase the rate of fire, liability, or any other insurance coverage on the Premises, the Building, or its contents; (3) use the Premises or any portion as a landfill or dump; (4) install any underground tanks of any kind; (5) permit any Hazardous or Toxic Materials to be brought onto the Premises except as permitted by Section 26.3 below; or (6) allow any surface of subsurface conditions to exist or come into existence that constitute or may, with the passage of time constitute a public or private nuisance.

**26.3** Permissive Uses. Tenant may use and temporarily store cleaning and office supplies used in the ordinary course of Tenant's business and then only if (1) such materials are in small quantities, properly labeled and contained, (2) notice of and a copy of the current material safety data sheet is first delivered to, and written consent is obtained from, Landlord for each such Hazardous or Toxic Material and (3) such materials are used and, as applicable, transported, stored, handled and disposed of off-site at properly authorized facilities in accordance with the highest accepted industry standards for safety, storage, use and disposal and in accordance with all applicable governmental laws, rules and regulations, including without limitations, all Environmental Laws.

**26.4** Landlord's Rights. Landlord shall have the right to periodically inspect, take samples for testing and otherwise investigate the Premises for the presence of Hazardous or Toxic Materials. Any inspection or testing by Landlord shall be done at Landlord's cost and no more than once during any calendar year unless Landlord has a legitimate and good faith basis to require more frequent inspection or testing.

**26.5** Remediation.

**26.5.1** Tenant's Obligations. If Tenant ever has knowledge of the presence in the Premises or the Building or the Land of Hazardous or Toxic Materials which affect the Premises, Tenant shall notify Landlord thereof in writing promptly after obtaining such knowledge. If at any time during or after the Term, the Premises, Land or Building are found to have Hazardous or Toxic Materials in, on or under them, except for such conditions that were present prior to the Effective Date of the Lease and conditions which were not caused by any act or omission of any Tenant Party, then Tenant shall promptly, diligently, and expeditiously investigate, clean up, remove and dispose of the material causing the violation, in compliance with all applicable governmental standards, Laws, rules and regulations, including without limitation, applicable Environmental Laws and the then prevalent industry practice and standards, and Tenant shall repair any damage to the Premises or the Building or the Land as soon as practicable. Tenant shall notify Landlord in advance of its method, time and procedure for any investigation, remediation or monitoring of Hazardous or Toxic Materials, and Landlord shall have the right to require reasonable changes in such method, time or procedure as Landlord considers appropriate to prevent interference with any use, occupancy, care, appearance or maintenance of the Land or the Building or the Premises or the rights of other tenants or to require the same to be done after normal business hours. Under no circumstances shall any remediation by Tenant leave any Hazardous or Toxic Materials at, in, or under the Premises, the Land, or the Building without first obtaining the prior written consent of Landlord.

**26.5.2** Landlord's Rights. Notwithstanding the foregoing, Landlord shall have the right, but not the obligation, to perform the work described in Section 26.5.1 and all actual, reasonable and documented costs and expenses associated therewith shall be due and payable by Tenant upon demand.

**26.6** Tenant's Representation. Tenant represents to Landlord that, except as has been disclosed to Landlord in writing, Tenant nor any of its owners, partners, managers, members, shareholders, or venturers have never been cited for or convicted of any violations under applicable Laws, rules or regulations, including without limitation, Environmental Laws. Tenant has completed the Hazardous Materials Disclosure Certificate that is attached hereto as Exhibit "F".

**26.7** TENANT'S INDEMNITY. **TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL OBLIGATIONS (INCLUDING REMOVAL AND REMEDIAL ACTIONS), LOSSES, CLAIMS, SUITS, JUDGMENTS, LIABILITIES (INCLUDING WITHOUT LIMITATION STRICT LIABILITIES), PENALTIES, DAMAGES COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' AND CONSULTANTS' FEES AND EXPENSES) OF ANY KIND OR NATURE WHATSOEVER THAT MAY AT ANY TIME BE INCURRED BY, IMPOSED ON OR ASSERTED AGAINST THE INDEMNIFIED PARTIES DIRECTLY OR INDIRECTLY BASED ON OR ARISING OUT OF OR RESULTING FROM (1) THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS OR TOXIC MATERIALS ON, AT, IN, UNDER FROM OR NEAR THE PREMISES, THE BUILDING, OR THE LAND WHICH IS CAUSED OR PERMITTED BY A TENANT PARTY OR AT THE DIRECTION OR PERMISSION OF A TENANT PARTY AND/OR (2) OPERATION OR USE OF THE PREMISES BY ANY TENANT PARTY AND/OR (3) NON-COMPLIANCE WITH ENVIRONMENTAL LAWS, OR THE CONDUCT OF OBLIGATIONS HEREUNDER, ANY TENANT PARTY OR AT THE DIRECTION OR PERMISSION OF A TENANT PARTY, (4) THE DIMUNITION OF PROPERTY VALUE AND THE RESULTING EFFECTS UPON LANDLORD'S TITLE TO THE PREMISES, THE BUILDING AND THE LAND CAUSED BY, OR ALLEGED TO BE CAUSED BY THE ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS OR TOXIC MATERIALS ON, AT, IN, UNDER, FROM OR NEAR THE PREMISES, THE BUILDING, OR THE LAND WHICH IS CAUSED OR PERMITTED BY A TENANT PARTY OR AT THE DIRECTION OR PERMISSION OF A TENANT PARTY**.

**26.8** Survival. The provisions of this Section 26 shall survive the Expiration Date or earlier termination of this Lease.

**27.** [**INTENTIONALLY OMITTED**]

**28.** TENANT'S ACKNOWLEDGEMENTS. **TENANT ACKNOWLEDGES THAT (1) IT HAS INSPECTED AND ACCEPTS THE PREMISES IN AN "AS-IS, WHERE IS" WITH ALL FAULTS CONDITION (EXCEPT WITH RESPECT TO LATENT DEFECTS AS PROVIDED IN THIS LEASE), (2) THE BUILDINGS AND IMPROVEMENTS COMPRISING THE SAME ARE SUITABLE FOR THE PURPOSE FOR WHICH THE PREMISES ARE LEASED AND LANDLORD HAS MADE NO WARRANTY, REPRESENTATION, COVENANT, OR AGREEMENT WITH RESPECT TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PREMISES, (3) THE PREMISES ARE IN GOOD AND SATISFACTORY CONDITION, (4) NO REPRESENTATIONS AS TO THE REPAIR OF THE PREMISES, NOR PROMISES (EXPRESS OR IMPLIED) TO ALTER, REMODEL OR IMPROVE THE BUILDING OR PREMISES OR ANY OTHER PART OF THE LAND HAVE BEEN MADE BY LANDLORD (UNLESS AND EXCEPT AS MAY BE SET FORTH IN EXHIBIT B ATTACHED TO THIS LEASE, IF ONE SHALL BE ATTACHED, OR AS IS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE), (5) THERE ARE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, THAT EXTEND BEYOND THE DESCRIPTION OF THE PREMISES, AND (6) NO RIGHTS, EASEMENTS OR LICENSES ARE ACQUIRED BY TENANT BY IMPLICATION OR OTHERWISE, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE**.

**29.** WAIVER. **TENANT WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES – CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS, AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER**.

[Remainder of Page intentionally Left Blank]

**TENANT:**

**EVERSPIN TECHNOLOGIES, INC.**
**a Delaware corporation**

| | |
|---|---|
| **Signature:** | /s/ Bob Schuch |
| **Printed Name:** | Bob Schuch |
| **Title:** | Director of Finance |
| **Date:** | 5/21/2012 |

| | |
|---|---|
| **Signature:** | |
| **Printed Name:** | |
| **Title:** | |
| **Date:** | |

**LANDLORD:**

**PRINCIPAL LIFE INSURANCE COMPANY, an Iowa corporation, for its Principal U.S. Property Separate Account, formerly known as Principal Life Insurance Company, an Iowa corporation, for its Real Estate Separate Account**

**By: PRINCIPAL REAL ESTATE INVESTORS, LLC. a Delaware limited liability company, its authorized signatory**

| | |
|---|---|
| **Signature:** | /s/ Tom Mathisen |
| **Printed Name:** | Tom Mathisen |
| **Title:** | Sr. Asset Manager |
| **Date:** | Jun 29 2012 |

| | |
|---|---|
| **Signature:** | |
| **Printed Name:** | |
| **Title:** | |
| **Date:** | |

**RIDER TO LEASE**

**Additional Provisions**

1. **This Rider Controls**. The provisions set forth in this Rider control to the extent they conflict with any provision or provisions set forth in the body of this Lease Agreement.

2. **Extension Option**. Tenant shall have the right and option to extend this Lease for one (1) consecutive period of four (4) years under the same terms and conditions as stated in the Lease ("Extension Option"), with the exceptions that (a) no further extension options shall exist and (b) monthly rental for such extension term shall be based on the then prevailing market rental rate as determined by Landlord in good faith based on then recent lease extensions within the Building and in surrounding buildings of comparable quality, condition and age for space approximately the same size and location within comparable buildings in the Austin marketplace and taking into consideration any allowances and concessions offered with such rental, Tenant's use and financial strength and other relevant factors ("Market Rental Rate"). Tenant may reject the Extension Option granted herein within ten (10) days following delivery to Tenant of Landlord's determination of the Market Rental Rate ("Rate Notice"). The Extension Option shall be exercisable by Tenant, if at all, only by timely delivery to Landlord of written notice of election at least six (6) months prior to the expiration of the then current Lease Term, but no earlier than nine (9) months prior to the expiration of the then current Lease Term. The option herein granted shall be deemed to be personal to Tenant, and if Tenant subleases any portion of the Premises or otherwise assigns or transfers any interest thereof to another party (other than a Permitted Transfer), such option shall lapse. In the event that Tenant is then in default of any term or condition at the time of its exercise notice beyond any applicable notice, cure or grace period, then there shall be no extension of this Lease as provided herein.

If Tenant desires to continue with the extension, but objects to the Market Rental Rate determined by Landlord, then Tenant must object to the same within said ten (10) business day period. No later than five (5) business days thereafter, Landlord and Tenant shall meet in an effort to negotiate, in good faith, the Market Rental Rate applicable to the Premises. If Landlord and Tenant have not agreed upon the Market Rental Rate applicable to the Premises within five (5) business days after meeting, then Landlord and Tenant shall each appoint a broker not later than forty-five (45) days following Landlord's delivery of the Rate Notice. If Landlord's broker and Tenant's broker have failed to agree upon the Market Rental Rate within sixty (60) days following delivery of the Rate Notice, the two appointed brokers shall appoint a third broker (within five (5) business days following the expiration of said sixty (60) day period), and the Market Rental Rate shall be the arithmetic average of two (2) of the three (3) determinations which are the closest in amount, and the third determination shall be disregarded. If either Landlord or Tenant fails to appoint a broker within the prescribed time period, the failing party shall pay to the other party as liquidated damages $100.00 per day for each day following the deadline that such party fails to appoint a broker, not to exceed a total of $500.00. If the two (2) appointed brokers fail to agree upon a third (3rd) broker, then the parties shall have the local office of the American Arbitration Association appoint the third (3rd) broker and the parties shall share equally in the cost of such arbitration. Each party shall bear the costs of its own broker, and the parties shall share equally the cost of the third broker, if applicable. Each broker shall have at least ten (10) years' experience in the leasing of similar commercial buildings in the submarket in which the Building is located and shall be a licensed real estate broker.

3. **One-Time Right of Refusal.**

(a) Grant of Right of Refusal. Subject to the provisions as hereinafter set forth, Landlord hereby grants to Tenant a one-time right of refusal ("Right of Refusal") to lease from Landlord space located adjacent to Tenant on the first (1st) floor of the Building ("Refusal Space").

(b) Third Party Offer; Exercise Notice. During the Lease Term, if Landlord desires to accept an offer from a third party ("Third Party Offer") to lease the Refusal Space or a portion thereof, Landlord shall first give to Tenant notice that Landlord has received such Third Party Offer and describing the terms and conditions of such Third Party Offer ("Third Party Offer Notice"). Tenant may exercise the Right of Refusal by giving Landlord written notice ("Exercise Notice") within five (5) business days after delivery to Tenant of the Third Party Offer Notice of Tenant's desire to lease that portion of the Refusal Space set forth in the Third Party Offer. Hereinafter the term "Refusal Space" shall be and shall mean the Refusal Space or portion thereof set forth in the Third Party Offer.

(c) Expansion Amendment. After receipt of the Exercise Notice, Landlord and Tenant shall enter into an amendment of the Lease ("Expansion Amendment") acceptable to Landlord and Tenant. Such Expansion Amendment shall provide that from and after the applicable date on which the Refusal Space is leased by Tenant ("Expansion Commencement Date"), the Lease shall be deemed modified as follows.

(i) Base Rent for the Refusal Space shall be as set forth in the Third Party Offer;

(ii) Tenant's Proportionate Share applicable to the Refusal Space shall be a fraction, the numerator of which shall be the number of rentable square feet in the Refusal Space and the denominator of which shall be the number of rentable square feet in the Building (as both shall be reasonably determined by Landlord);

(iii) Tenant's lease of the Refusal Space shall be for the term set forth in the Third Party Offer;

(iv) Other applicable terms and conditions of the Third Party Offer shall modify the Lease with respect to Tenant's lease of the Refusal Space; and

(v) For all purposes under the Lease, other than for the applicable provisions set forth above, the term "Premises" shall be deemed to include the Refusal Space.

Notwithstanding anything contained in this subsection (c) to the contrary, in the event a Third Party Offer is received by Landlord during the first year of the Term and Tenant elects to lease the Refusal Space set forth in the Third Party Offer, then Tenant shall lease the Refusal Spare under all of the same terms and conditions as specified in this Lease.

(d) Subordination. Tenant's Right of Refusal shall be subordinate to any and all existing rights or interests conferred to other tenants for all or any portion of the Refusal Space, as contained in any lease, or otherwise, in effect on the Effective Date of this Lease, including, without limitation, (i) options or rights regarding renewal, extension or expansion and/or (ii) subleases.

(e) Failure to Exercise. It Tenant does not exercise its Right of Refusal in the time and manner set forth herein, the Right of Refusal shall be deemed terminated and of no further force or effect.

(f) No Default. Tenant may exercise the Right of Refusal, and an exercise thereof shall only be effective, provided that Tenant is not then in default of any term or condition of this Lease beyond any applicable notice, cure or grace period.

(g) Not Transferable. Tenant acknowledges and agrees that the Right of Refusal shall be deemed personal to Tenant and if Tenant subleases, assigns, or otherwise transfers any interests hereunder to any person or entity prior to the exercise of the Right of Refusal, the Right of Refusal shall lapse and be forever waived.

4. Signs. Landlord will permit Tenant to place its signage on the Building outside of the Premises, and Landlord will install Tenant's signage on the applicable monument sign (on a basis of joint identification with other tenants and occupants). Landlord shall pay for costs attributable to the installation of Tenant's signage on the monument sign; however, all costs associated with the fabrication, installation, maintenance, removal and replacement of Tenant's signage (in front of the premises, on the monument, or other signage) shall be the sole responsibility of Tenant. Tenant shall maintain such signage in good condition and repair. Tenant shall remove such signage and repair any damage caused thereby, at its sole cost and expense, upon the expiration or sooner termination of the Lease. The color, content, size and other specifications of any such signage shall be in accordance with the terms and conditions of the Lease, and shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Further, Tenant shall ensure that all signage complies with any and all applicable and building regulations, as well as any and all sign criteria for Stonelake.

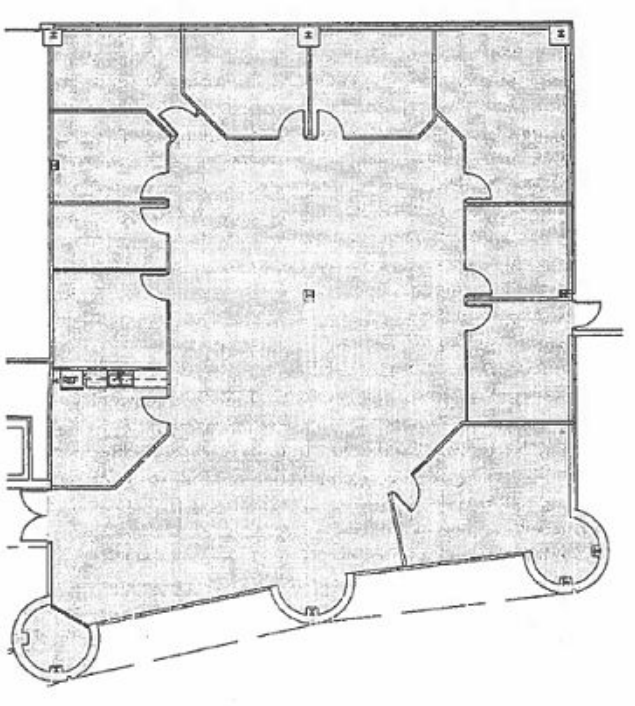
EXHIBIT A

**Building:** Stonelake 1

**Address:** 4030 W. Braker Lane, Austin, Texas 78759

**EXHIBIT A-1**

**Premises**



Site Plan

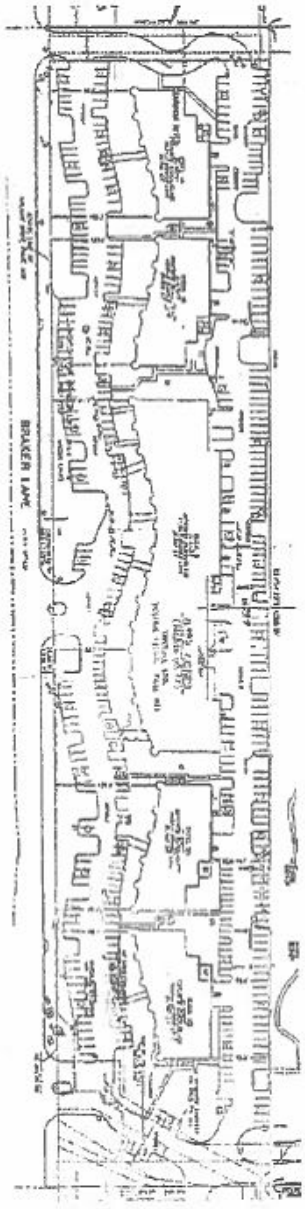


**EXHIBIT B**

**Work Letter**

The terms used herein shall have the meanings ascribed to them in the Lease, unless otherwise specifically stated herein.

1. Defined Terms.

1.01 Allowance. Landlord shall provide Tenant with an "Allowance" (herein so called) in the amount of Seventeen Thousand Five Hundred Seven and No/100ths Dollars ($17,507.00). Landlord's standard construction management fee of four percent (4%) of all hard and soft costs shall be deducted from the Allowance. Tenant shall have the right to use any remaining Allowance (after the completion of Landlord's Work), but none of the Additional Allowance, as defined below, for the purposes of signage, data cabling or moving costs or to offset Base Rent, as determined in the Tenant's sole discretion; provided, however, no more than fifty percent (50%) of the Allowance may be used to offset Base Rent and all amounts must be offset within six (6) months following the Commencement Date (any amounts in excess of such 50% cap or not so offset shall be forfeited). To the extent that the Allowance is inadequate to cover the cost of Landlord's Work as set forth in this Work Letter, (and none is being used for a rent credit), Tenant shall have the right to receive from Landlord up to an additional $15,006.00 (i.e., $3.00 per rentable square foot of space within the Premises) ("Additional Allowance"), to be used for the initial tenant finish, design, moving, cabling, telephone/data communications and/or furniture, which Additional Allowance (or so much thereof as is used) shall be amortized over the initial fifty-one months of the Lease with interest thereon at the annual rate of nine percent (9%) and added to the Base Rent. In the event of a monetary default beyond any applicable notice, cure or grace period, the outstanding balance of the Additional Allowance shall become fully liquidated and immediately due and payable.

1.02 Space Plans. Attached hereto as Exhibit B-1.

2. Construction of the Premises. Landlord and Tenant agree that their respective rights and obligations in reference to the construction of the Premises shall be as follows:

2.01 Preparation of Construction Documents.

(a) Landlord shall cause to be prepared detailed architectural, mechanical and engineering plans, including all dimensions and specifications for all work to be performed by Landlord in the Premises, substantially in accordance with the Space Plan ("Plans").

(b) Tenant shall cooperate as reasonably necessary in connection with the preparation of the Plans, in a complete and timely manner, and without limiting the foregoing, shall provide to Landlord all information as shall be required by Landlord's engineers to prepare mechanical plans pursuant to Section 2.01 hereof, which information shall include, but not be limited to, the following:

(1) any special floor-loading conditions which may exceed the structural weight limits of the floor;

(2) specifications of any heat emanating equipment to be installed by Tenant which may require special air conditioning:

(3) electrical specifications of any equipment that requires non-standard electrical power outlets; and

(4) complete specifications of any data-line wiring required, including cable routing, conduit, size, cable type and similar items.

(c) The Plans shall be delivered to Tenant for its review and consideration as soon as reasonably possible. Tenant shall inform Landlord of any required changes as soon as possible, but in no event later than five (5) business days following Tenant's receipt the Plans. Any change or modification of such Plans shall not be valid or binding unless consented to by Landlord in writing (such consent shall not be unreasonably withheld, conditioned or delayed).

2.02 Landlord's Work. Landlord shall furnish and install substantially in accordance with the Plans the materials and items described therein, including the Initial Improvements ("Landlord's Work"). Landlord shall bid Landlord's Work to a minimum of three (3) Landlord approved contractors. The Plans and Landlord's Work shall be at Tenant's sole cost and expense, provided that Tenant shall be entitled to a credit against the cost of the Plans and Landlord's Work in an amount equal to the Allowance and the Additional Allowance, if any. Unless otherwise specifically stated herein or in the Plans, all materials shall be of Building standard quality and color.

2.03 Cost Estimate. If Landlord determines that the cost of Landlord's Work will exceed the Allowance and the Additional Allowance, if any, then prior to commencement of Landlord's Work, Landlord will submit to Tenant a cost estimate for Landlord's Work ("Cost Estimate") which Tenant shall approve or reject within five (5) days after receipt thereof. Tenant's failure to reject the Cost Estimate within said five (5) day period shall be deemed to be an acceptance thereof. If Tenant rejects the Cost Estimate, Tenant shall, together with such rejection, propose such changes to the Plans as will cause the Cost Estimate to be acceptable. If the accepted Cost Estimate exceeds the Allowance and the Additional Allowance, if any, then Tenant shall pay to Landlord the amount of such excess within ten (10) business days after receipt by Tenant of a bill therefor, but in no event later than the Commencement Date.

2.04 Extra Work: Omissions.

(a) Tenant may request substitutions, additional or extra work and/or materials over and above Landlord's Work ("Extra Work'') to he performed by Landlord, provided that the Extra Work, in Landlord's judgment, (1) shall not delay completion of Landlord's Work or the Commencement Date of the Lease; (2) shall be practicable and consistent with existing physical conditions in the Building and any other plans for the Building which have been filed with the appropriate municipality or other governmental authorities having jurisdiction thereover; (3) shall not impair Landlord's ability to perform any of Landlord's obligations hereunder or under the Lease or any other lease of space in the Building; and (4) shall not affect any portion of the Building other than the Premises. All Extra Work shall require the installation of new materials at least comparable to Building standards and any substitution shall be of equal or greater quality than that for which it is substituted.

(b) In the event Tenant requests Landlord to perform Extra Work and if Landlord accedes to such request, then and in that event, prior to commencing such Extra Work, Landlord shall submit to Tenant a written estimate ("Estimate") for said Extra Work to be performed. Within five (5) days after Landlord's submission of the Estimate, Tenant shall, in writing, either accept or reject the Estimate. Tenant's failure either to accept or reject the Estimate within said five (5) day period shall be deemed rejection thereof. In the event that Tenant rejects the Estimate or the Estimate is deemed rejected, Tenant shall within five (5) days after such rejection propose to Landlord such necessary revisions of the Plans so as to enable Landlord to proceed as though no such Extra Work had been requested. Should Tenant fail to submit such proposals regarding necessary revisions of the Plans within said five (5) day period, Landlord, in its sole discretion may proceed to complete Landlord's Work in accordance with the Plans already submitted, with such variations as in Landlord's sole discretion may be necessary so as to eliminate the Extra Work.

(c) Tenant may request the omission of an item of Landlord's Work, provided that such omission shall not delay the completion of Landlord's Work and Landlord thereafter shall not be obligated to install the same. Credits for items deleted or not installed shall be granted in amounts equal to credits obtainable from subcontractors or materialmen. In no event shall there be any cash credits.

(d) In the event Landlord performs Extra Work hereunder, Tenant shall pay to Landlord, upon acceptance of the Estimate a sum equal to the Estimate to the Extent the Estimate together with the amount set forth in the Cost Estimate exceeds the Allowance and the Additional Allowance, if any.

3. Punch List. When Landlord is of the opinion that Landlord's Work is complete, then Landlord shall so notify Tenant. Tenant agrees that upon such notification, Tenant promptly (and not later than two (2) business days after the date of Landlord's said notice) will inspect the Premises and furnish to Landlord a written statement that Landlord's Work has been completed and are complete as required by the provisions of this Exhibit and the Lease with the exception of certain specified and enumerated items (hereinafter referred to as the "Punch List"). Tenant agrees that at the request of Landlord from time to time thereafter, Tenant will promptly furnish to Landlord revised Punch Lists reflecting any completion of any prior Punch List items.

4. Substantial Completion Data. It is mutually agreed that if the Punch List or any revised Punch List consists only of items which would not materially impair Tenant's use or occupancy of the Premises, then, in such event, Tenant will acknowledge in writing that Landlord's Work is complete and accept possession of the Premises ("Substantial Completion Date" or "Date of Substantial Completion"); provided, however, that such acknowledgment of acceptance shall not relieve Landlord of its obligations to promptly complete all such Punch List items. Notwithstanding the foregoing, in no event shall Landlord be obligated to repair latent defects, not originally listed on the Punch List, beyond a period of six (6) months after the Substantial Completion Date. Promptly after the Substantial Completion Date, the parties will execute an instrument in the form attached hereto as Exhibit C, confirming the Substantial Completion Date, the Commencement Date and the Expiration Date.

The Commencement Date shall not be delayed due to any delay in the Substantial Completion Date. If Landlord's Work is not substantially complete due to any special equipment, fixtures or materials, changes, alterations or additions requested by tenant or the delay or failure of Tenant in supplying information or approving or authorizing any applicable plans, specifications, estimates or other matters, or any other act or omission of Tenant, then there shall be a Tenant Delay. In the event the Substantial Completion Date is delayed due to one or more Tenant Delays (after accounting for any delays resulting from Landlord or Force Majeure), then the Substantial Completion Date shall be modified to be the earlier of the Substantial Completion Date or the date Landlord's Work would have been complete but for any Tenant Delays.

5. Tenant's Entry Prior to Commencement Date. Landlord shall permit Tenant or its agents or laborers to enter the Premises at Tenant's sole risk a minimum of two (2) weeks prior to the Commencement Date in order to perform through Tenant's own contactors such work as Tenant may desire, at the same time that Landlord's contractors are working in the Premises. The foregoing license to enter prior to the Commencement Date, however, is conditioned upon Tenant's labor not interfering with Landlord's contractors or with any other tenant or its labor. If at any time such entry shall cause disharmony, interference or union disputes of any nature whatsoever, or if Landlord shall, in Landlord's reasonable judgment, determine that such entry, such work or the continuance thereof shall interfere with, hamper or prevent Landlord from proceeding with the completion of the Building or Landlord's Work at the earliest possible date, this license may be withdrawn by Landlord immediately upon written notice to Tenant. Such entry shall be deemed to be under and subject to all of the terms, covenants and conditions of the Lease, and Tenant shall comply with all of the provisions of the Lease which are the obligations or covenants of Tenant, including, but not limited to, insurance requirements and indemnification obligations, except that the obligation to pay Rent shall not commence until the Commencement Date. In the event that Tenant's agents or laborers incur any charges from Landlord, including, but not limited to, charges for use of construction or hoisting equipment on the Building site, such charges shall be deemed an obligation of Tenant and shall be collectible as Rent pursuant to the Lease, and upon default in payment thereof, Landlord shall have the same remedies as for a default in payment of Rent pursuant to the Lease.

6. Landlord's Entry after Substantial Completion. At any time after the Commencement Date (or the date on which Landlord has turned over possession of any portion of the Premises to Tenant), but upon prior reasonable notice given to Tenant, Landlord may enter the Premises to complete Punch List items, and such entry by Landlord, its agents, servants, employees or contractors for such purpose shall not constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any obligation under this Lease, or impose any liability upon Landlord or its agents. Tenant hereby accepts any and all reasonable disturbances associated with such entry and agrees to fully cooperate with Landlord (and such cooperation shall include, without limitation, moving furniture as necessary). Landlord, however, shall use commercially reasonable efforts not to unreasonably disturb the operation of Tenant's business from the Premises during any such entry under this Section.

7. Time is of the Essence. Landlord and Tenant mutually acknowledge that Landlord's construction process in order to complete the Premises requires a coordination of activities and a compliance by Landlord and Tenant without delay of all obligations imposed upon Landlord and Tenant pursuant to this exhibit and that time is of the essence in the performance of Landlord's and Tenant's obligations hereunder and Landlord's and Tenant's compliance with the terms and provisions or this exhibit.

