

**AGREEMENT FOR ESTABLISHMENT OF
HIGH PERFORMANCE ANALOG SEMICONDUCTOR TECHNOLOGY RESEARCH,
DEVELOPMENT, INNOVATION AND COMMERCIALIZATION ALLIANCE**

This AGREEMENT FOR ESTABLISHMENT OF HIGH PERFORMANCE ANALOG SEMICONDUCTOR TECHNOLOGY RESEARCH, DEVELOPMENT, INNOVATION, AND COMMERCIALIZATION ALLIANCE ("Agreement") is effective as of July 27th, 2015 ("Effective Date") and is between FORT SCHUYLER MANAGEMENT CORPORATION ("FSMC"), a not-for-profit corporation existing under the laws of the State of New York having an office located at 257 Fuller Road, Albany, New York 12203, ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION ("EDGE"), a New York not-for-profit corporation having its principal offices at 584 Phoenix Drive, Rome, New York 13441, and ams AG ("AMS"), a corporation duly organized under the laws of Austria with its principal office located at Tobelbader Strasse 30, 8141 Unterpremstaetten, Austria. FSMC, EDGE and AMS are sometimes each referred to in this Agreement individually as a "Party" and collectively as "Parties."

I. BACKGROUND

- 1.1. New York State ("NYS") under the leadership of Governor Andrew Cuomo has led the U.S. in multi-billion dollar strategic investments in high technology programs that cover the entire spectrum of nanoelectronics, clean energy, information technology, medical, and smart cities industry needs, from long-term innovative research and development, to workforce development and education, to product demonstration and test-bedding, to product prototyping and supporting the transition to scale-up manufacturing and commercialization.
- 1.2. NYS' comprehensive job creation and economic growth agenda for NYS provides strategic investments for job creation and workforce development in emerging high-tech industries across NYS and fosters critical partnerships between NYS government, the private sector and NYS' top-flight universities and research institutions. This agenda is embodied in the commitment of NYS to, and the growth of, the State University of New York Polytechnic Institute ("SUNY POLY") and facilities throughout NYS that support SUNY POLY's collaborations with SUNY POLY's public and private university and industry partners, including the Albany Nanotech Complex in Albany, the Smart Systems Technology Commercialization Center in Canandaigua, the Computer Chip Commercialization Center and Marcy Nanocenter in Utica, the Buffalo Medical Innovation and Commercialization Hub, and the Buffalo High-Tech Manufacturing Innovation Hub at Riverbend.
- 1.3. AMS is a multinational company employing around 1,700 people in over 20 countries, and is a leading provider of high performance sensors and analog integrated circuits. AMS develops and manufactures high performance analog semiconductors that solve its customers' most challenging problems with innovative solutions. ams AG products are aimed at applications which require extreme precision, accuracy, dynamic range, sensitivity, and ultra-low power consumption. AMS' product range includes sensors, sensor interfaces, power management integrated circuits, and wireless integrated circuits for customers in the consumer, industrial, medical, mobile communications and automotive markets.
- 1.4. SUNY POLY is a critical enabling component in maintaining and bolstering NYS' position as a leader in nanoelectronics, medical and clean energy technology, and the Parties recognize the



mutual benefit that can be attained by: (i) AMS collaborating with SUNY POLY to bring to NYS new research, development, education, and business investments from the various sectors of the nanoelectronics industry; (ii) fostering critical partnerships among the Parties and the public and private sectors; (iii) transitioning emerging technologies critical for economic competitiveness; and (iv) commercializing emerging high performance analog semiconductor technology in commercial and consumer applications.

- 1.5. SUNY POLY and its innovative technology transitioning, business development, economic outreach, and workforce training model supports the entire research and development – manufacturing eco-system of companies and research partners of critical importance to the security and economic competitiveness of NYS and the nation.
- 1.6. SUNY POLY is Upstate New York's premier business leadership and economic development organization and is imperative for successful transition of the region to a knowledge-based economy. The establishment of research centers and product development centers supported by NYS' colleges and universities will assist in the development of a stream of innovative products and services enabling the test and demonstration of prototypes of innovative technology emerging from the region's existing and emerging clusters.
- 1.7. EDGE is a vertically integrated economic development organization assisting businesses to locate, grow and prosper in the Oneida and Herkimer Counties in the center of NYS. EDGE promotes the Mohawk Valley's people, work force, quality of life, infrastructure, sites, and everything else the region has to offer businesses. A private not-for-profit corporation, EDGE is an integral part of the long-term effort by the public and private sectors to strengthen opportunities and open the door for new businesses and industries to locate and grow within the region.
- 1.8. FSMC and SUNY POLY, in partnership with EDGE, are developing a 450 acre site in Marcy, New York ("Marcy Nanocenter") for advanced nanoelectronics manufacturing. Marcy Nanocenter is designed to accelerate the attraction of nanoelectronics manufacturing to the Mohawk Valley by deploying Governor Andrew Cuomo's public-private partnership model that has led to the growth of SUNY POLY and facilities owned, controlled and managed by FSMC throughout NYS that support SUNY POLY's collaborations with SUNY POLY's public and private university and industry partners.
- 1.9. AMS is seeking to collaborate with FSMC, SUNY POLY and EDGE to expand AMS' manufacturing capabilities for high performance analog semiconductor technology by establishing a new 200/300 mm wafer enabled fabrication facility for AMS' high performance analog semiconductor manufacturing operations.

NOW, THEREFORE, the Parties agree as follows:

II. DEFINED TERMS

In addition to the terms defined elsewhere in this Agreement, the following terms have the described meanings listed below.

2.1 Affiliate

Affiliate means an entity that controls, is controlled by, or is under common control with, another entity, but only during the period that such control exists. For purposes of this Agreement, FSMC's Affiliates shall be deemed to include, The Research Foundation for the State University of New York ("FOUNDATION"), Fuller Road Management Corporation ("FRMC"), the State University of New York ("SUNY") and SUNY POLY.

2.2 Change of Control

Change of Control means one transaction or a series of transactions that result in a third party obtaining, directly or indirectly, (a) all or a majority of the assets of or (b) Control of, a Party. Change of Control shall not include the sale of capital stock in one or more financing transactions.

2.3 Control

Control means the power to direct the affairs of any individual, corporation, partnership, joint venture, trust, business association, governmental entity or other entity including by reason of ownership of voting stock of a corporation or membership interests in a limited liability company.

2.3.1 Facility Lease

Facility Lease means the Facility Lease Agreement between FSMC and AMS effective as of _____, 2015, pursuant to which FSMC will lease the Manufacturing Facility to AMS.

2.4 Knowledge

Knowledge means the actual knowledge of the Party's officers.

2.5 Manufacturing Equipment

Manufacturing Equipment means the equipment to be listed in Exhibit B of this Agreement, consisting of the manufacturing tools to be purchased and owned by FSMC and made available to AMS for its exclusive use as necessary to perform the Manufacturing Operations, provided, however, any equipment purchased by AMS or an Affiliate of AMS, including but not limited to, replacements of any or all Manufacturing Equipment shall not constitute Manufacturing Equipment. Within a reasonable period of time after the Parties sign this Agreement, the

Parties will mutually agree on the list of Manufacturing Equipment to be set forth in Exhibit B by amending this Agreement, subject to AMS' general requirements with respect to such Manufacturing Equipment.

2.6 Manufacturing Facility

Manufacturing Facility means the approximately 360,000 square foot wafer enabled fabrication facility, associated offices, related support facilities and required infrastructure to house AMS' high performance analog semiconductor manufacturing operations on a portion of the Marcy Nanocenter. The size and specifications of the Manufacturing Facility will be mutually agreed to in writing by FSMC and AMS. The estimated requirements for the Manufacturing Facility are described in Exhibit A. Within a reasonable period of time, after the Parties sign this Agreement, the Parties will mutually agree on final specifications for the design and construction of the Manufacturing Facility to be set forth in Exhibit A by amending this Agreement and the final legal description for the property on which the Manufacturing Facility will be situated to be attached to the Facility Lease as Exhibit A.

2.7 Manufacturing Operations

Manufacturing Operations means the AMS and/or its Affiliates manufacturing activities and related business operations in connection with the manufacture of high performance analog semiconductor components and/or any other products and all other activities related thereto.

2.7.1 Program

Program means the various activities undertaken or conducted by or on behalf of the Parties during the Term of and pursuant to the terms and conditions of this Agreement.

2.8 SUNY POLY Facilities

SUNY POLY Facilities means, collectively, the Manufacturing Facility and all other FSMC, FSMC Affiliate, and SUNY POLY facilities used in the Program.

2.9 SUNY POLY Tools

SUNY POLY Tools means, collectively, the Manufacturing Equipment and all other FSMC and SUNY POLY tools and equipment used by a Party in the Program.

III. OBJECTIVES

3.1 Collaboration, Commercialization and Economic Development

The Parties are entering into this Agreement to establish a mutually beneficial collaboration focused on research, development, innovation and commercialization of advanced semiconductor technology through the establishment of a 200/300 mm wafer enabled

fabrication facility intended to support AMS' high performance analog semiconductor operations.

3.2 Program Essential Purposes

For purposes of this Agreement, the "Essential Purposes" of the Program shall be as follows:

- (a) Design, construct, and equip for use by AMS an approximately 360,000 square foot 200/300 mm wafer enabled fabrication facility for high performance analog semiconductors, along with associated offices, related support facilities and required infrastructure, at a mutually agreed to site within the Marcy Nanocenter; and
- (b) Develop a joint development program for FSMC, on behalf of SUNY POLY, to support AMS with complimentary research, development, workforce training, and commercialization capabilities at the SUNY POLY Albany NanoTech Complex and other SUNY POLY facilities throughout NYS to establish the full continuum of support for AMS' NYS manufacturing; and
- (c) Expand and enhance the ever growing high tech cluster that has been developed in NYS and centered in Albany at SUNY POLY.

IV. **AMS PROGRAM CONTRIBUTION OBLIGATIONS**

4.1 Manufacturing Operations

- (a) AMS shall establish Manufacturing Operations in Utica, New York at the Manufacturing Facility and shall jointly commission, with FSMC, the Manufacturing Operations and related business operations as soon as possible, with a target date of September 30, 2017 ("Target Commission Date"). AMS, at its expense, shall be responsible for operating and managing all aspects of the Manufacturing Operations at the Manufacturing Facility, including, without limitation, hiring the workforce to perform Manufacturing Operations in accordance with the terms of this Agreement, procuring the raw materials, supplies, manufacturing, selling and distributing its products, and maintaining compliance with all applicable laws. Except for the Manufacturing Facility and the Manufacturing Equipment that will be owned by FSMC and made available by FSMC to AMS for the Manufacturing Operations, AMS will own all the inventory, product, output, and other property it purchases or creates associated with running the Manufacturing Operations at the Manufacturing Facility. The profit or losses resulting from the Manufacturing Operations at the Manufacturing Facility shall accrue solely to AMS. AMS shall be responsible for all taxes, including, without limitation, applicable federal, state, and local taxes, associated with the Manufacturing Operations at the Manufacturing Facility.

