

CIRRUS LOGIC INC

FORM 10-Q/A (Amended Quarterly Report)

Filed 12/29/1995 For Period Ending 10/1/1994

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Sector	Technology
Fiscal Year	03/30

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

Quarterly Report Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

For the quarterly period ended October 1, 1994

Commission file Number 0-17795

CIRRUS LOGIC, INC.

(Exact name of registrant as specified in its charter.)

CALIFORNIA	77-0024818
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

3100 West Warren Avenue, Fremont, CA 94538
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code:
(510) 623-8300

Indicate by check mark whether the registrant(1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES ☒ NO ☐

The number of shares of the registrant's common stock, no par value, was 63,140,364 as of September 30, 1995.

Part II. Other Information

Item 6. Exhibits and Reports on Form 8-K

a. Exhibits

* 10-22 Participation Agreement dated as of September 1, 1994 among Cirrus Logic, Inc., International Business Machines Corporation, Cirel Inc. and MiCRUS Holdings Inc.

* 10-23 Partnership Agreement dated as of September 30, 1994 between Cirel Inc. and MiCRUS Holdings Inc.

11 Statement re: Computation of Earnings per share

* Portions have been filed separately with the Commission in reliance on Rule 24b-2 and the Registrant's request for confidential treatment.

b. Reports on Form 8-K

A report on Form 8-K concerning the merger with PicoPower Technology, Inc. was filed with the Securities and Exchange Commission on August 25, 1994.

A report on Form 8-K concerning the formation of a joint venture "MiCRUS" was filed with the Securities and Exchange Commission on October 12, 1994.

CIRRUS LOGIC, INC.

SIGNATURES

Pursuant to the requirement of the Securities Exchange Act of 1934, the registrant has duly cause this report to be signed on its behalf by the undersigned thereunto duly authorized.

CIRRUS LOGIC, INC.
(Registrant)

December 27, 1995
Date

/s/ Sam S. Srinivasan
Sam S. Srinivasan
Senior Vice President, Finance and
Administration, Chief Financial Officer,
Treasurer and Secretary
(Principal Financial and Accounting Officer)

December 27, 1995
Date

/s/ Michael L. Hackworth
Michael L. Hackworth
President, Chief Executive Officer
and Director (Principal Executive Officer)

CONFIDENTIAL TREATMENT REQUESTED

[*] Denotes information for which confidential treatment has been requested. Confidential portions omitted have been filed separately with the Commission.

PARTICIPATION AGREEMENT dated as of September 1, 1994, among CIRRUS LOGIC, INC., a California corporation ("CIRRUS"), INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation ("IBM"), CIREL, INC., a California corporation (the "CIRRUS Partner"), and MICRUS HOLDINGS INC., a Delaware corporation (the "IBM Partner").

The parties desire to enter into this Agreement in connection with the formation of a general partnership by the CIRRUS Partner and the IBM Partner pursuant to the Partnership Agreement to operate within the scope of activity set forth in the Partnership Agreement.

Accordingly, the parties agree as follows:

ARTICLE I

**DEFINITIONS, RULES OF CONSTRUCTION
AND DOCUMENTARY CONVENTIONS**

SECTION 1.01. Certain Definitions.

(a) Capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A.

(b) As used herein, the term "Agreement" means this Participation Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

SECTION 1.02. Additional Definition. The following capitalized terms shall have the meanings assigned in this Agreement:

Term Defined In

"322 Fabrication Employees" Section 7.01(a) "Affected Contract Commitment" Section 5.10(b) "Agreement" Section 1.01(b)

"CIRRUS Functional Area Report" Section 5.10(o) "Customer-IBM Patent License" Section 6.10(c)(i) "Disabled Capacity Allocation" Section 5.10(a)

"Existing Customer"	Section 6.02(b)
"Functional Area"	Section 5.10(o)
"Indemnified Parent"	Section 9.02(a)
"Key Customers"	Section 5.10(d)
"Loadable Capacity"	Section 5.10(c)
"ramp-up tooling"	Section 5.12
"Reimbursing Parent"	Section 9.02(a)

"Turn Customer" Section 5.10(b)

SECTION 1.03. Rules of Construction and Documentary Conventions. The rules of construction and documentary conventions set forth in Appendix A hereto shall apply to this Agreement.

ARTICLE II

CLOSING; INITIAL FUNDING

SECTION 2.01. Closing.

At the Closing, in reliance upon the representations and warranties set forth in this Agreement and subject to the fulfillment to the satisfaction of, or waiver by, the applicable party of the conditions set forth in this Agreement, the following events shall occur:

(a) each party shall execute and deliver each Operative Document not previously executed and delivered by it, to the extent it is specified to be a party thereto;

(b) the Partnership shall be formed (if it has not previously been formed); and

(c) each Partner shall cause the Partnership to execute and deliver each Operative Document not previously executed by the Partnership, to the extent the Partnership is specified to be a party thereto. The parties agree that the Partnership may be formed at any time prior to the Closing.

SECTION 2.02. Time and Place of Closing. The Closing shall take place at the Facility at 10:00 a.m. on the Closing Date, or at such other place or time or on such other date as may be agreed upon by the Parents.

SECTION 2.03 Initial Funding.

Subject only to the Closing having previously occurred, on the Initial Funding Date:

(a) the CIRRUS Partner shall transfer or cause the transfer of the CIRRUS Assets to the Partnership;

(b) the IBM Partner shall transfer or cause the transfer of the IBM Assets to the Partnership; and

(c) the Partnership shall make a special cash distribution to the IBM Partner pursuant to Section 6.02(b) of the Partnership Agreement. The transfers referred to in Sections 2.03(a) and (b) shall be accomplished, in the case of cash, by wire transfer in immediately available funds to an account of the Partnership and, in the case of all other Assets to be transferred to the Partnership on the Initial Funding Date, pursuant to instruments of transfer duly executed and delivered on the Initial Funding Date by each appropriate party, and in form and substance reasonably satisfactory to each Parent. The transfer referred to in Section 2.03(c) shall be accomplished by wire transfer in immediately available funds to an account of IBM.

ARTICLE III

CONDITIONS TO CLOSING

The obligation of each Parent and such Parent's Affiliated Partner to complete the transactions set forth in Section 2.01 shall be subject to the fulfillment, as of the Closing Date, to the satisfaction of, or waiver by, such Parent of the conditions set forth below in this Article III (except that the obligations of such Parent and its Affiliated Partner shall not be subject to either's own compliance with Sections 3.01, 3.02, 3.03, 3.06, 3.07, 3.08, 3.09, 3.10 and 3.11):

SECTION 3.01. Performance.

Each party and the Partnership shall have performed and complied in all material respects with each agreement, covenant and condition in each Operative Document to which it is or is specified to be a party, which agreement, covenant or condition is required to be performed or complied with by such Person at or before the Closing.

SECTION 3.02. Authorization, Execution and Delivery of Operative Documents. Each party and the Partnership shall have duly authorized, executed and delivered each Operative Document to which it is or is specified to be a party and an executed counterpart thereof shall have been delivered to each other party thereto and to each Parent.

SECTION 3.03. No Default.

Each Operative Document shall be in full force and effect at the Closing without any event having occurred or condition existing that constitutes, or with the giving of notice or passage of time (or both) would constitute, a default under or breach of such Operative Document or would give any party to such Operative Document the right to terminate or not to perform any obligation under such Operative Document.

SECTION 3.04. Consents, Approvals, etc.; Burdensome Conditions.

(a) All Governmental Actions (other than immaterial Governmental Actions such as routine qualifications to do business intended to be obtained as needed) required to be taken, given or obtained in connection with the transactions contemplated by the Operative Documents shall (i) have been taken, given or obtained, (ii) be in full force and effect at the Closing and

(iii) not be subject to any pending proceedings or appeals, administrative, judicial or otherwise (other than such immaterial Governmental Actions), and the time for appeal shall have expired or, if an appeal shall have been taken, it shall have been dismissed.

(b) All consents and approvals of any other Person necessary or advisable in order to consummate in all material respects the transactions contemplated by the Operative Documents, excluding written consents to the assignment of third party contracts, shall have been obtained and shall be in full force and effect at the Closing.

(c) No Burdensome Condition shall exist with respect to either Parent or any of its Affiliates or the Partnership in connection with the transactions contemplated by the Operative Documents.

SECTION 3.05. Governmental Rules.

(a) No Governmental Rule shall have been instituted, threatened, issued or proposed to set aside, restrain, enjoin or prevent the consummation of the transactions contemplated by the Operative Documents.

(b) No change shall have occurred since the date of this Agreement in any Governmental Rule that, in either Parent's opinion, would make it illegal for such Parent, its Affiliated Partner or the Partnership to consummate any of the transactions contemplated by the Operative Documents or subject any such Person to an unreasonably burdensome penalty or other unreasonably burdensome liability or other obligation under or pursuant to any Governmental Rule in connection with the transactions contemplated by the Operative Documents.

SECTION 3.06. Standard Closing Documents. Each Parent and its Affiliated Partner shall have received, with respect to the other Parent and the other Parent's Affiliated Partner:

(a) a certificate dated the Closing Date of the secretary, assistant secretary or another appropriate authorized signatory of such party certifying:

(i) that a true and correct copy of the charter and by-laws of such party is attached to such certificate;

(ii) that a true and correct copy of the resolutions, delegations or other written evidence of corporate action of the appropriate authority within such party and the stockholders of such party, duly authorizing or ratifying its execution, delivery and performance of the Operative Documents to which it is or is designated to be party and the consummation of the transactions contemplated thereby, are attached to such certificate, and as to the absence of other resolutions, delegations or other corporate action relating thereto; and

(iii) as to the absence of proceedings for the merger, consolidation, sale of all or substantially all the assets, dissolution or liquidation with respect to such party;

(b) an incumbency certificate signed by an appropriate officer or other authorized signatory of such party dated the Closing Date as to the signatures and titles of the officers or authorized signatories of such party executing any Operative Document on behalf of such party (whether as a party thereto or on behalf of the Partnership as a general partner thereof), and any other documents delivered in connection with the Operative Documents; and

(c) a certificate signed by an appropriate officer or other authorized signatory of such party dated the Closing Date certifying that the conditions set forth in Sections 3.01 through 3.05, 3.07 and 3.18 (with respect to such party) have been satisfied by such party.

SECTION 3.07. Representations and Warranties. The representations and warranties of each party in Article IV and in any other of the Operative Documents shall be true and correct in all material respects as of the date of this Agreement and at the Closing with the same effect as if made at and as of the Closing, except to the extent such representations or warranties expressly relate to an earlier time.

SECTION 3.08. No Material Adverse Change. Each Parent shall be reasonably satisfied that, since the date of this Agreement, there shall not have occurred any material adverse change in the other Parent or its Affiliated Partner or in the prospects for the Partnership.

SECTION 3.09. Proceedings. All corporate or partnership and legal proceedings taken by each party and the Partnership in connection with the transactions contemplated by the Operative Documents and all documents relating to the transactions contemplated thereby shall be reasonably satisfactory in form and substance to each Parent and its counsel, and certified or other copies of all relevant documents as either Parent shall have reasonably requested shall have been provided to such Parent or its counsel.

SECTION 3.10. Opinion of Counsel to CIRRUS. IBM and the IBM Partner shall have received an opinion addressed to them, dated the Closing Date, of B. J. Olson, Corporate Counsel of CIRRUS and the CIRRUS Partner, in form, substance and scope reasonably satisfactory to IBM.

SECTION 3.11. Opinion of Counsel to IBM. CIRRUS and the CIRRUS Partner shall have received an opinion addressed to them, dated the Closing Date, of Gregory C. Bomberger, Esq., counsel to IBM and the IBM Partner, in form, substance and scope reasonably satisfactory to CIRRUS.

SECTION 3.12. Due Diligence. Prior to the Closing, each Parent shall have completed its due diligence and business review with respect to the transactions contemplated by the Operative Documents and the results of such review shall be satisfactory to such Parent in its sole discretion.

SECTION 3.13. Insurance. Arrangements reasonably satisfactory to each Partner shall have been made to provide the Partnership with insurance coverage complying with the requirements of the Partnership Agreement.

SECTION 3.14. Support Arrangements, etc. Each Parent shall be reasonably satisfied that other than as provided in the Operative Documents, (i) no support agreements covering resources, services, facilities or utilities required for the business of the Partnership as then proposed to be conducted immediately after the Closing need to be and have not been obtained and (ii) arrangements for obtaining bank accounts, Federal tax identification numbers and similar items for the Partnership have been made.

SECTION 3.15. Employment and Certain Other Arrangements.

(a) Each Partner shall be reasonably satisfied (i) that the staffing of the Partnership shall be adequate for the conduct of the business of the Partnership contemplated to be conducted after the Closing and (ii) as to the terms and circumstances of any Person's acceptance of employment or service and transfer. The key employees of the Partnership as agreed by the Partners shall have accepted conditional offers of employment.

(b) The composition of the initial management team, and the compensation plans, benefits and incentive programs for the Partnership's management, shall comply with the description thereof set forth in the Initial Business Plan.

SECTION 3.16. Partnership Finances. Each Parent shall be reasonably satisfied that, after giving effect to the Closing and the capitals contributions required pursuant to Section 6.01 of the Partnership Agreement, the Partnership will have sufficient cash and financial resources to conduct its business as proposed to be conducted in the Initial Business Plan through June 30, 1995.

SECTION 3.17. Form of Operative and Other Documents. Each of the Operative Documents (other than this Agreement), including schedules and attachments, and the Initial Business Plan shall, in each case, either be (a) in substantially the form agreed upon by the parties in writing on the date hereof with blanks appropriately completed and dates adjusted to reflect the Closing Date as appropriate or (b) if not in such agreed form or if no agreement has been reached with respect to any particular such document, in form, substance and scope satisfactory to each party to such agreement in its sole discretion.

SECTION 3.18. Business Plan. The Parents and the Partners shall have each approved in writing and delivered the Initial Business Plan of the Partnership including the portion agreed to by IBM and CIRRUS as of the execution of this Agreement.

SECTION 3.19. Sale and Lease of Third Party Assets. The Third Party Lessor shall have purchased the Third Party Assets from IBM for proceeds of not less than \$150,000,000 and shall have executed and delivered the Third Party Lease leasing such assets to the Partnership.

SECTION 3.20. Additional Equipment Acquisitions; IBM Initial Equipment Lease.

(a) Accountants and tax counsel for IBM and CIRRUS shall have determined whether it will be feasible to provide the Partnership with the ramp-up tooling in a manner that would result in the Partnership's being deemed to be the owner of such ramp-up tooling for tax purposes but not for accounting purposes in accordance with GAAP. Only if it can be established prior to the Closing that the acquisition of such ramp-up tooling may be structured in a manner that would achieve the above tax and accounting results without additional unreimbursed cost to IBM or the IBM Partner, then, as a condition to the obligations of CIRRUS to complete the transactions to be effected at the Closing, IBM shall agree to use its reasonable best efforts to cooperate with CIRRUS in obtaining the ramp-up tooling in such manner.

(b) Accountants and tax counsel for IBM and CIRRUS shall have determined whether it will be feasible to structure the IBM Initial Equipment Lease as an operating lease rather than a capital lease for accounting purposes in accordance with GAAP. Only if it can be established prior to the Closing that the IBM Initial Equipment Lease may be structured in a manner that would achieve this accounting result without additional unreimbursed cost to IBM or the IBM Partner, then, as a condition to the obligations of CIRRUS to complete the transactions to be effected at the Closing, the IBM Initial Equipment Lease to be entered into at the Closing will be so structured.