8. Provisions Subject to Lease. The provisions of this exhibit are specifically subject to the provisions of the Lease.

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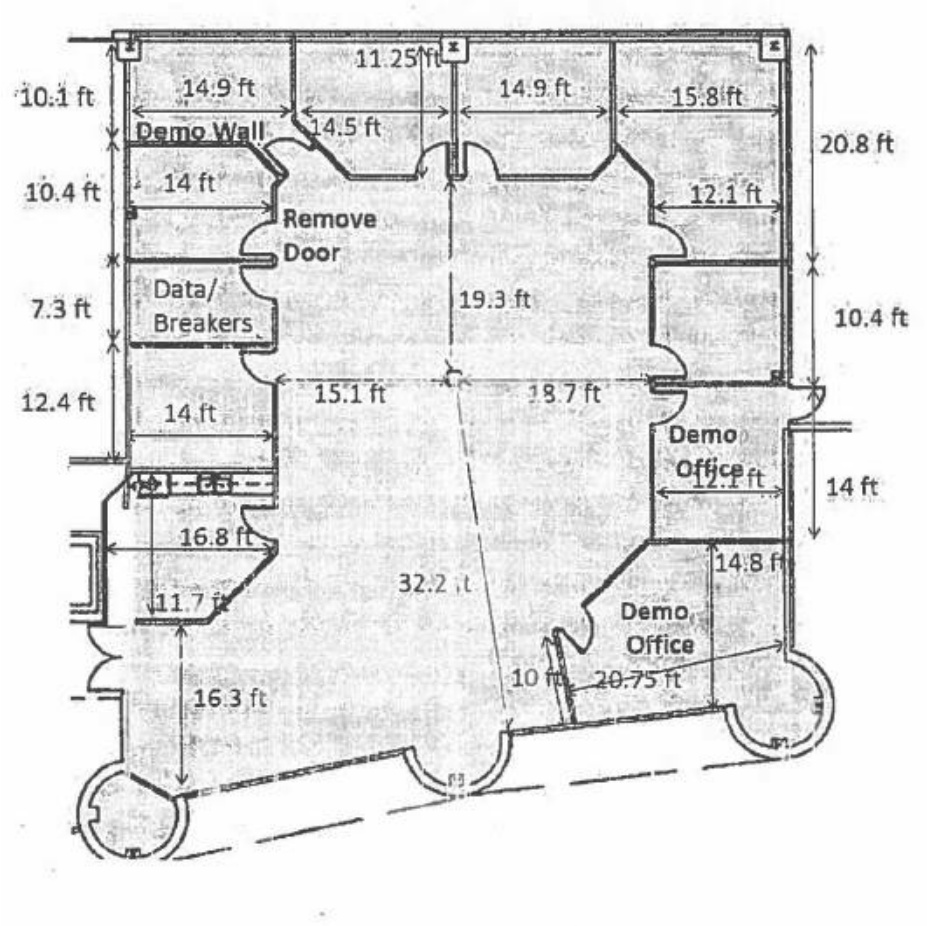
**EXHIBIT B-1**

(Plans)



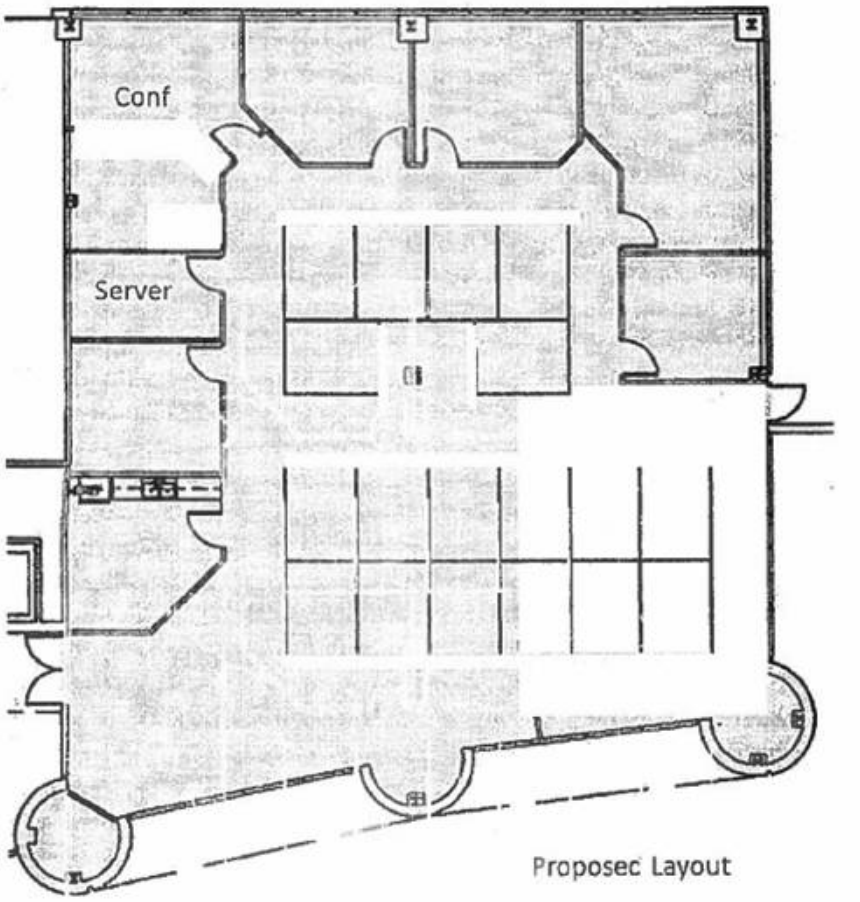

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**EXHIBIT C**

**CONFIRMATION OF LEASE TERMS AND DATES**

Re: Commercial Industrial Lease (the "Lease") dated May 18, 2012, between **PRINCIPAL LIFE INSURANCE COMPANY, AN IOWA CORPORATION, LANDLORD, AND EVERSPIN TECHNOLOGIES, INC., A DELAWARE CORPORATION, TENANT**, for the premises located at 4030 West Braker Lane, Suite 100, in Austin, Travis County, Texas, 78759 ("Premises")

The undersigned, as Tenant, hereby confirms as of this day of , 20 , the following:

1. The Substantial Completion Date is .

2. The Commencement Date is .

3. The Expiration Date is .

4. The schedule of Base Rent is:

| Months | | | Base Rent PSF/Mo. | Monthly Rent |
|---|---|---|---|---|
| _____ | - | _____ | $ 0.85 | $ 0.00* |
| _____ | - | _____ | $ 0.85 | $ 4,251.70 |
| _____ | - | _____ | $ 0.90 | $ 4,501.80 |
| _____ | - | _____ | $ 0.95 | $ 4,751.90 |
| _____ | - | _____ | $ 1.00 | $ 5,002.00 |

* See Basic Lease Terms of the Lease.

5. All alterations and Improvements required to be performed by Landlord pursuant to the terms of the Lease to prepare the entire Premises for Tenant's initial occupancy have been satisfactorily completed. As of the date hereof, Landlord has fulfilled all of its obligations under the Lease. The Lease is in full force and effect and has not been modified, altered, or amended. Landlord is not in default and there are no offsets or credits against Rent or other amounts owed by Tenant to Landlord.

TENANT:
EVERSPIN TECHNOLOGIES, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

**EXHIBIT D**

**Building Rules and Regulations**

The following rules and regulations shall apply to the Premises, the Building, the Land and the appurtenances thereto. To the extent of any conflicts between any such rules and regulations and the provisions of this Lease, the provisions of this Lease shall control.

1. Sidewalks, doorways, vestibules, halls, stairways, and other similar areas shall not be obstructed by tenants or used by any tenant for purposes other than ingress and egress to and from their respective leased premises and for going from one to another part of the Building.

2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweeping, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or its agents, employees or invitees, shall be paid by such tenant, and Landlord will not in any case be responsible therefor.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other part of the Building without the prior written consent of Landlord. No curtains or other window treatments shall be placed between the glass and the Building standard window treatments.

4. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which require use of stairways, or movement through the Building entrances or lobby shall be conducted under Landlord's supervision at such times and in such a manner as Landlord may reasonably require. Each tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for such tenant from the time of entering the property to completion of work and Landlord will not be liable for acts of any person engaged in, or any damage or loss to any of said property or persons resulting from, any act in connection with such service performed for a tenant.

5. Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner acceptable to Landlord which may include the use of such supporting devices as Landlord may require. All damages to the Building caused by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, shall be repaired at the expense of such tenant.

6. Nothing shall be swept or thrown into the corridors, halls, or stairways. No birds, pets or animals shall be brought into or kept in, on or about any tenant's Premises. No portion of any tenant's Premises or the Building shall at any time be used or occupied as sleeping or lodging quarters.

7. Tenant shall be responsible for any janitorial expenses and for the contracting of any such janitorial work.

8. Tenant shall not make or permit any improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business with them. Smoking of cigarettes, cigars, and all tobacco products is prohibited on the Land and in the Building or Premises.

9. No machinery of any kind (other than normal office equipment) shall be operated by any tenant in the Premises without Landlord's prior written consent, nor shall any tenant use or keep in the Building any flammable or explosive fluid or substance.

10. Landlord will not be responsible for lost or stolen personal property, money or jewelry from tenant's Premises or public or common areas or Parking Areas.

11. All tenants will refer all contractors, contractor's representatives and installation technicians to Landlord for Landlord's supervision, approval and control before the performance of any contractual services. This provision will apply to all work performed in the Building including but not limited to installations of telephones, telegraph equipment, electrical devices and attachments, doors, entrance ways, and any and all installations of every nature affecting floors, walls, woodwork, trim, window, ceilings, equipment and any other physical portion of the Building.

12. Should a tenant require telegraphic, telephonic, enunciator or other communication service, Landlord will direct the electrician where and how wires are to be introduced and placed and none will be introduced or placed except as Landlord will direct. Electric current will not be used for power or heating without Landlord's prior written permission.

13. No vehicles(s) will be left in the Parking Areas for more than a forty-eight (48) hour period without the Landlord's prior written consent. No outside storage is permitted.

14. Tenant shall give immediate notice to Landlord in case of any known emergency at the Premises, Building, or Land.

15. Tenant shall keep door to unattended areas locked and shall otherwise exercise reasonable precautions to protect its property from theft, loss or damage. Landlord shall not be responsible for the theft, loss or damage of any property or for any error with regard to the exclusion from or admission to the Premises or the Building of any person. In case of invasion, mob, riot or public excitement, Landlord reserves the right to prevent access to the Premises or the Building during the continuance of same by closing the doors or taking other measures for the safety of the tenants and protection of the Premises or the Building and property or persons therewith.

16. All keys shall be returned to Landlord upon termination of this Lease and Tenant shall give to Landlord the explanations of the combinations of all safes, vaults and combination locks remaining with the Premises. Landlord may at all times keep a pass key to the Premises. All entrance doors to the Premises shall be left closed at all times and left locked when the Premises are not in use.

17. Tenant shall not place, install or operate on the Premises or in any part of the Building, any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises any explosives, gasoline, kerosene, oil, acids, caustics, or any inflammable, explosive, or hazardous materials without written consent of Landlord.

18. Landlord reserves the right to rescind any of these Rules and Regulations and to make such other further Rules and Regulations as in its judgment will from time to time be needful for the safety, protection, care and cleanliness of the Premises, Building, and the Land the operation thereof, the preservation of good order therein and the protection and comfort of the tenants and their agents, employees, licensees and invitees, which Rules and Regulations, when made and written notice thereof if given to a tenant, will be binding upon it in like manner as if originally set forth herein.

19. Tenant shall cooperate with Landlord in any programs in which Landlord may elect to participate relating to the Building's (i) energy efficiency, management, and conservation; (ii) water conservation and management; (iii) environmental standards and efficiency; (iv) recycling and reduction programs; and/or (v) safety, which participation may include, without limitation, the Leadership in Energy and Environmental Design (LEED) program and related Green Building Rating System promoted by the U.S. Green Building Council, as well as the Energy Star program promoted by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

**EXHIBIT E**

**[Sign and Lettering]**

To be delivered by Landlord to Tenant, and as may be updated from time to time, upon prior written notice to Tenant.

**EXHIBIT F**

**HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE**

Your cooperation in this matter is appreciated. Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease agreement with you as tenant. After a lease agreement is signed by you and the Landlord (the "Lease Agreement"), on an annual basis in accordance with the provisions of the signed Lease Agreement, you are to provide an update to the information initially provided by you in this certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual certificate provided by you thereafter will be maintained in confidentiality by Landlord subject to release and disclosure as required by (i) any lenders and owners and their respective environmental consultants, (ii) any prospective purchaser(s) of all or any portion of the property on which the Premises are located, (iii) Landlord to defend itself or its lenders, partners or representatives against any claim or demand, and (iv) any laws, rules, regulations, orders, decrees, or ordinances, including, without limitation, court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the signed Lease Agreement. Any questions regarding this certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord: PRINCIPAL LIFE INSURANCE COMPANY
801 Grand Ave.
Des Moines, Iowa 50392-1370
Attn: Central States Equities Team

Name of (Prospective) Tenant: EverSpin Technologies, Inc.

Mailing Address: 4030 West Braker Lane, Suite 100, Austin, Texas 78759

Contact Person, Title and Telephone Number(s): Bob Schuch, Dir. of Finance, 480-347-1113

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s): Bob Schuch, Dir. of Finance, 480-347-1113

Address of (Prospective) Premises: 4030 West Braker Lane, Suite 100, Austin, Texas 78759

Length of (Prospective) initial Term: Fifty-one (51) full calendar months and any partial month.

1. GENERAL INFORMATION:

Describe the initial proposed operations to take place in, on, or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

2. USE, STORAGE AND DISPOSAL OF HAZARDOUS MATERIALS

2.1 Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises

(excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws)? Existing tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

| | | |
|---|---|---|
| Wastes | Yes, indicate amounts stored below | No |
| Chemical Products | Yes, indicate amounts stored below | No |
| Other | Yes, indicate amounts stored below | No |

If Yes is marked, please explain and indicate amounts of each item stored:_____

2.2 If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage; and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

3. STORAGE TANKS AND SUMPS

3.1 Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes No

If yes, please explain_____

4. WASTE MANAGEMENT

4.1 Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes No

4.2 Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes No

If yes, attach a copy of the most recent report filed.

5. WASTEWATER TREATMENT AND DISCHARGE

5.1 Will your company discharge wastewater or other wastes to:

no storm drain? no sewer?
no surface water? no no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).

5.2 Will any such wastewater or waste he treated before discharge?

Yes No/n/a

if yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.

6. AIR DISCHARGES

6.1 Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored?

Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes No

If yes, please describe:_____

6.2 Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

| | | | |
|---|---|---|---|
| no | Spray booth(s) | no | Incinerators |
| no | Dip tank(s) | no | Other (Please describe) |
| no | Drying oven(s) | no | No Equipment Requiring Air Permits |

If yes, please describe:_____

7. HAZARDOUS MATERIALS DISCLOSURES

7.1 Has your company prepared or will be required to prepare a Hazardous Materials management plan ("Management Plan"' pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes No

If yes, attach a copy of the Management Plan. Existing tenants should attach a copy of any required updates to the Management Plan.

8. ENFORCEMENT ACTIONS AND COMPLAINTS

8.1 With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations of similar nature to the space in question? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have can received.

Yes No

If yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Exiting tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of the signed Lease Agreement.

8.2 Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes No

If yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of the signed Lease Agreement.

8.3 Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises.

Yes No

If yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the signed Lease Agreement.

9. PERMITS AND LICENSES

9.1 Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease Agreement and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of the Lease Agreement; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the HazMat Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations

under the Lease with respect to Hazardous materials, including, without limitation, Tenant's indemnification of the Indemnified Parties and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws; (i) the delivery of such certificate to Landlord and/or Landlord's acceptance of such certificate, (ii) Landlord's review and approval of such certificate, (iii) Landlord's failure to obtain such certificate from Tenant at any time, or (iv) landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's Representatives. This should not he interpreted as a relief of Tenant's responsibility to follow Environmental Laws and best practices so as not to impart the Premises, the Building or the Land by the use of the disclosed materials. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders and representatives may, and will, rely upon the statements, representations, warranties and certifications made herein and the truthfulness thereof in entering into the Lease Agreement and the continuance thereof throughout the Term, and any renewals thereof, of the Lease Agreement.

I (print name) Bob Schuch, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this certificate is true and correct to the best of my actual knowledge.

(PROSPECTIVE) TENANT:
EVERSPIN TECHNOLOGIES, INC.
a Delaware corporation

By: /s/ Bob Schuch
Title: Director of Finance
Date: 5/21/2012

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**Exhibit 10.18**

**STT-MRAM JOINT DEVELOPMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into as of October 17 2014 ("Effective Date") by and between:

Everspin Technologies, Inc., a corporation under the laws of Delaware, having an office at 1347 North Alma School Road, Suite 220 Chandler, Arizona 85224 and

GLOBALFOUNDRIES Inc., a Cayman Islands corporation, having an address at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

Individually Everspin or GLOBALFOUNDRIES are referred to in this Agreement as a "Party" whereas collectively Everspin and GLOBALFOUNDRIES are referred to in this Agreement as the "Parties".

WHEREAS Everspin is engaged in, among other things, the research, design, and development of MRAM products and related semiconductor manufacturing processes;

WHEREAS GLOBALFOUNDRIES is engaged in, among other things, the research, design, and development of semiconductor manufacturing processes, and the manufacture of semiconductor products for customers;

WHEREAS the Parties wish to engage in joint development of 40nm STT-MRAM process technology and joint development of Embedded STT-MRAM Devices and Discrete STT-MRAM Devices and associated process technology for 28nm and smaller nodes, under the terms and conditions set forth herein and in the respective Statement(s) of Work (each attached hereto as an exhibit);

WHEREAS the Parties agree that the terms and conditions of a production agreement, including pricing and quantities shall be the subject of a distinct and separate agreement and are not included in the subject matter of this Agreement but shall be captured in a separate manufacturing agreement;

WHEREAS the Parties agree that the terms and conditions associated with GLOBALFOUNDRIES equity investment in Everspin, including pricing and quantities shall be the subject of a distinct and separate agreement and are not included in the subject matter of this Agreement but shall be captured in a separate equity agreement, (the "Equity Agreement");

NOW THEREFORE the Parties further agree as follows:

**1. Development Period**

**1.1** The term of this Agreement shall have a period lasting four (4) years from the Effective Date; provided, however, that if the term of a duly executed Statement of Work extends beyond the term of this Agreement, this Agreement shall end when such Statement of Work is completed, expires or is terminated.

**1.2** During the term of this Agreement, the Parties shall collaborate and cooperate with each other in good faith performance of the Joint Development Work (as defined below).

**2. Steering Committee and Program Managers**

**2.1** The Parties agree to establish a management group comprising an equal number of employees (at least 2) of each Party (the "Steering Committee") to oversee each project and to define a regular review process for the Parties' executive management teams. The reviews shall be held on no less than a quarterly basis and are to include an overall progress report to be prepared by the Program Managers who will be identified in the respective Statement of Work. The Steering Committee will be responsible for establishing and agreeing on a Business Plan and be responsible for updating the Business Plan as needed, including approving any increases in Project Costs. All decisions of the Steering Committee must be unanimous.

**2.2** The Parties each agree to appoint a representative employee (the "Program Manager") to manage, perform, and monitor the overall Joint Development Work and to resolve any conflicts between the Parties relative to any technical matters contemplated by this Agreement and relative to allocation of work efforts. The Program Managers shall be responsible for the exchange of information as defined in Section 5 below.

**2.3** The Program Managers and Steering Committee members appointed by each Party shall be as set forth in the respective Statement of Work attached hereto. Each Party, in its sole discretion, may replace any of its Program Managers or Steering Committee members appointed by such Party and will provide as much prior written notice as reasonably possible thereof to the other Party.



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**2.4** Any disagreements between GLOBALFOUNDRIES and Everspin with respect to this Agreement and respective Statements of Work will first be discussed by the Program Managers. If a resolution cannot be reached within fifteen (15) days, the matter will be escalated to the Steering Committee for resolution. If resolution is not reached by the Steering Committee within fifteen (15) days thereafter, the matter will be turned over to a designated senior executive from each Party for resolution; provided, however, that if the Parties are unable to agree on a particular process or design to be developed in an SOW, or should they disagree as to continued development of a process or design that was previously selected, [*] shall be [*]; provided [*], and provided further that [*]. If, after all the aforementioned steps for escalation have been taken and a resolution cannot be reached, the matter will be decided by the process outlined in Section 15.5.

**3. Joint Development Cost and Responsibility**

**3.1** The Parties agree that Exhibit B constitutes the initial Business Plan including projected Project Costs for each anticipated Statement of Work as of the Effective Date. Material changes to the Business Plan, including to projected Project Costs, require the mutual agreement of the Parties.

**3.2** Except where otherwise agreed to in the Agreement, in a duly executed Statement of Work or separately in writing, the Parties agree to equally share the Project Costs incurred during the execution thereof, not to exceed those set forth in the Business Plan without mutual agreement.

**3.3** [*] the cost of the [*] to be used for [*]. Such [*]; provided, however, [*] if appropriate. Any agreed upon [*] will be cost-shared as a Project Cost.

**3.4** Within sixty (60) days after the end of the first three (3) calendar quarters after the Effective Date, and within thirty (30) days after the end of the calendar quarters thereafter, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth (a) the incurred Project Costs for the preceding quarter and (b) a forecast of the Project Costs with respect to the then-current quarter and the following quarter. After submission of such report, the Party that has incurred [*] Project Costs shall issue an invoice to the other Party for [*] for the preceding quarter. The invoiced party shall pay the other Party the undisputed amount stated in each such invoice no later than forty-five (45) days following receipt.

**3.5** Except where otherwise agreed to in this Agreement, in the relevant SOW or separately in writing, as related to the performance of the Joint Development Work, each Party shall respectively be responsible for, and shall bear: (a) all of its own costs and expenses other than Project Costs; and, for avoidance of doubt, (b) all responsibility, and fully loaded costs and expenses for personnel it uses.



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**3.6** If the Parties mutually agree in writing to have Everspin or GLOBALFOUNDRIES dispatch its engineers and/or its technicians to the other Party's facilities, the hosting Party shall provide such visiting personnel with reasonable office accommodations and access to equipment and tools as reasonably necessary for the Joint Development Work, consistent with such Party's own workplace standards for its own employees, at no cost to the visiting Party; provided that such engineers and technicians shall comply with all applicable workplace rules, confidentiality, safety and security policies, rules and regulations applied by the hosting Party in accordance with the terms and conditions set forth in Section 18 and Section 19.

**3.7** Upon mutual agreement by the Parties, Everspin can pay all or some portion of their share of the Project Costs, invoiced according to Section 3.2 above, in the form of shares of common stock in Everspin pursuant to the terms and conditions of the Equity Agreement ("Pay by Stock" or "Payment by Stock"). For clarity, Everspin shall have no obligation to Pay by Stock and GLOBALFOUNDRIES shall have no obligation to accept Payment by Stock. The number of shares of common stock to be issued shall be agreed upon by the Parties at the time such Project Costs payments are due and shall be based on reasonable valuation methodologies; provided, however, that the valuation of Everspin stock shall not be valued at less than [*]. The Parties will discuss the timing of the payment dates for the Project Costs and issue date of the shares of common stock if such Project Costs will be paid in common stock and any such agreement will be captured in a supplement to the Equity Agreement. Everspin will provide GLOBALFOUNDRIES with written notice within fourteen days of receipt of the respective Project Cost invoice if it desires to Pay by Stock, and GLOBALFOUNDRIES will respond to such notice within thirty (30) days, indicating whether it wishes to accept Payment by Stock. No invoice for Project Costs under this Agreement shall be deemed to be overdue while the Parties are discussing Payment by Stock for such invoice.

**3.8** For avoidance of doubt, Project Costs do not include any [*], the payment of which will be determined by the terms and conditions of the MA. For purposes of clarification, Project Costs do include those associated with or related to [*].



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**4. Definitions for Purposes of this Agreement**

**4.1** "Affiliate" of a Party means any entity that now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with, either Party. The term "control" (including the terms "controlled by" and "under common control with") means ownership of more than fifty percent 50% of the (i) outstanding shares or securities that represent the right to vote for the entity's managing authority or (ii) ownership interest representing the right to (a) make the decisions for such entity, or (b) vote for, designate, or otherwise select members of the highest governing or decision making body, managing body or authority of such entity. An entity shall be deemed to be an Affiliate only so long as such ownership or control exists.

**4.2** "Background IP" of a Party means Intellectual Property that is already established (i.e., owned or controlled) by such Party as of the Effective Date or is developed or acquired by such Party outside the scope of the Joint Development Work during the term of the Agreement.

**4.3** "Business Plan" means (collectively) (a) the business plan for the Statements of Work(s) agreed to by the Parties and (b) the annual operating plan including projected Project Costs for each Statement of Work.

**4.4** "Confidential Information" means all non-public and/or proprietary information and technical information (including, but not limited to, the terms of this Agreement including those set forth in a valid SOW) disclosed or generated during the term of this Agreement by either Party pursuant to this Agreement, whether disclosed in oral, written, graphic, machine recognizable (including computer programs or data bases), model or sample form, or any derivation thereof, provided that all Project Results shall be considered Confidential Information and any Confidential Information shall be clearly marked as confidential or with words of similar importance, or, if disclosed orally or in other intangible forms, shall be identified as being Confidential Information at the time of disclosure and reduced to writing within 15 days after such disclosure. However, "Confidential Information" does not include information:

**4.4.1** of which the receiving Party ("Recipient") was rightfully in possession prior to disclosure, as evidenced by appropriate documentation;



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**4.4.2** independently developed by employees and/or Consultants of Recipient who have not received any relevant information provided by the disclosing Party ("Provider") hereunder;

**4.4.3** Recipient rightfully receives from a third party not owing a duty of confidentiality to Provider;

**4.4.4** that becomes publicly available without fault of Recipient; or

**4.4.5** whose disclosure is required by order of a court or governmental authority, but only to the extent required and provided that Provider shall have been given timely notice by Recipient of such requirement and that Recipient shall cooperate with Provider to limit the scope and effect of such order.

**4.5** "Consultants" of a Party means consultants, agents, representatives, partners, subcontractors and the like who are engaged by a Party to perform Joint Development Work on behalf of that Party.

**4.6** "Customer" means third parties that are evaluating or utilizing GLOBALFOUNDRIES for the manufacture of STT-MRAM Devices in the form of wafers for such third party's use or sale.

**4.7** "Design Information" means the portion of the Project Results that are (i) the design libraries, standard cells or memory compilers, (ii) design information within a design kit used in the design and manufacture of STT-MRAM Devices, and/or (iii) chip designs embodied in test chips or test vehicles used solely to test and qualify the Joint Development Work.

**4.8** "Discrete STT-MRAM Devices" means integrated circuit devices (i) having STT-MRAM memory cells thereon and (ii) whose primary function is memory storage, wherein the memory cells of the STT-MRAM are either In-Plane STT-MRAM or Perpendicular STT-MRAM.

**4.9** "Embedded STT-MRAM Devices" means integrated circuit devices (i) having STT-MRAM memory cells thereon and (ii) whose primary function is not memory storage, wherein the memory cells of the STT-MRAM are either In-Plane STT-MRAM or Perpendicular STT-MRAM.

**4.10** "Everspin IP" means Foreground IP that is: (i) created, made, conceived or reduced to practice solely by Everspin or their respective Consultants during the term of this Agreement and in the performance of this Agreement and (ii) any Joint Invention allocated to Everspin through the Invention Allocation Procedure.



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**4.11** "Everspin" means Everspin Technologies, Inc., and its Affiliates.

**4.12** "Exclusivity Period" means for Discrete STT-MRAM Devices and Embedded STT-MRAM Devices, the time period from the Effective Date until three (3) years after the M6 Qualification of such STT-MRAM Device for the respective technology node, but in no event longer than four (4) years from the completion of the relevant Statement of Work under which the STT-MRAM Device was developed.

**4.13** "Foreground IP" means Intellectual Property that may be either solely or jointly created, made, conceived or reduced to practice by the Parties or their respective Consultants during the course of and as part of the Joint Development Work that results from the Joint Development Work contemplated by, set forth in, and/or performed under, this Agreement including any Statements of Work during the term of this Agreement and in the performance of this Agreement. Foreground IP shall not include Background IP.

**4.14** "GLOBALFOUNDRIES IP" means Foreground IP that is: (i) created, made, conceived or reduced to practice solely by GLOBALFOUNDRIES or their respective Consultants during the term of this Agreement and in the performance of this Agreement and (ii) any Joint Invention allocated to GLOBALFOUNDRIES through the Invention Allocation Procedure.

**4.15** "GLOBALFOUNDRIES" means GLOBALFOUNDRIES Inc. and its Affiliates.

**4.16** "In-Plane STT-MRAM" means STT-MRAM technology where the pinned and free layer field orientation is within the plane of these layers.

**4.17** "Intellectual Property" means discoveries; ideas; drawings; improvements; inventions; know-how; knowledge; processes; products; trade secrets; copyrights; patents; maskworks or other intellectual property, whether patentable or not.

**4.18** "Invention Allocation Procedure" means the procedure set forth in Exhibit A for allocating a Joint Invention, and title to all patent applications filed thereon and all patents issued thereon, to either Everspin or GLOBALFOUNDRIES.

**4.19** "Joint Development Work" means all development work contemplated by this Agreement and carried out under a Statement of Work.

**4.20** "Joint Invention" means, with respect to the JOINT IP, each invention, discovery, design, and improvement conceived or first actually reduced to practice jointly by one or more employees or Consultants of GLOBALFOUNDRIES with one or more employees or Consultants of Everspin for which a written invention disclosure has been submitted to a Party's legal department.



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**4.21** "JOINT IP" means all Foreground IP which does not fall under the definition of either GLOBALFOUNDRIES IP or Everspin IP, wherein GLOBALFOUNDRIES and Everspin and/or their Consultants both made substantial contributions to its development. Where a layout, circuit design, product, technique, material, structure, method or process consists of multiple parts, elements or steps, each of which is capable of being subject to a claim of ownership, each such part, element or step will be analyzed separately to determine if it constitutes JOINT IP.