- (b) As used in this Agreement, the following terms have the following meanings:

"Manufacturing Facility Completion" means that the Manufacturing Facility and all related infrastructure have been substantially completed in accordance with the plans,

specifications and the construction documents mutually agreed upon by AMS and FSMC, FSMC shall have caused to be reduced to writing the items remaining to be completed for the final completion of the Manufacturing Facility and all related infrastructure ("Punch List Items") and such Punch List Items shall have been agreed upon by AMS and FSMC, all utilities serving the Manufacturing Facility are fully operational, a certificate of occupancy or its equivalent for the entire Manufacturing Facility has been issued by the applicable governmental agency, all Manufacturing Equipment has been acquired and delivered to the Manufacturing Facility.

"Manufacturing Equipment Commissioning" means that after Manufacturing Facility Completion has been achieved, all Manufacturing Equipment has been installed in the Manufacturing Facility, has been commissioned, and the entire manufacturing line and related Manufacturing Equipment is fully operational.

- (c) FSMC is responsible at its cost (subject to the limits below in Section 5.1(f)) to achieve Manufacturing Facility Completion, including the acquisition of the Manufacturing Equipment and to provide for all Manufacturing Equipment to be delivered to the Manufacturing Facility. Once Manufacturing Facility Completion has been achieved, including all Manufacturing Equipment has been acquired and delivered to the Manufacturing Facility, AMS is responsible at its cost to achieve Manufacturing Equipment Commissioning. The Parties will mutually agree upon the list of Manufacturing Equipment, subject to AMS' general requirements with respect to the Manufacturing Equipment, and will amend Exhibit B to describe the mutually agreed-upon Manufacturing Equipment.

4.2 Manufacturing Facility and Manufacturing Equipment

- (a) AMS shall lease the Manufacturing Facility for the Manufacturing Operations from FSMC in accordance with the terms of the Facility Lease. AMS and FSMC shall execute and deliver the Facility Lease, simultaneously with the signing and delivery of this Agreement. As set forth in the Facility Lease, AMS shall lease the Manufacturing Facility at the base rent rate of \$1.00 per year for an initial term of twenty (20) years.

AMS shall have the option to extend the Facility Lease for two additional ten (10) year terms, for annual rent of \$1.00 per year and on the same terms and conditions as the initial twenty (20) year lease term, subject to AMS agreeing to the investment targets in Section 4.3 as additional investment over the option terms and the employment targets in Section 4.4 of this Agreement for the option terms.

- (b) AMS is responsible for costs associated with the Manufacturing Facility and the property on which the Manufacturing Facility is situated as and to the extent described in the Facility Lease. Notwithstanding the foregoing or anything to the contrary in this Agreement, including Sections 4.1(a) and 4.3, or in the Facility Lease, with respect to the Manufacturing Facility and the property on which the Manufacturing Facility is situated, AMS shall in no event have any obligation to perform or to pay directly, or to reimburse FSMC for, and FSMC shall be solely responsible for: (1) costs caused by the violation of any law by FSMC or its Affiliates, or their respective agents, employees or contractors; (2) costs caused by

condemnation or casualties that are not caused by the negligence or willful misconduct of AMS or its agents, employees or contractors or that are of a type required to be insured against by FSMC under Exhibit E; (3) costs to correct any construction defect in the Manufacturing Facility or to comply with any covenant, condition, restriction or law applicable to the Manufacturing Facility on the Manufacturing Facility Completion date; (4) costs of structural or other repairs that are FSMC's responsibility hereunder or under the Facility Lease; or (5) any fee or compensation to FSMC or its Affiliates, designees, agents or contractors for management or administration of the Manufacturing Facility.

- (c) The Manufacturing Equipment shall be located at the Manufacturing Facility and, subject to the terms and conditions set forth in subsection 5.1(i) and Exhibit F, be provided to AMS for its exclusive use without cost, for the entire term of the Facility Lease, including extensions.

4.3 Investment Targets

AMS anticipates to spend in its Manufacturing Operations (accumulated operational costs and capital expenditures and other investments) at the Manufacturing Facility over the first ten (10) years of the Facility Lease term an estimated One Billion Dollars (\$1,000,000,000), an additional estimated One Billion Dollars (\$1,000,000,000) over the second ten (10) years of the Facility Lease term and an additional estimated One Billion Dollars (\$1,000,000,000) over each ten (10) year extension term of the Facility Lease. AMS commits to maintain operations in the Marcy Nanocenter for a period of at least twenty (20) years following the date of Manufacturing Facility Completion and during each ten (10) year extension of the Facility Lease beyond the initial twenty (20) year term.

4.4 Employment Targets

AMS will create 452 full-time equivalent (FTE) jobs within five (5) years after the date of Manufacturing Facility Completion. AMS will create an additional 288 FTE jobs by the 10th year after the date of Manufacturing Facility Completion (commensurate with the ramp up of manufacturing operations in the balance of the shelled cleanroom tooled at 300 mm technology). AMS will retain these jobs for a period of no less than the number of years remaining for the initial term of the lease for the Manufacturing Facility, and, in the event AMS exercises its options to extend the term of the lease for the Manufacturing Facility, AMS will retain these jobs for the extended lease term. In addition, the Parties will work together to attract and locate support jobs from the contractors, subcontractors, suppliers, and partners necessary to establish the full ecosystem necessary to support the AMS manufacturing operations in NYS. It is estimated that 500 such jobs could be attracted and located within the ecosystem.

4.5 Workforce Development

AMS will work with FSMC on behalf of SUNY POLY and EDGE to help recruit, relocate, and train the workforce necessary to staff the Manufacturing Facility. This may include participation in one or more workforce development programs FSMC, SUNY POLY and/or EDGE has or will commence in NYS.

4.6 Commitment to Local Content

AMS acknowledges NYS' desire to use as much locally manufactured product as is practical in support of the Manufacturing Facility. AMS will make reasonable efforts and provide first consideration to NYS based suppliers of equipment, materials and other items required for the establishment and growth of AMS' operations in order to use as much NYS manufactured product as is practical. However, AMS is entitled to use any other support of the Manufacturing Facility in case the NYS options are not competitive.

4.7 Additional Expansion of AMS Manufacturing Operations

AMS will explore the expansion of the AMS New York State Manufacturing Operations through the establishment of an AMS design center and other manufacturing operations at the SUNY Poly Albany NanoTech Complex and at the Utica site, subject to additional agreements with the State of New York.

V. FSMC PROGRAM CONTRIBUTION OBLIGATIONS

5.1 Manufacturing Facility and Manufacturing Equipment

- (a) Subject to the limitation set forth in Section 5.1(f), FSMC, with the assistance of EDGE, will generate funding from the State of New York, to be administered through FSMC or its Affiliate, for the design, construction and fit-up of the Manufacturing Facility to house the Manufacturing Operations. The estimated Manufacturing Facility requirements are described in Exhibit A, which requirements are subject to change based on further discussions between the Parties with any changes to be mutually agreed to by FSMC and AMS in writing. The Manufacturing Facility will be constructed and owned or controlled by FSMC and leased to AMS in accordance with the terms of the Facility Lease. FSMC, with the assistance of EDGE, will obtain additional funding, to be administered through FSMC, for site and infrastructure improvements, including: (i) additional clearing and grubbing of the Marcy Nanocenter, (ii) grading/earthwork, (iii) construction of retaining walls to partition the Marcy Nanocenter into multiple terraces (including a separate terrace for the Facility), (iv) stormwater improvements, (v) final paving of the ring road, (vi) construction of sidewalks and pedestrian/bike trails that are part of the overall Marcy Nanocenter plan, and (vii) extension of water and sewer lines from Edic Road to the site, (including a second water main feed from an existing transmission main off of Morris Road to provide a redundant water source). These improvements will be developed concurrently with the construction of the Manufacturing Facility.
- (b) AMS shall have a substantial and active role in the planning, design, construction and equipping the Manufacturing Facility as more specifically set forth in the Facility Lease, including, but not limited to, the right to review and substantially and actively participate in the Manufacturing Facility design and detailed budgets, selection of

design professionals, contractors and vendors, construction schedules and inspection of construction in progress.

- (c) FSMC and AMS shall mutually agree in writing to the design documents sufficient to establish the size, quality and character of the Manufacturing Facility; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Manufacturing Facility as set forth in the Facility Lease. FSMC and AMS shall mutually agree in writing to the construction documents, including shop drawings, product data and samples, which set forth in detail the requirements for construction of the Manufacturing Facility. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the design documents previously mutually agreed to in writing by AMS and FSMC shall be mutually agreed to in writing by the Parties. The construction documents shall include drawings, specifications, and other documents setting forth in detail the requirements for construction of the Manufacturing Facility.
- (d) Subject to AMS' rights described in Section 5.1(b) above and in the Facility Lease, FSMC shall negotiate and enter into the contracts for the design and construction of the Manufacturing Facility including approving the budget for the contracts for the design and construction of the Manufacturing Facility. FSMC shall use its best efforts to include in the contract(s) for the construction of the Manufacturing Facility payment obligations for the general construction contractor for failure to meet the construction schedule for the substantial completion of the Manufacturing Facility. FSMC shall cause the Manufacturing Facility to be constructed in a good and workmanlike manner in accordance with all laws and the requirements set forth in the Facility Lease. FSMC will appoint AMS as its agent to enforce all manufacturers and vendors' warranties for products and other work incorporated into the Manufacturing Facility (including but not limited to those required by the Facility Lease) to allow AMS to undertake needed maintenance and repairs to minimize downtime and impact on the Manufacturing Operations.
- (e) Subject to the limitation set forth in Section 5.1(f), FSMC, with the assistance of EDGE, will equip the Manufacturing Facility with the Manufacturing Equipment. AMS shall have the right to participate in the planning, design and purchase of Manufacturing Equipment including, but not limited to, the right to review and substantially and actively participate in equipment design and selection, detailed budgets, selection of contractors and vendors, schedules for installation of the Manufacturing Equipment and inspection of Manufacturing Equipment. The Manufacturing Equipment will be owned by FSMC or its Affiliate and provided to AMS for its exclusive use, without cost, for the entire term of the Facility Lease, including extensions. FSMC will reasonably cooperate with AMS in AMS procuring manufacturing equipment that is not included in the Manufacturing Equipment, supplies, utilities and other services that are required for the Manufacturing Operations at the Manufacturing Facility.
- (f) FSMC shall pay: (i) all costs associated with the design, construction and fit-up of the Manufacturing Facility, including the construction of a 12" natural gas line and

construction of two overhead transmission lines from the Edic substation to the Marcy Nanocenter substation, but not to exceed Five Hundred Million Dollars (\$500,000,000) ("Manufacturing Facility Cost Cap"); and (ii) all costs associated with the Manufacturing Equipment to be provided for Phase 1, but not to exceed Thirty Six Million Dollars (\$36,000,000) ("Tooling Grant"). In the event the actual costs for designing, constructing, and fitting-up of the Manufacturing Facility are less than the Manufacturing Facility Cost Cap, the balance of the Manufacturing Facility Cost Cap shall be used to increase the amount of the Tooling Grant or to pay costs of manufacturing process licenses, tools, equipment or other costs at the Manufacturing Facility, as mutually agreed to in writing by the Parties. FSMC will explore additional increases in the Tooling Grant through significant savings in other project costs (in addition to construction of the Manufacturing Facility), such as savings in site/infrastructure costs and/or through further investment by the State of New York.