SECTION 3.21. IBM Restrictions. Prior to the Closing, IBM shall provide to CIRRUS a list of types of Products that the Partnership will not manufacture in order to assure compliance with restrictions contained in IBM's existing agreements with third parties (in addition to those specified in Section 5.16). Upon receipt of said list, CIRRUS may elect not to proceed with the Closing if said listing is not acceptable to it. Alternatively, if CIRRUS elects to proceed with the Closing, CIRRUS shall be deemed to have agreed that the Partnership shall refrain from manufacturing Products as described on said list, which list shall be annexed hereto as Schedule 3.21.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PARTIES Each Parent and its Affiliated Partner represents and warrants to the other Parent and its Affiliated Partner as of the date of this Agreement and as of the Closing Date, with respect to itself (and in the case of each Parent, with respect to its Affiliated Partner), as follows:

SECTION 4.01. Organization, Ownership Interest, etc.

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization or incorporation and has the power and authority to carry on its business as then conducted, to own or hold under lease its properties and to enter into and perform its obligations under each Operative Document to which it is or is specified to be a party.

(b) It is, or in the case of each Partner will be in a timely fashion, duly qualified to own or lease its properties and generally to conduct its business as currently, or proposed to be, conducted in each jurisdiction necessary for purposes of the transactions contemplated by the Operative Documents, except where failure to so qualify would not have a material adverse effect on such Person or the Partnership.

(c) In the case of each Parent, as of the Closing Date all the ownership interest in such Parent's Affiliated Partner will be directly or indirectly owned and held by such Parent, free and clear from all Liens (other than Permitted Liens). In the case of CIRRUS, all the ownership interest in CIRRUS Barbados is and will be directly or indirectly owned and held by CIRRUS, free and clear of all Liens (other than Permitted Liens).

SECTION 4.02. Authorization; No Conflict. It has duly authorized, or will prior to the Closing duly authorize and ratify, by all necessary action, the execution, delivery and performance of each Operative Document to which it is or is specified to be a party (and, in the case of each Partner, each Operative Document to which the Partnership is or is specified to be a party), and its execution and delivery thereof, its consummation of the transactions contemplated thereby and its compliance therewith does not and will not (a) require any approval of its stockholders or partners or any approval or consent of any trustee or holder of any of its Indebtedness or obligations, (b) contravene any Governmental Rule applicable to or binding on it or any of its properties if such contravention would have a material adverse effect on it or any of the Assets to be transferred by it or on its ability to perform any of its obligations under any Operative Document, (c) contravene or result in any breach of or constitute any default under its charter or by-laws, or contravene or result in any breach of or constitute any default under, or result in the creation of any Lien (other than Permitted Liens) upon any of its property or the property of the Partnership under, any material indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, loan or credit agreement or other material agreement or document to which it is a party or by which it or any of its properties is bound or affected or by which the property of the Partnership is bound or affected, (d) require any negotiation with or notice to any labor union or violate, or require any procedure to be followed under, any collective bargaining or other agreement with employees or (e) require any Governmental Action, in each case (a) through (e), except such as have been duly obtained, made or taken and which are in full force and effect.

SECTION 4.03. Enforceability.

(a) It has duly executed and delivered this Agreement and, upon the execution and delivery of this Agreement by each other party hereto, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) As of the Closing Date, it will have duly executed and delivered each other Operative Document to which it is or is specified to be a party

and, upon the execution and delivery of each such other Operative Document by each other party thereto, each such other Operative Document will constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting the enforcement of creditors' rights generally or the availability of equitable remedies. After giving effect to the Closing, it will not be in default under or in respect of any Operative Document.

SECTION 4.04. Proceedings. There are no actions or proceedings pending, or to its knowledge threatened, by or before any Governmental Authority that, if adversely determined, would have a material adverse effect on it, on any of the Assets to be transferred by it, on the conduct of the business of the Partnership following the Closing as contemplated in the initial Business Plan or on its ability to perform any of its material obligations under any Operative Document.

SECTION 4.05. Special Purpose Representation as to Partners. In the case of each Partner, as of the Closing Date, such Partner will not have conducted any business, have any outstanding Indebtedness or other obligations or own or hold any assets other than, in each case, as permitted under Section 10.03 of the Partnership Agreement.

SECTION 4.06. No Broker's or Finder's Fees. In the case of each Parent, neither it nor any of its Subsidiaries has incurred any liability for any broker's or finder's fees or commissions or similar payments in connection with any of the transactions contemplated by any Operative Document which will, directly or indirectly, become the responsibility of, or be borne by, the Partnership or the other Parent (or any of their respective Affiliates); provided that fees and expenses payable to

[*] and [*] in connection with the Third Party Lease will be payable by the Partnership either directly or as part of the [*] of the equipment covered by the Third Party Lease.

SECTION 4.07. List of Assets; Title to Assets.

(a) In the case of CIRRUS and the CIRRUS Partner, Schedule 4.07(a), to be appended to this Agreement at the Closing, will set forth the cash contribution to be made by the CIRRUS Partner to the Partnership on the Initial Funding Date.

(b) In the case of IBM and the IBM Partner, Schedule 4.07(b), to be appended to this Agreement at the Closing, will contain a true and complete list of the IBM Assets. The equipment subject to the IBM Equipment Leases (other than the IBM Supplemental Equipment Lease) and the Third Party Lease will, at the Closing, be in good operating condition, subject to reasonable wear and tear, and, to the knowledge of IBM, will not then be in need of repairs (other than customary periodic servicing) that could reasonably be expected to cost [*] or more individually or [*] or more in the aggregate.

(c) On the Initial Funding Date, each Parent will have transferred, or caused to be transferred, to the Partnership unencumbered, good and marketable title to the Assets to be transferred by it, free and clear of the claims of others and of all Liens (other than Permitted Liens referred to in clauses (a) and (c) of the definition thereof).

(d) In the case of each Parent, other than pursuant to the Operative Documents, there are no outstanding rights, options, agreements or other commitments giving any Person any present or future right to require it or any of its Affiliates (or, following the Closing, the Partnership or any of its Affiliates) to Transfer to any Person any ownership or possessory interests in, or grant any Lien on, any of the Assets to be transferred by it to the Partnership.

SECTION 4.08. Scope and Value of Assets. In the case of IBM and the IBM Partner, Schedule 4.08, to be appended to this Agreement at the Closing, will correctly set forth (a) the aggregate value of the IBM Assets, valued at the lesser of cost and fair market value,

(b) the aggregate book value of the IBM Assets for financial reporting purposes, (c) the aggregate tax basis in the IBM Assets and (d) the respective fair market values, book values for financial reporting purposes and tax bases for each non-cash item of the IBM Assets.

SECTION 4.09. Litigation; Decrees.

(a) There are no lawsuits, claims, arbitrations or other proceedings or investigations pending, or to its knowledge threatened, by or against or affecting it or any of its Subsidiaries or any of their respective properties that (i) relate to, or could materially adversely affect the rights of the Partnership in respect of, any of the Assets to be transferred by it or the conduct of the business of the Partnership following the Closing as contemplated by the Initial Business Plan or (ii) relate to any of the transactions contemplated by the Operative Documents.

(b) Other than, in the case of IBM and the IBM Partner, the Consent Decree, there is no outstanding judgment, order or decree of any Governmental Authority applicable to it or any of its Subsidiaries that relates to or could materially adversely affect the Assets to be transferred by it or the conduct of the business of the Partnership following the Closing as contemplated by the Initial Business Plan.

SECTION 4.10. Compliance with Other Instruments. It is not in default in any material respect in the performance of any material obligation, agreement, instrument or undertaking to which it is a party or by which it or any of its properties is bound which default could, and there is no such obligation, agreement, instrument or undertaking (other than, in the case of IBM and the IBM Partner, the Consent Decree) which could, materially adversely affect the conduct of the business of the Partnership following the Closing as contemplated by the Initial Business Plan.

ARTICLE V

COVENANTS

SECTION 5.01. Covenants of Parents.

Each Parent agrees with the other Parent that:

(a) Performance of Obligations. It shall fully and faithfully carry out all its obligations under each Operative Document to which it is a party.

(b) Conduct of Businesses. Until the Closing, it shall not, and shall not permit any of its Subsidiaries to, take any action that would, or could be reasonably foreseen to, result in any of its or its Affiliated Partner's representations and warranties set forth herein becoming untrue or in any of the conditions set forth herein to be satisfied by it or its Affiliated Partner prior to or at the Closing not being so satisfied.

(c) Products and Services. IBM will be the supplier of information processing hardware, software and services to the Partnership under IBM's then standard customer agreements at those prices and upon those other terms and conditions that IBM offers to its most favored unaffiliated customers purchasing comparable quantities, except as may be otherwise provided in the Operative Documents.

(d) Ownership Interest. Subject to Section 10.01 of the Partnership Agreement, and except pursuant to a written agreement among the Parents and their Affiliated Partners, such Parent will not Transfer or cause its Affiliated Partner to Transfer, directly or indirectly, any interest in the Partnership to a third party, other than a Subsidiary of such Parent domiciled in the United States. All the ownership interest in such Parent's Affiliated Partner shall at all times be directly or indirectly owned and held by such Parent or a Subsidiary of such Parent domiciled in the United States free and clear from all Liens (other than Permitted Liens).

(e) Change of Control and Dissolution. It will furnish the information and enter into the agreements referred to in Sections 10.08, 10.10, 10.11 and 11.02(d) of the Partnership Agreement to be furnished or entered into by such Parent on a timely basis.

SECTION 5.02. Parent Undertaking as to Affiliated Partner Obligations. Each Parent agrees with the other Parent that it shall cause all covenants, conditions, representations, warranties and agreements to be performed or observed by such Parent's Affiliated Partner expressly set

forth in Sections 6.01, 10.01, 10.02, 10.03, 10.04, 10.05, 10.06, 10.07, 10.08, 10.10, 10.11 and 11.02 of the Partnership Agreement to be fully and faithfully observed, and shall not cause or permit to exist (i) an Event of Default under paragraph (a) or (b) of the definition of such term in Appendix A with respect to such Affiliated Partner or (ii) except as otherwise permitted pursuant to the Partnership Agreement, any event of dissolution of the Partnership caused by such Affiliated Partner (other than, in each case (i) and (ii), a Bankruptcy Event of such Affiliated Partner resulting from its status as a general partner of the Partnership or acts or omissions in its capacity as such). Nothing in Section 5.01 or in this Section 5.02 shall be construed to create any right in any Person other than a Parent.

SECTION 5.03. Liabilities. Each Parent represents, warrants and agrees that the Partnership has not and shall not assume any Indebtedness, liabilities, obligations or commitments of such Parent or any of its Affiliates as a result of or arising out of the transfer by such Parent of the Assets to be transferred by it to the Partnership, which Indebtedness, liabilities, obligations or commitments relate to any period before the Initial Funding Date. This Section 5.03 shall be enforceable against such Parent by the Partnership.

SECTION 5.04. Further Assurances. Following the execution and delivery of this Agreement and prior to the Closing, each party shall and shall cause its Subsidiaries to (and, in the case of each Partner, at the Closing shall cause the Partnership to), take all reasonable actions necessary or appropriate to ensure that the conditions to Closing set forth herein to be satisfied by such party (or the Partnership) are satisfied reasonably promptly following such execution and delivery, and to obtain (and cooperate with the others in obtaining) any Governmental Action required to be obtained or made by it in connection with any of the transactions contemplated by this Agreement; provided that no Burdensome Condition shall exist with respect to such Person or any of its Affiliates in connection therewith.

SECTION 5.05. Public Announcements.

(a) Prior to the Closing, the Parents, the Partners and the Partnership shall not (and shall not permit any of their respective Subsidiaries to), without the prior written consent of the other parties to this Agreement, issue any press release or make any public announcement with respect to any Operative Document or the transactions contemplated thereby or publicly file all or any part of any Operative Document or any description thereof except as required by any Governmental Rule or as necessary to secure any Governmental Action. The initial announcement of the transactions contemplated by the Operative Documents shall be made by joint press release of the Parents.

(b) At or following the Closing, each Parent shall not (and shall not permit any of its Subsidiaries to):

(i) issue any public release or announcement concerning the operations of the Partnership without first allowing the other Parent reasonable time to comment on such release or announcement in advance of its issuance and using reasonable efforts to accept the reasonable comments of such other Parent;

(ii) issue any public release or announcement or issue or distribute any document to be used in connection with the private or public sale of debt or equity securities without the prior consent of the other Parent if such release, announcement or document refers to such other Parent (or any of its Subsidiaries) in connection with the Partnership, except as may be required by any applicable Governmental Rule, in which case such Parent shall (or shall cause the Person required to make such disclosure to) allow such other Parent reasonable time to comment on such release or announcement in advance of its issuance and use reasonable efforts to accept the reasonable comments of such other Parent; or

(iii) publicly file all or any part of any Operative Document or any description thereof, except as may be required by any applicable Governmental Rule, in which case such Parent shall (or shall cause the Person required to make such filing to) cooperate with the other Parent, to the extent reasonable and practicable, in obtaining any confidential treatment for such filing requested by the other Parent.

SECTION 5.06. Nonsolicitation of Employees. So long as the business of the Partnership is being continued directly or indirectly by the Partnership, each Parent shall not, without the prior written consent of the Partnership, directly or indirectly, solicit, induce, recruit or encourage any employee or officer of the Partnership to leave his or her employment with the Partnership [*] In the event of dissolution of the Partnership, either Parent (or any Affiliate of either Parent) may employ any employee or former employee of the Partnership, but neither Parent (nor any of their Affiliates) shall be required to employ any such Person.

SECTION 5.07. Other Activities. Each Parent and its Affiliated Partner (for itself and, in the case of each Affiliated Partner, on behalf of the Partnership) acknowledges and agrees that:

(a) either Parent and any of its Affiliates (other than its Affiliated Partner) may engage in other business ventures and dealings of every nature, independently or with others, including within the scope of the activities of the Partnership and whether or not competitive with the business of the Partnership (or any of its Affiliates) or of the other Parent (or any of its Affiliates) and regardless of the effect on the Partnership, and none of the Partnership (nor any of its Affiliates) nor the other Parent (nor any of its Affiliates) shall have any rights in such ventures or dealings or to the income and profits derived therefrom; and

(b) the other Parent and its Affiliates, any of their respective employees, including any Seconded Employee and Liaison Representative, and any member of the Governing Board appointed by the other Parent's Affiliated Partner shall not be obligated to refer to the Partnership any business opportunity presented to or developed by any of them.

SECTION 5.08. Additional Arrangements.

(a) CIRRUS and the CIRRUS Partner acknowledge and agree that, for so long as IBM owns directly or indirectly more than 50 percent of the Partnership, the Partnership will, for various purposes, be required to take actions as a Subsidiary of IBM, including complying with contracts and obligations that apply to IBM Subsidiaries generally, and that the obligations of the Partnership as a Subsidiary of IBM may adversely affect its business, operations and affairs. Neither the Partnership nor CIRRUS (or any of its Affiliates) shall have any claim or rights against IBM (or any of its Affiliates) as a result of such requirements and obligations.

(b) Subject to Section 5.10 of this Agreement, IBM agrees that it shall not enter into any agreement or undertake any obligation requiring the Partnership to take action as a Subsidiary of IBM that materially adversely affects the out-of-pocket costs of the Partnership allocable to the CIRRUS Partner, other than any agreement or obligation that is entered into or undertaken to comply with any Governmental Rule, if such agreement or obligation (i) is intentionally induced against the Partnership by IBM to harm the Partnership and is not in response to the contractual or other requirements of another party to such agreement or obligation; (ii) does not bind Subsidiaries of IBM generally as such agreement or obligation binds the Partnership and does not bind IBM's Microelectronics Division (or successor division within IBM) as such agreement or obligation binds the Partnership; and (iii) is not approved in writing by CIRRUS.