**4.22** "M6 Qualification" means, for a respective STT-MRAM Device, the yield, process and reliability demonstration on an integrated process test chip, as defined for the qualification in GLOBALFOUNDRIES Facilities for production in limited volumes. Such qualification includes passing intrinsic and circuit level reliability, yield metrics including D0 targets, and process design kit maturity.

**4.23** "MA" means the manufacturing agreement between the Parties with an effective date of October 23, 2014 that governs the terms and conditions for wafers supplied to Everspin, including any amendments or attachments thereto.

**4.24** "MRAM" means magnetoresistive random access memory.

**4.25** "Perpendicular STT-MRAM" means STT-MRAM where the pinned and free layer field orientation is perpendicular to the plane of these layers.

**4.26** "Project Costs" means the cost and related expenses (such as necessary shipping costs) of process consumables, including but not limited to chemicals, targets and gases that are consumed during the operation of the semiconductor manufacturing processes, wafers, test chips and reticle costs, to the extent utilized or incurred in connection with the Joint Development Work. For the avoidance of doubt, Project Costs do not include any portion of costs related to human resources.

**4.27** "Project Result" means (a) any product, material, structure, layout, circuit design, method or process (i) developed pursuant to the Joint Development Work, and/or (ii) which is or uses Foreground IP and/or Everspin Background IP, and (b) all tangible and intangible results and items arising out of or constituting the results of the Joint Development Work, including, without limitation, all deliverables and documentation.



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**4.28** "Specifications" means the technical and other specifications for the Joint Development Work agreed to by the Parties pursuant to a Statement of Work.

**4.29** "Statement of Work" or "SOW" means the description of each joint development project which the Parties agree to pursue. Each Statement of Work will document various aspects of each development project, including but not limited to scope, expected results, deliverables, milestones, resource plan, schedule, Party responsibilities, project management plan and additional partners, if any. In order for a SOW to be valid, it shall be signed by an authorized representative of each Party.

**4.30** "STT-MRAM Devices" means collectively Discrete STT-MRAM Devices and Embedded STT-MRAM Devices.

**4.31** "STT-MRAM" means spin transfer torque MRAM technology.

**5. Joint Development Work and Technology Transfer**

**5.1** The Parties will perform the Joint Development Work as collectively set forth in one or more Statement(s) of Work.

**5.2** SOWs will include, but are not limited to, projects related to the development of Design Information and process technology for In-Plane STT-MRAM at the 40nm technology node and Perpendicular STT-MRAM at the 28nm technology node for STT-MRAM Devices.

**5.3** The Parties recognize that owing to the research and development nature of the work to be undertaken, completing the Joint Development Work within the specified timeframe, scope or within the limits of financial support allocated cannot be guaranteed. The risk of success or failure of the Joint Development Work is shared by both Parties.

**5.4** Subject to the execution of an applicable SOW within thirty (30) days of the Effective Date, within sixty (60) days of the Effective Date, Everspin shall deliver to GLOBALFOUNDRIES the technical materials, training, services and assistance related to [*] (Project 1) ("Technical Transfer"). To the extent not already adapted by Everspin prior to the Effective Date, the Parties will adapt such process to enable [*] pursuant to the terms of the MA. The Technical Transfer will include Everspin engineers on-site at GLOBALFOUNDRIES premises and GLOBALFOUNDRIES engineers on-site at Everspin premises, for the number of weeks set forth in an SOW or as agreed by the Program Managers. The names and skill sets for such engineers shall be defined in an SOW, and subject to the terms in Section 18.



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**6. Ownership of IP Rights**

**6.1** Everspin shall solely own all right, title and interest in the Everspin IP, including the right to sublicense Everspin IP to third parties, with no obligation to account to GLOBALFOUNDRIES for the use of such Everspin IP, except as otherwise provided in this Agreement.

**6.2** GLOBALFOUNDRIES shall solely own all right, title and interest in the GLOBALFOUNDRIES IP, including the right to sublicense GLOBALFOUNDRIES IP to third parties, with no obligation to account to Everspin for the use of such GLOBALFOUNDRIES IP, except as otherwise provided in this Agreement.

**6.3** Other than Joint Inventions, all JOINT IP shall be jointly owned by GLOBALFOUNDRIES and Everspin, each to have an equal and undivided interest therein. Except as otherwise provided in this Agreement, neither Party is required to obtain the consent, joinder or participation of, or account or make payment to, the other Party when disclosing, using, licensing or otherwise exploiting such JOINT IP. The Parties agree that, in the case where such JOINT IP is: (a) a copyrighted work, the work was intended to be jointly owned and that each Party intended its contributions to such work to be merged into inseparable or interdependent parts of a unitary whole; and (b) protected by the Semiconductor Chip Protection Act, the work was intended to be jointly owned and that each Party intended its contributions to such work to be merged into inseparable or interdependent parts of a unitary whole.

**6.4** The Parties agree that each Joint Invention, and title to all patent applications filed thereon and all patents issued thereon, shall be allocated to either Everspin or GLOBALFOUNDRIES in accordance with the Invention Allocation Procedure, such that either Everspin or GLOBALFOUNDRIES (the “Allocated Party”) shall solely own such Joint Invention and all patent rights with respect to such Joint Invention and all patent applications filed, and all patents issued, on such Joint Invention. To the extent that a Party has or acquires any ownership interest in a Joint Invention allocated to the Allocated Party, such Party hereby assigns to the Allocated Party all of its right, title, and interest in and to the Joint Invention and all Intellectual Property rights therein.



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**6.5** Each Party agrees to use commercially reasonable efforts to cooperate with the other Party, if requested, including, without limitation, in preparing Joint Invention documents in accordance with the Invention Allocation Procedure.

**6.6** The usual and reasonable costs of disclosure, preparation, filing, assignment, prosecution, grant/issue, maintenance, licensing, litigation, enforcement and the like of any Joint Invention, including any related patent application and/or patent will be the responsibility of the Allocated Party.

**6.7** Each Party agrees that each and every individual participating in the Joint Development Work shall either be an employee or Consultant acting under a valid and enforceable agreement pursuant to which such employee or Consultant has either (i) assigned and or (ii) granted a license (including a right to sublicense) to all proprietary rights to Intellectual Property developed during the term of such employment or consultancy to such Party.

**7. Foreground IP**

**7.1** Subject to the terms and conditions hereof, GLOBALFOUNDRIES grants to Everspin a world-wide, non-exclusive, non-transferable, royalty-free, perpetual license under the GLOBALFOUNDRIES IP to:

**7.1.1** (a) design, have designed, develop, have developed, and manufacture (but not have manufactured) semiconductor products, and (b) use, sell, offer to sell, lease, import and otherwise dispose of such semiconductor products;

**7.1.2** practice any improvement, process or method falling within the scope of the GLOBALFOUNDRIES IP, by itself or together with its Consultants, in connection with the exercise of the license set forth in Section 7.1.1 above;

**7.1.3** grant sublicenses thereunder (to the extent contained in the Design Information) solely to its customers, contractors and IP providers/EDA vendors, and to such customers' contractors and IP providers/EDA vendors (collectively, "Everspin Sublicensees"), the sublicenses so granted to be of scope that includes only the GLOBALFOUNDRIES IP that is necessary to design, develop and test, or assist Everspin or Everspin customers with designing, developing and testing, STT-MRAM Devices to be manufactured solely by GLOBALFOUNDRIES, and that restricts such Everspin



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Sublicensees from using such GLOBALFOUNDRIES IP for any purposes other than designing, developing and testing, or assisting Everspin or Everspin customers with designing, developing and testing, such STT-MRAM Devices; and

**7.1.4** except as otherwise provided herein, retain revenues derived from the exercise of the foregoing licenses without any obligation to account to GLOBALFOUNDRIES.

**7.2** Subject to the terms and conditions hereof, Everspin grants to GLOBALFOUNDRIES a world-wide, non-exclusive, non-transferable, royalty-free (except as stated in Section 17), perpetual license under the Everspin IP to:

**7.2.1** (a) design, have designed, develop, have developed, and manufacture (but not have manufactured) semiconductor products, and (b) use, sell, offer to sell, lease, import and otherwise dispose of such semiconductor products;

**7.2.2** practice any improvement, process or method falling within the scope of the Everspin IP, by itself or together with its Consultants, in connection with the exercise of the license set forth in Section 7.2.1 above;

**7.2.3** grant sublicenses thereunder (to the extent contained in the Design Information) to its Customers, contractors and IP providers/EDA vendors, and to such customers' contractors and IP providers/EDA vendors (collectively, "GLOBALFOUNDRIES Sublicensees"), the sublicenses so granted to be of scope that includes only the Everspin IP that is necessary to design, develop and test, or assist GLOBALFOUNDRIES or GLOBALFOUNDRIES Customers with designing, developing and testing, STT-MRAM Devices to be manufactured solely by GLOBALFOUNDRIES, and that restricts such GLOBALFOUNDRIES Sublicensees from using such Everspin IP for any purposes other than designing, developing and testing, or assisting GLOBALFOUNDRIES or GLOBALFOUNDRIES Customers with designing, developing and testing, such STT-MRAM Devices; provided that during the Exclusivity Period for any STT-MRAM Device, no sublicense granted pursuant to this Section 7.2.3 shall include the ability for the third party to design and develop STT-MRAM cores without becoming an Everspin licensee; and



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**7.2.4** except as otherwise provided herein, retain revenues derived from the exercise of the foregoing licenses without any obligation to account to Everspin.

**7.3** With respect to the GLOBALFOUNDRIES IP, JOINT IP and the licenses granted to GLOBALFOUNDRIES in Section 7.2, the ability for GLOBALFOUNDRIES to utilize, disclose, license or sublicense Foreground IP for the purpose of designing, developing and manufacturing Discrete STT-MRAM Devices shall solely be to enable the manufacture of such devices for Everspin, Everspin's customers and/or Everspin licensees at GLOBALFOUNDRIES. Any such Discrete STT-MRAM Devices manufactured and sold by GLOBALFOUNDRIES to Everspin pursuant to the MA, to Everspin's customers or to Everspin licensees shall not be deemed a Royalty Wafer as defined in Section 17.1.

**7.3.1** Upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith, a license under commercially reasonable terms, to Everspin IP, JOINT IP, and Everspin Background IP contained in the Design Information with a third party Customer that engages GLOBALFOUNDRIES to manufacture Discrete STT-MRAM Devices; such licenses to be of a scope that permits the Customer to design, develop and/or have Discrete STT-MRAM Devices manufactured at GLOBALFOUNDRIES.

**7.4** Provided [*], the Parties understand and agree that any Everspin product that contains or embodies any GLOBALFOUNDRIES IP, Everspin IP or JOINT IP shall be manufactured solely by GLOBALFOUNDRIES during the Exclusivity Period for such STT-MRAM Devices. After the expiration of such Exclusivity Period, upon Everspin's request, GLOBALFOUNDRIES agrees to negotiate in good faith a fee-bearing and/or royalty-bearing, have-made license to Everspin under the GLOBALFOUNDRIES IP. After the expiration of such Exclusivity Period, upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith a fee-bearing and/or royalty-bearing, have-made license to GLOBALFOUNDRIES under the Everspin IP.

**7.4.1** Only in the event that the MA is terminated due to a material breach by GLOBALFOUNDRIES, GLOBALFOUNDRIES grants to Everspin a royalty-free license under GLOBALFOUNDRIES IP to have Discrete STT-MRAM Devices made and Everspin shall be released from the disclosure restrictions associated with the Exclusivity Period under Section 7.8 only as necessary to enable the manufacture of STT-MRAM Devices for Everspin.



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**7.4.2** In the event that, prior to the expiration of the relevant Exclusivity Period, the Parties mutually agree (acting in good faith) that, under the circumstances, business requirements for Everspin STT-MRAM Devices manufactured by GLOBALFOUNDRIES necessitate additional manufacturing capacity (including, but not limited to, a need (i) to satisfy unmet additional demand or (ii) for a second source), the Parties will meet and discuss options to license and/or sublicense the JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP to another foundry. Such license or sublicense, if any, shall be negotiated in good faith and include a scope that is limited to only the JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP that is necessary to manufacture such STT-MRAM Devices for Everspin. The Parties shall [*] associated with the ability to use such JOINT IP, Everspin IP and/or GLOBALFOUNDRIES IP.

**7.5** Upon a Party's written request, GLOBALFOUNDRIES and Everspin agree to negotiate, in good faith, a broader sublicense grant for third party use under the Everspin IP, GLOBALFOUNDRIES IP and/or JOINT IP, where such grant shall be subject to mutually agreed minimum license fees and/or royalty payments that will be shared between the Parties.

**7.6** In addition to the other licenses granted in this Section 7, each Party grants to the other Party, during the term of the Agreement, a world-wide, royalty-free, non-exclusive, non-transferable, limited license, without the right to sublicense except as otherwise expressly provided herein, under the Everspin IP, GLOBALFOUNDRIES IP and/or Joint IP solely to the extent required for the other Party to perform the work allocated to it under the Agreement.

**7.7** Subject to Everspin's compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, GLOBALFOUNDRIES shall not disclose, dispose of or license any Foreground IP to Everspin Competitors during the Exclusivity Period associated with the relevant STT-MRAM Device. For purposes of this Section 7.7, Everspin Competitors means Avalanche, Crocus, Cypress, Inston Inc., Spin Transfer Technologies, and TDK. The restriction in this Section 7.7 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**7.8** Subject to GLOBALFOUNDRIES' compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, Everspin shall not disclose, dispose of or license any Foreground IP to any foundry during the Exclusivity Period associated with the relevant STT-MRAM Device. For purposes of this Section 7.8, a



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foundry is an entity whose primary business is manufacturing semiconductor devices with a customer defined function or design implementing or utilizing entity's process design rules, process design kit, and/or IP libraries designed for (whether by such entity or a third party) such entity's manufacturing process, and provides such devices to its customers in wafer or die form, or a fully packaged solution. Everspin may disclose, dispose of or license Everspin IP to an entity that includes an operating unit, division, subsidiary, or the like which operates as a foundry (collectively "Secondary Business Unit"), provided Everspin shall not authorize or license such Secondary Business Unit to use in any way Everspin IP, nor disclose to or allow disclosures of Everspin IP to such Secondary Business Unit, during the Exclusivity Period associated with the relevant STT-MRAM Device. The restriction in this Section 7.8 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**7.9** Subject to the Parties compliance with the non-disclosure and licensing restrictions corresponding to Background IP and Foreground IP as set forth herein, neither Party may [*] during the Exclusivity Period associated with the relevant STT-MRAM Device except as reasonably necessary to (i) perform the Joint Development Work as a Consultant of GLOBALFOUNDRIES or Everspin or (ii) conduct proprietary research which would solely be for the benefit of the disclosing Party. The restriction in this Section 7.9 shall not apply after the Exclusivity Period associated with such Foreground IP has expired.

**8. Background IP**

**8.1** Except as otherwise stated herein, each Party shall retain all right, title and interest in its respective Background IP, including the right to license and assign its rights therein. Except as expressly granted in this Agreement, including Sections 8.2, 8.3, and 8.4, nothing in this Agreement shall give either Party any rights, by license or otherwise, expressly, impliedly or otherwise, to the other Party's Background IP, nor shall the sale, lease or other disposal by either Party of any products or processes covered by GLOBALFOUNDRIES IP, Everspin IP, and/or JOINT IP be construed as granting to the purchaser of such processes or products any license, express or implied, under any patents of either Party other than those included in GLOBALFOUNDRIES IP, Everspin IP, and/or JOINT IP. Other than the rights and licenses explicitly granted in this Agreement, each Party reserves all rights to its intellectual property and products.



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**8.2** With respect to Background IP, each Party grants to the other Party, during the term of this Agreement, a world-wide, royalty-free, non-exclusive, non-transferable, limited license, without the right to sublicense, under such Party's Background IP solely to the extent required for the other Party to perform the Joint Development Work allocated to it under an SOW.

**8.3** With respect to Background IP, which Background IP is owned or controlled by Everspin and which Background IP pertains to the STT-MRAM technologies, including without limitation the semiconductor process enablement information to be developed and/or furnished in the course of performing the Joint Development Work under this Agreement, subject to GLOBALFOUNDRIES compliance with its payment obligations set forth in Section 17, Everspin hereby grants and will grant and will cause to be granted a world-wide, non-exclusive, non-transferable, perpetual, irrevocable license to GLOBALFOUNDRIES under such Background IP as needed for GLOBALFOUNDRIES to practice the Foreground IP to (i) design, develop, manufacture, use, sell, offer to sell, lease, import and otherwise dispose of Discrete STT-MRAM Devices for only Everspin, Everspin customers and licensees of Everspin, and (ii) design, have designed by GLOBALFOUNDRIES Sublicensees, develop, have developed by GLOBALFOUNDRIES Sublicensees, manufacture, use, sell, offer to sell, lease, import and otherwise dispose of Embedded STT-MRAM Devices that utilize Design Information, and (iii) design, develop and manufacture, but not sell or resell, non-production qualified wafers that utilize the Project Results. For purposes of clarification, nothing herein is intended, nor shall be construed, to be a license for GLOBALFOUNDRIES, a third party, or GLOBALFOUNDRIES with a third party, to use Everspin Background IP to design, develop, test, manufacture, use, sell, offer to sell, lease, import and/or otherwise dispose of products that are competitive with (a) Discrete STT-MRAM Devices of Everspin, Everspin customers or Everspin licensees, and/or (b) Royalty Wafers. Upon GLOBALFOUNDRIES' request, Everspin agrees to negotiate in good faith a fee-bearing and/or royalty-bearing (to be agreed upon by the Parties) license to use the Everspin Background IP to design, develop, test, manufacture, use, sell, offer to sell, lease, import and/or otherwise dispose of semiconductor products (other than as provided for STT-MRAM Devices described in (i), (ii) and (iii) above) that utilize the Project Results; provided such use is not with a competitive product.



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**8.4** With respect to Background IP, which Background IP is owned or controlled by GLOBALFOUNDRIES and which Background IP pertains to the STT-MRAM technologies to be developed and/or furnished in the course of performing the Joint Development Work under this Agreement, GLOBALFOUNDRIES hereby grants and will grant and will cause to be granted a world-wide, non-exclusive, non-transferable, royalty-free, perpetual license to Everspin under such Background IP as needed for Everspin to design, have designed by Everspin Sublicensees, develop, have developed by Everspin Sublicensees and test STT-MRAM Devices for manufacture solely at GLOBALFOUNDRIES.

**9. Infringement**

**9.1** Each Party shall use commercially reasonable efforts to promptly notify the other Party in the event it becomes aware of a third party claim of infringement of any patent, trademark, maskwork right, copyright, trade secret or other proprietary interest arising from the use of the Background IP licensed in Section 8, GLOBALFOUNDRIES IP, Everspin IP and/or JOINT IP as contemplated in this Agreement and such Party becomes reasonably certain that such claim is attributable to such Background IP, GLOBALFOUNDRIES IP, Everspin IP and/or JOINT IP.

**10. Compliance with Laws**

**10.1** GLOBALFOUNDRIES and Everspin and all persons furnished by either Party shall comply with the relevant federal, state, and local laws, ordinances, regulations and codes, including identification and procurement of required permits, certificates, approvals and inspections, in performance under this Agreement and each Party agrees to indemnify and hold the other Party harmless for any loss or damage that may be sustained by reason of its failure to do so.

**10.2** In performing their respective obligations hereunder, GLOBALFOUNDRIES and Everspin and their respective employees and Consultants shall adhere to all applicable export laws and regulations, including but not limited to the U.S. Export Administration Regulations (“EAR”) and cooperate with one another in connection therewith. Pursuant to the EAR, certain controlled technology may be exported under an EAR license exception referred to as “TSR,” if the exporter obtains a written assurance. (See 15 CFR 740.6.) In accordance with the TSR requirements, for technology that is exported to a Party pursuant to the TSR license exception, each Party hereby certifies that, except pursuant to a license granted by the U.S. Department of Commerce Bureau of Industry and Security or as otherwise permitted pursuant to a License Exception under the EAR, a Party shall not (1) export, re-export or release any restricted technology, software, or any source code it receives from the other to a national of a country in Country Groups D:1 or E:1, or (2) export to Country Groups



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D:1 or E:1 the direct product of such technology or software, if such foreign produced direct product is subject to national security controls as identified on the Commerce Control List (Supplement 1 to Part 774 of the EAR). These export requirements shall survive any expiration or termination of this Agreement.

**11. Confidentiality**

**11.1** The Parties agree to use Confidential Information only for the purposes of this Agreement and/or the purpose of the relevant Statements of Work as the case may be. It is agreed that the transfer of Confidential Information shall not be construed as a grant of any right or license with respect to the Confidential Information delivered except as set forth herein. For the avoidance of doubt, except as otherwise expressly stated herein, neither Party may disclose the other Party's Background IP for any reason or purpose except to the extent required for a Party to perform the work allocated to it under the Agreement and to manufacture STT-MRAM Devices at GLOBALFOUNDRIES as provided under the Agreement. The Parties agree to use firewalls and password protection to limit access to Confidential Information (such as recipe details) on any equipment being used in connection with the Joint Development Work to those individuals with proper permission.

**11.2** A Party has the right to disclose Confidential Information of the other Party to (i) any sublicensee that is sublicensed under Section 7 and (ii) as necessary to exercise a Party's license rights in Section 8 to manufacture STT-MRAM Devices at GLOBALFOUNDRIES, and for avoidance of doubt allow such recipients to further disclose such Confidential Information, in all cases solely to the extent necessary to exercise the rights granted in Section 7 and Section 8 subject to the terms and restrictions set forth therein. For clarity, such Party shall be responsible for any such third party's breach of such terms and restrictions set forth in Section 7 and/or Section 8 and applicable confidentiality terms set forth in the following Section 11.3. The Party disclosing such Confidential Information to permitted third parties may replace the Provider's markings with its own markings when reasonable under the circumstances (e.g., when using a watermark in connection with bundled materials), and not for the purpose of representing that the original source of such Confidential Information is the Party disclosing it.



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**11.3** Disclosure of Confidential Information as allowed in Section 11.2 will not be made without a signed, written agreement between the disclosing and recipient parties. Such written agreement shall contain the following terms:

**11.3.1** an obligation on the recipient to utilize the disclosed Confidential Information for the benefit of the discloser and in compliance with applicable restrictions set forth in Section 7 and/or Section 8; and

**11.3.2** a requirement that such disclosures are subject to confidentiality terms and conditions that are no less restrictive than those non-disclosure related terms set forth herein, and at a minimum must have a confidentiality term that is no shorter than [*] years from the scheduled SOW termination date of the respective Statement of Work.

**11.4** With respect to information that does not relate to the Joint Development Work and which is considered confidential by either Party, it is not the intention of any Party to disclose to or obtain from the other Party any such information. In particular, the Parties acknowledge that each has other development projects and relationships being conducted in their respective facilities, and the Parties shall take reasonable precautions to limit the disclosure and receipt of Information unrelated to the Joint Development Work. In the event that either Party obtains such information of the other Party that is designated as confidential and is not related with the Joint Development Work or which should from its nature be understood to be confidential and not related with the Joint Development Work, the Program Managers shall be informed, and any such information shall promptly be returned.

**11.5** Using such measures as Recipient uses to protect the confidentiality of its own Confidential Information of like importance, but in no event using less than reasonable care, the Parties shall treat all Confidential Information as confidential and for a period of [*] years after disclosure shall not disclose Confidential Information to any third party, other than to its employees and/or Consultants on a need to know basis, except as otherwise expressly set forth herein, or as otherwise expressly authorized by Discloser in a writing that states the title of this Agreement and its Effective Date.

**11.6** On termination of this Agreement and upon request of the terminating Party, all Confidential Information of the other Party in each Party's possession or control will be destroyed or returned to the Party to whom such Confidential Information belongs.



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**11.7** Subject to any patent rights, copyrights and trademark rights, the Parties agree that as a result of exposure to Confidential Information of the Provider, personnel of the Recipient may gain or enhance general knowledge, skills and experience related to the Confidential Information ("General Knowledge"). The subsequent internal use by these personnel of such General Knowledge as retained in their unaided memories, without reference to Confidential Information in written, electronic or other fixed form, shall not constitute a breach of the confidentiality obligation under this Section 11. A person's memory is considered unaided if the employee has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

**11.8** In the event that either Party engages with a third party to develop MRAM technology, the engaging Party agrees, prior to and concurrently with such engagement, to implement, as commercially reasonable, access control measures (electronic and physical) to prevent unauthorized access to Background IP and Foreground IP, however, with respect to Foreground IP, only during the Exclusivity Period for such STT-MRAM Devices.

**12. Termination**

**12.1** Termination for cause. Either Party will have the right to terminate this Agreement at any time if:

**12.1.1** The other Party is in material breach of any warranty, term, condition or covenant of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of that breach and the other Party's intention to terminate.

**12.1.2** Such Party terminates the MA as a result of the other Party's material breach of the MA (in accordance with and as such terms and conditions are defined in the MA).

**12.1.3** The other Party becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors; provided that if such condition is assumed involuntarily it has not been dismissed with prejudice within ninety (90) days after it begins.

**12.1.4** The other Party is purchased by a third party or otherwise experiences a change of control of more than fifty percent of its outstanding stock, except in connection with an authorized assignment or transfer as provided in Section 20, with such termination effective immediately.



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**12.2** In the event that GLOBALFOUNDRIES no longer retains observer rights on the Everspin board of directors under the terms of the Equity Agreement and Everspin (i) becomes insolvent or (ii) admits in writing its insolvency or inability to pay its debts or perform its obligations as they mature; upon GLOBALFOUNDRIES request, Everspin shall submit documentation to GLOBALFOUNDRIES within ninety (90) days thereof detailing actions that Everspin will take to become solvent within the subsequent ninety (90) days. If Everspin does not provide such documentation then GLOBALFOUNDRIES shall have the right to terminate the Agreement.

**12.3** Effect of Termination

**12.3.1** Should either GLOBALFOUNDRIES or Everspin terminate this Agreement for cause per Section 12.1 or Section 12.2, the Party that terminates this Agreement will be released from all restrictions associated with the Exclusivity Period. Should GLOBALFOUNDRIES terminate this Agreement for cause per Section 12.1 or Section 12.2, GLOBALFOUNDRIES will remain obligated to pay royalties to Everspin as set forth in Section 17.1; provided, however, the percentage of the Royalty Amount owed shall be as follows based upon when the termination occurs:

Less than [*] from the Effective Date: [*]%

Within [*] from the Effective Date: [*]%

Within [*] of the Effective Date: [*]%

Within [*] from the Effective Date: [*]% plus a [*] proration of the remaining [*]% royalty.

In addition, Sections 2.4, 3.4, 3.7, 4, 6 through 9 (other than 7.6 and 8.2), and 12 through 17 (other than 13.2), 20, 21.4, and 21.8, will survive termination of this Agreement.

**12.3.2** In the event that GLOBALFOUNDRIES is the Party that terminates this Agreement pursuant to Section 12.1, Everspin shall reimburse GLOBALFOUNDRIES solely for direct costs (i.e., [*], not already paid by Everspin) incurred by GLOBALFOUNDRIES that are [*] less the [*]. GLOBALFOUNDRIES shall provide Everspin with reasonable supporting documentation of such costs. Everspin's obligation to reimburse GLOBALFOUNDRIES for such direct costs shall terminate in the event [*].



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**12.3.3** Should this Agreement expire by its natural term per Section 1.1, each Party will be released from all obligations and liabilities to the other occurring or arising after the date of such expiration, except that Sections 2.4, 3.4, 3.7, 4, 6 through 9 (other than 7.6 and 8.2), and 12 through 17 (other than 13.2), 20, 21.4, and 21.8 will survive expiration of this Agreement.

**12.3.4** In the event of the termination or expiration of this Agreement for any reason, the confidentiality provisions of Section 11 (other than 11.4) shall survive and remain in full force and effect.

**13. Warranties, Limitations of Liability, Indemnification**

**13.1** EXCEPT FOR BREACHES OF SECTION 11 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSS OF PROFIT, LOSS OF ANTICIPATED PROFIT, LOSS OF DATA OR OTHERWISE, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED, OR KNEW, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, PROVIDED THAT NEITHER PARTY SHALL BE DEEMED TO HAVE ASSUMED THE RISK OF THE OTHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. EXCEPT FOR BREACHES OF SECTION 11, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EITHER PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY HEREUNDER SHALL NOT EXCEED A TOTAL OF [*]. THE LIMITATIONS ON LIABILITY FOR DAMAGES SET FORTH IN THIS AGREEMENT SHALL BE INAPPLICABLE TO EACH PARTY'S CONTRACTUAL OBLIGATION TO INDEMNIFY THE OTHER PARTY AS SET FORTH IN SECTIONS 13.4 AND 13.5 OF THIS AGREEMENT.

**13.2** Each Party represents and warrants that it has full capacity, power and authority to enter into this Agreement, to carry out the transactions and to grant the licenses contemplated by this Agreement. For clarity, the foregoing shall not be interpreted as a representation and warranty of non-infringement.



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**13.3** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY EXPRESS WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR USE OR PURPOSE REGARDING SUCH SUBJECT MATTER. To the extent that a Party may not, as a matter of applicable law, disclaim any implied warranty, the scope and duration of such warranty shall be the minimum permitted under such law.

**13.4** Everspin will defend, indemnify and hold GLOBALFOUNDRIES and its Affiliates harmless against all reasonable defense costs and final judgments and settlements arising from any third party claims that STT-MRAM Devices utilizing the Design Information infringe any third party intellectual property rights to the extent such claims relate to GLOBALFOUNDRIES' use of the Everspin Foreground IP and Everspin Background IP contained in the Design Information to make STT-MRAM Devices in accordance with the terms of this Agreement for its Customers; provided, however, (i) that the claim is not based on a modification of the IP core, Everspin Foreground IP or Everspin Background IP by anyone other than Everspin where the infringement would not have occurred but for such modification, or (ii) the combination of Everspin Foreground IP or Everspin Background IP with any device, component, program, data, material, apparatus, method or process that Everspin did not supply where the infringement would not have occurred but for such combination.