- (g) FSMC will manage the design and construction of the Manufacturing Facility, subject to AMS' rights under Section 5.1(b). FSMC shall keep, or cause to be kept, the foundation, the exterior walls, exterior entrance doors, and exterior entrance door closure devices, underground utilities, and roof of the Manufacturing Facility and boilers in good repair. FSMC will keep AMS apprised, where applicable, of maintenance and repair work to the Manufacturing Facility and will coordinate any such maintenance and repair work with AMS so as to minimize the disruption of the Manufacturing Operations.

In the event the Manufacturing Facility should become in need of maintenance or repair required to be made by FSMC hereunder, FSMC shall give prompt notice thereof to AMS; but in the event of a materially unsafe condition or imminent danger to persons with respect to the Manufacturing Facility, as determined by FSMC, FSMC shall make, or cause to be made, immediate interim repairs as are necessary to prevent damage from occurring.

Notwithstanding anything to the contrary contained in this Section 5.1(e), if a condition arises with respect to the Manufacturing Facility that either (i) creates a materially unsafe condition or imminent danger to persons, or (ii) materially impairs the manufacturing capacity or operation of the Manufacturing Operations, AMS shall provide prompt written notice thereof to FSMC and FSMC shall take commercially reasonable steps to address the condition, taking into account the urgency of the situation.

Where appropriate, FSMC shall cooperate with AMS (e.g., appointing AMS as FSMC's agent to enforce warranty rights) to enable AMS to address the condition.

- (h) FSMC (or its Affiliate) and AMS will mutually agree in writing on terms associated with any option to renew the lease for the Manufacturing Facility and the period of exclusive use of the Manufacturing Equipment by AMS beyond the initial twenty (20) year lease term and the ten (10) year renewal terms, including: (1) at the end of the term of the lease or any renewal the Parties will in good faith discuss alternatives for the disposition and future ownership of the Manufacturing Facility; (2) discuss alternatives for the

disposition and future ownership of that Manufacturing Equipment including having AMS purchase the Manufacturing Equipment at a price to be mutually agreed upon and based on a fair and equitable value.

- (i) Except as may be set forth elsewhere in the Agreement to the contrary, the terms, conditions, restrictions, rights of use, maintenance, repair and replacement of the Manufacturing Equipment set forth on Exhibit F to this Agreement shall govern the rights of FSMC and AMS with respect to the Manufacturing Equipment for the Term of this Agreement.

5.2 Workforce Education and Training

FSMC, with the assistance of EDGE, will work with AMS to help AMS recruit, relocate, and train the workforce necessary to staff the Manufacturing Facility. This may include participation in one or more workforce development programs FSMC and/or EDGE have or will commence in NYS. FSMC, with the assistance of EDGE, commits to work with AMS to help coordinate other NYS or local workforce training, relocation or programs available to assist AMS in the attraction, retraining, and retention of the workforce necessary to staff the Manufacturing Facility.

5.3 Industrial Development Agency Benefits

FSMC, with the assistance of EDGE, will use best efforts to cause the Oneida County Industrial Development Agency ("OCIDA") to provide sales tax exemptions, mortgage recording tax exemptions (if there is mortgage financing) and real property tax exemptions for the Manufacturing Facility, which may include:

- FSMC and/or AMS entering into a lease/leaseback transaction with OCIDA in order to implement the OCIDA benefits; and
- In connection with the OCIDA real property tax exemption for the Manufacturing Facility, the necessary parties entering into a Payment in Lieu of Tax Agreement ("PILOT Agreement"), consistent with the Agreement Approving PILOT Terms and Allocating PILOT Payments dated October 1, 2013 among OCIDA, EDGE, and the local taxing jurisdictions ("PILOT Allocation Agreement").

5.4 Incentives

FSMC, with the assistance of EDGE, will use best efforts to generate the following discretionary and partnership incentives, which are in the nature of direct cash grants, refunds, and discounts in natural gas/electric utility charges:

- (a) \$50 million: R&D grant from NYS available over 5 years (\$10 m/yr.) on joint research and development projects with FSMC/SUNY POLY for future product development and innovations in technology areas of interest of AMS.

- (b) \$27 million: Excelsior Refundable Tax Credits, estimated over a ten (10) year period. The actual amount of Excelsior refundable tax credits is based on AMS' hiring of FTE jobs, annual wages/FTE jobs, AMS' capital expenditures for its tooling purchases and other eligible CapEx expenditures, and refunds on real property taxes (PILOT payments) made by AMS as part of its occupancy on the Manufacturing Facility. These benefits are scaled and may increase or decrease based on AMS' actual job creation performance, the wages paid, total CapEx made by AMS and the actual real property/PILOT payments made by AMS.
- (c) \$2 million: EDGE job training grant for reimbursement of workforce recruitment costs, training wages for hires advertised through the NYS Department of Labor, and/or customized training programs through SUNY POLY and New York State Community Colleges that run on-site or off-site training programs for AMS. The EDGE Job Training grant would be funded through the payment in lieu of taxes payments made pursuant to the PILOT Agreement, consistent with the PILOT Allocation Agreement that has been approved by the affected taxing jurisdictions and allows a portion of the payment in lieu of tax payments to be used for specified project purposes. Notwithstanding anything to the contrary contained in this Agreement, EDGE's obligation to provide the \$2 million EDGE job training grant is subject to EDGE and AMS entering into a grant disbursement agreement containing such terms and conditions as mutually agreed to by EDGE and AMS. EDGE job training grant funds will be EDGE's special obligation payable solely from the payment in lieu of taxes payments allocated and paid to it by OCIDA for such purpose pursuant to the PILOT Allocation Agreement.
- (d) \$10 million: Estimated value of Excelsior Program utility discounts, through National Grid over ten (10) years for transportation/delivery charges. National Grid would provide the utility discount for new and expanding customers who have qualified for approval under the New York State Excelsior Jobs Program. The actual value of the utility incentives will be scaled on actual natural gas consumption and electric usage by AMS for this project.

5.5 START-UP New York Program

SUNY POLY will use best efforts to have the Manufacturing Facility designated as Tax-Free NY Area under the START-UP NY Program, but it is understood that the project may not be eligible for benefits under both START-UP NY and the Excelsior program, and, in that case, all Parties will use best efforts to secure eligibility for that program which would yield the highest dollar value benefit for of the Parties. In the event that the Manufacturing Facility and AMS are eligible or become eligible for START-UP NY, then if successful, work performed by AMS at the Manufacturing Facility may qualify for START-UP NY Program incentives which may include:

- Credits, exemptions and refunds to eliminate business taxes, sales and use taxes, and real property taxes applicable to the area within the Tax-Free NY Area occupied by the business for 10 years; and
- Exclusion for eligible employees of the business from New York State personal income taxes.

Notwithstanding anything to the contrary in this Section 5.5, the START-UP New York Program will not preclude use of the PILOT Allocation Agreement.

VI. EDGE PROGRAM CONTRIBUTIONS

6.1 Manufacturing Facility

EDGE will assist FSMC to generate funding from NYS, with such funding to be administered through FSMC, for the design, construction, and fit-up of the Manufacturing Facility. EDGE will use best efforts to work with FSMC to design, construct, and fit-up the Manufacturing Facility which will house AMS' high performance analog semiconductor Manufacturing Operations.

6.2 Site and Infrastructure Improvements

EDGE will assist FSMC to generate additional funding for site and infrastructure improvements, including those improvements set forth in Section 5.1.

6.3 Incentives

EDGE will assist FSMC to generate the discretionary and partnership incentives set forth in Section 5.4, including exploring an increase in tooling grant through significant savings in the cost of site/infrastructure/facility and/or further investment by the State of New York.

6.4 Workforce Education and Training

EDGE, with FSMC, will work with AMS to help AMS recruit, relocate, and train the workforce necessary to staff the Manufacturing Facility. This may include participation in one or more workforce development programs FSMC SUNY POLY and/or EDGE has or will commence in NYS. EDGE, with FSMC, commits to work with AMS to help coordinate other NYS or local workforce training, relocation or programs available to assist AMS in the attraction, retraining, and retention of the workforce necessary to staff the Manufacturing Facility.

VII. FSMC PRINCIPAL INVESTIGATOR AND FSMC/SUNY POLY OR FSMC'S AFFILIATE GUIDELINES

7.1 FSMC shall provide or shall cause to be provided ALAIN KALOYEROS as the principal investigator regarding all technical, programmatic and facilities use requirements in respect of the terms and conditions of this Agreement and regarding the supervision, management and operation of the Program. If ALAIN KALOYEROS' affiliation with SUNY POLY should terminate for any reason, an appropriate replacement shall be appointed by FSMC.

7.2 FSMC/SUNY POLY may provide to AMS documents setting forth commercially reasonable guidelines applicable to (a) AMS' employees and agents that are resident or working at the SUNY POLY Facilities and, to the extent applicable, such guidelines shall be consistent with the terms and conditions of this Agreement, and (b) AMS' use of SUNY POLY Facilities for conducting

operations of the Program. The Parties shall agree upon and shall document other guidelines that shall apply to the Parties' employees and agents participating in the Program.

VIII. INTELLECTUAL PROPERTY

Rights in and obligations with respect to intellectual property created under this Agreement shall be in accordance with the terms of Exhibit C. Except as set forth in Exhibit C, no rights in any intellectual property are conveyed or granted by or under this Agreement.