(c) Any agreement or commitment between IBM and a third party that is not otherwise a Limiting Agreement and that places a volume limitation on or otherwise restricts in any material respect the production and sale of specified types of Integrated Circuits by IBM and its Subsidiaries may, at IBM's election, be treated as a Limiting Agreement pursuant to which the Partnership's manufacture and sale of such Integrated Circuits would be prohibited. If IBM elects to treat any such agreement or commitment as a Limiting Agreement, the terms and conditions of Section 5.10 shall apply in all respects to said agreement or commitment. If IBM does not so elect, the terms and conditions of Section 5.10 shall not apply.

SECTION 5.09. Waiver of Conflict of Interest, etc.

(a) Each Parent and its Affiliated Partner (for itself and, in the case of each Affiliated Partner, on behalf of the Partnership) hereby:

(i) waive any claim or cause of action against each of the other Parent, such other Parent's Affiliates, any member of the Governing Board appointed by such other Parent's Affiliated Partner and any employee of such other Parent or any of its Affiliates (including any Seconded Employee and Liaison Representative) that may from time to time arise in respect of a breach of any duty to the Partnership or any of its Subsidiaries by any such Person as a result of a conflict of interest between the Partnership or any of its Subsidiaries and such other Parent or any of its Affiliates other than the breach of a duty expressly imposed pursuant to an Operative Document or other agreement to which the Partnership and the other Parent or any of its Affiliates are parties;

(ii) acknowledge and agree that (A) in the event of any conflict of interest between the Partnership or any of its Subsidiaries and the other Parent or any of its Affiliates that may from time to time arise, each of such other Parent, such other Parent's Affiliates, any member of the Governing Board appointed by such other Parent's Affiliated Partner and any employee of such other Parent or any of its Affiliates (including any Seconded Employee and Liaison Representative) may, in the absence of bad faith, act in the best interests of such other Parent or any of its Affiliates and (B) each such Person shall not be obligated (1) to reveal to the Partnership or any of its Subsidiaries confidential information belonging to or relating to the business of such other Parent or any of its Affiliates or (2) to recommend or take any action in its capacity as a general partner of the Partnership, member of the Governing Board or employee (including as a Seconded Employee or a Liaison Representative), as the case may be, that prefers the interests of the Partnership or any of its Subsidiaries over the interests of such other Parent or any of its Affiliates; and

(iii) acknowledge and agree that, to the fullest extent permitted by applicable law, the other Parent's Affiliated Partner and any member of the Governing Board appointed by such other Parent's Affiliated Partner and any employee of such other Parent or employee of any of its Affiliates shall not, now or in the future, be liable, responsible or accountable in damages or otherwise to such Parent or its Affiliated Partner or the Partnership for any acts reasonably believed by such other Parent's Affiliated Partner, member of the Governing Board or employee to be within the scope of the authority conferred on such Person by the Partnership Agreement, or for such Person's failure or refusal to perform any act except those expressly required by the terms of the Partnership Agreement, or for such Person's performance of, or omission to perform, any acts on advice of the Accountants or legal counsel for the Partnership, or for such Person's performance of any acts required by, or such Person's omission to perform any acts prohibited by, any Governmental Rule.

(b) The waivers, acknowledgments and agreements set forth in Section 5.09(a) shall not apply to (i) any act of fraud, gross negligence or willful misconduct by any member of the Governing Board in the performance of his duties as a member of the Governing Board or (ii) any alleged claim or cause of action against a Partner, any of such Partner's Affiliates or any of their respective employees based upon the breach or non-performance by such Person of an express contractual undertaking in an Operative Document.

SECTION 5.10. Limiting Arrangements.

(a) Capacity Load--Individual Limiting Agreements. If (i) IBM provides CIRRUS with less than [*] prior notice of the existence of a Limiting Agreement which would be the sole cause of CIRRUS' inability to utilize greater than [*] of the CIRRUS Capacity Allocation in accordance with the CIRRUS Sales Agreement (herein referred to as the "Disabled Capacity Allocation") for the production of Semiconductor Wafers containing Semiconductor Chips that are being produced by the Partnership for CIRRUS at the time of such notice, (ii) CIRRUS has elected not to exercise its rights, if any, pursuant to Section 5.10(d) with respect to such Limiting Agreement,

(iii) CIRRUS has taken all reasonable measures to eliminate or mitigate the effect of such Limiting Agreement on the Disabled Capacity Allocation including use of its reasonable best efforts to reallocate its orders to or production from third party suppliers so as to substitute other products into production in the Partnership and replace utilization of the Disabled Capacity Allocation or otherwise reasonably attempt to utilize the resulting Disabled Capacity Allocation and also exercise reasonable efforts to utilize its rights under Section 7.13 of the CIRRUS Sales Agreement as to any portion of such Disabled Capacity Allocation and (iv) CIRRUS continues to have Disabled Capacity Allocation due to such Limiting Agreement representing in excess of

[*] of the CIRRUS Capacity Allocation, then the following shall apply:

(i) if IBM has given CIRRUS less than [*] advance notice of the effect of the Limiting Agreement on the CIRRUS Capacity Allocation, (A) CIRRUS may cause IBM either to utilize, or bear all Costs associated with, all the Disabled Capacity Allocation that remains unutilized by CIRRUS for up to [*] less the period of advance notice given by IBM, and (B) thereafter, for the remaining period of up to [*] from the date of notice less the period covered by clause (A) (including the advance notice period referred to in said clause (A)), CIRRUS may cause IBM either to utilize, or bear all Costs associated with, [*] of the Disabled Capacity Allocation that remains unutilized by CIRRUS; and

(ii) if IBM has given CIRRUS at least [*] advance notice, but less than [*] advance notice, CIRRUS and IBM agree to equally utilize or equally share all Costs associated with the Disabled Capacity Allocation that remains unutilized by CIRRUS for a period of [*] from the date of notice less the amount of advance notice provided by IBM

(b) Computation of Disabled Capacity Allocation. For the purpose of measuring the loss of the CIRRUS Capacity Allocation resulting from a Limiting Agreement, Disabled Capacity Allocation shall be computed with respect to all CIRRUS Customers that, at the time IBM gives CIRRUS notice as to the existence of a Limiting Agreement, are party to a contract or have then-effective binding future purchase orders for the purchase of Semiconductor Chips affected by such Limiting Agreement ("Affected Contract Commitment") and, in the case of a determination of Disabled Capacity Allocation for purposes of

Section 5.10(a), with respect to Turn Customers, as:

(i) the sum of (A) that number of Semiconductor Wafers that will be required to manufacture such Semiconductor Chips that CIRRUS is contractually obligated to deliver to such Customers during the [*] following the date of notice plus (B) the number of Semiconductor Wafers that were required to produce such Semiconductor Chips that were sold to such Customers during the [*] preceding the date of notice plus (C) for the purpose of determining Disabled Capacity Allocation in connection with Section 5.10(a) only (but not

Section 5.10(d)), that number of Semiconductor Wafers that were required to produce such Semiconductor Chips that were sold to Turn Customers during the

[nine months] preceding the date of notice divided by

(ii) the total number of Semiconductor Wafers that could be produced for CIRRUS during the same [*] period including the [*] following the date of notice and the [*] preceding the date of notice utilizing all of the CIRRUS Capacity Allocation. "Turn Customer" shall mean each of up to a maximum of [*] customers of CIRRUS identified by CIRRUS in writing to IBM in response to IBM's notice to CIRRUS as to a Limiting Agreement that in the regular course of their business dealings with CIRRUS do not enter into binding purchase contracts for the purchase of

Semiconductor Chips but which customarily purchase such Semiconductor Chips from CIRRUS on a month-to-month basis and which have, within the month preceding notice from IBM as to the applicable Limiting Agreement, taken delivery of Semiconductor Chips manufactured pursuant to the CIRRUS Sales Agreement, the manufacture of which would be so restricted by such Limiting Agreement. CIRRUS shall be entitled to designate different Turn Customers in response to notices as to each different Limiting Agreement.

(c) Capacity Load--Aggregate Impact. If at any time:

(i) CIRRUS would be unable, solely as a result of Limiting Agreements entered into after the Closing and in effect at such time as to which IBM has notified CIRRUS, to use the CIRRUS Capacity Allocation in accordance with the CIRRUS Sales Agreement to produce Semiconductor Wafers containing those types of specified Integrated Circuits so restricted that, for the [*] immediately preceding the then [*], had accounted for the greater of (1) [*] of total CIRRUS revenues and (2) CIRRUS revenues of [*]

(ii) Loadable Capacity as of the end of the most recently ended fiscal quarter is less than [*] total Semiconductor Wafer output for the Facility utilizing the CIRRUS Capacity Allocation for the [*] ending with the most recent [*] and

(iii) CIRRUS is not at such time entitled to invoke the Limiting Agreement Procedure set forth in Section 10.11 of the Partnership Agreement on the basis of Section 5.10(d), then CIRRUS shall be entitled to invoke the Limiting Agreement Procedure set forth in Section 10.11 of the Partnership Agreement. As used herein, "Loadable Capacity" shall mean the sum of (i) the aggregate number of Semiconductor Wafers corresponding to the CIRRUS Capacity Allocation that the Partnership made available to CIRRUS and its Subsidiaries pursuant to the CIRRUS Sales Agreement during the [*] period ending as of the close of the most recently ended calendar quarter and (ii) the aggregate number of Semiconductor Wafers manufactured for CIRRUS and its Subsidiaries which CIRRUS plans to acquire from sources other than the Partnership in the next [*] that: (A) are design rule and parametrically compatible with a process installed or planned to be installed within the next [*] at the Facility; (B) could be manufactured and sold by the Partnership in accordance with and subject to terms and conditions of the licenses granted pursuant to the IBM License Agreements and without restriction by reason of the provisions of Section 5.10, 5.16 or 6.02 of this Agreement; and (C) when manufactured by the Partnership, results in a net die cost per wafer as calculated on a per usable die per wafer basis (including taking into account relative yield loss) that is not materially in excess of the net die cost per wafer to CIRRUS or its Subsidiaries from the alternative source for such production, when taking into consideration the planned production quantities of such parts (after ramp-up, in steady state production). Payments pursuant to Section 8.4 of the CIRRUS Sales Agreement to the Partnership will be excluded from the above calculations. For the purpose of the preceding clause (ii)(A), a Semiconductor Wafer shall be deemed design rule and parametrically compatible if CIRRUS, using its customary and usual porting procedures, could transfer production of such Semiconductor Wafer from the alternative production facility to the Facility for manufacture using a process installed or planned to be installed within the next [*] at the Facility. Example: As a further point of reference in determining what constitutes Loadable Capacity, during the negotiation of this Agreement CIRRUS described a [*] including judgments on (i) lack of license restrictions under the IBM Patent License; (ii) impact of the restrictions of Sections 5.10, 5.16 and 6.02 of this Agreement; and (iii) such compatibility; which resulted in Loadable Capacity under the [*] These judgments would also apply to and be similarly made with respect to any future determination of what constitutes Loadable Capacity.

(d) Effect on CIRRUS Customers. If (i) IBM provides CIRRUS with less than

[*] prior notice of the existence of a Limiting Agreement which would prohibit the Partnership from manufacturing for and selling to CIRRUS in accordance with the CIRRUS Sales Agreement Semiconductor Wafers containing Semiconductor Chips in order to satisfy Affected Contract Commitments, which Semiconductor Chips are at the time of such notice actually being manufactured for CIRRUS solely by the Partnership, (ii) CIRRUS has elected not to exercise its rights, if any, pursuant to Section 5.10(a) and (iii) CIRRUS has taken all reasonable measures to eliminate or mitigate the effect of such Limiting Agreement on the Affected Contract Commitments, including the reallocation of its production sources and attempting to facilitate its Customers' movement of the supply of the affected orders to alternative sources of supply, then the following shall apply:

(i) If such Limiting Agreement would result in a Disabled Capacity Allocation exceeding [*] of the CIRRUS Capacity Allocation on an annual basis, as determined pursuant to Section 5.10(b), such that CIRRUS would be in material breach of its contractual obligations to the affected customers, then, at IBM's option, IBM may (w) agree with CIRRUS upon mutually satisfactory terms and conditions pursuant to which IBM would manufacture elsewhere such Semiconductor Wafers containing such Integrated Circuits for CIRRUS required for the satisfaction of the Affected Contract Commitments; (x) remove or resolve such impact of such Limiting Agreement upon the Disabled Capacity Allocation; (y) agree to indemnify and hold CIRRUS harmless from and against amounts of CIRRUS' actual out of pocket expenses paid to Customers to satisfy CIRRUS' liability for damages under existing contract commitments or otherwise to release and cancel such existing contract commitments (i.e., cost of cover) prohibited by such Limiting Agreement, including reasonable attorney fees incurred by CIRRUS in connection with the release from or cancellation of such contract commitments; or (z) notify CIRRUS that IBM has chosen not to undertake any of the foregoing options, and that CIRRUS may therefore invoke the procedures in Section 10.11 of the Partnership Agreement within 30 days of receipt of such notice from IBM; provided, however, that if CIRRUS' inability to utilize the Disabled Capacity Allocation causes more than a de minimis impact on its ability to continue to supply any Key Customer as of the time of notice from IBM as to the existence of a Limiting Agreement, then CIRRUS may invoke the procedure in Section 10.11 of the Partnership Agreement despite IBM's offer to indemnify CIRRUS pursuant to clause (y). If CIRRUS invokes such procedures, the parties agree to amend the Operative Documents as contemplated by Section 10.11(d) of the Partnership Agreement. If CIRRUS does not invoke such procedures within 30 days of receipt of the notice from IBM referred to in clause (z), the Partnership shall continue to operate without any further adjustments resulting from said Limiting Agreement other than the effect the existence of said Limiting Agreement, may have upon a determination as to the availability of any remedies pursuant to Section 5.10(c).

(ii) If such Limiting Agreement would result in a Disabled Capacity Allocation of not greater than [*] of the CIRRUS Capacity Allocation on an annual basis, as determined pursuant to Section 5.10(b), then for each such Limiting Agreement, (y) IBM shall indemnify CIRRUS and hold CIRRUS harmless from CIRRUS' actual out of pocket expenses paid to Customers to satisfy CIRRUS liability for damages under existing contract commitments or otherwise to release and cancel such existing contract commitments (i.e., cost of cover) prohibited by such Limiting Agreement, including reasonable attorney fees incurred by CIRRUS in connection with the release from or cancellation of such contract commitments up to a maximum amount of [*] per Limiting Agreement; and

(z) CIRRUS and IBM shall equally share and indemnify each other for one-half of such costs, expenses and amounts that exceed [*]. "Key Customers" means (x) those largest revenue-producing customers of CIRRUS which accounted for [*] of total consolidated revenues for CIRRUS and its Subsidiaries for the [*] immediately preceding the current fiscal quarter at the time of determination plus (y) up to [*] additional customers of CIRRUS identified to IBM in writing prior to the date of notice of such Limiting Agreement. Not more frequently than quarterly, CIRRUS shall have the right to replace previously designated additional Key Customers by written notice to IBM.

(e) Any notice and response referred to in this Section 5.10 shall include a references to this specific Section of this Agreement and formally indicate that such notice or response is in fact the notice or response intended by the party under this Section.

(f) For the purpose of this Section 5.10, calculations based on the CIRRUS Capacity Allocation will be determined without reference to any changes due to the operation of this Section 5.10.

(g) If IBM, directly or through its Subsidiaries, is prohibited through arrangements with third parties from making or selling any Integrated Circuits, including CIRRUS Chips, CIRRUS RMM Chips and Subassembly Chips, or if contracts or obligations that may be entered into as described in Section 5.08 prohibit IBM or its Subsidiaries from making or selling any such Integrated Circuits, then the Partnership shall not make or sell any Semiconductor Wafer containing such Integrated Circuits unless IBM or CIRRUS obtains the rights required to remove the prohibition so that the Partnership will be permitted to make and sell such Integrated Circuits. IBM shall be under no obligation to obtain any such rights.