**13.5** GLOBALFOUNDRIES will defend, indemnify and hold Everspin and its Affiliates harmless against all reasonable defense costs and final judgments and settlements arising from any third party claims against Everspin asserting contributory or induced infringement by Everspin based on GLOBALFOUNDRIES' use of GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP used or contained in an STT-MRAM Device based on the Joint Development Work, which is sold and/or transferred by GLOBALFOUNDRIES to a third party; provided, however, that (i) the claim is not based on a modification of the GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP by anyone other than GLOBALFOUNDRIES where the infringement would not have occurred but for such modification, or (ii) the combination of GLOBALFOUNDRIES Foreground IP or GLOBALFOUNDRIES Background IP with any device, component, program, data, material, apparatus, method or process that GLOBALFOUNDRIES did not supply where the infringement would not have occurred but for such combination.



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**13.6** The indemnifying Party's ("Indemnitor") indemnification obligations herein are subject to (i) the indemnified Party ("Indemnitee") providing Indemnitor with prompt notification and tender of the applicable claim and (ii) Indemnitor having sole control of the defense and all related settlement negotiations for the claim, except that Indemnitor may not enter into any final settlement that would adversely affect Indemnitee's interests (including without limitation any admission of liability or requirement of payment by Indemnitee) without Indemnitee's prior written approval. Indemnitee shall provide reasonable cooperation, assistance and information with respect to the claim.

**14. Force Majeure**

Neither Party shall be liable to the other Party for failure or delay in the performance of any obligations hereunder due to causes reasonably beyond its control, including but not limited to, fire, flood, earthquakes, strikes, acts of God, government regulations, riots, actual or threatened terrorist acts, and insurrections. Upon the occurrence of such force majeure conditions, the affected Party shall notify the other Party thereof as soon as possible. Immediately after the cause is removed, the affected Party shall perform such obligation as affected by such force majeure conditions with all due speed.

**15. Governing Law and Dispute Resolution**

**15.1** Governing Law. This Agreement will be governed by the laws of the State of New York without giving effect to its principles of conflicts of laws.

**15.2** Attorneys' Fees. In the event of any lawsuit or other proceeding to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and expenses.

**15.3** Severability. Whenever possible, each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision is held to be invalid under applicable law, either in whole or in part, the provision will be ineffective only to the extent of such invalidity, and the remaining provisions of this Agreement shall remain in full force and effect.

**15.4** Waiver. The failure by either Party to enforce any of the terms and conditions of this Agreement shall not constitute a waiver of such Party's right thereafter to enforce that or any other terms and conditions of this Agreement.



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**15.5** Disputes. If the process outlined in Section 2.4 does not produce a resolution satisfactory to both Parties, such disputes, controversies or claims between the Parties, as well as any other disputes, controversies or claims arising out of or in connection with this Agreement (including its existence, validity or termination), shall be finally resolved by any remedy available at law. Nothing in this Agreement shall prevent either Party from reverting to a competent court to obtain injunctive relief if in such Party's opinion, such injunctive relief is necessary to prevent irreparable, material harm.

**16. Notices**

**16.1** All notices required or permitted to be given hereunder shall be in writing and shall be either delivered by hand or express courier or by facsimile transmission accompanied by original mailing on the next subsequent business day to the address and telephone number specified below in Section 16.2 or Section 16.3, respectively, (or to such changed address as may be specified from time to time by notice duly given). Notice shall be deemed to have been given upon receipt or, if given by fax, on the next business day following transmission.

**16.2** If to GLOBALFOUNDRIES:

GLOBALFOUNDRIES Inc.
P.O. Box 309
Ugland House, Grand Cayman
KY1-1104
Cayman Islands

With a copy to the GLOBALFOUNDRIES Legal Department:

GLOBALFOUNDRIES Legal Dept.
2600 Great America Way
Santa Clara, CA 95054
Email : Legal.Notices@globalfoundries.com
Facsimile: (408) 462-4299

**16.3** If to Everspin:

Everspin Technologies, Inc.
1347 N. Alma School Rd, Suite 220
Chandler, Arizona 85224
Email: phill.lopresti@everspin.com
Facsimile: (480) 347-1175


[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

With a copy, which shall not constitute notice, to:

Matthew Hemington
Cooley LLP
101 California, 5th Floor
San Francisco, CA 94111-5800
Email: HemingtonMB@cooley.com

**17. Royalties, Record Keeping and Audit Rights**

**17.1** In the event GLOBALFOUNDRIES manufactures and sells or transfers wafers containing production qualified Embedded STT-MRAM Devices that utilize Design Information to Customers ("Royalty Wafer"), then pursuant to Section 17.4 GLOBALFOUNDRIES shall pay Everspin a royalty percentage of the net selling price, excluding all amounts for bump, packaging and test, for each Royalty Wafer as shown below ("Royalty Amount").

**17.1.1** For the first one thousand (1,000) Royalty Wafers sold or transferred to Customers, a royalty of [*]%.

**17.1.2** For all Royalty Wafers sold or transferred to Customers during the [*] years following the period set forth in Section 17.1.1, a royalty of [*]%.

**17.1.3** For all Royalty Wafers sold or transferred to Customers during the [*] years following the period set forth in Section 17.1.2, a royalty of [*]%.

**17.1.4** For all Royalty Wafers sold or transferred to Customers during the [*] years following the period set forth in Section 17.1.3, a royalty of [*]%.

GLOBALFOUNDRIES' obligation to pay any royalties to Everspin pursuant to this Agreement will terminate when the time period set forth in Section 17.1.4 has passed.

**17.2** The Parties shall, in good faith, discuss lowering the royalty rates set forth in Section 17.1 for Royalty Wafers containing less than 1 Mbyte of Embedded STT-MRAM Devices per product provided the Royalty Wafers are based on memory macro designs of GLOBALFOUNDRIES or memory macro designs of a third party contracted by GLOBALFOUNDRIES.



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**17.3** All volumes stated in this Agreement are calculated as number of Royalty Wafers sold or transferred by GLOBALFOUNDRIES to a Customer and do not include internal transfer of Royalty Wafers to GLOBALFOUNDRIES Affiliates, related GLOBALFOUNDRIES companies or development partners for development purposes.

**17.4** Within thirty (30) days following (i) the end of the first calendar quarter in which Royalty Wafers are sold or transferred to Customers and (ii) each calendar quarter thereafter for which GLOBALFOUNDRIES has a royalty obligation pursuant to Section 17.1, GLOBALFOUNDRIES shall provide a written report to Everspin stating the cumulative royalties due as a result of Royalty Wafer sales to Customers in the previous calendar quarter ("Quarterly Report"). Upon receipt of the Quarterly Report, Everspin will issue an invoice for any Royalties due within thirty (30) calendar days of receiving the corresponding Quarterly Report. GLOBALFOUNDRIES shall pay Everspin the royalties due for each such quarter within fifteen (15) of receiving the Everspin invoice.

**17.5** Everspin shall determine to what extent the royalties agreed upon under this Agreement are subject to any value added tax, sales tax, goods and services tax, business tax or similar taxes. To the extent that the royalties agreed upon under this Agreement are subject to any VAT, sales tax, goods and services tax, business taxes or similar taxes, and to the extent that Everspin is required by law to collect and remit such taxes to the responsible tax authorities, such taxes shall be paid by GLOBALFOUNDRIES or its respective Affiliate in addition to the agreed Royalty Amounts. Everspin is obliged to render proper invoices within the meaning of the applicable tax law. In the event any tax exemptions apply, GLOBALFOUNDRIES or its respective Affiliate shall provide Everspin with all legally required information, certificates or other documents in a timely manner. GLOBALFOUNDRIES or its respective Affiliate shall not be liable for any penalty or interest charges resulting from Everspin's failure to collect such value added tax, sales tax, goods and services tax, business tax or similar taxes or from any incorrect invoicing by Everspin unless GLOBALFOUNDRIES or its respective Affiliate have not provided the legally required information, certificates or documents referred to above (as appropriate) in an accurate and timely manner to allow Everspin to determine to what extent such value added tax, sales tax, goods and services tax, business tax or similar taxes are applicable.



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**17.6** If payments made hereunder by GLOBALFOUNDRIES or its respective Affiliate are subject to deduction of any withholding taxes imposed by applicable laws, GLOBALFOUNDRIES or its respective Affiliate shall have the right to withhold from payments to Everspin any taxes that GLOBALFOUNDRIES or its respective Affiliate is required to withhold under such laws. GLOBALFOUNDRIES or its respective Affiliate shall provide Everspin with a certificate from the applicable tax authorities or other documentation reasonably required by Everspin to evidence such tax payment. In the event Everspin wishes to rely on a reduced withholding tax rate under applicable income tax treaty provisions by and between GLOBALFOUNDRIES or its respective Affiliate and Everspin's respective legal country of domicile, Everspin is to furnish to GLOBALFOUNDRIES or its respective Affiliate at the start of each year, a proper exemption certificate in form and substance satisfactory to GLOBALFOUNDRIES or its respective Affiliate. The Parties agree to use commercially reasonable efforts to cooperate in order to reduce the tax burden on each party arising under this Agreement.

**17.7** GLOBALFOUNDRIES shall keep records in sufficient detail to permit the determination of royalties payable to Everspin hereunder. Such records shall be kept for [*] years after the date of their creation.

**17.8** To ensure compliance with the royalty and other payment obligations of this Agreement, during the term of this Agreement and for a period of [*] years thereafter, either Party shall have the right to conduct an audit of the relevant information of the other Party, by a mutually acceptable audit firm, for up to a twelve month payment period. Upon prior written request (at least sixty (60) days in advance) from the other Party, the audited Party will provide the audit firm access to relevant records and personnel during regular business hours for these purposes. In no event shall audits be made hereunder more frequently than once in every twelve (12) month period, unless an audit has revealed a material underpayment within the last twelve (12) months. The time period that is audited will not be subject to subsequent audits. The cost of such audit shall be borne by the auditing Party unless the audit reveals an underpayment of more than [*]% of the amount due and owing to the other Party in which case the cost of the audit, the underpayment and reasonable interest shall be borne by the Party being audited.

**17.9** In the event, however, that a Party determines and objectively shows that STT-MRAM Devices for which compensation is due under the Agreement have been manufactured, but no royalty or license fee is paid thereon, and the failure to pay such royalty or license fee is not as a result of accounting or human error, but is due to a Party's decision not to pay such royalties or license fee despite having knowledge that Design Information was utilized in the manufactured STT-MRAM Device, the interest rate due for such underpayment will double.



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**17.10** Any payment required to be made under this Agreement will be made in U.S. dollars by bank transfer in accordance with instructions received from the other Party. Late payments will bear interest payable pro rata at the rate of [*] percent per annum.

**18. Access to GLOBALFOUNDRIES Premises**

**18.1** While on GLOBALFOUNDRIES premises, Everspin shall ensure that its personnel and Consultants at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, and orders.

**18.2** While on GLOBALFOUNDRIES premises, Everspin will comply with all applicable GLOBALFOUNDRIES environmental, health, safety, and security (including without limitation electronic information security) policies, procedures, and programs that have been communicated to Everspin including but not limited to attending and passing GLOBALFOUNDRIES' EHS certification and clean room training as well as attending any refresher courses as needed. Everspin is responsible for ensuring that its personnel and Consultants understand and comply with all applicable GLOBALFOUNDRIES policies, procedures, and programs, including those in the current version of GLOBALFOUNDRIES environmental, health & safety handbook for contractors. When performing work on GLOBALFOUNDRIES premises, Everspin will cooperate with GLOBALFOUNDRIES so as to minimize any potential interference with GLOBALFOUNDRIES' other activities, to protect the safety and health of GLOBALFOUNDRIES employees, agents, and visitors, and to safeguard GLOBALFOUNDRIES property. Any failure by Everspin personnel to comply with the requirements of Sections 18.1 and 18.2 may result in GLOBALFOUNDRIES denying the Everspin personnel access to GLOBALFOUNDRIES premises.

**18.3** All GLOBALFOUNDRIES clean room access by Everspin's personnel shall be at the sole discretion of GLOBALFOUNDRIES and at all times be under the escort and supervision of a GLOBALFOUNDRIES employee.

**19. Access to Everspin Premises**

**19.1** While on Everspin premises GLOBALFOUNDRIES shall ensure that its personnel and its Consultants at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, and orders.



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**19.2** While on Everspin premises, GLOBALFOUNDRIES and its Consultants will comply with all applicable Everspin environmental, health, safety, and security (including without limitation electronic information security) policies, procedures, and programs that have been communicated to GLOBALFOUNDRIES including but not limited to attending and passing Everspin EHS certification and clean room training as well as attending any refresher courses as needed. GLOBALFOUNDRIES is responsible for ensuring that its personnel understand and comply with all applicable Everspin policies, procedures, and programs, including those in the current version of Everspin's environmental, health & safety handbook for contractors. When performing work on Everspin premises, GLOBALFOUNDRIES will cooperate with Everspin so as to minimize any potential interference with Everspin other activities, to protect the safety and health of Everspin employees, agents, and visitors, and to safeguard Everspin property. Any failure by GLOBALFOUNDRIES personnel to comply with the requirements of Sections 19.1 and 19.2 may result in Everspin denying the GLOBALFOUNDRIES personnel access to Everspin premises.

**19.3** All Everspin clean room access by GLOBALFOUNDRIES personnel shall be at the sole discretion of Everspin and at all times be under the escort and supervision of an Everspin employee.

**20. Assignment**

**20.1** Neither Party may assign or transfer the rights and/or obligations under the Projects without the express written consent of the other, provided, however, either Party may, without such consent, assign and transfer its rights and obligations under this Agreement to a third party (i) in connection with the transfer or sale of all or substantially all of its MRAM business to such third party or (ii) in the event of a merger or consolidation with, or acquisition by such third party; further, provided, that the third party in (i) and (ii) agrees, in writing, to be bound by the terms and conditions of the Agreement and acknowledges its obligations, in writing, to comply with the terms and conditions of this Agreement.

**20.2** Any attempted assignment or delegation in contravention of the above provision shall be void and ineffective.

**21. Miscellaneous Provisions**

**21.1** Nothing contained in this Agreement shall be construed as creating a partnership or joint venture by or between the Parties or constituting either Party the agent of the other.



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**21.2** The Parties are independent contractors and neither Party is an employee, agent, servant, representative, partner, or joint venturer of the other. 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 prior written consent.

**21.3** During the term of this Agreement, each Party agrees not to directly solicit for employment or otherwise recruit any employees of the other Party without the prior written consent of such other Party. In the event a Party hires an employee of the other Party who was performing Joint Development Work, the Parties will utilize the Steering Committee to address any issues related thereto, including, without limitation, impact on schedules and additional costs.

**21.4** Subject to the restrictions and obligations described herein (including, without limitation, restrictions and obligations with respect to Foreground IP and Project Results), neither Party shall be under an obligation of exclusivity due to or as a result of engaging with the other Party in this Agreement, including with respect to: (i) engaging a third party regarding MRAM or MRAM technology, including, without limitation, engaging a third party (including, without limitation, a third party foundry) to design, develop and qualify MRAM products or design, develop and qualify fabrication lines for manufacture of MRAM, and/or (ii) licensing Intellectual Property to third parties including, without limitation, Intellectual Property relating to MRAM or MRAM technology.

**21.5** This Agreement constitutes the Parties' entire agreement with respect to the subject matter hereof, and all prior agreements or understandings between them concerning such subject matter shall not have any further force or effect.

**21.6** This Agreement may be modified only by a writing signed by both Parties.

**21.7** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which taken together shall be deemed one and the same instrument.

**21.8** Neither Party shall make any use of the other Party's name, logo or trademark for any purpose without the prior written consent of the other Party.



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**21.9** The Parties will mutually agree, which agreement shall not be unreasonably withheld, on a press release or public statement that both Parties will issue without unreasonable delay on or after the Effective Date; provided that either Party may issue such mutually agreeable press release or public statement at any time beginning forty-five (45) days after the Effective Date by providing the other Party no less than five (5) business days advance notice thereof. The Parties shall mutually agree, which agreement shall not be unreasonably withheld, in writing prior to releasing any other press release or other public statement relating to the subject matter of this Agreement. No other public release of information obtained from the other Party nor contributions from the other Party or results of the Joint Development Work, for example in a conference publication or technical journal, will be made without the prior written consent of both Parties.

**21.10** No course of dealing or failure by either Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

**21.11** All persons furnished by a Party shall, while on the premises of the other Party, remain liable for all acts or omissions of its representatives.

**21.12** All persons furnished by a Party shall be considered solely that Party's employees and/or Consultants, and that Party shall be responsible for payment of all unemployment, social security and other payroll taxes, including contributions required by law.



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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below. This Agreement shall have an effective date as defined in the first paragraph of the Agreement without regard to the final signature date of either Party.

| **GLOBALFOUNDRIES Inc.** | | **Everspin Technologies, Inc.** | |
|---|---|---|---|
| By: | /s/ David Bennett | By: | /s/ Phill LoPresti |
| Name: | David Bennett | Name: | Phill LoPresti |
| Title: | VP Strategic Agreements | Title: | President & CEO |
| Date: | 20-October-2014 | Date: | 10/20/2014 |



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**EXHIBIT A**

**Invention Allocation Procedure**

**1. Joint Invention Allocation Procedure**

**a. [*]**

1) The Parties shall cause their personnel and Consultants to promptly generate a mutually agreed-upon invention disclosure form, for each JOINT Invention created, developed or conceived by such personnel and/or Consultants. Each Party shall promptly forward to the other Party a copy of all invention disclosure forms received by such Party from its personnel and Consultants; except in extenuating circumstances, such forwarding shall occur within five business days after such receipt.

2) [*] the IP managers of each Party shall [*] subject to the Allocation Procedure [*]. An invention described in an invention disclosure shall [*] unless:

a. Either Party requests that the invention disclosure for that invention [*] and/or [*];

b. Either Party in good faith believes that the invention should [*];

c. Both Parties agree that the invention should [*] (e.g., because the invention [*]), or that the invention should [*] or [*] (e.g., if [*] that are [*]); or

d. Both Parties agree than an invention [*].

3) If the Parties agree that an invention described in an invention disclosure should [*], or that an invention should [*], then the IP managers will [*] and/or [*]

4) An invention that is [*] to be allocated will [*], but not [*].

**b. [*]**

1) [*], the Parties shall also [*], in which each Party will [*] that [*] for allocation.

2) [*] inventions are allocated, [*] will [*] determine [*]. Thereafter, [*], the Parties will [*].

3) The Parties may agree to either: (i) [*], or (ii) [*], in which case the Parties will [*]. Once [*], the Parties will [*] the allocation of inventions.

4) The Parties will work together in good faith to provide flexibility in the allocation process to [*].

**c. [*]**

Each Party will execute and deliver any required documents to [*] the invention described in the invention disclosures [*], including [*], and will use best efforts to [*].



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**2. Rights in [*]**

a. Rights to [*], and [*] will [*].

b. A Party shall not [*].

c. A Party shall have the right to [*] only if [*] as set forth in the Allocation Procedure defined herein**.**



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**Exhibit B**

**Business Plan**

GLOBALFOUNDRIES projected Project Costs for [*]*:

| | | | | [*] | | | | [*] | | [*] |
|---|---|---|---|---|---|---|---|---|---|---|
| **[*] - Total (M USD)**** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] | [*] |
| Total | | | | [*] | | | | | [*] | [*] |

*[*] costs are [*] costs for [*] subject to [*] and [*].

| **[*] - Total (M USD)** | **[*]** | **[*]** | **[*]** | **[*]** | **[*]** |
|---|---|---|---|---|---|
| [*] | | | | | |
| [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] |
| [*] | [*] | [*] | [*] | [*] | [*] |
| Total | [*] | [*] | [*] | [*] | [*] |

*The costs provided for the GLOBALFOUNDRIES estimates assume that [*]. The [*] estimates include [*] and [*].



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Everspin projected Project Costs for [*] ***:

| Project | Cost Category | [*] | [*] | [*] | [*] | [*] |
|---|---|---|---|---|---|---|
| [*] | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | [*] | [*] | [*] | | | |
| | Total (M USD) | [*] | [*] | | | |
| [*] | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | [*] | [*] | [*] | [*] | | |
| | Total (M USD) | [*] | [*] | [*] | | |

***The costs provided for Everspin estimates assume that [*]. The [*] estimates include [*] and [*].

The Parties believe, as of the Effective Date, that [*] will be [*] based on the estimates in the Business Plan shown above.



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**[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.**

**Exhibit 10.19**

**Amendment No.1**
**to the STT-MRAM Joint Development Agreement**

This Amendment No.1 to the STT-MRAM Joint Development Agreement (this "Amendment") by and between GLOBALFOUNDRIES Inc. (hereinafter referred to as "GLOBALFOUNDRIES" or "GF") and Everspin Technologies, Inc., a corporation incorporated under the laws of Delaware, having an office at 1347 North Alma School Road, Suite 220, Chandler, Arizona 85224 ("Everspin"), is effective as of the last date of signature hereunder, and amends that certain STT-MRAM Joint Development Agreement by and between GLOBALFOUNDRIES and Everspin executed on October 17, 2014 ("Agreement'').

WHEREAS Everspin has requested that GLOBALFOUNDRIES modify the payment schedule for Project Costs incurred under the Agreement; and

WHEREAS GLOBALFOUNDRIES has agreed to such modification under the terms and conditions described in this Amendment No.1 ("Amendment'');

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GLOBALFOUNDRIES and Everspin agree as follows.

**1. MODIFY SECTION 3.4**

Section 3.4 of the Agreement is deleted in its entirety and replaced with the following:

3.4 Within thirty (30) days after December 31, 2016, and within thirty (30) days after the end of each of the calendar quarters thereafter, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth (a) the incurred Project Costs for the preceding quarter and (b) a forecast of the projected Project Costs with respect to the then-current quarter and the following quarter. After submission of such report, the Party that has incurred [*] Project Costs shall issue an invoice to the other Party for [*] for the preceding quarter. The invoiced party shall pay the other Party the undisputed amount stated in each such invoice no later than forty-five (45) days following receipt.

**2. ADD NEW SECTION 3.9**

Section 3.9 of the Agreement is added after Section 3.8, as follows:

3.9 Within thirty (30) days after September 30, 2016, the Program Manager of each Party shall submit a report to the Program Manager of the other Party (or their designees as mutually agreed upon) setting forth the incurred Project Costs from April, 2016 through September 30, 2016. After submission of such report, the Party that has incurred [*] Project Costs shall issue an invoice to the other Party for [*].

3.9.1 Everspin agrees that its portion of the Project Costs incurred from the Effective Date through December 31, 2015 is equal to $3,620,000. Everspin shall pay GLOBALFOUNDRIES $3,620,000 plus interest on this amount at a rate of fourteen percent per annum. The interest shall be calculated from March 14, 2016 through the date this portion of the Project Costs is paid.

3.9.2 Everspin agrees that its portion of the Project Costs incurred from January 1, 2016 through April 1, 2016 is equal to $740,000. Everspin shall pay GLOBALFOUNDRIES $740,000 plus interest on this amount at a rate of fourteen percent per annum. The interest shall be calculated from June 25, 2016 through the date this portion of the Project Costs is paid.

3.9.3 All invoices issued pursuant to this Section 3.9 or amounts payable pursuant to Section 3.9.1 and 3.9.2 shall be payable to GLOBALFOUNDRIES no later than December 15, 2016 regardless of date of invoice.

**3. MODIFY SECTION 12.1.1**

Section 12.1.1 of the Agreement is deleted in its entirety and replaced with the following:

12.1.1 The other Party is in material breach of any warranty, term, condition or covenant of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of that breach.

**4. MODIFY SECTION 12.3.5**

Section 12.3.5 of the Agreement is added after Section 12.3.4, as follows:

12.3.5. Should GLOBALFOUNDRIES have the right to terminate this Agreement for cause pursuant to Section 12.4, the Royalty Amount owed or to be paid by GLOBALFOUNDRIES pursuant to Section 17.1 shall be reduced by any such amounts owed including applicable interest ("Royalty Offset"). For avoidance of doubt, the Royalty Offset shall not modify the calculation of the Royalty Amount, or alter the time periods set forth in Section 17.1. Everspin shall remain obligated to pay GLOBALFOUNDRIES any incurred Project Costs in addition to the Royalty Offset provided GLOBALFOUNDRIES. This Section 12.3.5 shall be enforceable only in the event GLOBALFOUNDRIES has the right to terminate this Agreement pursuant to Section 12.4.

**5. ADD NEW SECTION 12.4**

Section 12.4 of the Agreement is added after Section 12.3.5, as follows:

12.4 GLOBALFOUNDRIES shall have the right to terminate this Agreement at any time if Everspin fails to pay, in full, the Project Costs (as well as any applicable interest charges) that Everspin is required to pay according to Section 3.9 on or before December 16, 2016. Should Everspin pay, in full, the Project Costs (as well as any applicable interest charges) that it is required to pay according to Section 3.9 on or before December 16, 2016, GLOBALFOUNDRIES's right to terminate this Agreement pursuant to this Section 12.4 shall be extinguished immediately upon such payment.

**6. MISCELLANEOUS**

All references to the Agreement in any other document shall be deemed to refer to the Agreement as modified by this Amendment. Except as modified by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. In the event that the terms of this Amendment conflict with the terms of the Agreement, the terms of this Amendment shall control.



[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

**7. EXECUTION**

This Amendment may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument. This Amendment may be delivered by electronic mail or facsimile, and a scanned version of this Amendment shall be binding as an original.

**IN WITNESS WHEREO**F, the parties hereto have caused this Amendment to be executed by their duly authorized representatives:

| **GLOBALFOUNDRIES Inc.** | | **Everspin Technologies, Inc.** | |
|---|---|---|---|
| Date: | 26-May-2016 | Date: | 05/27/2016 |
| Name: | /s/ David Bennett | Name: | /s/ Jeff Winzeler |
| (Print) | David Bennett | (Print) | Jeff Winzeler |
| Title: | VP, Strategic Agreements & Alliances | Title: | Chief Financial Officer |



[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.

**[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 406 OF THE SECURITIES ACT OF 1933, AS AMENDED.**

**EXHIBIT 10.20**

# MANUFACTURING AGREEMENT

**THIS MANUFACTURING AGREEMENT** ("Agreement") is made on 23 October, 2014 ("Effective Date") by and between:

(1) **EVERSPIN TECHNOLOGIES, INC.**, with its principal place of business at 1347 N. Alma School Road, Suite 220 Chandler, AZ, USA 85224 ("Customer" or "Everspin"); and

(2) **GLOBALFOUNDRIES SINGAPORE PTE. LTD.** with its principal place of business at 60 Woodlands Industrial Park D, Street 2, Singapore 738406 ("GLOBALFOUNDRIES")

(individually a "Party" and collectively the "Parties").

## 1. DEFINITIONS

1.1. "**Acceptance Criteria**" means the criteria specified in GLOBALFOUNDRIES' prevailing Etest Corporate Specification (specification EX-009) and prevailing Outgoing Wafer Inspection Procedure (specification QX-050) for a Product, except to the extent otherwise agreed in writing between GLOBALFOUNDRIES and Customer.

1.2. "**Affiliate**" means any entity which now or hereinafter, directly or indirectly, Controls, is Controlled by, or is under common Control with a Party. An entity has "Control" if it possesses more than fifty percent (50%) of the (i) outstanding shares or securities representing the right to vote for the entity's managing authority or (ii) ownership interest representing the right to (a) make decisions for such entity or (b) vote for, designate, or otherwise select members of the highest governing or decision making, managing or authority body of such entity. An entity is considered to be an Affiliate so long as such ownership or Control exists. In the case of GLOBALFOUNDRIES, the term "Affiliate" shall include Silicon Manufacturing Partners Pte Ltd.

1.3. "**Business Day**" means any day except Saturdays, Sundays and public holidays in the United States or Singapore.

1.4. "**Etest Corporate Specification**" means GLOBALFOUNDRIES' specification and procedure for testing scribe line test sites.

1.5. "**Exclusivity Period**" means the definition and time period as defined in the JDA.

1.6. "**Infringement Claim(s)**" means any claim(s), complaint(s) or demand(s) arising from or in connection with any actual or claimed infringement or misappropriation of any patent, trademark, service mark, copyright or any other third party intellectual property right.

1.7. "**Joint Development Agreement**" or "**JDA**" means the STT-MRAM Joint Development Agreement between the Parties with an effective date of October 17, 2014, for (a) the technology transfer of Customer's 200mm STT-MRAM technology to the GLOBALFOUNDRIES' 300mm platform, and (b) the joint technology development of 40nm and 28nm STT-MRAM technologies.

1.8. "**Masks**" means the masks and reticle sets used in the production of Products for Customer.

1.9. "**NRE**" means any non-recurring engineering work performed by or for GLOBALFOUNDRIES in connection with the manufacture of Products or Masks, including but not limited to reticle frame generation, test program development, fabrication of reticle set and prototype wafers, multi-purpose wafers, and fabrication of and all work using probe card wafers, probe cards and load board.

1.10. "**Order Acceptance**" means the document issued by GLOBALFOUNDRIES after receipt of Customer's purchase order wherein GLOBALFOUNDRIES accepts the purchase order based on terms specified in such Order Acceptance which may include, but not be limited to, indication of applicable part numbers, quantity, price and Original Scheduled Date of the Products to be provided.

1.11. "**Original Scheduled Date**" means the date the Products will be available for delivery as prescribed in GLOBALFOUNDRIES' Order Acceptance.

1.12. "**Process**" means the manufacturing process technologies specific to any Product used by GLOBALFOUNDRIES to manufacture such Product.