IX. JOINT PROJECTS

If AMS and FSMC or its Affiliate desire to conduct a Joint Project (as defined in Exhibit C), AMS and FSMC or its Affiliate shall enter into a separate written agreement with respect to the Joint Project in accordance with the terms and conditions set forth in Exhibit C.

X. PROGRAM REVIEW AND DISPUTE RESOLUTION

- 10.1. The Parties will establish an annual program review process with appropriate senior executives of the Parties of at least the level of Vice President or other comparable level as defined by each Party.
- 10.2. Each Party shall designate a "Program Manager" to oversee its participation in Projects and the Program.
- 10.3. The Program Managers will exercise reasonable efforts in attempting to reach mutual agreement on all issues and matters under their consideration, consistent with the terms of this Agreement. If the Program Managers cannot reach agreement in a reasonable amount of time, the Program Managers shall refer the dispute in writing to the senior executives of the Parties that are designated under Section 10.1, who shall discuss and meet in person, if necessary, in order to negotiate a resolution to the dispute.

XI. TERM AND TERMINATION

11.1 Term

The term of this Agreement begins on the Effective Date and shall extend for twenty (20) years from the Manufacturing Facility Completion, unless the Parties extend the term of this Agreement in accordance with the terms of this Agreement or unless this Agreement is terminated by a Party in accordance with the terms of this Agreement ("Term"). The Parties may mutually agree in a written amendment to this Agreement to extend the Term of this Agreement upon mutually agreed upon terms.

11.2 Agreement Termination for Breach, Default or Failure to Perform

If a Party becomes a breaching Party (the "Breaching Party") by breaching, defaulting or failing to perform any representation, warranty, covenant, obligation or agreement hereunder in any respect that is material to this Agreement, then any other Party (a "Non-Breaching Party") may

terminate this Agreement through a written notice to the Breaching Party (the "Breach Notice") and the other Non-Breaching Party enumerating the Breaching Party's breach(es) or failure(s) to perform or event(s) of default under this Agreement; provided, that within ninety (90) calendar days after the date upon which the Breach Notice was delivered to the Breaching Party, the Breaching Party shall be entitled to cure any of the breaches, failures to perform or events of default identified in the Breach Notice. If at the end of the 90-day cure period, any of the identified breaches, failures to perform or events of default have not been cured, the Non-Breaching Party who gave the Breach Notice may, by a signed written notice, delivered to the Breaching Party and the other Non-Breaching Party, terminate this Agreement with respect to the Breaching Party, effective immediately. Notwithstanding the above, if the Breaching Party commences to cure the breaches, failures to perform or events of default identified in the Breach Notice within the 90-day cure period, but is unable to reasonably complete the cure within such period, the Breaching Party may, upon written request to the Non-Breaching Party who gave the Breach Notice prior to the end of the original cure period, together with a reasonably detailed explanation of how such cure would be achieved, have an additional 90-day cure period to complete the cure if such written request is granted by the Non-Breaching Party who gave the Breach Notice.

11.3 Other Agreement Termination Events

If any Party (an "Affected Party") commits, engages in or suffers any of the following events, then the other Party may terminate this Agreement:

- (a) Becomes insolvent, is dissolved or liquidated, files or has filed against it (and it is not dismissed within ninety (90) days of filing) a petition in bankruptcy, reorganization, dissolution or liquidation or similar action, is adjudicated as bankrupt, or has a receiver appointed for its business;
- (b) Has all or a substantial portion of its capital stock or assets expropriated or attached by any government entity;
- (c) Makes an assignment of this Agreement for the benefit of creditors;
- (d) Is subject to property attachment, court injunction, or court order materially affecting its ability to honor its obligations under this Agreement; or
- (e) Suffers a Change of Control, without the prior approval of the other Parties, which approval shall not be unreasonably withheld.

11.4 Effects of Agreement Termination, Party Termination

- (a) If a Party's participation in this Agreement is terminated by another Party in accordance with Sections 11.2 or 11.3, such Party shall be termed a "Terminated Party" herein, and each other Party (as to whose participation in this Agreement has not terminated) shall be termed the "Continuing Party" herein.

- (b) Any termination of the entire Agreement shall result in termination of all Joint Projects and all other Program-related activities. Any termination with respect to or withdrawal by a Terminated Party shall terminate the Terminated Party's current and/or prospective participation in all Joint Project activities as of the effective date of the Terminated Party's termination.
- (c) Upon termination of a Terminated Party's participation in this Agreement, the Terminated Party shall destroy or return to each Continuing Party all Confidential Information (as defined in Exhibit D) of each Continuing Party, as well as all copies and resumes thereof (except one (1) copy thereof which may be retained for archival and legal purposes), and the Terminated Party shall so certify such return or destruction in writing to each Continuing Party.

11.5 Limitation of Liability upon Termination

- (a) If FSMC is the Terminated Party, FSMC's total cumulative liability for the entirety of any remaining contributions and payments described in Section V of this Agreement shall not, under any circumstances, exceed the total amount of New York State committed contributions that have come due to the Program as of the date of termination minus any payments previously made by FSMC under this Agreement.
- (b) If AMS is the Terminated Party, AMS' total cumulative liability for the entirety of any remaining contributions and payments described in Section IV of this Agreement shall not, under any circumstances, exceed the Unamortized FSMC Investment. The "Unamortized FSMC Investment" means an amount equal to (i) the lesser of \$536,000,000 and the amount actually expended by FSMC prior to the termination, multiplied by (ii) a fraction, the numerator of which is equal to the difference between (x) \$2,000,000,000 and (y) the amount of capital, operational and other costs incurred or spent by AMS under Section IV through the effective date of termination, and the denominator of which is equal to \$2,000,000,000.
- (c) If EDGE is the Terminated Party, EDGE's total cumulative liability for the entirety of any remaining contributions and payments described in Section VI of this Agreement shall not, under any circumstances, exceed the total amount of (i) the EDGE Job Training grant that is part of a grant disbursement agreement with AMS less any payment previously made or disbursed by EDGE pursuant thereto up to the date of termination and (ii) the amount of New York State or other political subdivisions thereof committed contributions that have come due to EDGE under the Program for site and infrastructure improvements as of the date of termination minus any amounts thereof expended by EDGE for the Program for site and infrastructure improvements.

11.6 Failure of State Funding

- (a) FSMC is reliant on the allocation of NYS funds to satisfy the contribution obligations under Section 5.1(f) of this Agreement. FSMC shall notify AMS, in writing, when all requisite NYS funding has been allocated to FSMC (the "NYS Funding Notice").

- (b) FSMC must deliver the NYS Funding Notice to AMS no later than March 30, 2016. In the event that the NYS Funding Notice is not delivered to AMS on or before March 30, 2016, AMS shall have the right to terminate this Agreement upon thirty (30) days written notice to FSMC. Termination under this Section 11.6 shall not be regarded as termination for breach, default or failure to perform under Section 11.2 or other termination events under Section 11.3, but rather shall be considered termination by reason of impossibility. The Parties shall have no further obligations under in this Agreement.

XII. PUBLICITY

- 12.1 Any press releases, public announcements, and publicity regarding this Agreement, the relationship between the Parties, or the content and results of Joint Projects must be approved by the Parties in writing prior to any press release, public announcement, or other publicity by any Party including the timing of any such press release, announcement or other publicity, excluding any non-public communication that is internal to any individual Party or used solely by the Parties within the Program.
- 12.2 FSMC and its Affiliates may publicly reveal the existence of and the total contribution amounts under this Agreement without the prior consent from AMS notwithstanding the provisions of Section XIII of this Agreement.
- 12.3 Any public use by any Party of the names or logos associated with any other Party requires the prior written consent of such other Party.

XIII. CONFIDENTIAL INFORMATION

The Parties agree that the terms set forth in Exhibit D of this Agreement shall govern the handling of Confidential Information disclosed by a Party to another Party during the Term of this Agreement.

XIV. REPRESENTATIONS/WARRANTIES/LIABILITIES/INDEMNIFICATION

- 14.1 As of the Effective Date, AMS, EDGE and FSMC represent and warrant, as applicable, the following:
 - (a) Each Party has the authority to enter into this Agreement and perform its obligations under this Agreement and any other documents and instruments contemplated hereby to be executed and delivered by such Party.
 - (b) The signing, delivery and performance by such Party of this Agreement and all of the documents and instruments contemplated hereby to be executed and delivered by such Party are within the legal power and authority of such Party and have been duly authorized by all necessary action of such Party. This Agreement is, and the other documents and instruments required hereby to be delivered by it will be, when signed

and delivered, the valid and binding obligations of such Party, enforceable against such Party in accordance with their respective terms.

- (c) The signing, delivery and performance of this Agreement and all of the other documents and instruments contemplated hereby to be signed and delivered by such Party does not and will not conflict with or violate any material judgment, order or decree binding on such Party.
- (d) Such Party has the full right, power and authority to grant any licenses to be granted by such Party pursuant to this Agreement.
- (e) There are no outstanding agreements, assignments or encumbrances that have been made by such Party and by which such Party is bound and that are inconsistent with or are violated by the provisions of or granting of such licenses.
- (f) There is no litigation, governmental investigation, suit, action, proceeding or written claim of any kind pending and to the knowledge of such Party, none are threatened against such Party or any of its subsidiaries or affiliates affecting the ability of such Party to perform its obligations under this Agreement.

14.2 Injunctive Relief

Notwithstanding the other provisions of this Agreement, either Party may enforce any breach during the term of this Agreement of any of the specific provision(s) of this Agreement by commencing an action for injunctive or other equitable relief at any time.

14.3 Limitations of Liability

- (a) Except for (i) a Party's failure to make the specific payments, contributions, deliveries or provide the services or support under Sections IV, V, and VI of this Agreement, (ii) a Party's respective obligations under Sections VIII and XIII, and (iii) matters or claims in respect of this Agreement that relate to workers compensation, bodily injury, death, sickness, disease, disability and damage or destruction to real or personal property, tools and equipment, each Party's total cumulative liability for any and all matters, causes of action or indemnifications in any way relating to this Agreement or for the performance or non-performance or breach of any representation, warranty, covenant, duty or obligation under this Agreement, regardless of the form of action, shall be limited to damages and/or payments which shall not exceed \$10 Million, in the aggregate.
- (b) With respect to only subsections (i) and (iii) of Section 14.3(a) of this Agreement, each Party's total cumulative liability for any and all matters, causes of action or indemnifications (including, but not limited to, Section 14.5 of this Agreement) in any way relating to such subsections or for the performance or non-performance of any covenant, duty or obligation thereunder, regardless of the form of action, shall be limited to damages and/or payments which shall not exceed in the aggregate (1) with

respect to Section 14.3(a)(i) of this Agreement, the limits under Section 11.5, as to matters addressed in Section 11.5 and (2) with respect to Section 14.3(a)(iii) of this Agreement, only for those matters or claims that relate to damage or destruction to real or personal property, tools and equipment to the extent such matters or claims are not covered by insurance that is required to be carried by a party under this Agreement or under the lease or use agreement or similar agreement for the Manufacturing Facility, or Manufacturing Equipment, in each case of such damage or destruction, equal to the sum of (i) the insured value of the real or personal property, tools and equipment, and (ii) \$5 Million, in the aggregate.