(h) IBM shall have the prior right to audit CIRRUS information, and CIRRUS agrees to provide IBM with access to such CIRRUS information, sufficient to enable IBM to determine the applicability of CIRRUS' rights pursuant to this Section 5.10.

(i) CIRRUS agrees to reasonably cooperate with IBM to remove or resolve the impact of any Limiting Agreements entered into by IBM upon utilization by CIRRUS of the CIRRUS Capacity Allocation to the extent IBM attempts, at its option, to do so.

(j) For the purpose of this Section 5.10 all revenue calculations will be based on the consolidated revenue of CIRRUS and all CIRRUS Subsidiaries.

(k) "Limiting Agreements" shall mean any consensual third party commitments or obligations of IBM that prohibit the Partnership from making or selling any Integrated Circuits in Semiconductor Wafers to CIRRUS to the extent such commitments or obligations apply to CIRRUS implementations of Integrated Circuits in Semiconductor Wafers actually being produced by the Partnership as of the time of notice of such Limiting Agreement or capable of being produced by CIRRUS in the Partnership, as applicable, pursuant to the terms of this Section and any other commitments or obligations that are deemed Limiting Agreements by IBM pursuant to Section 5.08(c); provided however, that Limiting Agreements shall not include (i) any agreements containing prohibitions, limitations or restrictions resulting from licensing needs under the intellectual property of third parties, or the expiration, renewal, extension or modification of such rights or licenses and (ii) those agreements to which IBM is a party that relate to the manufacture of Products subject to Section 5.16 or Schedule 3.21.

(l) IBM and CIRRUS shall mutually consult to determine as to whether the Partnership will be prohibited pursuant to the terms and conditions of a notified Limiting Agreement from producing and selling CIRRUS Chips, CIRRUS RMM Chips and Subassembly Chips to CIRRUS; provided, however, that IBM will not reveal the names of the parties involved in a Limiting Agreement or any confidential information of any third parties. Any determination as to the scope of prohibitions in any Limiting Agreement shall be made by IBM, which determination shall be conclusive on the parties.

(m) Information provided between CIRRUS and IBM pursuant to this Section 5.10 shall (x) be treated as Business Confidential Information for the purpose of the CIRRUS/IBM Confidentiality and Invention Rights Agreement; and (y) be disclosed within IBM and CIRRUS on a "need to know" basis only for the purposes of complying with this Section 5.10.

(n) When IBM gives CIRRUS notice as to the applicability of a Limiting Agreement, IBM shall have the opportunity, but not the obligation, to explore solutions to reduce or eliminate the impact such Limiting Agreement would have with regard to CIRRUS' Disabled Capacity Allocation or Affected Contract Commitments. Such solutions may include (i) making a new arrangement for an exception with the other party to the Limiting Agreement or (ii) arranging to manufacture such impacted Semiconductor Wafers for CIRRUS elsewhere. CIRRUS agrees reasonably to cooperate in such efforts where such actions involve CIRRUS or CIRRUS Customers.

(o) During the term of the Partnership, CIRRUS shall provide IBM a [*] report ("CIRRUS Functional Area Report") setting forth Functional Areas and the relevant percentage of the CIRRUS Capacity Allocation for which CIRRUS intends to use the CIRRUS Capacity Allocation pursuant to the CIRRUS Sales Agreement for the [four fiscal quarters] immediately following the fiscal quarter in which such CIRRUS Functional Area Report is provided to IBM. Such Functional Area Report shall serve as the basis for IBM's reasonable efforts to notify CIRRUS of any Limiting Agreements pursuant to this Section 5.10 which affect such Functional Areas identified in such CIRRUS Functional Area Report; provided, however, that CIRRUS shall have further provided IBM with such additional information as IBM shall reasonably request in connection with ascertaining the application of the Limiting Agreements to such CIRRUS Functional Areas identified in such CIRRUS Functional Area Report. For purposes of this Section 5.10, "Functional Area" shall mean types of Semiconductor Chips or Semiconductor Wafers segmented among significant chip design areas for the projected period.

SECTION 5.11. Expenses. Whether or not the transactions contemplated by the Operative Documents shall be consummated (a) each party shall bear its own expenses in connection therewith and (b) any transfer Taxes and similar Taxes with respect to any Asset transferred to the Partnership shall be for the account of the transferee.

SECTION 5.12. Future Requirements. The Parents agree to share equally in the expenditures required during the period of approximately 15 months after the Initial Funding Date, in accordance with the schedule annexed as an Exhibit to the Business Plan. All tooling that the Partnership may require ("ramp-up tooling") will be leased, loaned or otherwise provided to the Partnership by the Parents or their respective Affiliated Partners (or by a third party subject to guarantee by the respective Parent) in equal shares and under substantially identical rates, terms and condition. The Parents shall provide or cause to be provided to the Partnership either valid leasehold interests in or the unencumbered right to use (upon terms and conditions to be mutually agreed upon by the Partners) the assets comprising the ramp-up tooling or, if ownership of such assets is to be transferred to the Partnership, unencumbered, good and marketable title to such assets. The Parents and the Partners shall cooperate in identifying the ramp-up assets that may be required and the manner in which they will be provided to the Partnership. Any such equipment provided directly by a Parent or its Affiliates shall be in good repair and fit for its intended use.

SECTION 5.13. New York State Assistance. CIRRUS agrees that the financing and other economic incentives it proposes to acquire from the New York State Urban Development Corporation and the New York Job Development Authority shall not require the support, assistance or other action of IBM, the IBM Partner or the Partnership except, in the case of the Partnership, for an acknowledgment of a security interest in favor of the lender or lenders with respect to certain ramp-up tooling which may be leased by CIRRUS to the Partnership. CIRRUS will not take any action in pursuing such financing or other economic incentives that would otherwise commit the properties, assets, businesses or operations of the Partnership or that would purport to commit the properties, assets, businesses or operations of IBM or the IBM Partner, and CIRRUS shall be solely responsible for all liabilities and undertakings to the State of New York, or any agency thereof, in connection with any such financing or other economic incentives.

SECTION 5.14. Sales by CIRRUS.

CIRRUS agrees that it will not sell any RMM Chips other than CIRRUS RMM Chips and that it will only sell CIRRUS RMM Chips and Subassembly Chips to customers that meet the requirements set forth in Sections 6.01(b) and (d), respectively, and only if and to the extent then so licensed pursuant to

Section 3.8 of the IBM Patent License in the case of CIRRUS RMM Chips or only if approved in writing by the IBM Director of Licensing (or designee) in accordance with Section 6.01(e) (which approval has not expired) in the case of Subassembly Chips. CIRRUS further agrees that it shall use its best efforts both to assure that the agreements made by its customers referred to in Sections 6.01(b)(ii)(C) and 6.01(d)(iii) are accurate and to enforce any such agreements that its customers may breach.

SECTION 5.15. Proration of Payments.

CIRRUS and IBM each agree promptly to pay any amounts that may be required to be paid by such party as Proration of Payments in accordance with the definition thereof as may be required pursuant to the Partnership Agreement.

SECTION 5.16. Existing IBM Restrictions.

(a) Notwithstanding Section 5.08 or 5.10 or any other provisions of this Agreement or of any other Operative Document, unless IBM and CIRRUS expressly agree in a writing specifically referencing this Section, the Partnership shall not manufacture the following Products (within the meaning of the CIRRUS Sales Agreement):

- (i) any Product which is an Intel compatible microprocessor ("Intel compatible microprocessor" includes any microprocessor capable of processing the Intel X86 instruction set or an instruction set compatible therewith or part of either instruction set (including Products compatible therewith sometimes known as clones), provided the term "Intel compatible microprocessor" shall not include the IBM MC196 16-Bit Microcontroller);
- (ii) prior to December 31, 1998, any Product which is manufactured for the United States Department of Defense or any equivalent foreign agency but not including any commercial off-the-shelf Product or commercially available standard Product;
- (iii) any Product implementing the Power PC architecture or any part thereof including any part of the Power PC instruction set (including Products compatible therewith sometimes known as clones) unless such Product is an embedded controller manufactured under contract with and for IBM or manufactured under a non-patent intellectual property license from IBM, provided nothing contained in this Section 5.16(a)(iii) shall prevent the manufacture of any Product which attaches to a Product implementing the Power PC architecture or instruction set as described above and complements its function provided such Product does not itself execute a substantial portion of the Power PC instruction set;
- (iv) any Product which is a NAND (not and) flash (memory) chip;
- (v) any Product that is Sound Blaster compatible when running in the DOS environment or in the DOS mode of any other operating system, including windows or OS/2 ("Sound Blaster compatible" shall mean that the Product is capable of running one or more Sound Blaster Programs and "Sound Blaster Program" is any program that is capable of running on a Creative Sound Blaster audio board or card); and
- (vi) any Product incorporating an aluminum nitride substrate.

(b) This Section 5.16 shall not restrict CIRRUS from independently obtaining any right that negates the applicability of the relevant IBM obligations to third parties with respect to the output manufactured by the Partnership and sold to CIRRUS under the CIRRUS Sales Agreement.

(c) CIRRUS may from time to time, but not more often than semiannually, inquire of IBM as to the status of the Partnership's inability to manufacture any of the Products referred to in Section 5.16(a). To the extent that any of the Limiting Agreements shall be terminated, amended by the parties or interpreted by a court of competent jurisdiction in a final, non-appealable order to be less restrictive on the Partnership than the restrictions described above or otherwise pursuant to Section 3.21 or 5.10 of this Agreement, IBM agrees that the restrictions imposed by such Limiting Agreement on the Partnership (and CIRRUS through the Partnership) shall be deemed modified to a scope that reflects such termination, amendment or interpretation.

ARTICLE VI

SALE OF PRODUCT

SECTION 6.01. Additional Procedures for Semiconductor Wafer Purchases by CIRRUS from the Partnership.

(a) Each order by CIRRUS to the Partnership pursuant to the CIRRUS Sales Agreement for Semiconductor Wafers containing CIRRUS Chips, Subassembly Chips or other Semiconductor Chips that the Partnership is authorized to manufacture for CIRRUS pursuant to the IBM License Agreements and the CIRRUS Sales Agreement shall identify the products as set forth in the CIRRUS Sales Agreement. If CIRRUS elects to exercise its rights under this Section 6.01 (corresponding to the rights granted to the Partnership by IBM under Section 3.8 of the IBM Patent License), CIRRUS will provide IBM with the appropriate information reasonably necessary for IBM to make the determinations referred to in this Section 6.01.

(b) CIRRUS at its option may request of the Partnership in writing to request of IBM that IBM license the Partnership to make for sale to CIRRUS Semiconductor Wafers containing specified CIRRUS RMM Chips which are to be sold by CIRRUS, subject to the Partnership receiving a license from IBM pursuant to Section 3.8 of the IBM Patent License, if one of the following two conditions is met:

- (i) CIRRUS establishes to IBM's reasonable satisfaction that such CIRRUS RMM Chips are not covered by any claim of any patent of IBM (provided, however, that the condition set forth in this Section 6.01(b)(i) shall not be met with regard to any orders placed after IBM gives to the Partnership written notice of IBM's determination that one or more claims of one or more patents of IBM cover such CIRRUS RMM Chips); or
- (ii) each of the following is satisfied:

(A) prior to requesting a license for any such CIRRUS RMM Chips from the Partnership, CIRRUS contacts the IBM Director of Licensing or his designee and provides the following information in a signed writing or by a signed facsimile (with original signed confirmation with a copy to the Partnership by mail):

- (1) the identity of the specified CIRRUS Customer for such CIRRUS RMM Chips, and
- (2) the duration of the commitment to deliver such CIRRUS RMM Chips to such CIRRUS Customer (if such period is less than [*], a request that the CIRRUS Customer be approved pursuant to this Section 6.01 for the following [*] period); (B) except where CIRRUS establishes to IBM's reasonable satisfaction that the specified CIRRUS Customer will always use or combine the specified CIRRUS RMM Chips in the specified CIRRUS Customer's non-RMM Products, the IBM Director of Licensing or his designee has provided approval in writing (that shall be renewed by CIRRUS for the specified CIRRUS Customer with respect to the specified CIRRUS RMM Chips after the earlier of (x) [*], or
- (y) the termination of the license granted by IBM to such specified CIRRUS Customer with respect to the specified CIRRUS RMM Chips) that the specified CIRRUS Customer has a license under those patents of IBM covering such CIRRUS RMM Chips and their combination and use

in the specified CIRRUS Customer's RMM Products as set forth in Section 6.01(c) and for the duration of the commitment specified in Section 6.01(b)(ii)(A)(2), which shall not exceed [*];

(C) the specified CIRRUS Customer is bound by a written agreement or in purchase documentation with CIRRUS that such CIRRUS Customer will not resell such CIRRUS RMM Chips before incorporating them into its own products; and (D) CIRRUS agrees to include with each order for the specified CIRRUS RMM Chips to be sold by CIRRUS to a specified CIRRUS Customer a written certification to the Partnership by an officer of CIRRUS that the requirements of this Section 6.01(b) have been satisfied.

(c) IBM will grant to the Partnership the license pursuant to Section 3.8 of the IBM Patent License required as a condition for the Partnership to make for and sell to CIRRUS the Semiconductor Wafers containing the specified CIRRUS RMM Chips and for CIRRUS to sell such CIRRUS RMM Chips if either the condition set forth in Section 6.01(b)(i) is met, or CIRRUS and the specified CIRRUS Customer meet the criteria of Section 6.01(b)(ii), including (unless the exception in Section 6.01(b)(ii)(B) is satisfied) the conditions that:

(i) such CIRRUS Customer is a party to a patent license agreement with IBM ("Customer/IBM Patent License"), the terms of which allow such CIRRUS Customer to make, use, sell or otherwise transfer RMM Products and Patented Combinations and to use RMM Chips in such RMM Products and Patented Combinations;

(ii) the Customer/IBM Patent License covers all patents of IBM covering such CIRRUS RMM Chips issued on or before the date of the sale of such CIRRUS RMM Chips by CIRRUS to such CIRRUS Customer;

(iii) no license under any claims of any patent of IBM covering RMM Products licensed to such CIRRUS Customer under the Customer/IBM Patent License has terminated for any reason; and

(iv) such CIRRUS Customer is not in default under the Customer/IBM Patent License, including any payment or royalty provisions.

(d) CIRRUS may order Semiconductor Wafers containing a specific type of Subassembly Chips from the Partnership and sell such Subassembly Chips to specific CIRRUS Customers only under the following conditions:

(i) prior to ordering any Subassembly Chips from the Partnership, CIRRUS shall contact the IBM Director of Licensing or his designee and provide the following information in a writing signed by CIRRUS or by a signed facsimile (with original signed confirmation with a copy to the Partnership by mail):

(A) identity of the CIRRUS customer, (B) the specific type of Subassembly into which the Subassembly Chips will be incorporated, and

(C) the duration of the commitment to deliver Subassembly Chips to such CIRRUS customer; and

(ii) the IBM Director of Licensing or his designee shall have provided permission in writing or by a signed facsimile (with original signed confirmation with a copy to the Partnership by mail) for CIRRUS to order such Subassembly Chips and sell such Subassembly Chips to such customer for the duration of the commitment specified in Section 6.01(d)(i)(C);

(iii) such customer in the contract or purchase documentation between CIRRUS and such Customer agrees not to resell such Subassembly Chips, but to incorporate them into its own Subassemblies which are licensed under the Customer/IBM Patent License and CIRRUS has no reason to believe that such contract provision will be violated; and

(iv) CIRRUS includes with each order for Subassembly Chips a written certification to the Partnership by an officer of CIRRUS to the effect that:

(A) the conditions set forth in Sections 6.01(d)(i)-(iii) for the specified Subassembly Chips have been satisfied and the approval of the CIRRUS customer that will purchase such Subassembly Chips from CIRRUS has not expired, and

(B) CIRRUS has no reason to believe that its customers that have purchased Subassembly Chips have breached their agreement described in Section 6.01(d)(iii).