1.13. "**Product(s)**" means unsorted wafers manufactured by GLOBALFOUNDRIES for sale to Customer in accordance with the terms of this Agreement.

1.14. "**Service Price List**" means GLOBALFOUNDRIES' prevailing charges for services such as storage of wafers and Masks, lot expedites, purchase order cancellations and substrate management, a copy of which shall be provided to Customer at Customer's request.

1.15. "**Specifications**" means mutually agreed to functional performance characteristics, including quality and reliability requirements, for a Product as set forth in Appendix A.

1.16. "**Tape-Out**" means the event when Customer submits a design database and supporting documentation to GLOBALFOUNDRIES to serve as a basis for Mask creation and subsequent Product manufacturing.

1.17. "**Turn Key Services**" means post-wafer production services provided by GLOBALFOUNDRIES, including but not limited to bump and sort, as mutually agreed to by the Parties.

## 2. PRE-PRODUCTION PROCEDURES

2.1. General. This Agreement governs the supply of Products by GLOBALFOUNDRIES or its Affiliates to Customer. Subject to GLOBALFOUNDRIES' approval, Customer's Affiliates may also order Products under this Agreement, in which event references to "Customer" herein shall also include Customer's Affiliate(s). All purchase orders placed by Customer or its Affiliates shall be deemed to incorporate the terms and conditions of this Agreement.

2.2. Quoting. For Products not identified under Appendix B (Product Pricing), GLOBALFOUNDRIES will provide Customer with one or more quotations for Products ("Quote(s)") which will include, among other terms, the prices for Products.

2.3. Purchase Orders. Unless otherwise mutually agreed upon in writing by the Parties, Customer may place purchase orders for Products consistent with this Agreement and its Appendices; provided that (a) the Joint Development Agreement has not been terminated for Customer's material breach in accordance with its terms, (b) the purchase order is placed within the applicable lead time [*], (c) the purchase order quantities do not exceed [*] wafers per month (unless otherwise specifically

agreed to in writing by GLOBALFOUNDRIES, and (d) the purchase quantity is in line with the last binding customer forecast (Section 3.1.1). Pursuant to Section 3.3 herein, GLOBALFOUNDRIES will issue an Order Acceptance for Products that it will supply, subject to the terms and conditions of this Agreement and such Order Acceptance.

2.4. NRE. Following the Parties' agreement with respect to NRE, NRE charges shall be invoiced by GLOBALFOUNDRIES and paid by Customer pursuant to Section 6. Notwithstanding, NRE known to the Parties as of the Effective Date is set forth in Appendix C. In the event that NRE efforts are cancelled at Customer's request, unless otherwise mutually agreed in writing, Customer will remain responsible for the originally agreed NRE charges. NRE charges will be invoiced and all undisputed amounts will be due immediately upon cancellation.

2.5. Masks. Unless otherwise agreed (including as set forth in the JDA), GLOBALFOUNDRIES shall commission the manufacture of Customer's Masks with a qualified Masks manufacturer. GLOBALFOUNDRIES will invoice Customer for Masks as an NRE charge. Customer shall furnish GLOBALFOUNDRIES with all information and technical support necessary for the manufacture of the Masks. Masks shall at all times be the property of Customer. Customer agrees to bear all risk of damage to the Masks except where such damage was caused by GLOBALFOUNDRIES' negligent or intentional acts. If Customer's Masks stored on GLOBALFOUNDRIES' premises are not used for a period of more than a year, GLOBALFOUNDRIES will give Customer no less than twenty-one (21) days' prior written notice for Customer to collect such Masks. If Customer fails to collect such Masks, GLOBALFOUNDRIES will be entitled to scrap, dispose or destroy such Masks in the manner GLOBALFOUNDRIES in its discretion deems fit, taking into consideration the protection of Customer's design intellectual property, and GLOBALFOUNDRIES will have no further obligations whatsoever to the Customer with respect to such Masks. In the alternative, GLOBALFOUNDRIES in its sole discretion may agree, if requested by Customer, to store such Masks, and in such event, Customer will pay GLOBALFOUNDRIES a storage fee as detailed in the Service Price List.

2.6. Operating Procedures. Except as otherwise agreed in writing by the Parties, GLOBALFOUNDRIES will manufacture Products pursuant to its standard operating procedures as amended from time to time in its sole discretion. GLOBALFOUNDRIES' relevant operating procedures will be made available to Customer through its proprietary FoundryView portal or such other electronic portal which GLOBALFOUNDRIES uses for customer communication purposes.

2.7. Product Specific Terms. Any mutually agreed upon Product specific terms not otherwise set forth herein will be set forth in Appendix A.

2.8. Unique materials. If Customer's Products require unique materials in order to be manufactured, GLOBALFOUNDRIES will obtain such materials from qualified suppliers in the quantities needed to support Customer's Product forecasts. If Customer's Product forecasts decrease and GLOBALFOUNDRIES cannot use, or return the unique materials (the "Excess Materials"), Customer will work with GLOBALFOUNDRIES to dispose of the Excess Materials. If GLOBALFOUNDRIES cannot dispose of any Excess Materials in a reasonable time, Customer will pay GLOBALFOUNDRIES for such Excess Materials at the price GLOBALFOUNDRIES paid for them including any associated management fee as detailed in the Service Price List.

2.9. Qualification. GLOBALFOUNDRIES will qualify each Process to be used in the manufacture of any Products while Customer will be responsible for qualification of each Product. During the qualification of the Product, Customer will reasonably inform GLOBALFOUNDRIES of the status of qualification. The qualification of each Process and Product will be in accordance with GLOBALFOUNDRIES' prevailing Readiness to Ramp ("RTR") and Release To Production ("RTP") procedures (collectively the "RTR/ RTP Specification"). Customer agrees that Products that have not been qualified pursuant to the RTR/RTP Specification are unwarranted and provided on an "AS IS" basis only.

## 3. ORDERING PROCEDURES

3.1. Product and Turn Key Services Forecasting.

3.1.1. On a monthly basis, Customer will provide GLOBALFOUNDRIES with a rolling [*]-month forecast of Customer's monthly volume requirements for Products and for Turn Key Services, if applicable. The first [*] months of such forecast will (a) specify Product capacity requirements and (b) constitute a binding volume commitment on Customer's part, pursuant to which Customer will issue one or more purchase orders for the relevant quantities of Products specified for such [*] months of the forecast, provided that (c) the quantities shall not exceed the volume set forth in Section 2.3. Unless otherwise agreed, Customer may not (i) revise any remaining portion of the binding period in a subsequent forecast cycle, or (ii) submit purchase orders in quantities smaller than the binding volume commitment. Purchase orders issued in quantities smaller than the binding volume commitment shall be considered a breach of forecast commitment and GLOBALFOUNDRIES shall not be obligated to accept such purchase orders. The next [*] months of such forecast is non-binding and will specify Product capacity requirements. The next [*] months of such forecast will specify the Process to be used.

3.1.2. (a) On a quarterly basis, Customer will provide GLOBALFOUNDRIES with a rolling [*]-month forecast, (b) on a semi-annual basis, Customer will provide GLOBALFOUNDRIES with an [*]-month forecast, and (c) on an annual basis, Customer will provide GLOBALFOUNDRIES with a [*]-month forecast of Customer's quarterly volume projections for the Products.

3.2. Tape Out Forecasting. On a quarterly basis, Customer will provide GLOBALFOUNDRIES with a rolling [*]-month forecast of Customer's requirements for Tape-Outs.

3.3. Ordering Procedures. After receipt of Customer's purchase orders, GLOBALFOUNDRIES will acknowledge receipt of such purchase order, and then, within a reasonable period of time (targeting [*] Business Days or less), issue an Order Acceptance to Customer. GLOBALFOUNDRIES shall be obliged to supply Products to Customer only upon its issuance of an Order Acceptance and subject to any conditions specified in the Order Acceptance and this Agreement; provided any changes to the purchase order proposed in the Order Acceptance are subject to Customer's acceptance or rejection which shall be promptly given. GLOBALFOUNDRIES will issue an Order Acceptance for all purchase orders that are consistent with the binding portion of Customer's forecast pursuant to 3.1.1. Customer shall be excused from any order failures caused by erroneous delivery dates or erroneous quantities specified by GLOBALFOUNDRIES in an Order Acceptance.

3.4. Minimum Orders. Unless otherwise specified in GLOBALFOUNDRIES' Quote, the minimum order quantity for wafers of prototype Products is [*] wafers and the minimum order quantity for wafers of production Products is [*] wafers.

3.5. End of Life. In the event GLOBALFOUNDRIES determines that it will discontinue the availability of a Product, it will provide Customer with an end of life notice "EOL Notice" as follows:

3.5.1. When Customer has been ordering wafer Products pursuant to and consistent with, or better than, the binding volume commitment under Section 3.1.1 herein, GLOBALFOUNDRIES will provide Customer with at least [*] months prior written EOL Notice. Following receipt of said EOL Notice, Customer will be provided the opportunity to place purchase

orders for Products to be delivered within [*] months from the original EOL Notice date. Purchase orders placed after receipt of the EOL Notice will be non-cancellable by Customer.

3.5.2. When Customer has not ordered wafer Products pursuant to, and consistent with, the binding volume commitment under Section 3.1.1 herein for a period of [*] months or longer, GLOBALFOUNDRIES will provide Customer with at least [*] months prior written EOL Notice. Following receipt of said EOL Notice, Customer will be provided the opportunity to place purchase orders for Products to be delivered within a time period to be specified in the EOL Notice. Purchase orders placed after receipt of the EOL Notice will be non-cancellable by Customer.

## 4. PRODUCTION AND DELIVERY PROCEDURES

4.1. Manufacturing. GLOBALFOUNDRIES will manufacture the Products to conform to the Acceptance Criteria. If changes to the Acceptance Criteria are made other than to correct any defects in the manufacture of a Product, the Parties will in good faith re-negotiate any existing terms and conditions of the purchase (including delivery commitments) which require amending due to such changes.

4.2. Changes. Processes and materials will not be changed except in accordance with GLOBALFOUNDRIES' then prevailing Change Request Procedures. Any requests by Customer for changes to a qualified Process for a Product, or lot of Products, will be evaluated by GLOBALFOUNDRIES in accordance with its then prevailing Process Request Form Procedure.

4.3. Expedited Lots. Customer may request Products to be processed at an accelerated cycle time, which will be accepted subject to GLOBALFOUNDRIES' commercially reasonable efforts. Should GLOBALFOUNDRIES perform such accelerated services, Customer shall pay GLOBALFOUNDRIES the price premiums for such expedited lots as detailed in the Service Price List.

4.4. Rescheduling. Prior to GLOBALFOUNDRIES' commencement of manufacture of a Product, Customer may request up to [*] times for GLOBALFOUNDRIES' to reschedule the delivery of that Product to a date later than the Original Scheduled Date issued in the Order Acceptance ("Rescheduled Date"), provided that the Rescheduled Date for [*] of the ordered quantities does not extend beyond [*]. The Rescheduled Date for the balance of up to [*] of the ordered quantities may extend [*].

4.5. Suspension of Processing. In the event GLOBALFOUNDRIES suspends processing of partially processed wafers at Customer's behest, Customer will pay inventory holding costs as set forth in the Service Price List. Notwithstanding, GLOBALFOUNDRIES reserves the right to delay said suspension of related fabrication at the conclusion of the manufacturing step in process, and wafers may be held at the next available safe hold stage.

4.6. Cancellation. Customer may cancel the whole or a part of its purchase order with not less than [*] Business Days written notice to GLOBALFOUNDRIES, subject to payment of a cancellation charge as detailed in the Service Price List ("Cancellation Fee"). The Cancellation Fee will also include any applicable sales, use, excise or other similar taxes levied on or otherwise payable in connection with the Cancellation Fee. Unless otherwise instructed by Customer, GLOBALFOUNDRIES may dispose of or destroy cancelled wafers in any manner that GLOBALFOUNDRIES deems fit and at Customer's expense.

4.7. Delivery. GLOBALFOUNDRIES will deliver the quantity of Products stipulated in the applicable Order Acceptance, subject to the variance identified below. Delivery of an aggregate quantity of Products within plus or minus [*], of the quantity stipulated in an Order Acceptance will constitute compliance; provided however, the amount Customer will be invoiced will be based on the actual number of Products delivered.

4.8. Shipping. Unless otherwise agreed by the Parties and stated in GLOBALFOUNDRIES' Order Acceptance, all deliveries will be made EXW (GLOBALFOUNDRIES' facilities) (INCOTERMS 2010). Title and risk will pass to Customer upon delivery to the delivery point at GLOBALFOUNDRIES' shipping facility. GLOBALFOUNDRIES will use commercially reasonable efforts to make Products available for collection on the Original Scheduled Date. However, delivery of Products [*] Business Days before or [*] Business Days after the Original Scheduled Date will constitute compliance with the Order Acceptance and Customer agrees to accept such delivery. GLOBALFOUNDRIES will provide Customer with as much advance notice as possible of late deliveries, and will use commercially reasonable efforts, at its cost, to expedite such late deliveries. Customer will visually inspect all Product shipments promptly upon receipt.

4.9. Packaging. Unless otherwise agreed by the Parties and stated in the Order Acceptance, all Products will be delivered in GLOBALFOUNDRIES' standard packaging based on semiconductor industry standards with labels identifying the specific Product and lot number and will be accompanied by a packing list and other agreed upon processing documentation.

## 5. .WARRANTY/ RETURNS

5.1. Warranty. Subject to the limitations set forth in this Agreement, GLOBALFOUNDRIES warrants that the Products will conform to the Specifications and be free from any defects in material and workmanship during the Warranty Period. Customer is solely responsible for any failures or non-conforming Products caused by Customer's design or any Customer Information (as that term is defined in Section 8.3 below), provided that Customer has required the specific implementation of such Customer Information. GLOBALFOUNDRIES does not warrant samples, prototypes or other Products that have not yet completed qualification.

5.2. Return Procedures. If Customer believes a Product does not comply with the warranty set forth in Section 5.1 above, Customer should notify its customer service representative to initiate a Return Materials Authorization ("RMA"). As part of the RMA process, Customer shall notify GLOBALFOUNDRIES in writing of the quantity and type of Product it would like to return and the reason and underlying data that supports the return. At GLOBALFOUNDRIES' request Customer will return the Products (or a sample amount as requested by GLOBALFOUNDRIES) freight prepaid to a location designated by GLOBALFOUNDRIES. GLOBALFOUNDRIES will assess the returned Products to verify warranty coverage. If GLOBALFOUNDRIES verifies that such Products contain defects which are not due to any event caused by Customer or any third party not authorized by GLOBALFOUNDRIES, including but not limited to accident, misuse, neglect, improper installation, handling or packing, repair or alteration, or by improper testing or usage contrary to any reasonable instructions provided by GLOBALFOUNDRIES to Customer prior to receipt of shipment, GLOBALFOUNDRIES will notify Customer that it authorizes such return and, at GLOBALFOUNDRIES' election, will replace the returned Products as soon as reasonably practicable, freight prepaid by GLOBALFOUNDRIES, or issue Customer one or more credit note(s) for an amount or amounts representing the purchase price of the returned Products. All Products validated for return by GLOBALFOUNDRIES shall be returned to GLOBALFOUNDRIES by Customer (to the extent not already done so) or destroyed (as evidenced by a scrap certificate to be provided by Customer) as directed by GLOBALFOUNDRIES.

5.3. Warranty Period. If any Product does not comply with the warranty set forth in Section 5.1 above, Customer must request an RMA pursuant to Section 5.2 no later than [*] from the date of delivery of the Products, except that any request for an RMA due to [*], must be made no later than [*] from the date of delivery of the Product (the "Warranty Period"). GLOBALFOUNDRIES will have no liability and will not be obliged to accept the return of any Products after the expiration of the Warranty Period.

5.4. Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, GLOBALFOUNDRIES EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND REGARDING ANY PRODUCTS OR SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND/OR ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. THIS SECTION 5 STATES GLOBALFOUNDRIES' ENTIRE LIABILITY, AND CUSTOMER'S ENTIRE REMEDY (OTHER THAN TERMINATION) WITH RESPECT TO BREACH OF WARRANTY OR NON-CONFORMITY OF THE PRODUCTS.

## 6. PRICING AND PAYMENT TERMS

6.1. Pricing. All Product pricing shall be in accordance with Appendix B. During the Exclusivity Period only, pricing will be consistent with, or better than, GLOBALFOUNDRIES' other customers who order substantially similar products as Customer. Subject to Section 6.3, GLOBALFOUNDRIES will invoice and Customer will pay: (i) the prices for the Products as set forth in the Order Acceptance and any NRE and other charges; and (ii) the cost of any freight, insurance, handling and other duties levied on the shipment and all goods and services taxes, value added taxes and any other sales, use, excise or other similar taxes levied on the purchase of Products. Notwithstanding Section 4.8 above, Customer shall be responsible for any export related costs. Each shipment is considered a separate and independent transaction. GLOBALFOUNDRIES may provide a separate invoice for each Product shipment by GLOBALFOUNDRIES.

6.2. Payment Terms. Customer will pay all invoices in United States dollars within [*] days from the date of an invoice. Any late payment will be subject to interest charges payable by Customer of [*] or the maximum rate allowable by law, whichever is less, on any unpaid and undisputed balance calculated from the due date of payment up to and including the date of actual payment. In its discretion, GLOBALFOUNDRIES may establish, modify or revoke credit terms for Customer or any of its Affiliates pursuant to GLOBALFOUNDRIES' prevailing credit practices. In the event of any dispute over the amount invoiced, Customer will first make timely payment of any undisputed portion pending resolution between the Parties of the disputed amount.

6.3. Pricing Adjustments. If Customer requests or requires any change(s) to the Process, Acceptance Criteria, test or Masks, or any engineering redesign(s) with respect to any Product, GLOBALFOUNDRIES may reasonably adjust the pricing for such Products, notwithstanding any previously quoted prices.

## 7. TERM AND TERMINATION

7.1. Term. This Agreement will commence on the Effective Date and will continue for a period of three (3) years ("Initial Term"). The Agreement will automatically renew for successive one (1) year periods ("Renewal Term") unless either Party gives written notice of non-renewal at least ninety (90) days prior to the end of the Initial Term or any Renewal Term.

7.2. Early Termination. This Agreement may also be earlier terminated as follows:

7.2.1. By written agreement of the Parties;

7.2.2. Immediately upon written notice by GLOBALFOUNDRIES if Customer fails to pay any undisputed sum which has been outstanding for sixty (60) or more days from date of invoice;

7.2.3. By either Party if the other Party is purchased by a third party or otherwise experiences a change of control of more than fifty percent of its outstanding stock, except in connection with an authorized assignment or transfer as provided in Section 10.6, with such termination effective immediately.

7.2.4. By either Party upon written notice if the other Party has committed a material breach of this Agreement, and the breaching Party has not remedied the breach within sixty (60) days of the written notice; or

7.2.5. By either Party, if the other Party becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors; provided that if such condition is assumed involuntarily it has not been dismissed with prejudice within ninety (90) days after it begins.

7.3. Effect of Termination. Termination will be without prejudice to the obligations or rights of either Party which have accrued prior to such termination. Notwithstanding the foregoing or the provisions listed in Section 7.4, GLOBALFOUNDRIES may at its option deliver Products as set forth in any Order Acceptance it has issued prior to the termination, and Customer shall remain obligated to pay for Products, pursuant to the terms and conditions of this Agreement.

7.4. Surviving Provisions. The following provisions shall survive any termination of this Agreement: 2.4 (NRE), 2.5 (Masks), 2.8 (Unique Materials); , 5 (Warranty/Returns); 6.1 (Pricing); 6.2 (Payment Terms); 7.3 (Effect of Termination), 8 (Restrictions) Indemnification and Limitation of Liability), 9 (Confidentiality), and 10 (General Provisions).

## 8. RESTRICTIONS, INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1. High Risk Activities. The Products are not fault-tolerant and are not designed, manufactured or intended for use as a Critical Component in (a) any medical, life saving or life support device or system (defined below), (b) any nuclear facilities, (c) any air traffic control device, application or system, (d) any weapons device, application or system, to specifically include any nuclear weapons, or (e) any other device, application or system where it is reasonably foreseeable that failure of the Product(s) as used in such device, application or system would lead to death, bodily injury or catastrophic property damage ("High Risk Activities"). "Medical, life saving or life support devices or systems" are those which are intended for surgical implant into the human body, or to support or sustain life, and whose malfunction or failure to perform may result in significant injury or death to the user. A Critical Component is one whose malfunction or failure to perform may cause the failure of a device or system, or may affect the effectiveness of such device or system. Accordingly, GLOBALFOUNDRIES specifically disclaims any express or implied warranty of any kind for Products when installed or embedded into Customer's products and used in High Risk Activities. Customer agrees that GLOBALFOUNDRIES will not be liable for any claims or damages arising from the use of the Products in such High Risk Activities beyond the claims or damages for which GLOBALFOUNDRIES is liable pursuant to the terms of this Agreement prior to being installed or embedded into Customer's products for such High Risk Activities. Notwithstanding the foregoing, Customer shall remain responsible for its obligations under Section 10.4, and in no event shall any warranty apply to any Products used in war or combat.

8.2. High Risk Use by Third Parties. In the event Customer sells to any third party (a "Sub-Buyer") any Products, whether in the form in which they were purchased by Customer or GLOBALFOUNDRIES or incorporated as a Critical Component into any device, system or application or in any other form, Customer hereby undertakes that such sale to the Sub-Buyer will be on terms that the use of the Products will be subject to the limitations set out in Section 8.1 and that the Products are not warranted for any of the uses referred to in Section 8.1. Customer will indemnify, hold harmless and defend GLOBALFOUNDRIES, its officers, directors, employees

and subcontractors from and against any claim, suit, demand or action (including all losses, liabilities, damages, settlements and attorneys' fees and expenses) which arises out of, involves or relates to Customer's failure to comply with this Section.

8.3. Customer Indemnification. Customer will defend GLOBALFOUNDRIES, its affiliates, subsidiaries, employees, directors, agents, successors, and assigns against any Infringement Claims arising from or in connection with Customer's design of any portion of the Product or any proprietary specifications, requirements or instructions required by Customer, but excluding any GLOBALFOUNDRIES Background IP or GLOBALFOUNDRIES IP (as those terms are defined under the JDA) ("Customer Information"), where such Infringement Claim would not have occurred but for such Customer Information, and will indemnify and hold GLOBALFOUNDRIES harmless from and against any damages, costs, judgment(s), litigation expenses (including attorneys' fees) and settlement(s) arising therefrom. Customer's indemnification obligations herein are subject to (i) GLOBALFOUNDRIES providing Customer with prompt notification and tender of the Infringement Claim and (ii) Customer having sole control of the defense and all related settlement negotiations for the Infringement Claim, except that Customer may not enter into any final settlement that would require any admission of liability or payment by GLOBALFOUNDRIES without GLOBALFOUNDRIES' prior written approval. GLOBALFOUNDRIES shall provide reasonable cooperation, assistance and information with respect to the Infringement Claim.

8.4. GLOBALFOUNDRIES Indemnification. GLOBALFOUNDRIES will defend Customer, its affiliates, subsidiaries, employees, directors, agents, successors, and assigns against any Infringement Claims arising from or in connection with the Process, including any proprietary specifications, requirements or instructions imposed by GLOBALFOUNDRIES but excluding any Everspin Background IP or Everspin IP (as those terms are defined in the JDA) ("GLOBALFOUNDRIES Information"), and will indemnify and hold Customer harmless from and against any damages, costs, judgment(s), litigation expense(s) (including attorneys' fees) and settlement(s) arising therefrom. GLOBALFOUNDRIES' indemnification obligations herein are subject to (i) Customer providing GLOBALFOUNDRIES with prompt notification and tender of the Infringement Claim and (ii) GLOBALFOUNDRIES having sole control of the defense and all related settlement negotiations for the Infringement Claim, except that GLOBALFOUNDRIES may not enter into any final settlement that would require any admission of liability or payment by Customer without Customer's prior written approval. Customer shall provide reasonable cooperation, assistance and information with respect to the Infringement Claim. Notwithstanding the foregoing, GLOBALFOUNDRIES will have no obligation or liability for any Infringement Claims based upon: a) GLOBALFOUNDRIES' compliance with or use of any Customer Information, including without limitation any modifications to GLOBALFOUNDRIES Information provided or specified by Customer, where such Infringement Claim would not have occurred but for such Customer Information; or, b) any modification of the Product by anyone other than GLOBALFOUNDRIES, where such Infringement Claim would not have occurred but for such modification; or c) the operation, sale or use of the Product in combination with any device, component, program, data, material, apparatus, method or process that GLOBALFOUNDRIES did not supply or use, where such Infringement Claim would not have occurred but for such combination, provided that this exception to GLOBALFOUNDRIES' indemnification obligations shall not apply if the basis of the Infringement Claim is GLOBALFOUNDRIES Information. To the extent that a court of competent jurisdiction issues a final order that enjoins the manufacture, use or sale of the Product due to an infringement by GLOBALFOUNDRIES Information, GLOBALFOUNDRIES shall exercise either of the following in its discretion: (i) procure for Customer the right to continue to use the Product

without liability for infringement based on GLOBALFOUNDRIES Information; or (ii) replace the Product with a substitute Product that does not infringe based on GLOBALFOUNDRIES Information. If GLOBALFOUNDRIES determines that neither (i) nor (ii) are commercially reasonable, Customer may return enjoined Products for a credit or refund for the amounts previously paid to GLOBALFOUNDRIES for such returned Products, and Customer shall have no exclusive sourcing or binding forecast obligations with respect to such Products. Subject to GLOBALFOUNDRIES' compliance with its obligations in this Section 8.4, this Section 8.4 states GLOBALFOUNDRIES' entire obligation to Customer and Customer's entire remedy regarding any third party claim of intellectual property infringement or misappropriation.

8.5. Limitation of Liability. TO THE EXTENT THAT EITHER PARTY MAY BE HELD LEGALLY LIABLE BY A COURT OF COMPETENT JURISDICTION UNDER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE ARISING OUT OF THE PERFORMANCE OR BREACH OF ITS OBLIGATIONS IN THIS AGREEMENT, EXCEPT FOR EACH PARTY'S CONFIDENTIALITY OR INDEMNITY OBLIGATIONS HEREUNDER OR FOR DAMAGES FOR BODILY INJURY OR PROPERTY DAMAGE, SUCH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND WILL NOT EXCEED THE TOTAL PURCHASE PRICE RECEIVED BY GLOBALFOUNDRIES FROM CUSTOMER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE FIRST CLAIM FROM CUSTOMER FOR THE SPECIFIC PRODUCT(S) (BASED ON THE RELEVANT PRODUCT NUMBER) THAT CAUSED THE DAMAGES, UP TO A CAP OF [*]. CUSTOMER AND GLOBALFOUNDRIES ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION HEREIN.

8.6. Limitations on Damages. THE REMEDIES PROVIDED HEREIN ARE EACH PARTY'S SOLE AND EXCLUSIVE REMEDIES. EXCEPT AS OTHERWISE MAY BE EXPRESSLY PROVIDED HEREIN AND EXCEPT FOR EACH PARTY'S CONFIDENTIALITY OR INDEMNITY OBLIGATIONS HEREUNDER OR FOR DAMAGES FOR BODILY INJURY OR PROPERTY DAMAGE, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO ANY INCREASED MANUFACTURING OR REWORK COSTS, DAMAGES RELATING TO PROCUREMENT OF SUBSTITUTE PRODUCT (i.e. "COST OF COVER"), LOSS OF PROFITS, REVENUES OR GOODWILL), WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GLOBALFOUNDRIES HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 9. CONFIDENTIALITY

9.1. General. The exchange of any confidential information between the Parties shall be subject to the terms of the Non-Disclosure Agreement number NDA2013-0014 executed between the Parties on 5-Jan-2013, as may be amended ("NDA"). Notwithstanding, Customer shall not, under any circumstance, disclose any GLOBALFOUNDRIES' manufacturing Process information to any third party, including, but not limited to contractors and subcontractors without the prior written consent of GLOBALFOUNDRIES. Without limiting the foregoing, neither Party shall make any public announcement, press release or other public statement regarding the terms and conditions of this Agreement, without the prior written consent of the other Party. With respect to GLOBALFOUNDRIES, such consent must be provided by GLOBALFOUNDRIES' Communications Department, and may be provided via electronic mail.

**10. GENERAL PROVISIONS**

10.1. Force Majeure. Neither Party will be liable for any failure to perform any actions, other than payment obligations, due to unforeseen circumstances or causes beyond the Party's reasonable control, including, without limitation, acts of God, flood, earthquake, fire, explosion, interruption or defect in the supply of electricity or water, acts of government, war, civil commotion, terrorism, insurrection, embargo, riots, lockouts, inability to obtain raw materials, or labor disputes ("Force Majeure"). Upon the occurrence of a Force Majeure event, the Party's obligation to perform will be extended for a period equal to the duration of the delay caused thereby. If a Force Majeure event continues for more than ninety (90) consecutive days, the other Party may terminate this Agreement immediately upon written notice.

10.2. No License. GLOBALFOUNDRIES reserves all right, title and interest in and to the intellectual property utilized to manufacture the Products and nothing herein grants or conveys to Customer any right or license under any trademark, copyright, patent, or other intellectual property of GLOBALFOUNDRIES, by implication, estoppel or otherwise.