- (c) Notwithstanding anything to the contrary contained elsewhere in this Agreement, the Parties agree that any liability or obligations under this Agreement shall not include any special, punitive, indirect, incidental or consequential damages, including, but not limited to, lost profits, even if a Party has been made aware of the possibility of such damages.

14.4 Insurance

AMS shall obtain the insurance coverage and/or limits in accordance with Exhibit E and agrees to the terms set forth in Exhibit E.

14.5 Indemnification

- (a) Each Party ("Indemnitor") to this Agreement, subject to the limitations set forth in Section 11.5 and Section 14.3, shall indemnify, save, hold harmless and defend each other Party and its officers, directors, managers, shareholders, employees, agents, advisors and assigns (collectively, "Party Indemnitee") and (b) AMS, as Indemnitor, shall also, subject to the limitations set forth in Section 11.5 and Section 14.3, indemnify, save, hold harmless and defend FRMC, FOUNDATION, SUNY POLY, the State of New York and SUNY, and their officers, directors, managers, shareholders, employees, Affiliates, Subsidiaries, agents, advisors and assigns ("SUNY Indemnity", and collectively with each Party Indemnitee, "Indemnitee"), in each case from and against any and all claims (including, without limitation, third party claims), damages, demands, actions, judgments, lawsuits, proceedings, assessments, liabilities, losses, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), whether or not subject to litigation (collectively, "Indemnified Claims"), incurred by any Indemnitee in connection with, by reason of, or arising out of (i) the breach, untruthfulness or inaccuracy of any representation or warranty of the Indemnitor that is contained in this Agreement, (ii) the breach or failure to keep, observe or perform any covenant or obligation of the Indemnitor (or its employees or agents) in this Agreement, (iii) any fraud of the Indemnitor (or its employees or agents) in connection with the performance of this Agreement, (iv) any damage or destruction of property, or injury, sickness, disease or death to persons, resulting from the Indemnitor's or its employees' or agents' negligence or misconduct, or (v) any act or omission or violation of statutory duty or regulation by the Indemnitor or any of its employees or agents. AMS shall also defend, indemnify and hold harmless FSMC and FSMC Affiliates as set forth herein, in

connection with any goods and/or services arising under this Agreement, provided, made, sold and/or transferred by AMS.

- (b) An Indemnitee, for purposes of asserting the indemnifications under this Section, will give the applicable Indemnitor written notice of any Indemnified Claim within thirty (30) days after the Indemnitee (a) receives notice of an Indemnified Claim for which indemnification is sought or (b) determines that an event of which it is aware is likely to give rise to an Indemnified Claim for indemnification, and the Indemnitee will give copies to the Indemnitor of all information and documents relating to such Indemnified Claim or potential Indemnified Claim that are received by the Indemnitee within thirty (30) days after the Indemnitee's receipt thereof or, if applicable, within thirty (30) days after the Indemnitee makes the determination referred to in clause (b); provided, that the failure of the Indemnitee to give notice or deliver copies of information or documents within the specified time periods shall not limit the Indemnitee's right to claim indemnification hereunder, except to the extent that the Indemnitor can demonstrate that it was actually damaged by the failure to give notice or provide information or documents within the specified time periods. The applicable Indemnitor will be obligated to defend any Indemnified Claim for indemnification hereunder, and to select counsel for any third-party Indemnified Claim, which counsel shall be reasonably satisfactory to the Indemnitee, all at the sole cost and expense of the Indemnitor; provided, that the Indemnitee will be allowed, at its expense, to participate in such defense; provided, further, that no settlement shall be entered into without the approval of the Indemnitee; provided further, that in the event the Indemnitor proposes in good faith to settle an Indemnified Claim that requires solely the payment of money damages by the Indemnitor on terms acceptable to the third-party claimant and the Indemnitor is ready, willing and able to completely satisfy the Indemnified Claim on such terms but the Indemnitee does not consent to the settlement on such terms, the Indemnitee shall be responsible for all liability or expenses (including reasonable legal expenses and costs) with respect to such Indemnified Claim that exceed the proposed settlement amount, including all legal expenses and costs incurred after the date the Indemnitee initially gave notice to the Indemnitor withholding its consent to the proposed settlement. Notice of the Indemnitor's intention to defend any such Indemnified Claim shall be given to the Indemnitee within twenty (20) days after the Indemnitee shall have notified the Indemnitor of the Indemnified Claim (but in all events at least five (5) business days prior to the date that an answer or other response is due to be filed or made), which notice shall contain an acknowledgment in writing of the Indemnitor's obligation to indemnify the Indemnitee with respect to such Indemnified Claim under this Section. In the event the Indemnitor fails or elects not to defend any such Indemnified Claim hereunder, the Indemnitee shall have the right to so defend such Indemnified Claim at the sole obligation, cost and expense of the Indemnitor.
- (c) The indemnifications set forth in this Agreement shall remain operative and in full force and shall survive the execution and performance hereof and the termination or expiration of this Agreement, as well as the withdrawal of either Party from this Agreement for any reason.

14.6 Limitation of FSMC Representations and Warranties

Except to the extent described in this Agreement, FSMC and EDGE makes no representation or warranty, express or implied, with respect to the condition or suitability of the SUNY POLY Tools, SUNY POLY Facilities or any part thereof in respect of the operations and activities of the Program, including but not limited to any implied warranties of merchantability or fitness for a particular purpose, or warranty of non-infringement of third party intellectual property rights.

14.7 AMS Assumption of Risk

Except to the extent due to the negligence, willful misconduct or violation of laws or this Agreement by FSMC or its Affiliates and EDGE or their respective employees, agents or contractors, AMS assumes all risks involved in the use of and the access to the Manufacturing Facility, and Manufacturing Equipment and shall be solely responsible for any and all accidents and injuries to persons and property which relate to AMS' use of and access to the Manufacturing Facilities and Manufacturing Equipment in respect of the operations and activities of AMS under this Agreement and AMS agrees to accept the Manufacturing Facilities and the Manufacturing Equipment in the condition required by this Agreement.

14.8 Execution, Delivery and Performance

The Parties represent and warrant that the signing, delivery and performance of this Agreement does not and will not violate or create any material conflict with any of the terms or conditions of another agreement to which they are parties.

XV. ASSIGNMENT

- (a) A Party may not assign this Agreement, or any of rights afforded hereunder, without the prior written consent of each other Party, which consent shall not be unreasonably withheld. In addition, AMS may not allow any other party, person or entity access to or use of the SUNY POLY Tools or the SUNY POLY Facilities, except employees of AMS' wholly owned Subsidiaries or Affiliates, or contractors, suppliers, or customers of AMS, provided they meet the same requirements imposed on AMS employees by FSMC. Any assignment made in violation of this Section shall be void *ab initio*.
- (b) Notwithstanding anything else herein to the contrary, AMS may assign this Agreement to any Affiliate established by AMS to conduct Manufacturing Operations at the Marcy Nanocenter, without the prior consent of any other Party, provided that AMS provides prior written notice of the assignment to FSMC and EDGE. The AMS Affiliate shall execute and deliver to the other Parties written acknowledgement and agreement to be bound by this Agreement, whereupon AMS shall be released of all obligations under this Agreement without further action by any Party.

XVI. COMPLIANCE WITH LAWS, REGULATIONS AND RULES

- 16.1 Each Party agrees to comply with all applicable laws, rules and regulations of the State of New York, the United States Government and of any other duly constituted governmental authority having jurisdiction over such Party, to the extent applicable to the activities under this Agreement and as may be updated by the applicable governmental authority from time to time. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and AMS represents and warrants that it will not re-export data or commodities to certain foreign countries or nationals of certain foreign countries without prior approval of the cognizant government agency. While FSMC agrees to cooperate in pursuing any license that the cognizant agency deems necessary in connection with this Agreement, FSMC cannot guarantee that such licenses will be granted. Each Party shall do all things necessary (a) to obtain in a timely manner all required licenses and approvals related to the activities under this Agreement and (b) to comply with all applicable laws, rules and regulations, including, but not limited to, the regulations of the United States Government relating to the export and re-export of technical data and commodities, related to the activities under this Agreement. In addition to the foregoing, AMS covenants that it will provide written certification by an authorized officer of the applicable corporation(s) that any export or re-export of any technical data and commodities related to activities under this Agreement will have a valid United States Department of Commerce export license or that no export license is required. AMS will not integrate, promote, sell or otherwise transfer any technical data and/or commodities under this Agreement to any customer or end user for use in any military applications. The Parties hereby acknowledge that stricter United States Government regulations may apply to the export and re-export of technical data and commodities to any of the following countries or to the nationals of any of the following countries: Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Iran, Iraq, Laos, Latvia, Libya, Lithuania, Macao, Moldova, Mongolia, North Korea, People's Republic of China, Romania, Russia, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam or as updated by the U.S. Department of Commerce.
- 16.2 Each Party represents and covenants that it has, or will have in place, established procedures and/or agreements with its employees, agents or others, including subcontractors, whose services the Party may require to fulfill the terms and conditions of this Agreement, sufficient to enable such employees, agents or others to comply with all the terms and conditions of this Agreement. Each Party shall be responsible for the selection and screening of its employees, agents or others who will be assigned to work on the Program. Each Party will ensure, by management direction and if necessary by contract, that its employees, agents or others comply with the laws, rules and regulations of the State of New York, the United States Government and of any other duly constituted governmental authority having jurisdiction over such Party. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be interpreted such that any person who is not an actual employee of a Party or, in the case of FSMC, an actual employee of an Affiliate, shall be treated or construed as a common law employee of such Party.