(e) IBM will not unreasonably withhold the permission required as a condition for CIRRUS to sell Subassembly Chips to a particular CIRRUS customer referred to in Section 6.01(d) so long as:

(i) such customer is a party to a Customer/IBM Patent License, the terms of which allow such customer to make, use, sell or otherwise transfer Subassembly Chips, Subassemblies and Patented Combinations;

(ii) the Customer/IBM Patent License covers all patents of IBM filed up to the date of the sale of such chips from CIRRUS to such customer;

(iii) no license under any IBM Licensed Chip Claim licensed to such customer under the Customer/IBM Patent License has terminated for any reason; and

(iv) such customer is not in default under the Customer/IBM Patent License, including any payment or royalty provisions.

(f) The rights of CIRRUS pursuant to Sections 6.01(d) and 6.01(e) may be exercised by CIRRUS Barbados in accordance with Section 7.15 of the CIRRUS Sales Agreement, provided, however, (i) all the terms, conditions and restrictions of this Article VI applicable to CIRRUS and its customers shall apply to the same extent to CIRRUS Barbados and its customers and (ii) CIRRUS shall be responsible in all respects for the performance of CIRRUS Barbados hereunder.

SECTION 6.02. Termination Due to Litigation. If, at any time, a customer of CIRRUS is a party to patent litigation with IBM or any of its Subsidiaries, the following shall apply:

(a) IBM shall be entitled to direct the Partnership to cease or not commence the production and sale of any Semiconductor Wafers containing CIRRUS Chips, RMM Chips or Subassembly Chips to CIRRUS for sale to any such customer if IBM's litigation counsel states in a written opinion that such CIRRUS Chips, RMM Chips or Subassembly Chips are "related" to such patent litigation. CIRRUS Chips, RMM Chips or Subassembly Chips shall be deemed "related" to such patent litigation if the origin of such Chips becomes part of any defense raised in such patent litigation. Such defenses may include the defenses of patent exhaustion and the existence of any implied licenses. Any termination of the production and sale of any Semiconductor Wafers pursuant to this

Section 6.02(a) shall (i) continue only for so long as the customer of CIRRUS is involved in patent litigation with IBM; (ii) apply only to those Semiconductor Wafers to be sold to that customer of CIRRUS that is "related" to such patent litigation; and (iii) be invoked no more than [*].

In the event that the Partnership does not cease such production and sale within [*] after being so directed, then IBM may terminate the licenses to the Partnership under the IBM Patents and Patents of third parties licensed by IBM to the Partnership covering CIRRUS Chips, CIRRUS RMM Chips or Subassembly Chips made by the Partnership for CIRRUS for sale to such customer; and

(b) In the event that sales of CIRRUS Chips, CIRRUS RMM Chips or Subassembly Chips to an "Existing Customer" that has purchased such chips from CIRRUS prior to the commencement of such patent litigation are interrupted as a result of IBM exercising its rights under Section 3.6.1 of the IBM Patent License, then IBM will make available to CIRRUS a limited license to have such chips made under the IBM Licensed Chip Claims at a single foundry for sale only to such Existing Customer, such limited license to last for a maximum duration of [*] from the date written notice of such litigation is given to CIRRUS under said Section 3.6.1 if such chips are being manufactured for CIRRUS at the time of such notice of litigation at another foundry. If such chips are not being manufactured for CIRRUS at another foundry at the time of such

notice of litigation, then (i) such limited license shall be extended in duration for an additional period of the lesser of [*] or the period required for such single foundry to commence shipping such chips to CIRRUS; and (ii) the Partnership may continue to manufacture such chips for CIRRUS only during such extended period, provided such extended period may not be further extended pursuant to Section 3.10 of the IBM Patent License. "Existing Customer" is defined herein as a customer of CIRRUS and its Subsidiaries for at least [*] that has purchased at least [*] of product shipments from CIRRUS and its Subsidiaries during the preceding [*] period. Such limited license to have chips made at such single foundry shall be limited only to have made the identical type of chips that would have been made by the Partnership but for the cessation of production in accordance with Section 3.6.1 of the IBM Patent License and the rate of production and sales shall be limited to the number of such chips per month that CIRRUS is actually producing at the Partnership at the time of such notice of litigation or is obligated by contract to sell to such Existing Customer at the commencement of such patent litigation, whichever is greater. CIRRUS shall not disclose to such single foundry any of the IBM Know-How or any other know-how used by the Partnership, and such single foundry shall have no rights to use any IBM Know-How or any such know-how.

SECTION 6.03. Compliance with Procedures.

(a) IBM shall have the right to have an independent auditor audit and verify compliance with the conditions of Sections 6.01 and 6.02, and if IBM has reasonable grounds to believe that any of the conditions of Section 6.01 or 6.02 have been violated, IBM shall give notice of such violation to the Partnership and CIRRUS. If such violation is not cured within [*] following such notice, IBM may direct the Partnership not to make for or sell any wafers containing RMM Chips or Subassembly Chips to CIRRUS if the RMM Chips or Subassembly Chips therefrom are produced in violation of Section 6.01 or 6.02, or are produced for a Customer that is not in compliance with Section 6.01 or 6.02.

(b) In those situations where a customer of CIRRUS claims not to need a license from IBM for the use or sale of certain chips because such customer claims to have acquired such chips from CIRRUS and also claims that such chips were made by the Partnership, IBM shall have the right to request and CIRRUS shall confirm whether or not such customer of CIRRUS has purchased certain CIRRUS Chips, RMM Chips or Subassembly Chips from CIRRUS and whether the wafers containing such Chips were sold to CIRRUS by the Partnership. CIRRUS shall answer any such request from IBM within [*] following the date of such request.

SECTION 6.04. Excess Capacity. CIRRUS shall use its best efforts to coordinate its orders from its various third-party suppliers so as to permit the full utilization by CIRRUS of the CIRRUS Capacity Allocation. In the event that after exercising such best efforts [*], CIRRUS remains unable to fully utilize the CIRRUS Capacity Allocation, the following provisions apply:

(a) CIRRUS shall first offer to IBM any Unutilized Capacity.

(b) If IBM decides not to use the Unutilized Capacity, CIRRUS shall be permitted to manufacture for resale to a CIRRUS Customer Semiconductor Wafers to be manufactured using such Unutilized Capacity that include Semiconductor Chips (other than RMM Chips), Subassembly Chips or CIRRUS Chips only if the following conditions are satisfied:

(i) CIRRUS is under contract to sell such other wafers to such Customer for delivery within the [*];

(ii) CIRRUS may not use more than [*] of the total CIRRUS Capacity Allocation for the manufacture of such other wafers; and

(iii) the price to be paid to the Seller by CIRRUS for such other wafers shall be not less than the equivalent price that CIRRUS offers to IBM pursuant to Section 6.04(a) plus applicable per wafer charges pursuant to Section 8.4 of the CIRRUS Sales Agreement.

(c) CIRRUS shall be entitled to exercise the foregoing right to engage in alternative production [*].

(d) If CIRRUS does not, within [*] following IBM's rejection of the offer to use the Unutilized Capacity, enter into an agreement with a customer referred to in Section 6.04(b)(i), CIRRUS must again offer the Unutilized Capacity to IBM.

(e) CIRRUS shall continue to be obligated under the CIRRUS Sales Agreement in all respects other than in its obligation to cause the Partnership to manufacture only CIRRUS Chips, RMM Chips and Subassembly Chips.

SECTION 6.05. Remedies.

(a) In the event that CIRRUS sells any RMM Chips or Subassembly Chips made by the Partnership in violation of Section 6.01 or breaches its covenant contained in Section 5.14, then, in addition to any other remedies available to IBM or the IBM Partner under the Operative Documents, IBM shall have the following remedies unless CIRRUS cures all such violations within [*] following notice of such violations from IBM:

(i) IBM shall be entitled to direct the Partnership to cease the production and sale of such RMM Chips or Subassembly Chips to CIRRUS;

(ii) IBM shall be entitled to injunctive relief against CIRRUS for the ordering, selling, marketing or any other activities relating to such RMM Chips or Subassembly Chips; and

(iii) CIRRUS shall be liable to IBM for liquidated damages in the case of a sale of RMM Chips, in the amount of [*] of the retail selling price of the RMM Product, including any rotating cylinder or disk and all other elements used for recording and/or reproducing information, into which RMM Chips are ultimately incorporated for retail sale.

(b) In the event that IBM sells any IBM Subassembly Chips made by the Partnership in violation of Section 2.2.2. of the CIRRUS Patent License, then, in addition to any other remedies available to CIRRUS or the CIRRUS Partner under the Operative Documents, CIRRUS shall have the following remedies unless IBM cures all such violations within [*] following notice of such violations from CIRRUS:

(i) CIRRUS shall be entitled to direct the Partnership to cease the production and sale of such IBM Subassembly Chips to IBM; and

(ii) CIRRUS shall be entitled to injunctive relief against IBM for the ordering, selling, marketing or any other activities relating to such IBM Subassembly Chips.

SECTION 6.06. No Licenses between IBM and CIRRUS.

(a) No licenses, immunities or other rights of any kind are granted hereunder by either CIRRUS to IBM or by IBM to CIRRUS, directly or by implication, estoppel or otherwise, with respect to any existing or future intellectual property and no release is granted by either IBM or CIRRUS to each other for any claims of any kind, whether or not asserted, including any claims of patent infringement which may exist against the other or their respective customers, whether or not known; and no such licenses, immunities or other rights shall arise from the consummation of this Agreement, or any other Operative Document, or from any acts, statements or dealings leading to such consummation.

(b) No licenses or other rights are granted hereunder by either IBM to CIRRUS or CIRRUS to IBM, directly or by implication, estoppel or otherwise, with respect to any trade secrets or know-how, and no such licenses or other rights shall arise from the consummation of this Agreement or any other Operative Document or from any acts, statements or dealings leading to such consummation. Neither party is required hereunder to furnish or disclose to the other any technical or other information under this Agreement. (c) [*]

SECTION 6.07. Verification of IBM Information. IBM agrees to provide to an independent auditor of CIRRUS that is reasonably acceptable to IBM the information required to be furnished pursuant to Section 2.2.3 of the CIRRUS Patent License.

ARTICLE VII

EMPLOYEES

SECTION 7.01. Selection of Partnership Employees.

(a) IBM employees presently working at the facility to be leased to the Partnership pursuant to the IBM Real Estate Lease ("322 Fabrication Employees") shall be given the first opportunity to interview to become employees of the Partnership. However, all employees shall be hired through an arms-length interview process based upon specific needs and qualifications. The candidates shall complete an application process to be agreed upon by the Partners.

(b) All then-current full-time 322 Fabrication Employees who wish to be hired by the Partnership will be interviewed, and the Partnership will offer to employ, conditional upon Closing and such offer not being withdrawn, as the Partnership employees, on January 1, 1995, those full-time 322 Fabrication Employees agreed to by the Partners as well as any additional employees required to run the Partnership's manufacturing facility, on the terms and conditions as to salary and benefits to be agreed upon by the Partners prior to Closing. The Partners will mutually approve a minimum of [*] Partnership employment offers to potential employees starting immediately after the date of execution of this Agreement. If the Partners have not agreed upon a total of [*] such offers by [*] from the date of execution of this Agreement, then the Partners will approve immediately Partnership employment offers to sufficient current full-time 322 Fabrication Employees such that all employment offers will total a minimum of [*]. Key skills by job category required for the Partnership shall be agreed upon by the Partners prior to Closing.

SECTION 7.02. Employee Benefits.

(a) The benefits plan outline for all Partnership employees shall be agreed upon by the Partners prior to the Closing.

(b) The salary and bonus plan for all regular employees of the Partnership shall be agreed upon by the Partners prior to Closing. The Partners shall also mutually agree upon a self-funding bonus plan through cost-savings for certain employees of the Partnership which will be included as an appendix to said salary and bonus plan and which may thereafter be amended or modified only upon the written agreement of the Partners or through the approval of a subsequent annual Business Plan that includes such amendment or modification. The Partners estimate that [*] of the cost savings over the Initial Business Plan will be utilized for this purpose over the life of the Partnership.

(c) IBM shall transfer to an account designated by the Partners funds to provide for such retirement benefits as have accrued through December 31, 1994, for those IBM employees who are offered and accept offers of employment pursuant to Section 7.01, and report to work as regular employees of the Partnership. CIRRUS may engage the service of a qualified actuary to review the amount to be transferred and will have complete access to the actuarial assumptions used in arriving at the proposed amount and the estimated cost for the Initial Business Plan.

ARTICLE VIII

TERMINATION

SECTION 8.01. Termination.

This Agreement may be terminated at any time before Closing:

(a) by either Parent if there has been a material breach of any representation, warranty, covenant or agreement on the part of the other Parent or its Affiliated Partner set forth in this Agreement and, if it is susceptible of cure, it has not been cured within [*] after notice thereof to such other Parent;

(b) by either Parent if a Burdensome Condition with respect to the transactions contemplated by this Agreement shall have, in such Parent's reasonable judgment, been imposed on such Parent or any of its Affiliates; provided that prior to such termination, it will have exercised reasonable efforts to negotiate an arrangement reasonably acceptable to it with the appropriate Governmental Authority to eliminate such Burdensome Condition; or

(c) by either Parent, in its sole discretion, if the Closing has not occurred before October 15, 1994. Upon such termination, the parties shall promptly cause the Partnership to be dissolved (if it has previously been formed) and its affairs wound up. This Agreement (except for Sections 5.05, 5.11 and 5.13 which shall survive any such termination) shall thereupon become void and (except as aforesaid) there shall be no liability or obligation on the part of either Parent or its Affiliated Partner, except to the extent that such termination results from the breach by a Parent or its Affiliated Partner of any of their respective representations, warranties, covenants or agreements set forth herein.

ARTICLE IX

CONTRIBUTION; JOINT AND SEVERAL LEASE GUARANTEES

SECTION 9.01. Reimbursement.

(a) Each Parent hereby agrees to reimburse the other Parent and its Affiliated Partner for any loss, damage, liability, cost or expense of the Partnership arising during the period that both Partners are general partners of the Partnership and incurred by the other Parent or its Affiliated Partner after the Closing solely as a result of such other Parent's Affiliated Partner's status as a general partner of the Partnership (including acts or omissions in its capacity as such) to the extent necessary so that such other Parent and its Affiliated Partner shall not bear any portion of a loss, damage, liability, cost or expense of the Partnership in an amount in excess of such other Parent's Affiliated Partner's Percentage in the Partnership at the time such loss, damage liability, cost or expense arose (except to the extent that such excess is attributable to the willful misconduct or gross negligence of such other Parent or its Affiliated Partner or to such other Parent's Affiliated Partner exceeding its authority under the Partnership Agreement or defaulting in the performance or observance of its agreements and covenants under Section 10.03 of the Partnership Agreement).

(b) So long as both Partners are general partners of the Partnership, reimbursement pursuant to Section 9.01(a) shall not be available to either Parent or Partner until demand shall have been made by such Parent and Partner to collect or recover the relevant amount from the Partnership and such demand shall not have been satisfied.

(c) The provisions of this Section 9.01 shall survive the termination of this Agreement or any other Operative Document, the dissolution of the Partnership and the withdrawal of either Partner from the Partnership.

SECTION 9.02. Joint and Several Lease Guarantees.