10.3. Severability. If any provision or part of this Agreement is rendered void, illegal or unenforceable in any respect under any enactment or rule of law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

10.4. Legal Compliance. Each Party shall, in the performance of this Agreement, comply with all laws, rules and regulations issued by governmental authorities applicable to such Party. Without limiting the foregoing, Customer shall adhere to all applicable export laws, including but not limited to the U.S. Export Administration Regulations ("EAR") and the European Export Regulation (EG) Nr.428/2009. Pursuant to the EAR, certain controlled technology may be exported under an EAR license exception referred to as "TSR," if the exporter obtains a written assurance. See 15 CFR 740.6. In accordance with the TSR requirements, for technology that is exported to Customer pursuant to the TSR license exception, Customer hereby certifies that, except pursuant to a license granted by the U.S. Department of Commerce Bureau of Industry and Security or as otherwise permitted pursuant to a License Exception under the EAR, Customer will not: (1) export, re-export or release to a national of a country in Country Groups D:1 or E any restricted technology, software, or source code it receives from GLOBALFOUNDRIES, or (2) export to Country Groups D:1 or E the direct product of such technology or software, if such foreign produced direct product is subject to national security controls as identified on the Commerce Control List (Supplement 1 to Part 774 of the EAR).

10.5. Notices. All notices, demands or other communications required or permitted to be given or made in connection with this Agreement will be in writing and will be sent via facsimile (with confirmation of receipt), or by registered or certified mail, return receipt requested, or by an internationally recognized overnight courier service and addressed to the other Party at its address as set forth below or any other address of which the other Party may provide. Any notice shall be deemed to have been duly given and received by the Party to whom it is addressed (i) if sent by facsimile when sent, provided confirmation is received, (ii) if sent by registered or certified mail, three (3) Business Days after deposit in the mail postage prepaid, or (iii) if by overnight courier service, the next Business Day.

GLOBALFOUNDRIES Singapore Pte. Ltd

60 Woodlands Industrial Park D
Street 2
Singapore 738406
Facsimile no: (65) 6360 4917
Attention: Business Alliances

with copy to:
GLOBALFOUNDRIES U.S. Inc.
2600 Great America Way.
Santa Clara, CA 95054 U.S.A.
Attention: (1) General Counsel
(2) Strategic Agreements, US

CUSTOMER:

Everspin Technologies, Inc.
1347 N. Alma School Rd, Suite 220
Chandler, Arizona 85224
Email: phill.lopresti@everspin.com
Facsimile: (480) 347-1175

With a copy to: Cooley LLP
Matt Hemington
101 California, 5th Floor
San Francisco, 94111-5800
Email: HemingtonMB@cooley.com

10.6. Assignment. Neither Party may assign or transfer the rights and/or obligations under the Projects without the express written consent of the other; provided, however, either Party may, without such consent, assign and transfer its rights and obligations under this Agreement to a third party (i) in connection with the transfer or sale of all or substantially all of its MRAM business to such third party or (ii) in the event of a merger or consolidation with, or acquisition by such third party; further, provided, that the third party in (i) and (ii) agrees, in writing, to be bound by the terms and conditions of the Agreement and acknowledges its obligations, in writing, to comply with the terms and conditions of this Agreement. Any attempted assignment or delegation in contravention of the above provision shall be void and ineffective.

10.7. Governing law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of New York, except that the application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be brought and litigated exclusively in the United States District Court for the Southern District of New York, or if there is no jurisdiction in such court, then in a state court located in New York County, New York. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL AND AGREES THAT ANY DISPUTES BETWEEN THE PARTIES WILL BE TRIED BY A JUDGE WITHOUT A JURY.

10.8. Entire Agreement. This Agreement, including the NDA and any Appendices, (i) embodies the entire understanding between the Parties and supersedes all previous verbal or written agreements and undertakings with respect to the subject matter of this Agreement; and (ii) supersedes any conflicting, additional terms contained on Customer's purchase order and other documents issued by Customer. This Agreement may only be amended by a writing signed by the authorized representatives of both Parties.

10.9. Agreement Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute a signed original. Once signed, any reproduction of this Agreement made by reliable means (e.g., electronic image, facsimile or photocopy) shall be deemed an original.

**ACCEPTED AND AGREED:**

| **GLOBALFOUNDRIES Singapore Pte. Ltd.** | **Customer:** |
|---|---|
| | /s/ Phill LoPresti |
| Signature: | Signature: |
| | Phill LoPresti |
| Printed Name: | Printed Name: |
| | President & Chief Executive Officer |
| Title: | Title: |

**APPENDIX A**

1) Specifications

2) Additional Product Specific Terms:

To be mutually agreed upon by the Parties

**[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.**

**APPENDIX B**

**Product Pricing**

**[*]**

**[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act of 1933, as amended.**

## APPENDIX C

**Non-Recurring Engineering (NRE)**

For the 40nm Discrete (in-plane) STT-RAM activities, the NRE is covered in SOW1 to the JDA

**EVERSPIN TEHCNOLOGIES, INC.**

**RESTRICTED STOCK PURCHASE AGREEMENT**

**THIS RESTRICTED STOCK PURCHASE AGREEMENT** (the "***Agreement***") is made as of October 21, 2014, (the "***Issue Date***") by and between **EVERSPIN TECHNOLOGIES, INC.,** a Delaware corporation (the "***Company***"), and GLOBALFOUNDRIES Inc. ("***Purchaser***").

**WHEREAS,** in connection with the execution of that certain STT-MRAM Joint Development Agreement dated on or around the Issue Date (the "***Development Agreement***"), the Company desires to issue, and Purchaser desires to acquire, stock of the Company as herein described, on the terms and conditions hereinafter set forth;

**NOW, THEREFORE, IT IS AGREED** between the parties as follows:

**1. PURCHASE AND SALE OF STOCK.** Purchaser hereby agrees to purchase from the Company, and the Company hereby agrees to sell to Purchaser, an aggregate of 12,000,000 shares of the Common Stock of the Company (the "***Stock***") at $0.00001 per share, for an aggregate purchase price of $120.00. The closing hereunder, including payment for and delivery of the Stock shall occur at the offices of the Company immediately following the execution of this Agreement, or at such other time and place as the parties may mutually agree.

**2. REPURCHASE OPTION**

**(a)** In the event the Development Agreement is terminated for any reason the Company shall have an irrevocable option (the "***Repurchase Option***"), for a period of 365 days after said termination to repurchase from Purchaser, as the case may be, at a price that is the lower of (i) the original price per share indicated above paid by Purchaser for such Stock or (ii) the Fair Market Value per share of such Stock as of the date of such repurchase ("***Option Price***"), up to but not exceeding the number of shares of Stock that have not vested in accordance with the provisions of Section 2(b) below as of such termination date. For purposes of the Repurchase Option, the "***Fair Market Value***" shall mean the value of the Stock as determined in good faith by the Company's Board of Directors.

**(b)** One hundred percent (100%) of the Stock shall initially be subject to the Repurchase Option. Commencing on the Qualification Date, as defined in the Statement of Work #1 to that certain Development Agreement, that number of shares of the Stock equal to product of (a) the number of full months between the Issue Date and the Qualification Date, multiplied by (b) 1/48, shall vest in full and be released from the Repurchase Option. Thereafter, 1/48$^{th}$ of the Stock shall vest and be released from the Repurchase Option on a monthly basis measured from the Issue Date until all the Stock is released from the Repurchase Option (provided in each case that the Development Agreement has not been terminated as of the date of such release). No shares of the Stock shall vest and be released from the Repurchase Option prior to the Qualification Date.

**3. EXERCISE OF REPURCHASE OPTION.** The Repurchase Option shall be exercised by written notice signed by an officer of the Company or by any assignee or assignees of the Company and delivered or mailed as provided in Section 16(a). Such notice shall identify the number of shares of Stock to be purchased and shall notify Purchaser of the time, place and date for settlement of such purchase, which shall be scheduled by the Company within the term of the Repurchase Option set forth in Section 2 above. The Company shall be entitled to pay for any shares of Stock purchased pursuant to its Repurchase Option at the Company's option in cash or by offset against any indebtedness owing to the Company by Purchaser, or by a combination of both. Upon delivery of such notice and payment of the purchase price in any of the ways described above, the Company shall become the legal and beneficial owner of the Stock being repurchased and all rights and interest therein or related thereto, and the Company shall have the right to transfer to its own name the Stock being repurchased by the Company, without further action by Purchaser.

**4. ADJUSTMENTS TO STOCK.** If, from time to time, during the term of the Repurchase Option there is any change affecting the Company's outstanding Common Stock as a class that is effected without the receipt of consideration by the Company (through merger, consolidation, reorganization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, change in corporation structure or other transaction not involving the receipt of consideration by the Company), then any and all new, substituted or additional securities or other property to which Purchaser is entitled by reason of Purchaser's ownership of Stock shall be immediately subject to the Repurchase Option and be included in the word "Stock" for all purposes of the Repurchase Option with the same force and effect as the shares of the Stock presently subject to the Repurchase Option, but only to the extent the Stock is, at the time, covered by such Repurchase Option. While the total Option Price shall remain the same after each such event, the Option Price per share of Stock upon exercise of the Repurchase Option shall be appropriately adjusted.

**5. CORPORATE TRANSACTION.** In the event of Deemed Liquidation Event (as defined in the Company's Amended and Restated Certificate of Incorporation and referred to herein as a "***Corporate Transaction***"), then the Repurchase Option shall be assigned by the Company to any successor of the Company (or the successor's parent) in connection with such Corporate Transaction. To the extent that the Repurchase Option remains in effect following such a Corporate Transaction, it shall apply to the new capital stock or other property received in exchange for the Stock in consummation of the Corporate Transaction, but only to the extent the Stock is at the time covered by such right. Appropriate adjustments shall be made to the Option Price per share payable upon exercise of the Repurchase Option to reflect the effect of the Corporate Transaction upon the Company's capital structure; provided, however, that the aggregate Option Price shall remain the same.

**6. TERMINATION OF REPURCHASE OPTION.** Sections 2, 3, 4 and 5 of this Agreement shall terminate upon the exercise in full or expiration of the Repurchase Option, whichever occurs first.

**7. ESCROW OF UNVESTED STOCK.** As security for Purchaser's faithful performance of the terms of this Agreement and to insure the availability for delivery of Purchaser's Stock upon exercise of the Repurchase Option herein provided for, Purchaser agrees, at the closing hereunder, to deliver to and deposit with the Secretary of the Company or the Secretary's designee ("***Escrow Agent***"), as Escrow Agent in this transaction, three (3) stock assignments duly endorsed (with date and number of shares blank) in the form attached hereto as Exhibit A, together with a certificate or certificates evidencing all of the Stock subject to the Repurchase Option; said documents are to be held by the Escrow Agent and delivered by said Escrow Agent pursuant to the Joint Escrow Instructions of the Company and Purchaser set forth in Exhibit B attached hereto and incorporated by this reference, which instructions shall also be delivered to the Escrow Agent at the closing hereunder. Purchaser hereby acknowledges that the Secretary of the Company, or the Secretary's designee, is so appointed as the escrow holder with the foregoing authorities as a material inducement to make this Agreement and that said appointment is coupled with an interest and is accordingly irrevocable. Purchaser agrees that Escrow Agent shall not be liable to any party hereof (or to any other party). Escrow Agent may rely upon any letter, notice or other document executed by any signature purported to be genuine and may resign at any time. Purchaser agrees that if the Secretary of the Company, or the Secretary's designee, resigns as Escrow Agent for any or no reason, the Board of Directors of the Company shall have the power to appoint a successor to serve as Escrow Agent pursuant to the terms of this Agreement. Purchaser agrees that if the Secretary of the Company resigns as Secretary, the successor Secretary shall serve as Escrow Agent pursuant to the terms of this Agreement.

**8. RIGHTS OF PURCHASER.** Subject to the provisions of Sections 7, 9, 12 and 14 herein, Purchaser shall exercise all rights and privileges of a shareholder of the Company with respect to the Stock deposited in escrow. Purchaser shall be deemed to be the holder for purposes of receiving any dividends that may be paid with respect to such shares of Stock and for the purpose of exercising any voting rights relating to such shares of Stock, even if some or all of such shares of Stock have not yet vested and been released from the Repurchase Option.

**9. LIMITATIONS ON TRANSFER.** In addition to any other limitation on transfer created by applicable securities laws, Purchaser shall not assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Stock while the Stock is subject to the Repurchase Option. After any Stock has been released from the Repurchase Option, Purchaser shall not assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Stock except in compliance with the provisions herein and applicable securities laws. Furthermore, the Stock shall be subject to any right of first refusal in favor of the Company or its assignees that may be contained in the Company's Bylaws. **Purchaser hereby further acknowledges that Purchaser may be required to hold the Common Stock purchased hereunder indefinitely. During the period of time during which the Purchaser holds the Common Stock, the value of the Common Stock may increase or decrease, and any risk associated with such Common Stock and such fluctuation in value shall be borne by the Purchaser.**

**10. RESTRICTIVE LEGENDS.** All certificates representing the Stock shall have endorsed thereon legends in substantially the following forms (in addition to any other legend which may be required by other agreements between the parties hereto):

**(a)** "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AN OPTION SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE REGISTERED HOLDER, OR SUCH HOLDER'S PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. ANY TRANSFER OR ATTEMPTED TRANSFER OF ANY SHARES SUBJECT TO SUCH OPTION IS VOID WITHOUT THE PRIOR EXPRESS WRITTEN CONSENT OF THE COMPANY."

**(b)** "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

**(c)** "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE COMPANY AND/OR ITS ASSIGNEE(S) AS PROVIDED IN THE BYLAWS OF THE COMPANY."

**(d)** Any legend required by appropriate blue sky officials.

**11. INVESTMENT REPRESENTATIONS.** In connection with the purchase of the Stock, Purchaser represents to the Company the following:

**(a)** Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Stock. Purchaser is purchasing the Stock for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "***Act***").

**(b)** Purchaser understands that the Stock has not been registered under the Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

**(c)** Purchaser further acknowledges and understands that the Stock must be held indefinitely unless the Stock is subsequently registered under the Act or an exemption from such registration is available. Purchaser understands that the certificate evidencing the Stock will be imprinted with a legend which prohibits the transfer of the Stock unless the Stock is registered or such registration is not required in the opinion of counsel for the Company.

**(d)** Purchaser is familiar with the provisions of Rule144, under the Act, as in effect from time to time, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Stock may be resold by Purchaser in certain limited circumstances subject to the provisions of Rule 144, which may require, among other things, (i) the availability of certain public information about the Company and (ii) the resale occurring following the required holding period under Rule 144 after the Purchaser has purchased, and made full payment for (within the meaning of Rule 144), the securities to be sold.

**(e)** Purchaser further understands that at the time Purchaser wishes to sell the Stock there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144, and that, in such event, Purchaser may be precluded from selling the Stock under Rule 144 even if the minimum holding period requirement had been satisfied.

**(f)** Purchaser represents that Purchaser is an "accredited investor" as that term is defined in Rule 501 of Regulation D promulgated by the Securities and Exchange Commission under the Act.

**(g)** Purchaser further warrants and represents that Purchaser has either (i) preexisting personal or business relationships, with the Company or any of its officers, directors or controlling persons, or (ii) the capacity to protect his own interests in connection with the purchase of the Stock by virtue of the business or financial expertise of himself or of professional advisors to Purchaser who are unaffiliated with and who are not compensated by the Company or any of its affiliates, directly or indirectly.

**12. MARKET STAND-OFF AGREEMENT.** Purchaser hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the first sale to the public pursuant to the final prospectus relating to the registration by the Company of shares of its common stock or any other equity securities under the Act on a registration statement on Form S-1 or Form S-3 (the "***IPO***"), and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (180) days in the case of the IPO, which period may be extended upon the request of the managing underwriter, to the extent required by any FINRA rules, for an additional period of up to fifteen (15) days if the Company issues or proposes to issue an earnings or other public release within fifteen (15) days of the expiration of the 180-day lockup period), (i) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or warrant to purchase; or otherwise transfer or dispose of, directly or indirectly, any shares of the Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for common stock of the Company (whether such shares or any such securities are then owned by Purchaser or are thereafter acquired) or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of common stock or other securities, in cash, or otherwise. The foregoing provisions of this Section 12 shall apply only to the IPO, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall be applicable to the Purchaser only if the Company's officers and directors are subject to the same restrictions. The underwriters in connection with such registration are intended third party beneficiaries of this Section 12 and shall have the right, power, and authority to enforce the provisions hereof as though they were a party hereto. Purchaser further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such registration that are consistent with this Section 12 or that are necessary to give further effect thereto.

**13. SECTION 83(B) ELECTION.** Purchaser understands that Section 83(a) of the Internal Revenue Code of 1986, as amended (the "***Code***"), taxes as ordinary income the difference between the amount paid for the Stock and the fair market value of the Stock as of the date any restrictions on the Stock lapse. In this context, "restriction" includes the right of the Company to buy back the Stock pursuant to the Repurchase Option set forth in Section 2 above. Purchaser understands that Purchaser may elect to be taxed at the time the Stock is purchased, rather than when and as the Repurchase Option expires, by filing an election under Section 83(b) (an "***83(b) Election***") of the Code with the Internal Revenue Service within thirty (30) days from the date of purchase. Even if the fair market value of the Stock at the time of the execution of this Agreement equals the amount paid for the Stock, the 83(b) Election must be made to avoid income under Section 83(a) in the future. **Purchaser understands that failure to file such an 83(b) Election in a timely manner may result in adverse tax consequences for Purchaser. Purchaser further understands that an additional copy of such 83(b) Election is required to be filed with its federal income tax return for the calendar year in which the date of this Agreement falls.** Purchaser further acknowledges and understands that it is Purchaser's sole obligation and responsibility to timely file such 83(b) Election, and neither the Company nor the Company's legal or financial advisors shall have any obligation or responsibility with respect to such filing. Purchaser acknowledges that the foregoing is only a summary of the effect of United States federal income taxation with respect to purchase of the Stock hereunder, and does not purport to be complete. Purchaser further acknowledges that the Company has directed Purchaser to seek independent advice regarding the applicable provisions of the Code, the income tax laws of any municipality, state or foreign country in which Purchaser may reside, and the tax consequences of Purchaser's death. Purchaser assumes all responsibility for filing an 83(b) Election and paying all taxes resulting from such election or the lapse of the restrictions on the Stock.

**14. REFUSAL TO TRANSFER.** The Company shall not be required (a) to transfer on its books any shares of Stock of the Company which shall have been transferred in violation of any of the provisions set forth in this Agreement or (b) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so transferred.

**15. NO EMPLOYMENT RIGHTS.** This Agreement is not an employment or other service contract and nothing in this Agreement shall affect in any manner whatsoever the right or power of the Company (or a parent or subsidiary of the Company) to terminate Purchaser's service relationship for any reason at any time, with or without cause and with or without notice.

**16. MISCELLANEOUS.**

**(a) Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic transmission, telex or facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (iii) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party's address hereinafter set forth on the signature page hereof, or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto.

**(b) Successors and Assigns.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon Purchaser, Purchaser's successors, and assigns. The Repurchase Option of the Company hereunder shall be assignable by the Company at any time or from time to time, in whole or in part.

**(c) Attorneys' Fees; Specific Performance.** Purchaser shall reimburse the Company for all costs incurred by the Company in enforcing the performance of, or protecting its rights under, any part of this Agreement, including reasonable costs of investigation and attorneys' fees. It is the intention of the parties that the Company, upon exercise of the Repurchase Option and payment therefor, pursuant to the terms of this Agreement, shall be entitled to receive the Stock, in specie, in order to have such Stock available for future issuance without dilution of the holdings of other shareholders. Furthermore, it is expressly agreed between the parties that money damages are inadequate to compensate the Company for the Stock and that the Company shall, upon proper exercise of the Repurchase Option, be entitled to specific enforcement of its rights to purchase and receive said Stock.

**(d) Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. The parties agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to, and does hereby, submit to the jurisdiction and venue of, the appropriate state or federal court for the district encompassing the Company's principal place of business.

**(e) Further Execution.** The parties agree to take all such further action (s) as may reasonably be necessary to carry out and consummate this Agreement as soon as practicable, and to take whatever steps may be necessary to obtain any governmental approval in connection with or otherwise qualify the issuance of the securities that are the subject of this Agreement.

**(f) Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior agreements or understandings, whether written or oral. This Agreement may not be amended, modified or revoked, in whole or in part, except by an agreement in writing signed by each of the parties hereto.

**(g) Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

**(h) Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the day and year first above written.

**EVERSPIN TECHNOLOGIES, INC.**

| | |
|---|---|
| By: | /s/ Phillip LoPresti |
| Title: | President & CEO |
| Address: | 1347 N. Alma School Road, Suite 220 |
| | Chandler, AZ 85224 |

**GLOBALFOUNDRIES Inc.**

| | |
|---|---|
| By: | /s/ Authorized Signatory |
| Title: | /s/ Authorized Signor |

**EXHIBIT A**

**STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE**

**STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE**

**FOR VALUE RECEIVED, GLOBALFOUNDRIES INC.** hereby sells, assigns and transfers unto **EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation (the "Company"), pursuant to the Repurchase Option under that certain Restricted Stock Purchase Agreement, dated _____, 2014**,** by and between the undersigned and the Company (the "Agreement") _____ shares of Common Stock of the Company standing in the undersigned's name on the books of the Company represented by Certificate No**[(S)]** _____ and does hereby irrevocably constitute and appoint both the Company's Secretary and the Company's attorney, or either of them, to transfer said stock on the books of the Company with full power of substitution in the premises. This Assignment may be used only in accordance with and subject to the terms and conditions of the Agreement, in connection with the repurchase of shares of Stock (as defined in the Agreement) issued to the undersigned pursuant to the Agreement, and only to the extent that such shares remain subject to the Company's Repurchase Option under the Agreement.

Dated: _____

**GLOBALFOUNDRIES Inc.**

By: /s/ Authorized Signatory
Title: /s/ Authorized Signor

**[Instruction:** Please do not fill in any blanks other than the signature line. The purpose of this Assignment is to enable the Company to exercise its repurchase option set forth in the Agreement without requiring additional signatures on the part of Purchaser.**]**

**EXHIBIT B**

**JOINT ESCROW INSTRUCTIONS**

1.

**JOINT ESCROW INSTRUCTIONS**

Secretary
**EVERSPIN TECHNOLOGIES, INC.**
1347 N. Alma School Road
Suite 220
Chandler, AZ 85224

Ladies and Gentlemen:

As Escrow Agent for both **EVERSPIN TECHNOLOGIES, INC.** a Delaware Company ("***Company***") and **GLOBALFOUNDRIES INC.** ("***Purchaser***"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Restricted Stock Purchase Agreement dated as of October 21, 2014 ("***Agreement***"), to which a copy of these Joint Escrow Instructions is attached as Exhibit B, in accordance with the following instructions. Capitalized terms used herein and not defined shall have the same meaning given them in the Agreement.

**1.** In the event Company or an assignee shall elect to exercise the Repurchase Option set forth in the Agreement, the Company or its assignee will give to Purchaser and you a written notice specifying the number of shares of Stock to be purchased, the Option Price, and the time for a closing thereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of Stock to be transferred, to the Company against the simultaneous delivery to Purchaser of the Option Price (which may include suitable acknowledgment of cancellation of indebtedness) for the number of shares of Stock being purchased pursuant to the exercise of the Repurchase Option.

Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of Stock to be held by you hereunder and any additions and substitutions to said shares of Stock as specified in the Agreement. Purchaser does hereby irrevocably constitute and appoint you as his attorney-in-fact and agent for the term of this escrow to execute with respect to such securities all documents necessary or appropriate to make such securities negotiable and complete any transaction herein contemplated, including but not limited to any appropriate filing with state or government officials or bank officials. Subject to the provisions of this paragraph 3, Purchaser shall exercise all rights and privileges of a shareholder of the Company while the stock is held by you.

This escrow shall terminate upon the exercise in full or expiration of the Repurchase Option, whichever occurs first.

If at the time of termination of this escrow under Section 4 herein you should have in your possession any documents, securities, or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder; provided, however, that if at the time of termination of this escrow you are advised by the Company that any property subject to this escrow is the subject of a pledge or other security agreement, you shall deliver all such property to the pledgeholder or other person designated by the Company.

Except as otherwise provided in these Joint Escrow Instructions, your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith and in the exercise of your own good judgment, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or Company, excepting only orders or process of courts of law, and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree of any court, you shall not be liable to any of the parties hereto or to any other person, firm or Company by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver these Joint Escrow Instructions documents or papers deposited or called for hereunder.

You shall not be liable for the outlawing of any rights under any statute of limitations with respect to these Joint Escrow Instructions or any documents deposited with you.

Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be Secretary of the Company or if you shall resign by written notice to the Company. In the event of any such termination, the Secretary of the Company shall automatically become the successor Escrow Agent unless the Company shall appoint another successor Escrow Agent, and Purchaser hereby confirms the appointment of such successor as Purchaser’s attorney-in-fact and agent to the full extent of your appointment.

If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such dispute shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic transmission, telex or facsimile if sent during normal business hours of the recipient, and if not during normal business hours of the recipient, then on the next business day, (c) five (5) calendar days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the other party hereto at such party's address set forth below, or at such other address as such party may designate by ten (10) days advance written notice to the other party hereto.

| | |
|---|---|
| **Company:** | **Everspin Technologies, Inc.**<br>1347 N. Alma School Road, Suite 220<br>Chandler, AZ 85224 |
| **Purchaser:** | **GLOBALFOUNDRIES Inc.**<br><br>_____<br><br>_____ |
| **Escrow Agent:** | **Robert Schuch**<br>1347 N. Alma School Road, Suite 220<br>Chandler, AZ 85224 |

By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

You shall be entitled to employ such legal counsel and other experts (including, without limitation, the firm of Cooley LLP) as you may deem necessary properly to advise you in connection with your obligations hereunder. You may rely upon the advice of such counsel, and you may pay such counsel reasonable compensation therefor. The Company shall be responsible for all fees generated by such legal counsel in connection with your obligations hereunder.

This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. It is understood and agreed that references to "you" and "your" herein refer to the original Escrow Agents. It is understood and agreed that the Company may at any time or from time to time assign its rights under the Agreement and these Joint Escrow Instructions.

These Joint Escrow Instructions shall be governed by and interpreted and determined in accordance with the laws of the State of Delaware, as such laws are applied by Delaware courts to contracts made and to be performed entirely in Delaware by residents of that state.

Very truly yours,

**EVERSPIN TECHNOLOGIES, INC.**

By /s/ Phillip LoPresti
**PHILLIP LOPRESTI**

**PURCHASER**

**GLOBALFOUNDRIES Inc.**

By: /s/ Authorized Signatory

Title: /s/ Authorized Signor

**ESCROW AGENT:**

/s/ Robert Schuch
Robert Schuch

# FIRST AMENDMENT TO COMMERCIAL INDUSTRIAL LEASE AGREEMENT

**THIS FIRST AMENDMENT TO COMMERCIAL INDUSTRIAL LEASE AGREEMENT** (this **"First Amendment"**) is made and entered into as of August 12, 2016 (the **"Effective Date"**), by and between **LEGACY STONELAKE JV-T, LLC**, a Delaware limited liability company (**"Landlord"**), and **EVERSPIN TECHNOLOGIES, INC.,** a Delaware corporation (**"Tenant"**).

**RECITALS:**

A. Principal Life Insurance Company, an Iowa corporation (**"Principal"**) and Tenant entered into that certain Commercial Industrial Lease Agreement dated as of May 18, 2012 (the **"Lease"**), pursuant to which Principal leased to Tenant and Tenant leased from Principal that certain office space (the **"Existing Premises"**) commonly known as Suite 100, containing approximately 5,002 rentable square feet located on the first ( floor of that certain building located at 4030 West Braker Lane, Building I, Austin, Texas (the **"Building 1"**). Building I and Building 3 (as defined below) (each, a **"Building"**) are part of a multi-building project commonly known as **"Stonelake"** (the **"Project"**).

B. Landlord has succeeded to the interests of Principal as landlord under the Lease.

C. Landlord and Tenant now desire to amend the Lease to (i) extend the Original Term, (ii) relocate the Existing Premises to approximately 11,084 rentable square feet, commonly known as Suite 360 and located on the first (151) floor of that certain building located at 4030 West Braker Lane, Building 3, Austin, Texas (the **"Building 3"**), and depicted on the floor plan attached hereto as Exhibit A (the **"Relocated Premises"**), and (iii) modify various terms and provisions of the Lease, all as hereinafter provided.

D. All capitalized terms when used herein shall have the same meanings given such terms in the Lease unless expressly superseded by the terms of this First Amendment.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Stub Period**. The Original Term for the Existing Premises, which is currently scheduled to expire on September 17, 2016, is hereby extended for a fixed term (the **"Stub Period"**) commencing upon September 18, 2016 and expiring upon the Relocation Date (as defined below). During the Stub Period, Tenant shall (i) pay monthly Base Rent to Landlord for the Existing Premises in the amount of $5,002.00 per month, and (ii) continue to be responsible for paying Tenant's Proportionate Share of Operating Expenses and Taxes for the Existing Premises in accordance with the terms of the Lease, as amended hereby. Notwithstanding the foregoing, if the Relocation Date shall occur on or prior to September 17, 2016, then this Section 1 shall be null and void.