XVII. LITIGATION/DISPUTE RESOLUTION/NOTICES

- 17.1 This Agreement shall be construed and the legal relations created herein between the Parties shall be determined in accordance with the substantive laws of the State of New York, without regard to the conflict of laws principles thereof.
- 17.2 Subject to the Parties attempting in good faith to promptly resolve any disputes in accordance with Section X, any disputes arising out of or in connection with this Agreement shall be settled in compliance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), Paris by three arbitrators appointed according to said rules. The language of the Arbitration shall be English. The place of Arbitration shall be New York City.
- 17.3 All communications, notices and disclosures required or permitted by this Agreement shall be in writing, shall be provided to the other Party and shall be deemed to have been given at the earlier of the date when actually delivered to the other Party or when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, or by overnight courier service with signed receipt, and addressed as follows, unless and until either Party notifies the other Party in accordance with a change of address:

In the case of FSMC:
Fort Schuyler Management Corporation
257 Fuller Road
Albany, NY 12203
Attn: Walter Gerald Barber

With a copy (which shall not constitute notice) to:
Fort Schuyler Management Corporation
257 Fuller Road
Albany, New York 12203
Attn: Carl J. Kempf, III, Esq.
General Counsel

In the case of AMS:
Bernd Gessner/Jann H. Siefken
Tobelbader Strasse 30, 8141
Unterpemstaetten, Austria

With a copy (which shall not constitute notice) to:
Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn: Linda E. Romano, Esq.

In the case of EDGE:
Steven J. DiMeo, President
584 Phoenix Drive
Rome, New York 13441

With a copy (which shall not constitute notice) to:
Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501
Attn: Joseph E. Saunders, Esq.

XVIII. MISCELLANEOUS

- 18.1 Each Party agrees not to use each other's names, the names of any staff members or employees thereof, or trademark or other designation of any Party hereto, in advertising, sales promotion work, or in any other form of publicity except with the written permission of, and to the extent approved by the Party whose name is to be used.
- 18.2 If any term or provision of this Agreement or the application thereof to any Party hereto or set of circumstances shall, in any jurisdiction and to any extent, be finally held to be invalid or unenforceable, such term or provision shall only be ineffective as to such jurisdiction, and only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable any other terms or provisions of this Agreement or under any other circumstances, so long as the remainder of this Agreement still effectuates the Essential Purposes.
- 18.3 The failure of any Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that Party of the right to insist later on adherence thereto, or thereafter to insist upon strict adherence to that term or any other term of this Agreement. To be effective, any waiver must be in a writing signed by an authorized representative of the Party granting such waiver.
- 18.4 The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. The terms "herein", "hereof", "hereunder" and any similar terms used in this Agreement refer to this Agreement and all references to "this Agreement" refer to this instrument and the Exhibits hereto, as amended from time to time. The terms "including" or "include" shall mean "including, without limitation", or "include, without limitation."
- 18.5 If any Party is rendered wholly or partially unable by Force Majeure to carry out its obligations under this Agreement, and if that Party gives prompt written notice, including a reasonable description of such Force Majeure, to the other Parties, the notifying Party shall be excused from performance of its obligations hereunder during the continuance of any inability so caused, but for no longer period. Such cause shall be remedied by the notifying Party as far as possible with reasonable speed and effort, but no Party shall have any obligation to settle any

labor dispute. For the purposes of this Agreement, "Force Majeure" shall mean Acts of God, labor disputes, acts of public enemies or terrorists, war, other military conflicts, blockades, insurrections, riots, epidemics, quarantine restrictions, landslides, lightning, earthquake, fires, conflagration, storms, floods, washouts, arrests, civil disturbances, restraints by or actions of any governmental body (including export or security restrictions on information, material, personnel, equipment or otherwise), industry-wide shortages, industry-wide unavailability, semiconductor industry-wide decline in demand, and any other acts or events whatsoever, whether or not similar to the foregoing, not within the control of the Party claiming excuse from performance, which by the exercise of the diligence and reasonable efforts that Party shall not have been able to overcome or avoid. If the notifying Party cannot remedy the Force Majeure situation and resume satisfactory performance within ninety (90) days after delivery of the notice, the other Parties may at their option immediately terminate this Agreement and such notifying Party will be treated as a Terminated Party under Section 11.4.

- 18.6 Each Party shall be responsible for all tax matters, issues or obligations related to the employment of its employees or agents or to the presence of its personal property in any taxing jurisdiction.
- 18.7 During the Term of this Agreement, no Party shall solicit for employment purposes any employees of the other Parties (and in the case of FSMC, FSMC Affiliates) who have performed or are performing Program-related work under this Agreement. No Party shall make any payment or any gift of more than a nominal value to any employee of a Party without the employing Party's prior concurrence. No Party shall make any representation that an employment relationship exists between that Party and an employee of another Party. The above portions of this Section shall not restrict (a) the ability of the Parties to conduct general solicitations for employment, (b) the right of any employee of a Party, on that employee's own initiative or in response to general solicitations, to seek employment from the other Parties, or (c) the ability of AMS to solicit students employed or working at the SUNY POLY Facilities.
- 18.8 To the extent a particular right, obligation, representation, warranty, covenant or indemnity in this Agreement does not have a specifically identified survival period, then such right, obligation, representation, warranty, covenant and/or indemnity shall remain in effect beyond any expiration or termination of this Agreement and shall bind and inure to the benefit of the Parties, their legal representatives, successors and permitted assigns. Particular Sections of this Agreement that survive any termination or expiration of this Agreement include, but are not limited to, Sections VIII, XIII, and XIV.
- 18.9 No amendment or modification of this Agreement shall be valid or binding upon the Parties unless in a writing signed by all of the Parties.
- 18.10 Except as otherwise provided for in this Agreement, neither the provisions of this Agreement nor anything done pursuant to this Agreement shall create any partnership, any employer-employee relationship or any agency relationship between the Parties and the Parties are otherwise independent contractors relative to each other.

- 18.11 Nothing in this Agreement shall obligate any Party to institute any action or suit against third-parties for infringement of any of its patents, or to defend any action or suit brought by a third-party that challenges or concerns the validity of any of its patents. Nothing in this Agreement shall grant any Party the right to institute any action or suit against third-parties for infringement of any other Party's patents. Nothing in this Agreement shall obligate any Party, or any of its Subsidiaries, to file any patent application, to secure any patent or patent rights, or to maintain any patent in force.
- 18.12 This Agreement, together with the Exhibits hereto entered into by the Parties pursuant to Section IX, and any follow on contracts and/or amendments entered into by the Parties pursuant to Sections 2.5, 2.6, 4.2, or 5.1 of this Agreement, if and as signed by the Parties, is the complete and exclusive statement of the agreement of the Parties in respect of the subject matter described in this Agreement and shall supersede all prior and contemporaneous agreements, communications, representations, and understandings, either oral or written, between the Parties or any officers, agents or representatives thereof.
- 18.13 This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same Agreement. Any signed copy of this Agreement made by photocopy, facsimile or PDF Adobe format shall be considered an original.

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FSMC-AMS-EDGE CONFIDENTIAL

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT FOR ESTABLISHMENT OF HIGH PERFORMANCE ANALOG SEMIDCONDUCTOR TECHNOLOGY RESEARCH, DEVELOPMENT, INNOVATION, AND COMMERCIALIZATION ALLIANCE to be signed and delivered by their duly authorized representatives as of the Effective Date.

FORT SCHUYLER MANAGEMENT CORPORATION

By: Walter G Barber
Name: Walter Gerald Barber
Title: Chair
Date: July 27, 2015
August

ams AG

By: Stoekmeier
Name: STOCKMEIER
Title: COO
Date: July 27, 2015

Dr. H. WACHSNER-MARKOWITZ
Name: H. WACHSNER-MARKOWITZ
Title: CFO
Date: July 27, 2015

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

By: _____
Name: Steven J. DiMeo
Title: President
Date: July __, 2015

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT FOR ESTABLISHMENT OF HIGH PERFORMANCE ANALOG SEMICONDUCTOR TECHNOLOGY RESEARCH, DEVELOPMENT, INNOVATION, AND COMMERCIALIZATION ALLIANCE to be signed and delivered by their duly authorized representatives as of the Effective Date.

FORT SCHUYLER MANAGEMENT CORPORATION

ams AG

By: _____
Name: Walter Gerald Barber
Title: Chair
Date: July __, 2015

By: _____
Name: _____
Title: _____
Date: July __, 2015

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES
CORPORATION

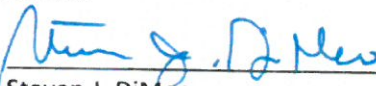
By: 
Name: Steven J. DiMeo
Title: President
Date: July 27, 2015

EXHIBIT A

MANUFACTURING FACILITY REQUIREMENTS

Following are the current estimated/approximate Manufacturing Facility requirements.

Facility Requirements				
Facilities	Description	Qty.	Unit of Measurement	Notes
300 MM Wafer Fabrication Facility	2+1 Level (clean room approx. 86,110 ft ² . Mfg. area will also include: <ul style="list-style-type: none"> • 12,920 ft² for EWP • 4,306 ft² for filter deposition 	360,000	GSF or ft. ²	50% of fab (cleanroom) initially to be completed and balance of cleanroom shelled <ul style="list-style-type: none"> • Phase 1: 200 mm, supports 208,000 WSPY • Phase 2: 300 mm, supports 145,000 WSPY
CUB (process and mechanical)		150,695	GSF or ft. ²	81,000 GSF to be finished as part of Phase 1.
Administrative Offices		79,653	GSF or ft. ²	50,590 GSF to be finished as part of Phase 1.
HPM		16,100	GSF or ft. ²	To be finished as part of Phase 1
Gas Yard		30,000	GSF or ft. ²	To be finished as part of Phase 1
Water Tank		150,000	Gallons	To be finished as part of Phase 1
WWPS		1	LS	To be finished as part of Phase 1
Substation		1	LS	To be finished as part of Phase 1

In addition, for full build-out of the Manufacturing Facility, AMS will require the following utility capacity, which is either already in place at the Mary Nanocenter or will be built to support the Manufacturing Facility:

- Power 25.5 MW
- Natural Gas: 38 dth/hr. (in place)

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- Water: 1.4 MGD (in place)
- Sewer: 1.2 MGD (in place)
- Telecom/Internet: Fiber available

These requirements remain subject to change and any changes will be mutually agreed to in writing by the Parties. All amounts are approximate targets, for discussion purposes.