(a) Each Parent (the "Reimbursing Parent") agrees to pay to the other Parent (the "Indemnified Parent") on written demand an amount equal to 50% of the excess, if any, of (i) the aggregate amount paid by the Indemnified Parent as guarantor under the Joint and Several Lease Guarantees over (ii) the aggregate amount paid by the Reimbursing Parent as guarantor under the Joint and Several Lease Guarantees, together with interest on such amount at a rate equal to 15% per annum from the date of demand until such amount is paid.

(b) Each Reimbursing Parent also agrees to pay, promptly upon receipt of a written statement specifying the applicable items, all costs, expenses and attorney's fees incurred by the Indemnified Parent in connection with the Joint and Several Lease Guarantees and in enforcing against the Reimbursing Parent the reimbursement agreement contained in this Section 9.02. Subject to the foregoing, each Reimbursing Parent hereby waives promptness, diligence and notice with respect to any of its obligations under this Section 9.02 and any requirement that any

beneficiary of the Joint and Several Lease Guarantees exhaust any right to take any action against the Partnership or any other Person.

(c) The obligations of the Reimbursing Parent under this Section 9.02 to reimburse the Indemnified Parent shall be absolute, unconditional and irrevocable under any and all circumstances and irrespective of:

(i) any lack of validity or enforceability of the Joint and Several Lease Guarantees or the underlying leases;

(ii) any amendment or waiver of or any consent to departure from all or any of the terms and conditions of the underlying leases;

(iii) the existence of any claim, set-off, defense or other right that the Partnership or any other Person may at any time have against the applicable lessor or any other Person, whether in connection with this Agreement, the Joint and Several Lease Guarantees or the underlying leases or in connection with any unrelated transaction;

(iv) the availability of any procedural defenses to enforcement, including absence of jurisdiction, venue or service of process; and

(v) the availability of any substantive defenses to enforcement, including lack of notice, extension of time periods, failure to enforce rights against the Partnership or any other Person, laches or change in position or any other circumstance which might vary the risk of or otherwise constitute a defense available to or discharge of either Parent.

(d) The mutual obligations of the Parents hereunder are subject to modification or termination in accordance with Sections 10.08, 10.10, 10.11, 11.02 and 11.03 of the Partnership Agreement.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. [*]

SECTION 10.02. Survival.

Except as may otherwise be specifically provided in this Agreement, all covenants, agreements, representations and warranties of the parties made in or pursuant to this Agreement shall survive the execution and delivery of the Operative Documents and the closing of the transactions contemplated thereby and the expiration or other termination of any other Operative Document, notwithstanding any investigation by or on behalf of any party.

SECTION 10.03. Legal Disputes; Attorneys' Fees.

In any legal dispute arising under this Agreement which is determined by the final and unappealable judgment or order of a court in favor of one party hereto, the party against whom such judgment or order is rendered (or its Parent) shall pay to the other party (or its Parent), promptly upon request therefor and receipt of reasonably complete itemization and documentation thereof, the reasonable attorneys' fees and expenses of such other party relating to such dispute.

SECTION 10.04. Not a Partnership.

Nothing contained in this Agreement shall be deemed or construed to make IBM and CIRRUS Partners or joint venturers with each other. The only partnership will be formed between the IBM Partner and the CIRRUS Partner pursuant to the Partnership Agreement upon the consummation of the transactions contemplated by this Agreement and the Partnership Agreement . IN WITNESS WHEREOF, this Agreement has been executed and delivered by the parties as of the date first above written.

CIRRUS LOGIC, INC.,

by /s/ MICHAEL L. HACKWORTH
Name: Michael L. Hackworth
Title: President, CEO

INTERNATIONAL BUSINESS MACHINES CORPORATION,

by /s/ MICHAEL J. ATTARDO
Name: Michael J. Attardo
Title: General Manager
Microelectronics Division

CIREL, INC.,

by /s/ MICHAEL L. HACKWORTH
Name: Michael L. Hackworth
Title: President, CEO

MICRUS HOLDINGS INC.,

by /s/ ERIC G. JOHNSON
Name: Eric G. Johnson
Title: President

PARTICIPATION AGREEMENT

Dated as of September 1, 1994

among

CIRRUS LOGIC, INC.

INTERNATIONAL BUSINESS MACHINES CORPORATION

CIREL, INC.

and

MICRUS HOLDINGS INC.

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APPENDIX A

DEFINITIONS, RULES OF CONSTRUCTION AND DOCUMENTARY CONVENTIONS

In any agreement or instrument that incorporates the definitions set forth in this Appendix and states that the rules of construction and documentary conventions set forth herein shall apply to such agreement or instrument, then, unless such agreement or instrument otherwise requires:

ARTICLE I

Definitions

The following terms shall have the specified meanings:

"Accountants" means such firm of nationally recognized independent certified public accountants for the Partnership as is appointed pursuant to the Partnership Agreement from time to time. Initially, the Accountants shall be Price Waterhouse.

"Affiliate" of any Person means any other Person which directly or indirectly controls, is controlled by or is under common control with, such Person; provided, however, that the term Affiliate, (a) when used in relation to the Partnership, shall not include either Parent or any of its Affiliates and (b) when used in relation to a Parent or any of its Affiliates, shall not include the Partnership or any of its Subsidiaries. The term "control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Affiliated Partner" means, when used in relation to CIRRUS, the CIRRUS Partner, and when used in relation to IBM, the IBM Partner.

"Agreed Fair Market Value" means those agreed prices for wafers sold by the Partnership to CIRRUS and IBM as set forth in an Exhibit to the Initial Business Plan.

"Assets" means, with respect to CIRRUS or the CIRRUS Partner, the CIRRUS Assets, and with respect to IBM or the IBM Partner, the IBM Assets. "Bankruptcy Event" means, with respect to any Person, the occurrence or existence of any of the following events or conditions: such Person (1) is dissolved; (2) becomes insolvent or fails or is unable or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 60 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up or liquidation; (6) seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (regardless of how brief such appointment May be, or whether any obligations are promptly assumed by another entity or whether any other event described in this clause (6) has occurred and is continuing); (7) any event occurs with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) through (6) above; or (8) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts. "Burdensome Condition" means, with respect to any proposed transaction, any action taken, or credibly threatened, by any Governmental Authority or other Person to challenge the legality of such proposed transaction, including

(i) the pendency of a governmental investigation (formal or informal), (ii) the institution of a suit or the threat thereof (A) seeking to restrain, enjoin or prohibit the consummation of such transaction or part thereof, to place any condition or limitation upon such consummation or to invalidate, suspend or require modification of any provision of any Operative Document, (B) challenging the acquisition by either Partner of its interest in the Partnership or (C) seeking to impose limitations on the ability of either Partner effectively to exercise full rights as a general partner in the Partnership, including the right to act on all matters properly presented to the Partners pursuant to the Partnership Agreement, (iii) an order by a court of competent jurisdiction having any of the consequences described in (ii)(A), (ii)(B) or (ii)(C) above, or placing any conditions or limitations upon such consummation that are unreasonably burdensome in the reasonable judgment of the applicable Person or (iv) the issuance of any subpoena, civil investigative demand or other request for documents and information that is unreasonably burdensome in the reasonable judgment of the applicable Person. "Business Day" means any day (other than a day which is a Saturday, Sunday or legal holiday in the State of New York or California) on which banks are open for business in New York, New York and San Francisco, California. "Business Plan" means each 12-month business plan, including budgets and projections for the Partnership for each relevant period, adopted in accordance with Section 3.04(a) of the Partnership Agreement and complying with Section 3.04(b) of the Partnership Agreement. "Capital Transaction" means a disposition by the Partnership of property which is or has been property of a character subject to the allowance for depreciation provided in Section 167 of the Code if such disposition results in the recognition of gain or loss by the Partnership. "Change of Control of CIRRUS" means the acquisition by a Subject Acquirer of more than 35% of the outstanding

common shares of CIRRUS representing the right to vote for CIRRUS's Board of Directors, or any consolidation, merger or other reorganization of CIRRUS in which CIRRUS is not the continuing or surviving corporation or pursuant to which shares of such common stock would be converted into cash, securities or other property. "CIRRUS" means CIRRUS Logic, Inc., a California corporation. "CIRRUS Assets" means the cash contributions to the Partnership to be made by the CIRRUS Partner on the Initial Funding Date. "CIRRUS Barbados" means CIRRUS International, Ltd., a corporation formed under the laws of Bermuda. "CIRRUS Capacity Allocation" shall have the meaning set forth in the CIRRUS Sales Agreement. "CIRRUS Chips" means Semiconductor Chips whose designs, specifications and working drawings are furnished by CIRRUS and have [*] of the functional chip area and functional circuit content designed and developed:

(i) by employees of CIRRUS for CIRRUS or any of its Subsidiaries;

(ii) by a third party as a work for hire under copyright law for CIRRUS or any of its Subsidiaries;

(iii) by a third party from which CIRRUS or any of its Subsidiaries has acquired ownership of designs, specifications and working drawings, only when the following conditions are met:

(a) no more than [*] of the sales of such chips are sold back to such third party, and

(b) if payment by CIRRUS for ownership of such designs, specifications and working drawings is by other than a lump sum payment, no more than [*] of the sales price of such chips by CIRRUS shall be paid to such third party as consideration for the sale of such designs, specifications and working drawings to CIRRUS or any of its Subsidiaries, which [*] amount shall be calculated based on the [*] or

(iv) by a third party from which CIRRUS has licensed designs, specifications and working drawings, only when the following conditions are met:

(a) no more than [*] of the sales of such chips are sold back to such third party, as calculated on a CIRRUS fiscal year basis, and

(b) if payment by CIRRUS for such license is by other than a lump sum payment, then no more than an average of a [*] royalty over a five year period shall be paid to such third party, which [*] amount shall be calculated based on the [*] and

(c) CIRRUS does not purchase such third party's customer base; provided that such functional chip area and functional circuit content perform integral functions of such Semiconductor Chips and can be identified by CIRRUS to the Partnership in a verifiable and documented manner; and provided, further, that RMM Chips and Subassembly Chips shall not be considered to be CIRRUS Chips. "CIRRUS Equipment Lease" means the equipment lease to be entered into between the Partnership and CIRRUS with respect to future tooling and equipment requirements pursuant to Section 5.12 of the Participation Agreement.

"CIRRUS/IBM Confidentiality and Invention Rights Agreement" means the Confidentiality and Invention Rights Agreement to be entered into between CIRRUS and IBM at the Closing.

"CIRRUS License Agreements" means the CIRRUS Patent License and the CIRRUS/IBM Confidentiality and Invention Rights Agreement.

"CIRRUS/Manufacturing Confidentiality Agreement" means the Confidentiality Agreement to be entered into between the Partnership and CIRRUS at the Closing.

"CIRRUS Patent License" means the license agreement to be entered into between CIRRUS and the Partnership at the Closing providing for the royalty- free license to the Partnership of certain CIRRUS patents. "CIRRUS Patents" shall have the meaning set forth in the CIRRUS Patent License.

"CIRRUS Partner" means Cirel, Inc., a California corporation. "CIRRUS Sales Agreement" means the agreement to be entered into between CIRRUS and the Partnership at the Closing for the sale of Semiconductor Wafers by the Partnership to CIRRUS.

"CIRRUS RMM Chips" shall have the meaning set forth in the IBM Patent License.

"Closing" means the closing of the transactions described in Section 2.01 of the Participation Agreement.

"Closing Date" means September 30, 1994, or if all the conditions set forth in Article III of the Participation Agreement have not been satisfied or waived by that date, as promptly as practicable after the satisfaction or waiver of the remaining conditions; provided, however, that in no event will the Closing Date be later than October 15, 1994, without the written agreement of both Partners.

"CMOS" means complementary metal oxide semiconductor.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute. Any reference to a particular provision of the Code or a Treasury Regulation means, where appropriate, the corresponding provision of any successor statute or regulation.

"Confidentiality and Inventions Agreements" means the CIRRUS/IBM Confidentiality and Invention Rights Agreement, the CIRRUS/Manufacturing Company Confidentiality Agreement and the IBM/Manufacturing Company Confidentiality Agreement.

"Consent Decree" means the Final Judgment, entered January 25, 1956, as amended, in the matter entitled United States of America v. International Business Machines Corporation, C.A. No. 72-344 (S.D.N.Y.).

"Cost" shall have the meaning set forth in the CIRRUS Sales Agreement or the IBM Sales Agreement, as the case May be.

"Customers" shall have the meaning set forth in the CIRRUS Sales Agreement.

"Deadlock" means a failure or inability to resolve a dispute between the

CIRRUS Partner and the IBM Partner on any matter requiring their mutual approval after having exhausted the dispute resolution process set forth in

Section 2.15 of this Appendix A.

"Designated Individuals" has the meaning set forth in Section 2.15(a) of this Appendix A.

"Engineering Change" means a mechanical or electrical change to the Product which affects form, fit, function, maintainability or manufacturability.

"Event of Default" means, with respect to a Partner, the occurrence or existence of any of the following events or conditions:

(a) a Bankruptcy Event of such Partner, such Partner's Parent or any Subsidiary of such Parent that has a direct or indirect ownership interest in such Partner;

(b) the failure of such Partner to make any required capital contribution when due under the Partnership Agreement;

(c) the material breach by such Partner or its Parent of any of the specified material obligations identified in the respective Operative Documents as 'Events of Default' under the Partnership Agreement, which breach is not cured (together with the payment of interest on any unpaid amount from the due date therefor computed at a rate of 15% per annum based on the actual number of days elapsed in a 360-day year) within 30 days following written notice thereof to such Partner and its Parent by the Partnership or the other Partner;

(d) the failure by such Partner or Parent to make any payment when due as specified in an Operative Document in an aggregate unpaid amount in excess of \$7 million, which breach is not cured (together with the payment of interest on any unpaid amount from the due date therefor computed at a rate of 15% per annum based on the actual number of days elapsed in a 360-day year) within 30 days following written notice thereof to such Partner and its Parent by the Partnership or the other Partner; or

(e) a breach by either Parent of its covenant contained in

Section 5.01(d) of the Participation Agreement. "Facility" means IBM's building located in East Fishkill, New York, designated "Building 322" prior to the signing of the Partnership Agreement (including ancillary non-production support areas) and leased to the Partnership at the Closing. "Fiscal Quarter" means, unless changed by the Governing Board, a calendar quarter. "Fiscal Year" means, unless changed by the Governing Board, a calendar year or, in the case of the Partnership's first Fiscal Year, such portion of a calendar year beginning on the Closing Date or, in the case of the Partnership's final Fiscal Year, such portion of a calendar year ending on the date that the Partnership is liquidated in accordance with Article XI of the Partnership Agreement or ending on the date on which a termination of the Partnership shall have occurred within the meaning of Code

Section 708(b)(1)(B). "GAAP" means generally accepted accounting principles in the United States as in effect from time to time, consistently applied. "GAAS" means generally accepted auditing standards in the United States as in effect from time to time. "Governing Board" has the meaning set forth in Section 5.01 of the Partnership Agreement. "Governmental Action" means any authorization, consent, approval, order, waiver, exception, variance, franchise, permission, permit or license of, or any registration, filing or declaration with, by or in respect of, any Governmental Authority. "Governmental Authority" means any Federal, state, local or foreign governmental Person, authority, agency, court, regulatory commission or other governmental body, including the Internal Revenue Service and the Secretary of State of any State, or any stock exchange having competence in the matter. "Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, license, permit, certificate or order of any Governmental Authority or any judgment, decree, injunction, writ, order or like action of any court or other judicial or quasijudicial tribunal. "Harmful Code" means any computer code, programming instruction or a set of instructions that is intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes self-replicating and self-propagating programming instructions commonly called viruses or worms. "IBM" means International Business Machines Corporation, a New York corporation. "IBM Assets" means the cash contributions, assets and properties initially to be transferred to the Partnership on the Initial Funding Date by the IBM Partner, as set forth in Schedule 4.07 to the Participation Agreement. "IBM Capacity Allocation" shall have the meaning set forth in the IBM Sales Agreement. "IBM Chips" shall have the meaning set forth in the CIRRU Patent License. "IBM Director of Licensing" means that person appointed from time to time to said position within IBM, to whom notice May be given in accordance with

Section 9.1.2 of the IBM Patent License. "IBM Equipment Leases" means each of the following:

(a) the "IBM Initial Equipment Lease" to be entered into between the Partnership and IBM at the Closing providing for the leasing to the Partnership of existing machinery and equipment listed on a Schedule thereto; and

(b) the "IBM Supplemental Equipment Lease" to be entered into between the Partnership and IBM with respect to future tooling and equipment requirements pursuant to Section 5.12 of the Participation Agreement. "IBM Know-How" shall have the meaning set forth in the IBM Know-How License. "IBM Know-How License" means the license agreement to be entered into between IBM and the Partnership at the Closing providing for the license to the Partnership of certain IBM Know-How.