2. **Relocation of Existing Premises**. Effective as of the date (the **"Relocation Date"**) which is the earlier of (i) the date Tenant commences business operations in all or any portion of the Relocated Premises, and (ii) the date Landlord delivers possession of the Relocated Premises to Tenant Ready for Occupancy (as such terms are defined in the Tenant

Work Letter attached hereto as Exhibit B [the **"Tenant Work Letter"**]), which Relocation Date is anticipated to be September 15, 2016 (the **"Anticipated Relocation Date"**): (A) Tenant's lease of the Existing Premises shall terminate; (B) Tenant shall lease the Relocated Premises for a term (the **"Relocation Term"**) commencing on the Relocation Date and ending on the date (the **"Relocation Term Expiration Date"**) which is sixty-four (64) months following the Relocation Date; (C) such lease of the Relocated Premises shall be upon all of the terms and conditions of the Lease, as amended hereby; (D) all references in the Lease, as amended hereby, to the **"Premises"** shall mean and refer to the Relocated Premises, unless such reference would be illogical or inconsistent with the provisions of the Lease, as modified by this First Amendment; (E) all references in the Lease, as amended hereby, to the **"Original Term"** shall mean and refer to the Relocation Term, unless such reference would be illogical or inconsistent with the provisions of the Lease, as modified by this First Amendment; and (F) all references in the Lease, as amended hereby, to the **"Building"** shall mean and refer to Building 3, unless such reference would be illogical or inconsistent with the provisions of the Lease, as modified by this First Amendment. On or prior to the date that is three (3) days after the Relocation Date (such 3-day period, the **"Move-Out Period"**), Tenant shall vacate the Existing Premises and surrender exclusive possession thereof to Landlord in accordance with the surrender provisions of the Lease, as amended hereby. Notwithstanding the termination of the Lease with respect to the Existing Premises as provided hereinabove, Tenant shall remain liable for (A) all of its obligations as Tenant under the Lease, as amended hereby, with respect to the Existing Premises arising prior to and including the Relocation Date and during that portion of the Move-Out Period that Tenant has not yet vacated and surrendered possession of the Existing Premises to Landlord, and (B) all of Tenant's indemnification and other obligations with respect to the Existing Premises which expressly survive termination of the Lease, including, without limitation, the obligation to pay for any reconciliation of Tenant's Proportionate Share of estimated Operating Expenses and Taxes vs. Tenant's Proportionate Share of actual Operating Expenses and Taxes with respect to the Existing Premises for the period prior to and including the Relocation Date and during that portion of the Move-Out Period that Tenant has not yet vacated and surrendered possession of the Existing Premises to Landlord. If Tenant fails to surrender the Existing Premises to Landlord on or prior to the date which is three (3) days after the Relocation Date, the holdover provisions of Section 17.2 of the Lease shall apply with respect to the Existing Premises. After the Relocation Date occurs, Landlord shall deliver to Tenant a Second Amendment to Commercial Industrial Lease Agreement (the **"Second Amendment"**) in the form attached hereto as Exhibit C, setting forth, among other things, the Relocation Date and the Relocation Term Expiration Date, which Second Amendment Tenant shall execute and return to Landlord within five (5) business days after Tenant's receipt thereof. If Tenant fails to execute and return the Second Amendment within such 5-business day period, Tenant shall be deemed to have approved and confirmed the dates set forth therein provided that such deemed approval shall not relieve Tenant of its obligation to execute and return the Second Amendment (and such failure shall constitute a default by Tenant hereunder).

3. **Relocated Premises Base Rent**.

3.1. **Relocated Premises Base Rent**. During the Relocation Term, Tenant shall pay monthly installments of Base Rent for the Relocated Premises as set forth in the following schedule, subject to abatement pursuant to Section 3.2 below:

| Months of Relocation Term | Annual Base Rent | Monthly Installment of Base Rent | Annual Base Rental Rate Per Rentable Square Foot of Relocated Premises |
|---|---|---|---|
| 1 – 24 | $199,512.00 | $16,626.00 | $ 18.00 |
| 25 – 36 | $210,596.00 | $17,549.67 | $ 19.00 |
| 37 – 48 | $216,138.00 | $18,011.50 | $ 19.50 |
| 49 – 60 | $221,680.00 | $18,473.33 | $ 20.00 |
| 61 – 64 | $227,222.00 | $18,935.17 | $ 20.50 |

3.2. **Relocated Premises Abated Rent**. Notwithstanding anything in the Lease or Section 3.1 above to the contrary, and provided that Tenant faithfully performs all of the terms and conditions of the Lease, as amended hereby, and is not in default under the Lease, as amended hereby, beyond all applicable notice and cure periods, Landlord shall abate Tenant's obligation to pay the monthly installments of Base Rent otherwise payable by Tenant for the Relocated Premises (collectively, the **"Relocated Premises Abated Rent"**) during the first four (4) months of the initial Relocation Term (the **"Relocated Premises Abatement Period"**). During the Relocated Premises Abatement Period, Tenant shall remain responsible for the payment of all of its other monetary obligations under the Lease, as amended hereby. In the event of a default by Tenant under the terms of the Lease, as amended hereby, that results in the early termination of the Lease, as amended hereby, pursuant to the provisions of Section 20 of the Lease, then as a part of the recovery set forth in Section 20 of the Lease, Landlord shall be entitled to recover the unamortized portion of the Relocated Premises Abated Rent. For purposes of this Section 3.2, the Relocated Premises Abated Rent shall be amortized on a straight-line basis over the scheduled 64-month Relocation Term, and the unamortized portion thereof shall be determined based upon the unexpired portion of such Relocation Term as of the date of such early termination.

4. **Tenant's Proportionate Share of Operating Expenses and Taxes**. From and after the Relocation Date, due to the revised number of rentable square feet contained within the Relocated Premises as compared to the Existing Premises, and the revised number of rentable square feet contained within Building 3 as compared to Building 1, Tenant's Proportionate Share of Operating Expenses and Taxes shall be revised to be 29.23% (i.e., 11,084 rentable square feet in the Relocated Premises/37,921 rentable square feet in Building 3).

5. **Condition of Existinc Premises and Relocated Premises**. With respect to: (i) the Existing Premises. Tenant is in possession of the Existing Premises and shall continue its occupancy of same in its current "AS-IS" condition as of the Effective Date without any agreements, representations, understandings or obligations on the part of Landlord to perform or pay for any alterations, repairs or improvements to the Existing Premises, except as otherwise expressly provided in the Lease; and (ii) the Relocated Premises, except as expressly set forth in the Tenant Work Letter and in this Section 5 hereinbelow, Landlord shall not be obligated to

provide or pay for (or contribute any improvement allowance for) any improvements, work or services related to the improvement, remodeling or refurbishment of the Relocated Premises, and Tenant shall accept the Relocated Premises in its "AS IS" condition as of the Effective Date and the Relocation Date. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THE LEASE, AS AMENDED HEREBY, LANDLORD HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATIVE TO THE EXISTING PREMISES, THE RELOCATED PREMISES, BUILDING 1, BUILDING 3 OR THE PROJECT. Notwithstanding the foregoing to the contrary, Landlord shall, at Landlord's sole cost and expense, modify the restrooms located in the Relocated Premises (collectively, the **"Restrooms"**) as necessary to comply with applicable Law (including the ADA) pertaining to such Restrooms in effect as of the Effective Date. Landlord shall use commercially reasonable efforts to complete the Restroom Work prior to the Relocation Date, but if Landlord does not complete the Restroom Work prior to the Relocation Date, there shall be no extension of the Relocation Date and Tenant hereby acknowledges that Landlord will be performing the Restroom Work during Tenant's occupancy of the Relocated Premises under the Lease, as amended hereby, and Tenant hereby agrees that Tenant shall accept all inconveniences associated with the performance of the Restroom Work and agrees that the performance of the Restroom Work shall not constitute a constructive eviction of Tenant, nor entitle Tenant to any rent abatement, compensation or other damages from Landlord, nor subject Landlord to any liability, except for any injury to persons or damage to property (but not loss of business or other consequential damages) to the extent caused by Landlord's gross negligence or willful misconduct and not insured or required to be insured by Tenant under the Lease, as amended hereby.

6. **HVAC, Utilities and Janitorial Services Modifications**. Notwithstanding anything in the Lease to the contrary, with respect to the Relocated Premises, from and after the Relocation Date, and with respect to the Existing Premises, from and after the Effective Date: (i) subject to the provisions of Section 8 of the Lease, as amended hereby. Tenant shall obtain and pay for electricity provided to the Existing Premises and the Relocated Premises, including all electricity required to provide all heating, ventilation and air conditioning (**"HVAC"**) for the Existing Premises and the Relocated Premises, from the applicable base building HVAC unit located on the roof of Building I or Building 3, as the case may be, and which exclusively serves the Existing Premises or Relocated Premises, as the case may be (herein, each a **"Building HVAC Unit"**, as applicable); (ii) subject to the provisions of Section 4 of the Lease, as amended hereby, Landlord shall maintain the applicable Building HVAC Unit; and (iii) Landlord shall provide janitorial services to the Existing Premises and the Relocated Premises as provided in Section 6.9 below. In connection therewith, with respect to the Relocated Premises, from and after the Relocation Date, and with respect to the Existing Premises, from and after the Effective Date, the Lease shall be modified as follows:

6.1. clause (2) of Section 2.3.1.1 of the Lease shall be deleted and replaced with the following: "(2) all costs and expenses incurred by Landlord in providing services and utilities to the Project, including to the Common Area and to tenants of the applicable Building, including, but not limited to, the costs of water, sewer, gas and electricity, and the costs of heat, ventilation or air conditioning ("HVAC") and other utilities (but excluding the costs of HVAC and electricity provided to the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) and the premises of other tenants of the applicable Building since such

electricity is separately metered and Tenant pays directly to the utility company for the costs of such utilities provided to the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) pursuant to Section 8 below) as well as related fees, assessments, measurement meters and devices and surcharges;";

6.2. the following shall be added to the end of clause (4) of Section 2.3.1.1 of the Lease: "; provided, however, that any such costs of "repair" and "replacement" shall not include the costs of maintenance, repair and/or replacement of the applicable Building HVAC Unit (as defined in Section 6 of that certain First Amendment to Commercial Industrial Lease Agreement dated August __, 2016 [the "**First Amendment**"]) (since Tenant is responsible for directly reimbursing Landlord for certain of such costs pursuant to Section 4.2 below)";

6.3. the following shall be added as new clause (9) of Section 2.3.1.1 of the Lease: "; (9) all costs and expenses incurred by Landlord in providing standard janitorial services to tenants of the applicable Building, including office janitorial services, trash removal and window washing, together with the cost of replacement of the applicable Building standard electric light bulbs and fluorescent tubes and ballasts, which Landlord shall have the exclusive right to provide and install; and";

6.4. the following shall be added as new clause (10) of Section 2.3.1.1 of the Lease: "; (10) the costs and expenses of complying with, or participating in, conservation, recycling, sustainability, energy efficiency, waste reduction or other programs or practices implemented or enacted from time to time at the applicable Building and/or the Project, including, without limitation, in connection with any LEED (Leadership in Energy and Environmental Design) rating or compliance system or program, including that currently coordinated through the U.S. Green Building Council or Energy Star rating and/or compliance system or program (collectively "Conservation Costs").";

6.5. the second (2nd) sentence of Section 4.1 of the Lease shall be deleted and replaced with the following:

> "Landlord's maintenance obligations shall be limited to only the maintenance, repair and replacement of (i) the applicable Building's roof, foundation and exterior walls and the Common Areas, including, but not limited to the elevators, lobbies and restrooms, landscaping, Parking Areas, and sidewalks (collectively, the "Building's Structure and Common Areas"), and (ii) the electrical and plumbing systems up to the point they exclusively serve the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be); provided, however, to the extent such maintenance, repairs and/or replacements are caused by or necessitated due to the negligence or willful misconduct of, or excess use of electrical and plumbing systems by, Tenant or its agents, contractors, employees, licensees and/or invitees, then Tenant shall pay to Landlord, as Additional Rent, the reasonable cost of such maintenance, repairs and/or replacements. Notwithstanding the foregoing, Landlord shall also have additional maintenance, repair and replacement obligations with respect to

the applicable Building HVAC Unit as more particularly set forth in Section 4.2 below.";

6.6. the following shall be added after the text **"doors"** in the fourth (4th) sentence of Section 4.1 of the Lease: "or HVAC systems to the extent exclusively serving the Premises,";

6.7. the following shall be added as a new Section 4.2 of the Lease:

"Landlord's Maintenance and Repair of the Building HVAC Unit and Tenant's Reimbursement Obligations. Landlord shall also have the obligation to maintain, repair and replace the applicable Building HVAC Unit and, in connection therewith, (i) Tenant shall reimburse Landlord, directly and not as part of Operating Expenses, for the costs incurred by Landlord in the maintenance and repair of the applicable Building HVAC Unit, and (ii) Landlord shall be responsible for the costs of any replacement of the applicable Building HVAC Unit, which costs shall not be included as part of Operating Expenses, except that Tenant shall reimburse Landlord for the costs of any such replacements to the extent such replacements are caused by or necessitated due to the negligence or willful misconduct of, or excess use by, Tenant or its agents, contractors, employees, licensees and/or invitees. All such reimbursements hereunder by Tenant shall be made within thirty (30) days following Tenant's receipt of an invoice from Landlord therefor.";

6.8. Section 8 of the Lease shall be modified as follows: (i) the heading of Section 8 entitled **"UTILITIES"** shall be deleted and replaced with the heading entitled **"UTILITIES AND SERVICES"**; (ii) the first (1') paragraph of Section 8 shall be modified to be a new Section 8.1; (iii) the second (2"d) paragraph of Section 8 shall be modified to be a new Section 8.2; (iv) the text "all electricity, heat, telephone," in the first (151) sentence of such new Section 8.1 of the Lease shall be deleted and replaced with the text "all electricity consumed in the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be), all electricity incurred or accrued in providing HVAC to the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) from the applicable Building HVAC Unit, and all telephone service**"; and (v) the text "**(including the electricity used to provide HVAC)**" shall be added immediately following the text "**or failure of utility service**" in the fifth (51")** sentence of such new Section 8.1 of the Lease;

6.9. the following shall be added as a new Section 8.3 of the Lease:

"8.3 Janitorial Services. Landlord shall provide janitorial services five (5) days per week, except the date of observation of the Holidays, in and about the Premises (i.e., the Existing Premises and the Relocated Premises) and window washing services in a manner consistent with other Comparable Buildings (as defined in Section 8.1 of the First Amendment).";

6.10. the following shall be added as a new Section 8.4 of the Lease:

> "8.4 Overstandard Tenant Use. If Tenant shall use, or desire to use, electricity, water, HVAC or any other utilities for the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) in quantities that exceed the capacity of the equipment supplying the same to the applicable Building or that are in excess of the quantities normally required for ordinary office use for premises in the Comparable Buildings, then, (i) subject to applicable law, and subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall, at Tenant's sole cost and expense, install such supplemental equipment as may be reasonably required to provide such excess capacity, and (ii) Tenant shall pay for the cost of any increased wear and tear on existing utility systems and equipment caused by such excess use."; and

6.11. with respect to Tenant's existing maintenance and repair obligations set forth in the Lease, the following modifications shall be made: (i) the following shall be added following the phrase **"all parts of the Premises"** in the first sentence of Section 5.1 of the Lease "including any HVAC systems and equipment located in the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) which exclusively serve the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) (including any distribution equipment located within the Premises [i.e., the Existing Premises or the Relocated Premises, as the case may be] which provides for distribution of HVAC to the Premises [i.e., the Existing Premises or the Relocated Premises, as the case may be] from the applicable Building HVAC Unit, and any HVAC systems and equipment located in the Premises [i.e. the Existing Premises or the Relocated Premises, as the case may be] for the purpose of providing any supplemental HVAC exclusively to the Premises [i.e., the Existing Premises or the Relocated Premises, as the case may be] or to any server rooms located in the Premises [i.e., the Existing Premises or the Relocated Premises, as the case may be]), and all other systems and equipment located within the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be) that exclusively serve the Premises (i.e., the Existing Premises or the Relocated Premises, as the case may be)"; and (ii) the following shall each be deleted and of no further force or effect: (A) Section 5.3 of the Lease; (B) the text **"HVAC System,"** in clause (1) of Section 17.1.3 of the Lease; and (C) clause (2) of the second (2nd) sentence of Section 19.3 of the Lease.

7. **Prepaid Rent; Security Deposit**. Concurrently with Tenant's execution and delivery of this First Amendment, Tenant shall (i) pay to Landlord the amount of $100,000.00, which amount shall constitute prepaid Base Rent for the Relocated Premises (the **"Prepaid Rent"**) paid by Tenant pursuant to the Lease, as amended hereby, and (ii) deposit with Landlord the amount of $24,052.28, which amount Landlord shall add to the Security Deposit held by Landlord under the Lease, as amended hereby, such that after Tenant's deposit of such $24,052.28 amount, the Security Deposit shall be increased from the amount of the existing Security Deposit (Le., $5,002.00 as set forth in the Basic Lease Information under the Lease) to $29,054.28. Provided that Tenant is not in default under the Lease, as amended hereby, Landlord shall apply the Prepaid Rent as a credit against the installment(s) of Base Rent next due and payable by Tenant under the Lease, as amended hereby, after taking into account the Relocated

Premises Abated Rent as set forth in Section 3.2 above and the Base Rent Credit (if any) as set forth in the Tenant Work Letter, until such Prepaid Rent is exhausted.

8. **Extension Option**. Section 2 of the Rider to Lease attached to the Lease is hereby deleted in its entirety, and in lieu thereof, Landlord hereby grants Tenant one (I) option (the **"Extension Option"**) to extend the Relocation Term for all, but not less than all, of the Relocated Premises (sometimes referred to herein as the **"Renewal Premises"**) for a period of five (5) years (the **"Option Term"**), which Extension Option shall be exercisable only by written Exercise Notice (as defined below) delivered by Tenant to Landlord as provided below. Upon the proper exercise of the Extension Option, the Relocation Term shall be extended for the Option Tenn.

8.1. **Option Rent**. The annual Base Rent payable by Tenant during the Option Term (the **"Option Rent"**) shall be equal to the Fair Market Rental Rate for the Renewal Premises. As used herein, the **"Fair Market Rental Rate"** for purposes of determining the Option Rent for the Renewal Premises during the Option Term shall mean the annual base rent at which non-renewal, non-equity tenants, as of the commencement of the Option Term will be leasing non-sublease, non-equity, unencumbered space comparable in size, location and quality to the Renewal Premises for a comparable term as the Option Term, which comparable space is located in the Project and in other comparable office buildings located in the Northwest Submarket of Austin, Texas (collectively, the **"Comparable Buildings"**), taking into consideration all free rent and other out-of-pocket concessions generally being granted at such time for such comparable space for the Option Term, including, without limitation, any tenant improvement allowance provided for such comparable space, with the amount of such tenant improvement allowance to be provided for the Renewal Premises for the Option Term to be determined after taking into account the age, quality and layout of the tenant improvements in the Renewal Premises as of the commencement of the Option Term.

8.2. **Exercise of Option**. The Extension Option shall be exercised by Tenant, if at all, only in the following manner: (i) Tenant shall deliver written notice (the **"Interest Notice"**) to Landlord not more than twelve (12) months nor less than eleven (1 1) months prior to the expiration of the Relocation Term stating that Tenant may be interested in exercising the Extension Option; (ii) Landlord, after receipt of Tenant's Interest Notice, shall deliver written notice (the **"Option Rent Notice"**) to Tenant not less than ten (10) months prior to the expiration of the Relocation Term setting forth the Option Rent; and (iii) if Tenant wishes to exercise the Extension Option, Tenant shall, on or before the date (the **"Exercise Date"**) which is nine (9) months prior to the expiration of the Relocation Term, exercise the Extension Option by delivering written notice (**"Exercise Notice"**) thereof to Landlord. Concurrently with Tenant's delivery of the Exercise Notice, Tenant may object, in writing, to Landlord's determination of the Fair Market Rental Rate set forth in the Option Rent Notice, in which event such Fair Market Rental Rate shall be determined pursuant to Section 8.3 below. If Tenant timely delivers the Exercise Notice but fails to timely object in writing to Landlord's determination of the Fair Market Rental Rate set forth in the Option Rent Notice, then Tenant shall be deemed to have accepted Landlord's determination thereof and the following provisions of Section 8.3 shall not apply. Tenant's failure to deliver the Interest Notice or the Exercise Notice on or before the delivery dates therefor shall be deemed to constitute Tenant's waiver of its Extension Option.

8.3. **Determination of Option Rent**. If Tenant timely and appropriately objects in writing pursuant to Section 8.2 above with respect to the Fair Market Rental Rate for the Renewal Premises for the Option Term initially determined by Landlord in Landlord's Option Rent Notice, then Landlord and Tenant shall attempt to agree upon the Fair Market Rental Rate, using their best good-faith efforts. If Landlord and Tenant fail to reach agreement by the date (the **"Outside Agreement Date"**) which is twenty (20) days following Tenant's delivery of the Exercise Notice, then each party shall submit to the other party a separate written determination of the Fair Market Rental Rate for the Option Term within ten (10) business days after the Outside Agreement Date, and such determinations shall be submitted to arbitration in accordance with the provisions of Sections 8.3.1 through 8.3.7 below. The failure of Tenant or Landlord to submit a written determination of the Fair Market Rental Rate for the Option Term within such ten (10) business day period shall conclusively be deemed to be such party's approval of the Fair Market Rental Rate for the Option Tenn submitted within such ten (10) business day period by the other party.

8.3.1. Landlord and Tenant shall each appoint one (1) arbitrator who shall by profession be a real estate leasing broker who shall (i) have been active over the ten (10) year period ending on the date of such appointment in the leasing of the Building and the Comparable Buildings, (ii) have no financial interest in Landlord or Tenant, and (iii) not have represented or been employed or engaged by the appointing party during such 10-year period. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Option Term is the closer to the actual Fair Market Rental Rate for the Option Term as determined by the arbitrators, taking into account the requirements with respect thereto set forth in Section 8.1 above. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date.

8.3.2. The two (2) arbitrators so appointed shall, within fifteen (15) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators.

8.3.3. The three (3) arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to which of Landlord's or Tenant's submitted Fair Market Rental Rate for the Option Term is closer to the actual Fair Market Rental Rate for the Option Term and shall select such closer determination as the Fair Market Rental Rate for the Option Term and notify Landlord and Tenant thereof.

8.3.4. The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant.

8.3.5. If either Landlord or Tenant fails to appoint an arbitrator within the time period specified in Section 8.3.1 hereinabove, the arbitrator appointed by one of them shall reach the decision described in Section 8.3.3 above, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

8.3.6. If the two (2) arbitrators fail to agree upon and appoint a third arbitrator, a third arbitrator shall be appointed by the Superior Court in and for the county in which the Building is located.

8.3.7. Each party shall pay the fees and expenses of the arbitrator appointed by or on behalf of it, and each shall pay one-half of the fees and expenses of the third arbitrator, if any.

8.4. **Default: Personal**. Notwithstanding anything in the foregoing to the contrary, at Landlord's option, and in addition to all of Landlord's remedies under the Lease, as amended hereby, at law or in equity, the Extension Option shall not be deemed properly exercised it as of the date Tenant delivers the Exercise Notice: (i) Tenant has previously been in default under the Lease, as amended hereby, beyond all applicable notice and cure periods; and/or (ii) Landlord does not approve of Tenant's then-existing financial condition and/or Landlord's lender does not approve of the terms for the Option Term (including, without limitation, the Option Rent). In addition, the Extension Option is personal to the original Tenant executing this First Amendment (the **"Original Tenant"**), and may not be assigned or exercised, voluntarily or involuntarily, by or to, any person or entity other than the Original Tenant, and shall only be available to and exercisable by the Original Tenant when the Original Tenant is in actual and physical possession of the entire Renewal Premises.

9. **Parking**. From and after the Relocation Date, notwithstanding anything to the contrary set forth in Section 13.4 of the Lease, Tenant shall be entitled to a total of thirty-eight (38) unreserved parking spaces (the **"Parking Spaces"**) in the Parking Areas, the use of which Parking Spaces by Tenant shall be free of any parking charges and otherwise governed in accordance with the terms of the Lease, as amended hereby.

10. **Miscellaneous Modifications**. Effective from and after he Effective Date, the Lease shall be modified as follows:

10.1. the following shall be added after the first (1st) sentence of Section 2.3.1.1 of the Lease: "Without limiting the generality of the immediately preceding sentence. Tenant acknowledges that **LANDLORD MAKES NO REPRESENTATION OR WARRANTY REGARDING SECURITY SERVICES**.";

10.2. the following shall be added as new Section 3.3 of the Lease:

> "3.3 Section 93.012 of the Texas Property Code. Landlord and Tenant agree that each provision of this Lease for determining charges and amounts payable by Tenant (including, but not limited to, provisions regarding calculating and charging Operating Expenses and Taxes and Tenant's Proportionate Share of Operating Expenses and Taxes) is commercially reasonable and, as to each such charge or amount, constitutes a statement of the amount of the charge or a method by which the charge is to be computed for purposes of Section 93.012 of the Texas Property Code. **TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT**

**PERMITTED BY APPLICABLE LAW) ALL RIGHTS AND BENEFITS OF TENANT UNDER TEXAS PROPERTY CODE SECTION 93.012, AS IT NOW EXISTS OR AS IT MAY BE AMENDED OR SUCCEEDED IN THE FUTURE**.",

10.3. the following shall be added at the end of the fifth (5111) sentence of Section 4.1 of the Lease: "and not insured or required to be insured by Tenant under this Lease";

10.4. the following shall be added to the end of Section 6.3 of the Lease: "In addition, upon completion of any Alteration, Tenant shall cause an Affidavit of Completion to be recorded in the office of the county clerk of the county in which the Land is located in accordance with Section 53.106 of the Texas Property Code or any successor statute and otherwise comply with the requirements of such Section 53.106.";

10.5. both occurrences of the text "One Million Dollars ($1,000,000)" in Section 9.1 of the Lease shall be deleted and replaced with the text: "Two Million Dollars ($2,000,000)";

10.6. the following shall be added before the word **"all"** in Section 9.2 of the Lease: "(i) all improvements, Alterations and additions to the Premises, including any improvements, Alterations or additions installed at Tenant's request above the ceiling of the Premises or below the floor of the Premises, and (ii)";

10.7. the following shall be added to the end of the first (1'1) sentence of Section 11.2 of the Lease: "; provided, however, upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 9.2(i) above (as added by Section 10.6 of the First Amendment), and Landlord shall repair any damage to such tenant improvements and alterations installed in the Premises and shall return such tenant improvements and alterations to their original condition; provided that if the costs of such repair of such tenant improvements and alterations by Landlord exceeds the amount of insurance proceeds received by Landlord therefor from Tenant's insurance carrier, as assigned by Tenant, the excess costs of such repairs shall be paid by Tenant to Landlord prior to Landlord's repair of the damage.";

10.8. with respect to Section 12 of the Lease: (i) the following shall be added to the end of Sections 12.1 and 12.2, and clause (2) of Section 12.3 of the Lease: "AND NOT INSURED OR REQUIRED TO BE INSURED BY TENANT UNDER THIS LEASE"; and (ii) clause (I) of Section 12.3 thereof shall be deleted and of no further force or effect;

10.9. the text in the second (2") sentence of the second paragraph of Section 13.3 of the Lease following the semicolon therein shall be deleted and replaced with the following: "(i) Landlord shall be responsible for ADA compliance with respect to the base, shell and core components of the applicable Building (i.e., Building 1 from and after the Effective Date or Building 3 from and after the Relocation Date, as the case may be) and the common areas of the applicable Building (i.e., Building I from and after the Effective Date or Building 3 from and after the Relocation Date, as the case may be) and Project unless the need for such compliance results from any improvements or Alterations made to the Premises (i.e. the Existing

Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be) by or on behalf of Tenant, the installation of Tenant's fixtures, furniture and/or equipment in the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be) and/or Tenant's particular manner of use of the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be); (ii) Tenant shall be responsible for ADA compliance within the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be) required with respect thereto; and (iii) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of ADA "path of travel" requirements triggered by (A) the construction of any Alterations or improvements (including the Tenant Improvements) within the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be), (B) the installation of Tenant's fixtures, furniture and/or equipment in the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be) and/or (C) Tenant's particular manner of use of the Premises (i.e., the Existing Premises from and after the Effective Date or the Relocated Premises from and after the Relocation Date, as the case may be).";

10.10. the following shall be added after "Permitted Transferees" in the first (1st) sentence of the last paragraph of Section 15 of the Lease: ", so long as such transfer is not a subterfuge by Tenant to avoid its obligations under this Lease";

10.11. the text "immediately prior to such transfer" in the last sentence of Section 15 of the Lease shall be deleted and replaced with the text "as of the date of execution of the First Amendment";

10.12. the following shall be added after the end of the last sentence of Section 15 of the Lease: "Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder.";

10.13. the following shall be added after the end of the second (2nd) sentence of Section 20.1.2 of the Lease: "In the event, and only in the event, that state law requires Landlord to attempt to mitigate damages, Landlord and Tenant agree that any such duty to attempt to mitigate shall be satisfied and Landlord shall be conclusively deemed to have used commercially reasonable efforts to re-let the Premises by doing the following: (i) posting a "For Lease- sign on the Premises, (ii) advising Landlord's leasing staff of the availability of the Premises and (iii) advising at least one commercial brokerage entity familiar with the market in which the Project is located of the availability of the Premises. Furthermore, if either (A) Landlord decides to re-let the Premises or (B) a duty to re-let is imposed upon Landlord by law, then Landlord shall be required to use only the same efforts Landlord then uses to lease premises in the Project generally. Landlord shall not in any event be required to give any preference or priority to the leasing of the Premises over any other space that Landlord may have available in the Project. Landlord shall not be required to: (I) take any instruction or advice given by Tenant regarding re-letting of the Premises, (2) accept any proposed tenant unless such tenant has a credit worthiness

acceptable to Landlord in its sole discretion, (3) accept any proposed tenant unless the proposed use of the Premises by such tenant is acceptable to Landlord in its sole discretion, (4) accept any proposed tenant unless such tenant leases the entire Premises upon terms and conditions satisfactory to Landlord in its sole discretion (after giving consideration to all expenditures by Landlord for tenant improvements, broker's commissions and other leasing costs), or (5) consent to any assignment or sublease for a period which extends beyond the expiration of the current term or which Landlord would not otherwise be required to consent under this Lease.";

10.14. the following shall be added after the phrase "DEFAULT BY LANDLORD" in the first (1st) sentence of Section 21.2 of the Lease: " **REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM THE NEGLIGENCE OR FAULT OF LANDLORD OR ANY PARTY FOR WHOSE ACTIONS LANDLORD IS LEGALLY LIABLE OR FOR WHOSE ACTIONS LANDLORD HAS ASSUMED LIABILITY UNDER THIS LEASE (IF ANY)**,";

10.15. the following shall be added to the end of Section 23.1 of the Lease: "NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES. TENANT WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY TENANT PROVIDING LABOR, SERVICES OR MATERIAL TO THE PREMISES.";

10.16. the following shall be added after the phrase "Tenant's failure" in the last sentence of Section 24.5 of the Lease: ", **WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE OR FAULT**,";

10.17. the following shall be added to the end of Section 24.11 of the Lease: **", WHETHER OR NOT DUE TO THE INDEMNIFYING PARTY'S OWN NEGLIGENCE OR FAULT."**;

10.18. Section 3 of the Rider to Lease attached to the Lease is hereby deleted in its entirety and of no further force and effect; and

10.19. Section 7 of Exhibit D attached to the Lease is hereby deleted in its entirety and of no further force and effect.