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EXHIBIT B
MANUFACTURING EQUIPMENT

[TO BE AGREED UPON AND INSERTED BY THE PARTIES]

EXHIBIT C
INTELLECTUAL PROPERTY AND JOINT PROJECTS

1. Definitions

In addition to the terms defined elsewhere in this Agreement, for the purposes of the Agreement, including this Exhibit, the following terms have the described meanings listed below. AMS and FSMC or its Affiliate, acting on behalf of SUNY POLY, shall enter into a separate agreement to set forth any joint research and development projects, which shall incorporate the terms and conditions of this Exhibit.

a. Foreground Non-Patent IP

Foreground Non-Patent IP" means all know-how, trade secrets, copyrights, rights in computer programs, documentation, and mask layout designs in physical and/or electronic form and other intellectual property (other than Foreground Patent IP) developed during Joint Projects. Foreground Non-Patent IP shall not include the results of any research or project rejected by the Parties and undertaken by a Party or its Representatives outside the Joint Projects, or the results of any other program undertaken by a Party or its Representatives outside the Joint Projects.

b. Foreground Patent IP

Foreground Patent IP means patents and patent applications (including, but not limited to, design, utility, utility model, provisional, continuation, continuation-in-part, divisional, reexamination, reissue or extensions) in any country or jurisdiction of either Party or its Representatives on Joint Project Inventions.

c. FSMC and its Affiliates Personnel

FSMC and its Affiliates Personnel shall mean the general, administrative and research employees and the independent contractors and consultants of FSMC, FOUNDATION, SUNY POLY, and the faculty, researchers, research assistants, teaching assistants, and students of SUNY POLY, who are or who are expected to be performing activities under or in respect of the Program.

d. Joint Projects

Joint Projects means research program(s) approved by the Parties and/or its Affiliates for performance jointly by the Parties in respect of the Program.

e. Intentionally Omitted

f. Joint Project Inventions

Joint Project Invention(s) shall mean an invention(s) conceived and/or first reduced to practice (within the meaning of the prevailing US Patent Laws) by an employee,

contractor or consultant of a Party or a Party's Affiliates in the conduct of a Joint Project(s).

g. Proprietary Technical Projects

Proprietary Technical Project(s) shall mean research programs performed solely for AMS within the Program that are not Joint Projects.

h. Representatives

Representative(s) shall mean a Party's agents, contractors, or employees and employees, contractors or agents of a Party's Affiliates and, in the case of FSMC, FSMC and FSMC Affiliate Personnel.

i. US Patent Law(s)

US Patent Law(s) shall mean 35 U.S.C. Section 1 *et seq.*, 37 C.F.R. Section 1 *et seq.*, and the case law interpreting such statutes, regulations and the rights incident thereto.

2. Treatment of SUNY POLY Facilities

The Parties recognize that, in consideration of AMS' contributions to be provided pursuant to Section IV of the Agreement, and in conjunction with the SUNY's Cooperative Use of Equipment Policy, the SUNY POLY Facilities will be made available for access and use by AMS for Proprietary Technical Projects in accordance with the terms of this Agreement. Further, in recognition of each Party's respective contributions to the Program, the SUNY POLY Facilities used jointly by the Parties for Projects will be considered a joint use of facilities. FSMC warrants that the treatment of the SUNY POLY Facilities as a joint use of facilities, as set forth in this Section 2 of this Exhibit, is consistent with and facilitates the ownership of intellectual property created under the Program, as set forth in Section 4 of this Exhibit.

3. Reporting of Joint Project Inventions

Representatives of the Parties performing services under the Joint Projects shall promptly report in a reasonably detailed written disclosure all Joint Project Inventions to their applicable Party. Within sixty (60) days after receipt, each Party shall provide a copy of such invention disclosure(s) received on a Joint Project Invention to the other Party. The Program Managers (or their mutually agreed designee) shall maintain a reasonably detailed written log of all Joint Project Inventions.

4. Ownership of Project Intellectual Property

- (a) Foreground Patent IP shall be owned by the Party or Parties whose Representatives are inventors of the underlying Project Invention as a matter of US Patent Law. The owning Party or Parties shall retain the entire right, title, and interest throughout the world to such Foreground Patent IP including, without limitation, the right to file (or not to file) for patents for such Project Invention(s). Any Foreground Patent IP on Project Inventions invented jointly by the Parties' Representatives as a matter of U.S. Patent

Law shall be jointly owned by the Parties and shall be licensable by each Party without accounting to or permission from the other Party subject to subsection (c) below.

- (b) Foreground Non-Patent IP shall be owned by the Party or Parties whose Representatives developed such Foreground Non-Patent IP. The owning Party or Parties shall retain the entire right, title, and interest throughout the world to such Foreground Non-Patent IP including, without limitation, the right to register (or not to register) such Foreground Non-Patent IP. Any Foreground Non-Patent IP developed jointly by the Parties' Representatives shall be jointly owned by the Parties and shall be licensable by each Party without accounting to or permission from the other such Party subject to subsection (c) below.
- (c) FSMC and, if applicable, its Affiliate each agree to grant to AMS an option to negotiate, a royalty-bearing exclusive license, to make, use, or sell under any of its solely owned Foreground Non-Patent IP and/or Foreground Patent IP, and on any jointly owned Foreground Non-Patent IP and/or Foreground Patent IP to the extent that they are legally able to do so. FSMC and, if applicable, its Affiliate reserve for themselves a royalty-free, irrevocable license to make and use any such exclusively licensed Foreground Non-Patent IP and/or Foreground Patent IP for their own research and educational purposes. AMS shall have thirty (30) days from receipt of such disclosure of any invention or discovery pursuant to Paragraph 3 hereof to notify FSMC and/or its Affiliate of its desire to enter into such an exclusive license agreement, and an exclusive license agreement shall be negotiated in good faith within a period not to exceed sixty days (60) from the notification by AMS of its desire to enter into a license agreement, or such period of time as the parties shall mutually agree in writing. In the event that AMS and FSMC and/or its Affiliate fail to enter into an agreement during that period of time, then the rights to such inventions or discoveries shall be disposed of in accordance with FSMC's and/or its Affiliate's policies, with no obligation to AMS.

5. Patent Filing for Project Inventions

The decision on filing of patents for Project Inventions shall be made by the Party having an ownership interest in such Project Invention. In the event of a dispute, such Party shall refer the dispute in writing to the senior executives of the Parties, as described in Section X of this Agreement, who shall discuss and meet in person, if necessary, in order to negotiate a resolution of the dispute. If the Parties together own Project Inventions, they shall equitably share the cost of obtaining and maintaining any resulting Foreground Patent IP on such Project Inventions. In the event that a Party owning such a Project Invention elects not to seek patent protection for such Project Invention in any particular country or not to share equally in the expense thereof with the other owning Party, the other owning Party shall have the right to seek or maintain such protection at its own expense in such country and shall have full control over the prosecution and maintenance thereof and title to any patent issuing therefrom shall be owned solely by such participating party with the non-participating party obtaining a royalty free, irrevocable, non-exclusive license to make and use the Project Invention for its own research and educational purposes only. Any election by a Party not to share equally in the

expenses associated with seeking patent protection for any Project Invention shall not be construed as a termination event under Section XI.

6. Restriction on Confidential Information in Patent Applications

Neither Party may disclose any Confidential Information of the other Party in any patent application or in the prosecution of such patent application without the written approval of the Party owning such Confidential Information, which approval shall not be unreasonably withheld or delayed.

7. Assistance for Patent Protection

Each Party, at its own expense, shall reasonably assist the other Party in obtaining patent protection for joint Project Inventions. Such assistance shall include, without limitation, provision of invention disclosure documents which include data and examples, causing the execution of assignments and other instruments and provision of such documents as the other Party may reasonably consider necessary or appropriate to the obtaining of patent protection. The Parties shall cooperate to facilitate compliance with the duty of disclosure requirements for patent application filing and/or prosecution.

8. Project Invention Disclosure Review

At least on an annual basis, during the Term of this Agreement, each Party must report in writing to the other Party on the status of all Project Invention disclosures, any corresponding patent applications, and any corresponding issued patents for which it is responsible. For one (1) year after the expiration or earlier termination of this Agreement, each Party must report in writing to the other Party the status of all Project Invention disclosures, any corresponding patent applications, and any corresponding issued patents for which it is responsible.

9. Activity at Other Facilities

Any intellectual property developed by AMS in any other FOUNDATION-owned facilities outside of those provided for the Program and/or outside of the SUNY POLY Facilities is not part of this Agreement and shall be subject to the terms and conditions of any separate contract or agreement executed between AMS and FSMC or its Affiliate.

10. No Restriction on Licensing Owned Patents

Nothing in this Agreement shall be construed as limiting the ability of either Party to grant non-exclusive licenses under any patents in which that Party has an ownership interest and/or otherwise has the right to grant licenses.

11. Joint Project Costs and Personnel

Except as otherwise expressly agreed to in this Agreement or the corresponding SOW, each Party shall be responsible for and shall bear (a) all of its own costs and expenses for a Joint Project and (b) all responsibility for all personnel that it uses for a Joint Project.

**EXHIBIT D
CONFIDENTIALITY**

1. Disclosure of Confidential Information

- (a) Each Party may disclose and receive Confidential Information (defined below) from any other Party.
- (b) "Confidential Information" shall mean all information that (i) is maintained in confidence by a Party ("Owning Party"), (ii) is disclosed to or obtained by any other Party in connection with and during the Term of this Agreement, including, but not limited to, information that relates to such Owning Party's or its Affiliates' past, present or future research, development, manufacturing, or business activities relating to the Essential Purposes, and (iii) is information that may be exempted from disclosure under Articles 6 and 6-A of the New York Public Officers Law. Any Party ("Disclosing Party") may disclose its Confidential Information to any other Party ("Receiving Party") orally, in writing, or by other media or transfer of materials including graphic, photographic, recorded, prototype, sample, or other tangible or permanent form clearly and obviously marked "confidential" or "proprietary". Electronic information will be adequately marked if the container is marked and if a proprietary legend displays when the information runs on a computer system and when the information is printed from its data file.
- (c) When disclosed orally, the Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to each Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. All restrictions provided herein regarding use and/or disclosure shall apply during such thirty-day period.

2. Protecting confidential information

- (a) Each Receiving Party will retain the Disclosing Party's Confidential Information in confidence for three (3) years from the date of disclosure. Each Receiving Party will not disclose, disseminate, or publish any of the Disclosing Party's Confidential Information to any person except employees or agents of such Receiving Party on a need to know basis, except as consistent with the Receiving Party's obligations under Articles 6 and 6-A of the New York Public Officers Law, or other applicable law, regulation or legal process. Each Receiving Party shall ensure that such employees or agents shall be bound by terms at least as protective as the terms of this Exhibit D. Each Party warrants that its employees or agents shall comply with the terms of this Exhibit D. Upon the termination or expiration of this Agreement, the Parties shall confer regarding the status of Confidential Information disclosed and/or created under this Agreement.