"IBM License Agreements" means the IBM Patent License and the IBM Know-How License.

"IBM Licensed Chip Claims" means the claims of the IBM Patents except for the IBM RMM Chip Claims.

"IBM/Manufacturing Company Confidentiality Agreement" means the Confidentiality Agreement to be entered into between the Partnership and IBM at the Closing.

"IBM Partner" means MiCrus Holdings Inc., a Delaware corporation. "IBM Patent License" means the license agreement to be entered into between IBM and the Partnership at the Closing providing for the license to the Partnership of certain patents.

"IBM Patents" shall have the meaning set forth in the IBM Patent License. "IBM Real Estate Lease" means the lease to be entered into between the Partnership and IBM at the Closing providing for the leasing to the Partnership of the real property component of the manufacturing facility to be used in the conduct of the Partnership's business commonly known as Building 322 located in Fishkill, New York.

"IBM RMM Chip Claims" means the (i) claims of the IBM Patents in which the claimed invention is contained on a single RMM Chip and (ii) claims covering processes for making such chips.

"IBM Sales Agreement" means the agreement to be entered into between IBM and the Partnership at the Closing for the sale of Semiconductor Wafers by the Partnership to IBM.

"IBM Services Agreement" means the agreement to be entered into between the Partnership and IBM at the Closing relating to the provision of certain site and administrative services by IBM to the Partnership. "Indebtedness" of any Person means, without duplication, (a) all obligations (whether present or future, contingent or otherwise, as principal or surety or otherwise) of such Person in respect of borrowed money or in respect of deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charge. are customarily paid,

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person,

(e) all obligations of such Person issued or assumed as the deferred purchase price of property or services, (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, (g) all guarantees by such Person of Indebtedness of others, (h) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property (or a combination thereof), which obligations would be required to be classified and accounted for as capital leases on a balance sheet of such Person prepared in accordance with GAAP, (i) all obligations of such Person (whether absolute or contingent) in respect of interest rate swap or protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (j) all obligations of such Person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any partnership (other than the Partnership) in which such Person is a general partner. "Initial Business Plan" means the initial business plan of the Partnership as agreed to by the Partners and the Parents pursuant to the Operative Documents.

"Initial Funding Date" means December 30, 1994.

"Integrated Circuit" means an integral unit including a plurality of active and/or passive circuit elements formed at least in part of

Semiconductor Material and associated on, or in, a single substrate, such unit forming, or contributing to the formation of, an electrical circuit. "Intellectual Property" means any rights under applicable law with respect to intellectual property, including patents, patent applications, patent rights, trademarks, trademark registrations, trademark applications, licenses, service marks, business marks, brand names, trade names, all other names and slogans embodying business or product goodwill (or both), copyright registrations, mask works, copyrights (including copyrights in computer programs, software, including all source code and object code, development documentation, programming tools, drawings, specifications and data), rights in designs, trade secrets, technology, inventions, discoveries and improvements, know-how, proprietary rights, formulae, processes, technical information, confidential and proprietary information, and all other intellectual property rights, whether or not subject to statutory registration or protection.

"Inventions" shall have the meaning set forth in the IBM Patent License. "Joint and Several Lease Guarantees" means those Joint and Several Lease Guarantees of certain lease payments to be provided by CIRRUS and IBM in support of lease obligations incurred by the Partnership under the Third Party Lease, the IBM Equipment Leases (excluding the IBM Supplemental Equipment Lease) and the IBM Real Estate Lease. The term "knowledge", when used in relation to a Person, includes the knowledge of such Person's Subsidiaries and general partners. "Liaison Representative" means the representative of its respective Parent that each Partner is entitled to select in order to receive information concerning the Partnership pursuant to Section 8.04 of the Partnership Agreement.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset,

(b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement relating to such asset and (c) in the case of securities, any purchase option, call or similar right with respect to such securities. "Limiting Agreement" shall have the meaning set forth in Section 5.10(k) of the Participation Agreement. "Magneto-Optical Disk Drive" shall have the meaning set forth in the IBM Patent License. Any reference to any event, change or effect being "material" with respect to any Person means an event, change or effect which is or, insofar as reasonably can be foreseen, will be material to the condition (financial or otherwise), properties, assets, liabilities, capitalization, licenses, businesses, operations or prospects of such Person and, in the case of the Partnership, the capital accounts of the Partners. "Net Profits" and "Net Losses" means, subject to Section 7.03 of the Partnership Agreement, the taxable income and tax loss of the Partnership for Federal income tax purposes for a given Fiscal Year, increased by the amount of any tax-exempt income of the Partnership during such Fiscal Year and decreased by the amount of any Code Section 705(a)(2)(B) expenditures (within the meaning of Treasury Regulation Section 1.704-1(b)(2)(iv)(i)) of the Partnership during such Fiscal Year; provided, however, that, in the case of Section 704(c) Property, depreciation for each Fiscal Year shall be an amount equal to (x) the depreciation for Federal income tax purposes with respect to such Section 704(c) Property for such Fiscal Year multiplied by (y) a fraction

(i) the numerator of which is the fair market value of such Section 704(c) Property on the date of contribution or revaluation and (ii) the denominator of which is the basis of such Section 704(c) Property on the date of contribution or revaluation for Federal income tax purposes; and provided further, however, that if the basis of such Section 704(c) Property for Federal income tax purposes is zero, depreciation for each Fiscal Year shall be computed under any reasonable method in accordance with Treasury Regulation

Section 1.704-1(b)(2)(iv)(g)(3) that is approved by both Partners. "Operative Documents" means the Participation Agreement, the Partnership Agreement, the Third Party Lease, the IBM Equipment Leases, the CIRRUS Equipment Lease, the IBM Real Estate Lease, the Joint and Several Lease Guarantees, the IBM Patent License, the IBM Know-How License, the CIRRUS Patent License, the IBM Sales Agreement, the CIRRUS Sales Agreement, the IBM Services Agreement and the Confidentiality and Inventions Agreements. "Patented Combinations" means any combination of a CIRRUS Chip, RMM Chip or Subassembly Chip or portions of any thereof with each other or with any other product, device or apparatus, which combination is covered by at least one claim of any patent of IBM.

"Parent" means, with respect to the IBM Partner, IBM and, with respect to the CIRRUS Partner, CIRRUS.

"Participation Agreement" means the Participation Agreement dated as of September 1, 1994, among CIRRUS, IBM, the CIRRUS Partner and the IBM Partner, an the same May be amended from time to time in accordance with the provisions thereof.

"Partner" means each of the CIRRUS Partner and the IBM Partner, each a general partner of the Partnership, and any other Person who becomes a partner in the Partnership in accordance with the terms of the Partnership Agreement. "Partnership" means MiCrus, a New York general partnership, formed by the CIRRUS Partner and the IBM Partner pursuant to the Partnership Agreement. "Partnership Agreement" means the Partnership Agreement dated as of the Closing Date between the CIRRUS Partner and the IBM Partner, as the same May be amended from time to time in accordance with the provisions thereof. "Percentage" means, with respect to the CIRRUS Partner, 48%, and, with respect to the IBM Partner, 52%; provided, however, that if either Partner transfers a portion of its ownership interest in the Partnership to any third party, its Percentage shall decrease accordingly and such third party transferee shall receive the appropriate Percentage interest.

"Permitted Liens" means (a) the rights and interests of the Partnership, either Partner, either Parent or any Affiliate of any such Person as provided in the Operative Documents; (b) Liens for Taxes which are not due and payable or which May after contest be paid without penalty or which are being contested in good faith and by appropriate proceedings (provided that an adequate reserve for the payment of such Taxes has been established by the appropriate Person) and so long as such proceedings shall not involve any substantial risk of the sale, forfeiture or loss of any part of any relevant asset or title thereto or any interest therein; and (c) other imperfections of title or other encumbrances, if any, which imperfections of title or other encumbrances are nonconsensual and do not, individually or in the aggregate, materially impair the use or value of the relevant asset.

"Person" means any individual, firm, company, corporation, unincorporated association, partnership, trust, joint venture, Governmental Authority or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Product(s)", unless otherwise specified, means the product(s) manufactured by the Partnership in Semiconductor Wafer form, unless otherwise specified in Attachment B to the CIRRUS Sales Agreement or the IBM Sales Agreement, as applicable, and any supplements thereto.

"Product Family" means a group of Products which are produced generally using the same materials, technical processes and steps.

"Proration of Payments" means payments to be made from either CIRRUS to IBM, or LOM to CIRRUS, upon the termination of the Partnership prior to December 31, 2002, under the circumstances referred to in the Partnership Agreement as permitting or requiring Proration of Payments.

Such payments shall be based on the difference between (a) the cumulative actual fixed and per wafer payments made by CIRRUS to the Partnership pursuant to Section 8.4 of the CIRRUS Sales Agreement [*] and (b) the cumulative average per wafer assessment multiplied by the planned wafer shipments allocated to CIRRUS over the period from January 1, 1995, to December 31, 2002 as reflected in the Initial Business Plan to the date the last wafer shipment is made available F.O.B. (including the period of any applicable transition period).

The average per wafer assessment shall be calculated as follows: (c) the total payments to be made by CIRRUS to the Partnership including the

fixed payments pursuant to Section 8.4.4 - 8.4.1 of the CIRRUS Sales Agreement [*] plus the actual per wafer payments made for wafers actually made available F.O.B. to CIRRUS by the Partnership to the date the last wafer shipment is made available F.O.B. (including the period of any applicable transition period), and the planned "to go" per wafer payments for the planned "to go" wafers allocated to CIRRUS over eight years as reflected in the Initial Business Plan divided by (d) the total actual and projected "to go" wafer shipments from the Partnership to CIRRUS for the wafers allocated to CIRRUS

[*] as reflected in the Initial Business Plan.

If the cumulative actual fixed and per wafer payments made by CIRRUS to the Partnership pursuant to Section 8.4 of the CIRRUS Sales Agreement [*] exceed the average per wafer assessment multiplied by the wafers actually made available to CIRRUS by the Partnership to the date the last wafer shipment is made available F.O.B. (including the period of any applicable transition period), then IBM shall pay CIRRUS the difference if Proration of Payments is required under the Partnership Agreement. If the cumulative actual fixed and per wafer payments made by CIRRUS to the Partnership pursuant to Section 8.4 of the CIRRUS Sales Agreement [*] are less than the average per wafer assessment multiplied by the wafers actually made available to CIRRUS by the Partnership to the date the last wafer shipment is made available F.O.B. (including the period of any applicable transition period), then CIRRUS shall pay IBM the difference if Proration of Payments is required under the Partnership Agreement. If Proration of Payments is invoked as a result of an Event of Default, then such Proration of Payments shall also include the Start-up Adjustment Payment. An example of the application of Proration of Payments is attached to the Initial Business Plan.

"Rotating Magnetic Memory Chips" or "RMM Chips" means Semiconductor Chips primarily designed and developed for incorporation into a RMM Product. RMM Chips shall include CIRRUS RMM Chips.

"Rotating Magnetic Memory Product" or "RMM Product" means any product primarily designed to record information on end/or reproduce information from a rotating cylinder or disk having a magnetizable surface, during rotation of said cylinder or disk. RMM Products shall not include Magneto-Optical Disk Drives.

"Seconded Employee" means an employee of a Parent or any of its Affiliates that is made available to the Partnership or any of its Subsidiaries while remaining an employee of such Parent or any such Affiliate. "Section 704(c) Property" means any property contributed to the Partnership that has a tax basis for Federal income tax purposes on the date of its contribution that differs from its fair market value on such date and any Partnership property that is revalued pursuant to Section 7.01(b) of the Partnership Agreement. For purposes of calculating Net Profits or Net Losses arising from any Capital Transaction involving Section 704(c) Property, the basis of such Section 704(c) Property shall be deemed to be its fair market value on the date of contribution or revaluation less the accumulated depreciation (calculated in accordance with the provisos to the definition of Net Profits and Net Losses) arising after that date with respect to such Section 704(c) Property.

"Semiconductor Chip" means any Integrated Circuit which has been manufactured using any part or all of the IBM Know-How, as defined in the IBM Know-How License.

"Semiconductor Material" means any material whose electrical conductivity is intermediate to that of metals and insulators at room temperature and whose electrical conductivity, over some temperature range, increases with increases in temperature. Such materials shall include but not be limited to refined products, reaction products and reduced products.

"Semiconductor Wafer" means a circular, disk-shaped unit of Semiconductor Material from which May be created, by applying various lithographic and other technological processes, Semiconductor Chips.

"Senior Executives" has the meaning set forth in Section 2.15(b) of this Appendix A.

"Start-up Adjustment Payment" means an adjustment payment from CIRRUS to IBM, or IBM to CIRRUS, calculated as follows: (a) subtract the planned wafer shipments allocated to both CIRRUS and IBM over the period from January 1, 1995, to December 31, 2002, as indicated in an Exhibit to the Initial Business Plan to the date the last wafer shipment is made available by the Partnership F.O.B. (including the period of any applicable transition period) from (b) the total planned wafer shipments from the Partnership to both CIRRUS and IBM over such period as indicated in an Exhibit to the Initial Business Plan; and divide the result by (c) the total planned wafer shipments from the Partnership to both CIRRUS and IBM [*] as indicated in an Exhibit to the Initial Business Plan; and multiply the result by [*].

"Subassembly" means a group of Semiconductor Chips that are physically, electrically and functionally interconnected on a single substrate wherein the minimum percentage of CIRRUS Chips and/or CIRRUS RMM Chips in such group of Semiconductor Chips is at least: (i) [*] for a group of [*] or more of such Semiconductor Chips; (ii) [*] for a group of [*] or more of such Semiconductor Chips; and (iii) [*] for a group of [*] such Semiconductor Chips; provided, however, that any Integrated Circuits acquired by the Customer from a source other than CIRRUS and added to such substrate shall not be counted in determining the above percentage requirements.

"Subassembly Chips" means Semiconductor Chips that are to be physically, electrically and functionally interconnected with CIRRUS Chips or CIRRUS RMM Chips in a Subassembly.

"Subject Acquirer" means any Person, or any of its Affiliates, who (i) is an RMM Product disk drive manufacturer; (ii) is a Semiconductor Chip or Semiconductor Wafer manufacturer; or (iii) has, for the most recent fiscal year of such Person, together with its Affiliates, , (a) gross revenues in excess of [*] from the development, manufacture, sale, leasing and servicing of information processing hardware; or (b) gross revenues in excess of [*] from the development, reproduction, licensing, leasing and sale of information processing software and information processing related services.