11. **Addresses of Landlord**. Landlord's addresses for notices, as originally set forth in the Basic Lease Information under the Lease, is hereby changed to:

c/o SteelWave, Inc.
4000 East Third Avenue, Suite 600
Foster City, California 94404-4805
Attention: Debra Smith

with a copy to:

c/o SteelWave, Inc.
1660 Wynkoop Street, Suite 1120
Denver, Colorado 80202
Attention: Peter J. Llorente

In addition, Landlord's address for payment of Rent, as originally set forth in the Basic Lease Infon-nation under the Lease, is hereby changed to:

If sent by US Mail:

Legacy Stonelake JV-T, LLC
PO Box 31001-2196
Pasadena, CA 91110-2196

If sent by overnight courier:

Legacy Stonelake JV-T, LLC
Lockbox # 912196 – Pasadena Tech Center
465 N Halstead St, Ste 160
Pasadena, CA 91107

12. **Brokers**. Landlord and Tenant each hereby represents and warrants to the other party that it has had no dealings with any real estate broker or agent in connection with the negotiation of this First Amendment other than CBRE, Inc., representing Landlord, and HPI Corporate Services, LLC, representing Tenant (collectively, the **"Brokers"**), and that it knows of no real estate broker or agent (other than the Brokers) who is entitled to a commission in connection with this First Amendment. Landlord shall pay the brokerage commissions owing to the Brokers in connection with this First Amendment pursuant to the terms of a separate written agreement between Landlord and the Brokers. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any breach of the foregoing representation and warranty by the indemnifying party in connection with this First Amendment.

13. **No Further Modification**. Except as set forth in this First Amendment, all of the term-is and provisions of the Lease shall remain unmodified and in full force and effect.

14. **Counterparts**. This First Amendment may be executed in multiple counterparts, each of which is to be deemed original for all purposes, but all of which together shall constitute one and the same instrument.

[**SIGNATURES ON FOLLOWING PAGE**]

**IN WITNESS WHEREOF**, the parties have caused this First Amendment to be duly executed by their duly authorized representatives as of the date first above written.

LANDLORD:

LEGACY STONELAKE JV-T, LLC, a Delaware limited liability company

Owner

By: STEELWAVE, L.P.,
a California limited partnership,
as Property Manager and Agent for Owner

By: STEELWAVE, INC.,
General Partner

By: /s/ Hanna Eyal
Name: Hanna Eyal
Its: Exec. Vice President

TENANT:

EVERSPIN TECHNOLOGIES, INC.,
A Delaware corporation

By: /s/ Jeff Winzeler
Name: Jeff Winzeler
Title: CFO

By: _____
Name: _____
Title: _____

**EXHIBIT A**

**DEPICTION OF RELOCATED PREMISES**

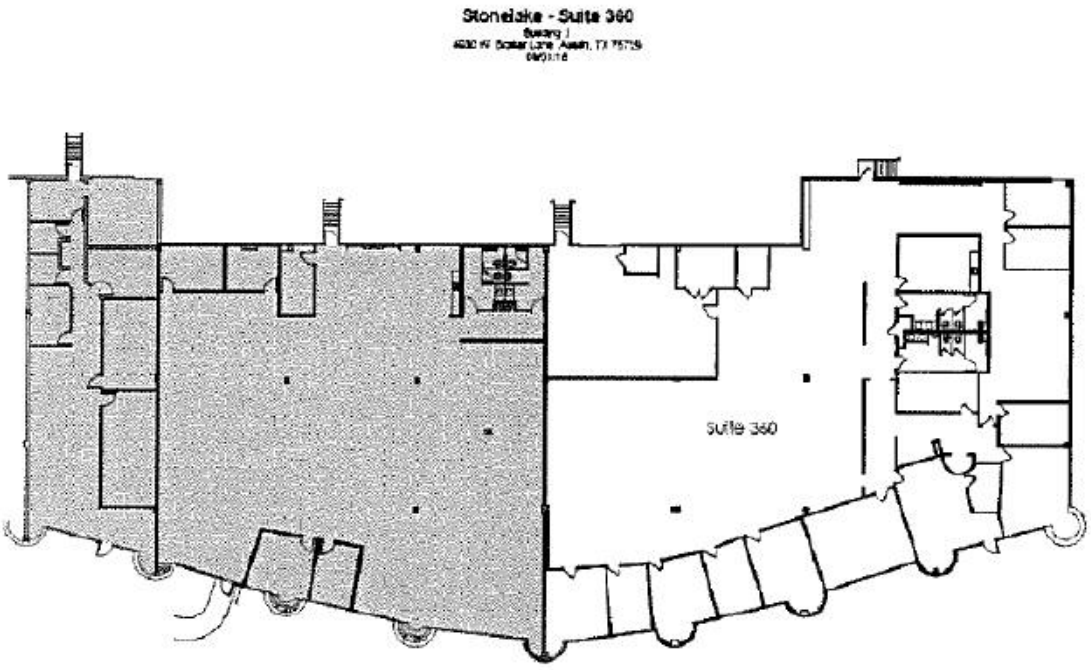


**EXHIBIT B**

**TENANT WORK LETTER**

Landlord shall construct certain modifications to the interior of the Relocated Premises pursuant to the Approved Working Drawings in accordance with the following provisions of this Tenant Work Letter.

**SECTION 1**

**CONSTRUCTION DRAWINGS FOR THE RELOCATED PREMISES**

Prior to the execution of the First Amendment, Landlord and Tenant have approved a detailed space plan for the construction of certain improvements in the Relocated Premises, a copy of which space plan is attached hereto as Schedule I (the **"Final Space Plan"**). Based upon and in conformity with the Final Space Plan, Landlord shall cause its architect and engineers to prepare and deliver to Tenant, for Tenant's approval, detailed specifications and engineered working drawings for the tenant improvements shown on the Final Space Plan (the **"Working Drawings"**). The Working Drawings shall incorporate modifications to the Final Space Plan as necessary to comply with the floor load and other structural and system requirements of Building 3. To the extent that the finishes and specifications are not completely set forth in the Final Space Plan for any portion of the tenant improvements depicted thereon, the actual specifications and finish work shall be in accordance with the specifications for Building 3's standard improvement package items, as determined by Landlord. Within three (3) business days after Tenant's receipt of the Working Drawings, Tenant shall approve or disapprove the same, which approval shall not be unreasonably withheld; provided, however, that Tenant may only disapprove the Working Drawings to the extent the Working Drawings are inconsistent with the Final Space Plan and only if Tenant delivers to Landlord, within such three (3) business day period, specific changes proposed by Tenant which are consistent with the Final Space Plan and do not constitute changes which would result in any of the circumstances described in items (i) through (iv) hereinbelow. If any such revisions are timely and properly proposed by Tenant, Landlord shall cause its architect and engineers to revise the Working Drawings to incorporate such revisions and submit the same for Tenant's approval in accordance with the foregoing provisions, and the parties shall follow the foregoing procedures for approving the Working Drawings until the same are finally approved by Landlord and Tenant. Upon Landlord's and Tenant's approval of the Working Drawings, the same shall be known as the **"Approved Working Drawings."** The tenant improvements shown on the Approved Working Drawings shall be referred to herein as the **"Tenant Improvements."** Once the Approved Working Drawings have been approved by Landlord and Tenant, Tenant shall make no changes, change orders or modifications thereto without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion if such change or modification would: (i) delay the Substantial Completion of the Relocated Premises (as defined below); (ii) increase the costs of the design, pen-nitting or construction of the Tenant Improvements above the costs of the design, permitting and construction of the tenant improvements depicted in the Final Space Plan; (iii) be of a quality lower than the quality of the standard improvement package items for Building 3; and/or (iv) require any changes to the base, shell, and core work or structural improvements or systems of Building 3. The Final Space Plan, Working Drawings and Approved Working Drawings shall be

collectively referred to herein as, the **"Construction Drawings."**

**SECTION 2**

**CONSTRUCTION AND COSTS OF THE TENANT IMPROVEMENTS IN THE RELOCATED PREMISES**

Landlord shall cause a general contractor designated by Landlord (the **"Contractor"**) to (i) obtain all applicable building permits for construction of the Tenant Improvements (collectively, the **"Permits"**), and (ii) construct the Tenant Improvements as depicted on the Approved Working Drawings, in compliance with such Permits and all applicable laws in effect at the time of construction, and in good workmanlike manner. Landlord may elect, at its option, to retain Steel Wave CDS, Inc. as the Contractor. SteelWave CDS, Inc. is affiliated with Landlord. Landlord shall pay for the costs of the design, permitting and construction of the Tenant Improvements in an amount up to, but not exceeding, $ 110,840.00 (i.e., $10.00 per rentable square foot of the Relocated Premises) (the **"Allowance"**). The cost of the design, permitting and construction of the Tenant Improvements shall include Landlord's construction supervision and management fee in an amount equal to the product of (i) four percent (4%) and (ii) the amount equal to the sum of the Allowance and the Over-Allowance Amount (as such term is defined below.) Notwithstanding the foregoing, no such construction supervision and management fee shall be charged by the Landlord if and to the extent Steel Wave CDS, Inc. is retained as the Contractor hereunder. Tenant shall pay for all costs of the design, permitting and construction of the Tenant Improvements in excess of the Allowance (**"Over-Allowance Amount"**), which payment shall be made to Landlord in cash within ten (10) business days after Tenant's receipt of invoice therefor from Landlord and, in any event, prior to the date Landlord causes the Contractor to commence the actions described in the first sentence of this Section 2. If after Tenant pays the Over-Allowance Amount Tenant requests any changes, change orders or modifications to the Approved Working Drawings (which Landlord approves pursuant to Section 1 above) which increase the costs of the design, permitting and construction of the Tenant Improvements, Tenant shall pay such increased cost to Landlord within five (5) business days after Landlord's request therefor, and, in any event, prior to the date Landlord causes the Contractor to commence construction of the changes, change orders or modifications. In no event shall Landlord be obligated to pay for, nor shall the Allowance be used to pay for, the costs of any of Tenant's furniture, computer systems, telephone systems, equipment or other personal property which may be depicted on the Construction Drawings; the costs of such items shall be paid for by Tenant from Tenant's own funds. Except as otherwise provided hereinbelow, Tenant shall not be entitled to receive in cash or as a credit against any rental or otherwise, any portion of the Allowance not used to pay for the costs of the design, permitting and construction of the Tenant Improvements). Notwithstanding the foregoing to the contrary, provided that: (A) the Relocation Date has occurred; (B) Landlord has completed the Tenant Improvements; and (C) the costs of the design, permitting and construction of the Tenant Improvements are less than the Allowance and Landlord has paid all such costs in full, then, Tenant shall be entitled, by delivery of written notice (the **"Base Rent Credit Notice"**) to Landlord on or before the date that is ninety (90) days after the Relocation Date, to receive an amount of up to Fifty-Five Thousand Four Hundred Twenty and No/l00 Dollars ($55,420.00) of the then unused balance of the Allowance as a credit against the Base Rent in accordance with this Section 2. The Base Rent Credit Notice shall expressly state the exact amounts of such then unused portion of the

Allowance which Tenant elects to receive as a credit against Base Rent due and payable by Tenant under the Lease, as amended by the First Amendment (the **"Base Rent Credit Amount"**). If Tenant properly and timely delivers the Base Rent Credit Notice to Landlord, Landlord shall apply the Base Rent Credit Amount against the installment(s) of Base Rent next due and payable under the Lease, as amended by the First Amendment, after taking account of the Relocated Premises Abated Rent (as defined and set forth in Section 3.2 of the First Amendment) until such Base Rent Credit Amount is exhausted.

**SECTION 3**

**READY FOR OCCUPANCY; SUBSTANTIAL COMPLETION OF THE RELOCATED PREMISES**

3.1 Ready for Occupancy: Substantial Completion of the Relocated Premises. For purposes of the Lease (as amended by the First Amendment): (i) the Relocated Premises shall be **"Ready for Occupancy"** upon Substantial Completion of the Relocated Premises; and (ii) **"Substantial Completion of the Relocated Premises"** shall occur upon the completion of construction of the Tenant Improvements in the Relocated Premises pursuant to the Approved Working Drawings, with the exception of any punch list items and any tenant fixtures, work-stations, built-in furniture, or equipment to be installed by Tenant or under the supervision of the Contractor.

3.2 Delay of the Substantial Completion of the Relocated Premises. If there shall be a delay or there are delays in the Substantial Completion of the Relocated Premises as a result of any of the following (collectively, **"Tenant Delays"**):

3.2.1 Tenant's failure to timely approve the Working Drawings or any other matter requiring Tenant's approval;

3.2.2 a breach by Tenant of the terms of this Tenant Work Letter or the Lease, as amended by the First Amendment (including, without limitation, any anticipatory breach by Tenant described in Section 4.5 below);

3.2.3 Tenant's request for changes in any of the Construction Drawings;

3.2.4 Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the estimated date of Substantial Completion of the Relocated Premises, as set forth in the First Amendment, or which are different from, or not included in, Landlord's standard improvement package items for Building 3;

3.2.5 changes to the base, shell, and core work, structural components or structural components or systems of Building 3 required by the Approved Working Drawings;

3.2.6 any changes in the Construction Drawings and/or the Tenant Improvements required by applicable laws if such changes are directly attributable to Tenant's use of the Relocated Premises or Tenant's specialized tenant improvement(s) (as determined by Landlord); or

3.2.7 any other acts or omissions of Tenant, or its agents, or employees; then, Tenant shall pay to Landlord, as Additional Rent under the Lease, as amended by the First Amendment, a per diem Base Rent equal to the product of $554.20 multiplied by the number of days of such Tenant Delays. Tenant shall deliver such payment to Landlord within thirty (30) days after Tenant's receipt of such statement from Landlord specifying such Tenant Delays.

**SECTION 4**

**MISCELLANEOUS**

4.1 Tenant's Right to Access Relocated Premises. Subject to the terms hereof and provided that Tenant and its agents do not interfere with Landlord's and the Contractor's work in Building 3 and the Relocated Premises, at Landlord's reasonable discretion, Landlord shall allow Tenant access to the Relocated Premises ten (10) days prior to the Substantial Completion of the Relocated Premises for the purpose of Tenant installing Tenant's equipment and/or fixtures (including Tenant's data and telephone equipment) in the Relocated Premises. Prior to Tenant's entry into the Relocated Premises as permitted by the terms of this Section 4.1, Tenant shall submit a schedule to Landlord and the Contractor, for their approval, which schedule shall detail the timing and purpose of Tenant's entry. In connection with any such entry, Tenant acknowledges and agrees that Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees shall fully cooperate, work in hannony and not, in any manner, interfere with Landlord or Landlord's contractors (including the Contractor), agents or representatives in performing work in Building 3 and the Relocated Premises, or interfere with the general operation of Building 3 and/or the Project. If at any time any such person representing Tenant shall not be cooperative or shall otherwise cause or threaten to cause any such disharmony or interference, including, without limitation, labor disharmony, and Tenant fails to immediately institute and maintain corrective actions as directed by Landlord, then Landlord may revoke Tenant's entry rights upon twenty-four (24) hours' prior written notice to Tenant. Tenant acknowledges and agrees that any such entry into and occupancy of the Relocated Premises or any portion thereof by Tenant or any person or entity working for or on behalf of Tenant shall be deemed to be subject to all of the terms, covenants, conditions and provisions of the Lease, excluding only the covenant to pay Rent with respect to the Relocated Premises (until the occurrence of the Relocation Date). Tenant further acknowledges and agrees that Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's work made in or about the Relocated Premises in connection with such entry or to any property placed therein prior to the Relocation Date, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to any portion of the Relocated Premises, including the Tenant Improvements, caused by Tenant or any of Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees. If the performance of Tenant's work in connection with such entry causes extra costs to be incurred by Landlord or requires the use of any Building 3 services, Tenant shall promptly reimburse Landlord for such extra costs and/or shall pay Landlord for such Building 3 services at Landlord's standard rates then in effect. In addition, Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Relocated Premises, Building 3 or the Project and against injury to any persons caused by Tenant's actions pursuant to this Section 4.1.

4.2 Tenant's Representative. Tenant has designated Jim Everett as its sole

representative with respect to the matters set forth in this Tenant Work Letter, who shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

4.3 Landlord's Representative. Landlord has designated Andrew Lodeesen as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

4.4 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a **"number of days"** shall mean and refer to calendar days. If any item requiring approval is timely disapproved by Landlord, the procedure for preparation of the document and approval thereof shall be repeated until the document is approved by Landlord.

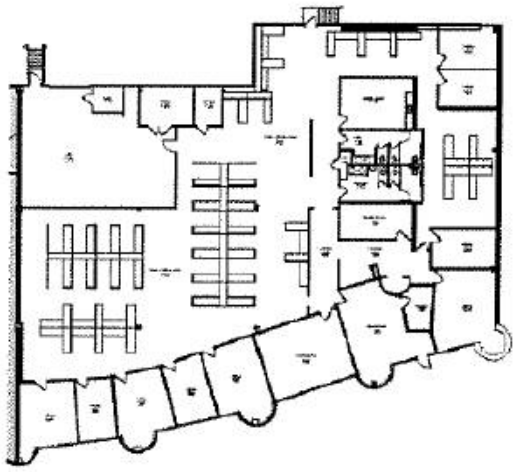
4.5 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease (as amended by the First Amendment), if an event of default by Tenant of this Tenant Work Letter (which, for purposes hereof, shall include, without limitation, the delivery by Tenant to Landlord of any oral or written notice instructing Landlord to cease the design and/or construction of the Tenant Improvements and/or that Tenant does not intend to occupy the Relocated Premises, and/or any other anticipatory breach of the Lease, as amended by the First Amendment) or the Lease (as amended by the First Amendment) has occurred at any time on or before the Substantial Completion of the Relocated Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease (as amended by the First Amendment), at law and/or in equity, Landlord shall have the right to cause the Contractor to cease the construction of the Tenant Improvements (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the Relocated Premises caused by such work stoppage as a Tenant Delay as set forth in Section 3.2 above), and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease, as amended by the First Amendment (in which case, Tenant shall be responsible for any delay in the Substantial Completion of the Relocated Premises caused by such inaction by Landlord as a Tenant Delay). In addition, if the Lease (as amended by the First Amendment) is terminated prior to the Relocation Date due to a default by Tenant as described in Section 19 of the Lease or under this Tenant Work Letter (including, without limitation, any anticipatory breach described above in this Section 4.5), then (A) Tenant shall be liable to Landlord for all damages available to Landlord pursuant to the Lease (as amended by the First Amendment) and otherwise available to Landlord at law and/or in equity by reason of a default by Tenant under the Lease (as amended by the First Amendment) or this Tenant Work Letter, and (B) Tenant shall pay to Landlord, as additional rent under the Lease (as amended by the First Amendment), within five (5) business days after Tenant's receipt of a statement therefor, any and all costs incurred by Landlord (including any portion of the Allowance disbursed by Landlord) and not reimbursed or otherwise paid by Tenant through the date of such termination in connection with the Tenant Improvements to the extent planned, installed and/or constructed as of such date of termination, including, but not limited to, any costs related to the removal of all or any portion of the Tenant Improvements and restoration costs related thereto. For purposes of calculating the damages available to Landlord under Section 20 of the Lease, the Relocation Date shall be deemed to be the date upon which the Relocation Date would have otherwise occurred but for such default by Tenant.

4.6 Independent Entities. The terms of this Tenant Work Letter shall not be deemed modified in any respect if Steel Wave CDS, Inc. is retained as the Contractor, it being understood and agreed that Landlord and the Contractor, regardless of the identity of the Contractor, shall at all times remain separate and independent entities and the knowledge and actions of one shall not be imputed to the other.

4.7 Space Plan Allowance. Landlord shall, within thirty (30) days after Landlord's receipt of an invoice and paid receipts therefor from Tenant, reimburse Tenant for all actual, out-of-pocket costs incurred and paid for by Tenant to Landlord's architect, Carson Design, for the preparation of a test fit or initial space plan for the Tenant Improvements, in an amount up to, but not exceeding, $1,108.40 (the **"Space Plan Allowance"**); provided, however, Landlord shall have no such obligation to disburse the Space Plan Allowance to Tenant unless Landlord receives such invoice and paid receipts on or prior to the date that is sixty (60) days after the Relocation Date.

**SCHEDULE 1**

**Final Space Plan**



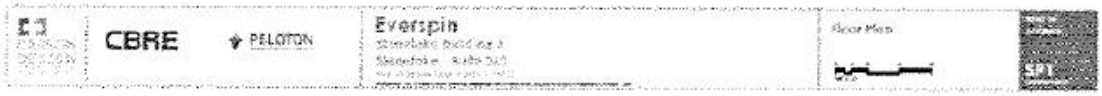


**EXHIBIT C**

**SECOND AMENDMENT TO COMMERCIAL INDUSTRIAL LEASE AGREEMENT**

**THIS SECOND AMENDMENT TO COMMERCIAL INDUSTRIAL LEASE AGREEMENT** (this **"Second Amendment"**) is made and entered into as of _____, 2016 (the **"Effective Date"**), by and between **LEGACY STONELAKE JV-T, LLC**, a Delaware limited liability company (**"Landlord"**), and **EVERSPIN TECHNOLOGIES, INC.**, a Delaware corporation (**"Tenant"**).

**RECITALS:**

A. Principal Life Insurance Company, an Iowa corporation (**"Principal"**) and Tenant entered into that certain Commercial Industrial Lease Agreement dated as of May 18, 2012 (the **"Original Lease"**), pursuant to which Principal leased to Tenant and Tenant leased from Principal that certain office space (the **"Original Premises"**) commonly known as Suite 100, containing approximately 5,002 rentable square feet located on the first (I51) floor of that certain building located at 4030 West Braker Lane, Building 1, Austin, Texas (the **"Building 1"**). Building 1 and Building 3 (as defined below) (each, a **"Building"**) are part of a multi-building project commonly known as **"Stonelake"** (the **"Project"**).

B. Landlord succeeded to the interests of Principal as landlord under the Original Lease.

C. Landlord and Tenant entered into that certain First Amendment to Commercial Industrial Lease Agreement dated as of August __, 2016 (the **"First Amendment"**) pursuant to which the parties, among other things, relocated the Original Premises to approximately 11,084 rentable square feet, commonly known as Suite 360 and located on the third (3rd) floor of that certain building located at 4030 \Vest Braker Lane, Building 3, Austin, Texas (the **"Building 3"**) (the **"Relocated Premises"**).

D. The Original Lease and the First Amendment are collectively referred to herein as the **"Lease."**

E. Except as otherwise set forth herein, all capitalized terms used in this Second Amendment shall have the same meaning as given such terms in the Lease.

F. Landlord and Tenant desire to amend the Lease to confirm the Relocation Date, as hereinafter provided.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Confirmation of Dates**. The parties hereby confirm that: (i) Landlord has delivered the Relocated Premises to Tenant Ready for Occupancy: and (ii) the Relocation Term commenced as of _____ (the **"Relocation Date"**) for a term of sixty-four (64) months expiring on _____ (the **"Relocation Term Expiration Date"**), unless sooner terminated as provided in the Lease.

2. No Further Modification. Except as set forth in this Second Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

**IN WITNESS WHEREOF**, this Second Amendment has been executed as of the day and year first written.

LANDLORD:

LEGACY STONELAKE JV-T, LLC, a Delaware limited liability company

Owner

By: STEELWAVE, L.P.,
a California limited partnership,
as Property Manager and Agent for Owner

By: STEELWAVE, INC.,
General Partner

By: _____
Name: Hanna Eyal
Its: Exec. Vice President

TENANT:

EVERSPIN TECHNOLOGIES, INC.,
A Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**Exhibit 23.1**

**Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm**

We consent to the reference to our firm under the caption “Experts” and the use of our report dated May 13, 2016 in the Registration Statement (Form S-1) and related Prospectus of Everspin Technologies, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Phoenix, Arizona
September 9, 2016

Cooley

Matthew B. Hemington
+1 650 843 5062
hemingtonmb@cooley.com

September 9, 2016

United States Securities and Exchange Commission
Division of Corporate Finance
100 F Street, N.E.
Washington, D.C. 20549

Attn: Amanda Ravitz

**Re: Everspin Technologies, Inc.**
**Amendment No. 2 to**
**Draft Registration Statement on Form S-1**
**Submitted on August 16, 2016**
**CIK No. 0001438423**

Dear Ms. Ravitz:

Attached for submission via EDGAR on behalf of our client, Everspin Technologies, Inc. (the ***"Company"***), is the Company's Registration Statement on Form S-1 (***"Registration Statement"***). The Registration Statement updates the Company's registration statement on Form S-1 recently submitted confidentially to the Securities and Exchange Commission (the ***"Commission"***) on August 16, 2016 (the ***"Confidential Submission"***).

The Registration Statement is being submitted in response to comments received from the staff of the Commission (the ***"Staff"***) by letter dated August 31, 2016, with respect to the Confidential Submission (the ***"Comment Letter"***). The numbering of the paragraphs below corresponds to the numbering in the Comment Letter, the text of which we have incorporated into this response letter for your convenience. Except where otherwise indicated, page references in the text of the responses below correspond to the page numbers of the Confidential Submission.

Risk Factors, page 10

Our joint development agreement and strategic relationships involve numerous risks, page 13

1. *Please expand your disclosure here to discuss the risks associated with GLOBALFOUNDERIES' right to terminate the joint development agreement pursuant to the terms of the May 27, 2016 amendment, as disclosed on page 72.*

   **Response:** In response to the Staff's comment, the Company has added the requested disclosure to the risk factor on page 13 and on page 74 of the Registration Statement.

Management's Discussion and Analysis

Comparison of six months ended June 30, 2015 and 2016, page 48

2. *It appears that several unusual events contributed to your results for this period, including a single customer decreasing inventory, as well as an increase by you of inventory, possibly in anticipation of receiving orders or based upon existing orders. Please explain these factors more clearly so that an investor can understand your current business and possible factors that may cause present results to differ from future results. For example, if possible, describe the drivers that lead your customer to decrease inventory and whether this customer intends to continue purchases in the future. Also, was your "effort to timely fill product orders" driven by actual order volume or forecasted volume?*

   **Response:** The Company respectfully acknowledges the Staff's comment and has revised the disclosures beginning on page 48 of the Registration Statement to clarify that the factor that drove the Company's customer to decrease its inventory was that the customer wanted to decrease the amount of inventory it had on hand. In addition, the Company has clarified that the customer reverted to its customary order level during the latter part of the second quarter of 2016, and supplementally advises the staff that the customer has informed the Company that it has reached its desired level of inventory to be kept on hand. The Company supplementally advises the Staff that any reference to inventory levels in these paragraphs is in relation to the Company's customer's desired levels of inventory to be kept on hand, not the Company's inventory levels.

   The Company's inventory balance was $4.2 million at December 31, 2015, $4.1 million at March 31, 2016, and $3.8 million at June 30, 2016; thus the Company has not increased its inventory levels in anticipation of receiving orders. The Company has revised the language in the first paragraph under "Cost of Sales and Gross Margin" to clarify that the reference of "*effort to timely fill product orders*" pertains to the Company's efforts to timely fill actual orders, not a forecasted volume.

3. *Please provide additional details about the reasons why you redeployed general and administrative personnel to research and development.*

   **Response:** In response to the Staff's comment, the Company has added the requested disclosure on pages 49 and 50 of the Registration Statement.

Business, page 62

Limitations of Existing and Emerging Memory Solutions, page 63

4. *Please expand your response to prior comment 3 to clarify why the emerging technologies noted here would not compete with your higher density products, which you indicate on page 62 are "optimized" for use in the enterprise storage market. Please also clarify whether you consider the enterprise storage market to be a target market, and, if not, please revise your disclosures that suggest otherwise.*

   **Response:** In response to the Staff's comment, the Company has expanded the requested disclosure on page 65 of the Registration Statement regarding competing emerging technologies.

Exhibits

5. *Please tell us which of the exhibit to this registration statement is the Equity Agreement referenced on the first page of exhibit 10.18. If you have not filed this Agreement, please do so or advise us as to why it need not be filed pursuant to Item 601(b)(4) or (10) of Regulation S-K.*

**Response:** In response to the Staff's comment, the Company has filed the Equity Agreement, including the exhibits thereto, as Exhibit 10.21 with the Registration Statement.

Cooley

Matthew B. Hemington
+1 650 843 5062
hemingtonmb@cooley.com

The Company requests the Staff's assistance in completing the review of the Registration Statement as soon as possible. Please advise us if we can provide any further information or assistance to facilitate your review. Please direct any further comments or questions regarding the Registration Statement or this response letter to me at (650) 843-5062.

Sincerely,

/s/ Matthew B. Hemington

Matthew B. Hemington

cc: Phillip LoPresti, Everspin Technologies, Inc.