3. Ownership

All right, title and interest in the Disclosing Party's Confidential Information which is furnished to each Receiving Party shall be and remain the exclusive property of the Disclosing Party.

4. Standard of Care

Each Receiving Party shall be held to the same standard of care in protecting the Disclosing Party's Confidential Information as each Receiving Party normally employs to preserve and safeguard its own Confidential Information of similar kind, but in no event less than reasonable care.

5. Exclusions; Required Disclosure

- (a) Each Receiving Party's obligations regarding the Disclosing Party's Confidential Information shall not apply to information (a) that was already known to each Receiving Party prior to the disclosure of such information to each Receiving Party by the Disclosing Party, (b) that is or becomes publicly available through no act or fault of Receiving Party, (c) that is rightfully received by each Receiving Party from a third-party having no obligation of confidentiality to the Disclosing Party, or (d) that is independently developed by each Receiving Party.
- (b) In the event FSMC or EDGE is required by law, regulation, or court order to disclose any of AMS' Confidential Information, FSMC or EDGE, as the case may be, will notify AMS in writing prior to making such disclosure in order to facilitate AMS seeking a protective order or other appropriate remedy from the appropriate legal body. In the event AMS is required by law, regulation, or court order to disclose any of FSMC's or EDGE's Confidential Information, AMS will notify FSMC or EDGE, as the case may be, in writing prior to making such disclosure in order to facilitate FSMC or EDGE, as the case may be, seeking a protective order or other appropriate remedy from the appropriate legal body. Each Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from reviewing the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

6. Protection of Plans and Specifications for SUNY POLY Facilities

AMS agrees that all plans, specifications, drawings and other documents of any kind whatsoever, and in whatever medium expressed, prepared in connection with the SUNY POLY Facilities (collectively, the "SUNY POLY Facilities Documents") and all rights therein (including trademarks, trade names, rights of use, copyrights and/or other proprietary rights) shall be and remain the sole property of FSMC and shall be treated as FSMC's Confidential Information (whether or not the Parties terminate or withdraw from this Agreement for any reason whatsoever). Except as expressly provided for in this Agreement, AMS shall not use (or

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distribute) the SUNY POLY Facilities Documents without FSMC's prior written consent. This Section shall survive the term or termination of this Agreement.

EXHIBIT E
AMS INSURANCE REQUIREMENTS

AMS shall obtain the following insurance coverage and/or limits to be effective upon the earlier of Manufacturing Facility Completion or AMS' entry into the Manufacturing Facility:

- (a) AMS shall maintain (or cause to be secured and maintained) for the benefit of FSMC, annual comprehensive general public liability insurance (or a combination of commercial general liability insurance, self-insurance and/or umbrella liability insurance) with a combined single limit per occurrence of not less than \$10 Million, and an aggregate limitation of not less than \$10 Million, which insurance covers bodily injury, disease and death and property damage (including, to the extent such insurance is reasonably available therefor, environmental damage), and which applies to any such liabilities AMS may have under this Agreement.
- (b) Business Automobile Liability with limits of insurance of not less than \$1,000,000.00 each accident.
- (c) Workers Compensation & Employers Liability with limits of insurance of not less than the amount required by New York State. This policy shall contain an All States Endorsement.
- (d) AMS shall purchase and maintain for the duration of this agreement Property Insurance ("PI") in the amount of \$65 Million that includes coverage for the personal property/equipment of others and/or property that is in the care, custody and control of AMS (other than Manufacturing Equipment). This policy should provide "all-risk" coverage and shall include coverage for the perils of "testing", "calibrating" and "mechanical breakdown." FSMC shall be named as Loss Payees on the PI policy maintained by AMS.
- (e) AMS will name FOUNDATION, SUNY POLY, FRMC, FSMC, SUNY and the State of New York, as Additional Insureds. Purchase and maintenance of such insurance shall in no way be interpreted as relieving AMS of any of its responsibilities or liabilities hereunder, and AMS may carry, at its expense, such additional insurance amounts and coverage as it deems necessary. The general public liability insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured party. Except due to claims caused by the negligence of the FSMC, it shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds. AMS shall maintain coverage for itself and all Additional Insureds for the duration of the term of this Agreement.
- (g) AMS shall use best efforts to secure written agreement of its insurance carrier(s) and, upon request, copy same to FSMC and to the parties set forth in the Notice section, agreeing to notify FSMC in writing no less than thirty (30) days prior to any cancellation, termination or material modification of any of the foregoing policies and coverages.

FSMC shall, at its sole cost, purchase and maintain for the duration of this Agreement Property Insurance (PI) that includes coverage for the Manufacturing Facility, Manufacturing Equipment, for the replacement cost thereof, including builder's risk insurance on the Manufacturing Facility while it is under construction. This policy should provide "all-risk" coverage and shall include coverage for the perils of "testing", "calibrating" and "mechanical breakdown."

Each Party hereby agrees that, notwithstanding anything to the contrary in the Agreement, including Sections 14.5 and 14.7, each Party and its respective insurers waives all rights against the other Party, with respect to AMS, as a Party, and FSMC, as the other Party, SUNY, FRMC, FOUNDATION, SUNY POLY, the State of New York, as well as such entities' officers, directors, trustees and employees for recovery of damages to the extent these damages are covered by insurance maintained by such Party per the requirements stated above.

Upon signing of this Agreement and immediately upon renewal or replacement of any and all insurance policies required hereunder, AMS shall furnish to FSMC certificates of insurance evidencing all coverages required hereunder, to which copies of all additional named insured endorsements and loss payee endorsements required hereunder, executed by the insurers, shall be attached. FSMC shall have the right to review all insurance policies maintained by AMS hereunder upon request.

**EXHIBIT F
MANUFACTURING EQUIPMENT**

1. Use.
 - 1.1. Installation.
 - 1.1.1. Prior to the Manufacturing Equipment Commissioning, FSMC and AMS shall have access and use of the Manufacturing Equipment for purposes of installation, fit-up and testing.
 - 1.2. Term.
 - 1.2.1. Throughout the Term, AMS shall have sole and exclusive use of the Manufacturing Equipment.
2. Warranties and other Rights.
 - 2.1. Intentionally Omitted.
 - 2.1.1. Intentionally Omitted.
 - 2.2. Third Party Beneficiary.
 - 2.2.1. FSMC shall, without expense to AMS, use its best efforts to include AMS as a third party beneficiary under each contract for the purchase of each component of the Manufacturing Equipment. If AMS is not included as a third party beneficiary under a contract for the purchase of a component of the Manufacturing Equipment, then FSMC will appoint AMS as its agent to enforce all express warranties and other rights with respect to the component of the Manufacturing Equipment, to allow AMS to undertake needed maintenance and repairs on an expedited basis when necessary to minimize downtime and impact on the Manufacturing Operations.
3. Intentionally Omitted
4. Repair and Maintenance.
 - 4.1. Warranty Period.
 - 4.1.1. During the term of all Manufacturing Equipment Warranties, consistent with the terms of Section 2 above, FSMC or AMS will ensure that necessary repairs and maintenance of the Manufacturing Equipment are done.
 - 4.2. Non-Warranty.
 - 4.2.1. If any Manufacturing Equipment needs repairs or maintenance not covered by Manufacturing Equipment Warranties due to the passage of time, the nature of the repair or maintenance or otherwise, AMS, at its cost and expense, shall perform or cause to be performed the necessary maintenance and repairs.

5. Replacements.

5.1. Warranty Period.

- 5.1.1. During the term of all Manufacturing Equipment Warranties, consistent with the terms of Section 2 above, FSMC or AMS will ensure that necessary replacements of the Manufacturing Equipment are done.

5.2. Post Warranty Period.

- 5.2.1. If any Manufacturing Equipment needs replacement and such replacement is not covered by Manufacturing Equipment Warranties due to the passage of time, the nature of the repair or maintenance or otherwise, AMS, at its cost and expense, shall perform or cause to be performed the necessary maintenance and repairs.

5.3. Ownership.

- 5.3.1. If Manufacturing Equipment is replaced pursuant to the terms of subsection 5.1.1 above, without cost or expense to AMS, such replaced Manufacturing Equipment will be owned by FSMC.
- 5.3.2. If Manufacturing Equipment is replaced pursuant to the terms of subsection 5.2.1 above, such replaced Manufacturing Equipment will be owned by AMS.

6. Modifications.

- 6.1.1. AMS may make such alterations and revisions to the Manufacturing Equipment as reasonable and necessary to facilitate Manufacturing Operations.

7. Insurance.

7.1. Special Causes of Loss and Difference in Condition.

- 7.1.1. FSMC, at its sole cost and expense, shall keep all Manufacturing Equipment insured against loss or damage by risks now or hereafter embraced by "Special Causes of Loss" and "Difference in Conditions" coverages.

7.2. Additional Casualty Coverages.

- 7.2.1. FSMC, at its sole cost and expense, shall keep all Manufacturing Equipment insured against loss or damage by the perils of "testing", "calibrating" and "mechanical breakdown."

7.3. Settlement of Claims.

- 7.3.1. FSMC shall be named loss payees on all coverages required by this Section 7.

- 7.3.2. Application of proceeds to repair or replace any or all of the Manufacturing Equipment affected by a casualty event shall be done only upon the mutual consent of the Parties, after determining the scope and specifications of all repairs and replacement of the affected Manufacturing Equipment.

7.4. Miscellaneous.

- 7.4.1. FSMC will use best efforts for each insurance policy to require that the insurer give AMS at least thirty (30) days' prior written notice of any cancellation of such policy and will require that AMS's interests remain insured regardless of any act, error, omission, neglect or misrepresentation of FSMC.
- 7.4.2. Deductibles for each policy shall not exceed \$25,000.
- 7.4.3. The insurance maintained by FSMC shall be primary without any right of contribution from insurance which may be maintained by AMS.
- 7.4.4. FSMC hereby releases and waives on behalf of itself and on behalf of its insurers of the Manufacturing Equipment, any and all claims and any rights of subrogation of any such insurer against the AMS, its employees and agents for loss sustained from any peril to Manufacturing Equipment, whether or not such insurance is actually in force, or from any peril to Manufacturing Equipment actually insured against, though not required to be under this Exhibit F. The policies of FSMC shall contain an express waiver of subrogation to this effect.
- 7.4.5. All insurance required under this Exhibit F shall be effected under valid and enforceable policies of at minimum a Best rating of A-, XII and issued by insurers of recognized responsibility which are licensed to do business in the State of New York.
- 7.4.6. Intentionally Omitted.