"Subsidiary" of any Person means any other Person

(i) more than 50% of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, or

(ii) which does not have outstanding shares or securities (as May be the case in a partnership, joint venture or unincorporated association), but more than 50% of whose ownership interest representing the right to make decisions for such other Person is, now or hereafter owned or controlled, directly or indirectly, by such Person, but such other Person shall be deemed to be a Subsidiary only so long as such ownership or control exists; provided, however, that the term Subsidiary as used in any Operative Document, when used in relation to a Parent or any of its Affiliates, shall not include the Partnership or any of its Subsidiaries. "Tax" or "Taxes" means all Federal, state, local and foreign taxes, assessments and other governmental charges, including (a) taxes based upon or measured by gross receipts, income, profits, sales, use or occupation and (b) value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise or property taxes, together with (c) all interest, penalties and additions imposed with respect to such amounts and (d) any obligations under any agreements or arrangements with any other Person with respect to such amounts. "Technical Coordinator" means each person effecting or supervising the transfer of information among the parties. The identity of the initial Technical Coordinator for each party is set forth in Section 2.16 of this Appendix A or in a

document delivered pursuant thereto. "Third Party Assets" means the machinery and equipment listed on a Schedule to the Third Party Lease, to be sold to the Third Party Lessor by IBM for \$150,000,000 at or prior to the Closing and to be leased to the Partnership pursuant to the Third Party Lease. "Third Party Lease" means the equipment lease agreement or lease agreements to be entered into between the Third Party Lessor and the Partnership at the Closing providing for the leasing of the Third Party Assets. "Third Party Lessor" means the lessor or lessors under the Third Party Lease. "Transfer" means any transfer, sale, assignment, conveyance, issuance, license, sublicense or other disposal or delivery, including by merger, consolidation, dividend or distribution, whether made directly or indirectly, voluntarily or involuntarily, absolutely or conditionally, or by operation of law or otherwise. "Unutilized Capacity" shall have the meaning set forth in Section 7.13 of the CIRRUS Sales Agreement.

ARTICLE II

Rules of Construction and Documentary Conventions

SECTION 2.01. Assignment. Except as May otherwise be specifically provided in any agreement or instrument incorporating these Rules of Construction and Documentary Conventions, a party thereto shall not Transfer, or grant or permit to exist any Lien (except Permitted Liens) on, such agreement or instrument or any of its rights thereunder (except for any Transfer by operation of law in connection with a merger, consolidation or sale of all or substantially all the assets of such party) without the prior written consent of each other party thereto (which consent May be withheld in such other party's sole discretion), and any such purported Transfer or Lien without such consent shall be void.

SECTION 2.02. Severability. If any provision of any agreement or instrument incorporating these Rules of Construction and Documentary Conventions or the application of any such provision is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of such agreement or instrument or invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties waive any provision of law that renders any provision of such agreement or instrument invalid, illegal or unenforceable in any respect. The parties shall, to the extent lawful and practicable, use their reasonable efforts to enter into arrangements to reinstate the intended benefits, net of the intended burdens, of any such provision held invalid, illegal or unenforceable. If the intent of the parties cannot be preserved, the agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall either be renegotiated or terminated.

SECTION 2.03. Survival. Except as May otherwise be specifically provided in any agreement or instrument incorporating these Rules of Construction and Documentary Conventions, all covenants, agreements, representations and warranties of the parties made in or pursuant to such agreement or instrument shall survive the execution and delivery of such agreement or instrument and of the other Operative Documents and the closing of the transactions contemplated thereby and the expiration or other termination of such agreement or instrument or of any other Operative Document, notwithstanding any investigation by or on behalf of any party.

SECTION 2.04. Amendment and Waiver. No amendment to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall be effective unless it shall be in writing, identify with specificity the provisions of the applicable agreement or instrument that are thereby amended or waived and be signed by each party thereto. Any failure of a party to comply with any obligation, covenant, agreement or condition contained in such agreement or instrument May be waived by the party entitled to the benefits thereof only by a written instrument duly executed and delivered by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure of compliance.

SECTION 2.05. Remedies. (a) In no event will any party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions be liable to another party thereto for special, indirect, punitive or incidental damages, lost profits, lost savings or any other consequential damages, even if such party has been advised of the possibility of such damages, resulting from the breach by it of any of its obligations thereunder or breach by it or any of its Affiliates of any of their respective obligations under any other Operative Document or from the use of any confidential or other information.

(b) Except as May otherwise be specifically provided in any agreement or instrument incorporating these Rules of Construction and Documentary Conventions, the rights and remedies of the parties under such agreement or instrument are cumulative and are not exclusive of any rights or remedies which the parties would otherwise have. Equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of such agreement or instrument.

SECTION 2.06. Table of Contents, Headings. The Table of Contents and Article and Section headings of any agreement or instrument incorporating these Rules of Construction and Documentary Conventions are for convenience of reference only and shall not affect the construction of or be taken into consideration in interpreting such agreement or instrument.

SECTION 2.07. Parties in Interest; Limitation on Rights of Others. Any agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall be binding upon and inure to the benefit of the parties thereto and their permitted successors and assigns. Nothing in such agreement or instrument whether express or implied shall give or be construed to give any Person (other than the parties thereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of such agreement or instrument unless such Person is expressly stated in such agreement or instrument to be entitled to any such right remedy or claim.

SECTION 2.08. Counterparts; Effectiveness.

(a) Any agreement or instrument incorporating these Rules of Construction and Documentary Conventions May be executed by the parties thereto in separate counterparts each of which when so executed and delivered shall be an original but all such counterparts shall together constitute but one and the same contract.

(b) Any agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall not become effective until one or more counterparts have been executed by each party thereto and delivered to the other parties thereto.

SECTION 2.09. Entire Agreement. Any agreement or instrument incorporating these Rules of Construction and Documentary Conventions, together with the other Operative Documents and the Exhibits Schedules Appendices and Attachments thereto any agreement entered into simultaneously therewith and the Initial Business Plan constitute the entire agreement of the parties to the Operative Documents with respect to the subject matter thereof and supersede all prior written and oral agreements and understandings with respect to such subject matter.

SECTION 2.10. Construction. References in any agreement or instrument incorporating these Rules of Construction and Documentary Conventions to any gender include references to all genders and references in such agreement or instrument to the singular include references to the plural and vice versa. Unless the context otherwise requires, the term "party" when used in any such agreement or instrument means a party to such agreement or instrument. References in any such agreement or instrument to a party or other Person include their respective successors and assigns. The words "include", "includes" and "including" when used in any such agreement or instrument shall be deemed to be followed by the phrase "without limitation". Unless the context otherwise requires, references in any such agreement or instrument to Articles,

Sections, Exhibits, Schedules, Appendices and Attachments shall be deemed references to Articles and Sections of, and Exhibits, Schedules, Appendices and Attachments to, such agreement or instrument. Unless the context otherwise requires, the words "hereof", "hereby" and "herein" and words of similar meaning when used in any such agreement or instrument refer to such agreement or instrument in its entirety and not to any particular Article, Section or provision of such agreement or instrument.

SECTION 2.11. Governing Law. Any agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall in all respects be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed entirely within such State, without regard to the conflict of laws principles of such State.

SECTION 2.12. Waiver of Jury Trial and Certain Damages. Each party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions waives, to the fullest extent permitted by applicable law, (i) any right it May have to a trial by jury in respect of any action, suit or proceeding arising out of or relating to any Operative Document and (ii) any right it May have to receive damages or indemnification from any other party to any Operative Document in respect of any act, omission or event relating to such Operative Document or the transactions contemplated by the Operative Documents based on any theory of liability for any special, indirect, consequential or punitive damages. Each party to any such agreement or instrument (x) certifies that no representative, agent or attorney of another party to any Operative Document has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (y) acknowledges that it has been induced to enter into such agreement or instrument by, among other things, the mutual waivers and certifications set forth above in this Section 2.12.

SECTION 2.13. Jurisdiction, Consent to Service of Process.

(a) Each party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of any Federal court of the United States of America sitting in the Southern District of New York, and any appellate court from any such court, in any suit, action or proceeding arising out of or relating to the Operative Documents, or for recognition or enforcement of any judgment resulting from any such suit, action or proceeding, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding May be heard and determined in such Federal court.

(b) It shall be a condition precedent to each party's right to bring any such suit, action or proceeding (unless such suit, action or proceeding is brought solely to obtain discovery or to enforce a judgment) that such suit, action or proceeding, in the first instance, be brought in such Federal court, and if such Federal court refuses to accept jurisdiction with respect thereto, such suit, action or proceeding May be brought in any other court with jurisdiction; provided that the foregoing condition precedent shall not apply to any suit, action or proceeding by a party seeking indemnification or contribution pursuant to any Operative Document or otherwise in respect of a suit, action or proceeding against such party if such suit, action or proceeding by such party seeking indemnification or contribution is brought in the same court as the suit, action or proceeding against such party.

(c) No party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions May move to (i) transfer any such suit, action or proceeding from such Federal court to another jurisdiction,

(ii) consolidate any such suit, action or proceeding brought in such Federal court with a suit, action or proceeding in another jurisdiction or (iii) dismiss any such suit, action or proceeding brought in such Federal court for the purpose of bringing the same in another jurisdiction.

(d) Each party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions hereby irrevocably and unconditionally waives, to the fullest extent it May legally and effectively do so, (i) any objection which it May now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to the Operative Documents in any Federal court sitting in the Southern District of New York, (ii) the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court and (iii) the right to object, with respect to such suit, action or proceeding, that such court does not have jurisdiction over such party.

(e) Each party to any agreement or instrument incorporating these Rules of Construction and Documentary Conventions irrevocably consents to service of process in the manner provided for the giving of notices pursuant to such agreement or instrument. Nothing in this Appendix shall affect the right of any party to such agreement or instrument to serve process in any other manner permitted by law.

SECTION 2.14. Notices. All notices and other communications to be given to any party under any agreement or instrument incorporating these Rules of Construction and Documentary Conventions shall be in writing and any notice shall be deemed given when delivered by hand, courier or overnight delivery service or three days after being mailed by certified or registered mail, return receipt requested, with appropriate postage prepaid, or when received in the form of a telegram or facsimile, and shall be directed to the address or facsimile number of such party specified below (or at such other address or facsimile number as such party shall designate by like notice):

(a) If to IBM:

International Business Machines Corporation Old Orchard Road

Armonk, New York 10504

Telephone: (914) 765-7800

Telecopy: (914) 765-7803

Attention of Lee A. Dayton

General Manager

Real Estate and Business Development

With a copy to:

Gregory C. Bomberger, Esq.

International Business Machines Corporation Old Orchard Road

Armonk, New York 10504

Telephone: (914) 765-7392

Telecopy: (914) 765-6006

And a copy to:

Cravath, Swaine & Moore

Worldwide Plaza

825 Eighth Avenue

New York, New York 10019

Telephone: (212) 474-1000

Telecopy: (212) 474-3700

Attention of Martin L. Senzel, Esq.

(b) If to the IBM Partner:

MiCrus Holdings Inc.

In care of International Business Machines Corporation Route 52, East Fishkill

Hopewell Junction, New York 12533

Telephone: 914-892-5150

Telecopy: 914-892-5153

Attention of Eric G. Johnson

With a copy to:

Lee A. Dayton

International Business Machines Corporation Old Orchard Road

Armonk, New York 10504

Telephone: (914) 765-7800

Telecopy: (914) 765-7803

And a copy to:

Gregory C. Bomberger, Esq.

International Business Machines Corporation Old Orchard Road

Armonk, New York 10504

Telephone: (914) 765-7392

Telecopy: (914) 765-6006

And a copy to:

Cravath, Swaine & Moore

Worldwide Plaza

825 Eighth Avenue

New York, New York 10019

Telephone: (212) 474-1000

Telecopy: (212) 474-3700

Attention of Martin L. Senzel, Esq.

(c) If to CIRRUS:

CIRRUS Logic, Inc.

3100 West Warren Avenue

Fremont, California 94538

Telephone: (510) 623-8300

Telecopy: (510) 226-2033

Attention of George Alexy

With a copy to:

Morrison & Foerster

345 California Street

San Francisco, California 94104

Telephone: (415) 677-7000

Telecopy: (415) 677-7522

Attention of David E. Nelson, Esq.

(d) If to the CIRRUS Partner:

Cirel, Inc.

In care of

CIRRUS Logic, Inc.

3100 West Warren Avenue

Fremont, California 94538

Telephone: (510) 623-8300

Telecopy: (510) 226-2033

Attention of George Alexy

With a copy to:

Morrison & Foerster

345 California Street

San Francisco, California 94104

Telephone: (415) 677-7000

Telecopy: (415) 677-7522

Attention of David E. Nelson, Esq.

(e) If to the Partnership:

MiCrus

1580 Route 52

Hopewell Junction, New York 12533

Attention of Chief Executive Officer

SECTION 2.15. Escalation. Upon the occurrence of any event which, pursuant to the express provisions of any agreement or instrument incorporating these Rules of Construction and Documentary Conventions, entitles a party to invoke the escalation provisions set out in this Section 2.15, the following procedure shall apply:

(a) The Partners will attempt to resolve the subject of the escalation promptly by negotiations between the persons designated to receive notices pursuant to Section 2.14 from time to time of each Partner (the "Designated Individuals"). The Designated Individuals shall meet at least once

in person to attempt to resolve the matter. Either Designated Individual May request the other to meet at a time and location to be mutually agreed. If the matter has not been resolved within [*] of the initiation of the escalation procedure, either Designated Individual May refer the matter as provided in

Section 2.15(b).

(b) The subject matter of the escalation shall be referred to, in the case of the IBM Partner, a Vice President of IBM with responsibility for the IBM Microelectronics Division and, in the case of the CIRRUS Partner, the Chief Executive Officer of CIRRUS (collectively, the "Senior Executives"), and the applicable persons shall deliver to the Senior Executives memoranda stating the subject of the escalation and their positions. The Senior Executives will meet in person or by telephone within 14 days after (i) the expiration of the [*] specified in Section 2.15 (a) or (ii) in the case of a direct referral to the Senior Executives in accordance with the Partnership Agreement, such direct referral, and attempt in good faith to resolve the subject matter of the escalation.

(c) Efforts to comply with the provisions of Section 2.15(a) (if applicable) for a period of [*] and with Section 2.15(b) for a period of [*] from the commencement of such procedure (which time period May be extended by written agreement of the Senior Executives) shall be a condition precedent to any further action or proceeding with respect to such matter. Subject to the foregoing, use of the procedures specified in this Section 2.15 shall be without prejudice to the exercise of any other remedies permitted by the Operative Documents.

SECTION 2.16. Technical Coordinators. CIRRUS, IBM and the Partnership shall each maintain a Technical Coordinator to represent such party in connection with the routine implementation of procedures described in the Operative Documents requiring the involvement of such party's Technical Coordinator. Each Technical Coordinator May be replaced at any time by the party represented by such Technical Coordinator upon written notice given to the other parties in accordance with Section 2.14, with copies of such notice to be given to the other Technical Coordinators. The initial Technical Coordinators shall be:

(a) For IBM:

That person designated in a document furnished pursuant hereto.

(b) For CIRRUS:

That person designated in a document furnished pursuant hereto.

(c) For the Partnership:

That person designated pursuant to Section 5.02(a)(i) of the Partnership Agreement.

SECTION 2.17. Definitions. The definitions set forth in Article I of this Appendix A shall apply to this Article II.

CONFIDENTIAL TREATMENT REQUESTED

[*] Denotes information for which confidential treatment has been requested. Confidential portions omitted have been filed separately with the Commission.

PARTNERSHIP AGREEMENT of MiCrus dated as of September 30, 1994, between Cirel Inc., a California corporation (the "CIRRUS Partner"), and MiCrus Holdings Inc., a Delaware corporation (the "IBM Partner").

The CIRRUS Partner and the IBM Partner desire to act as general partners in a general partnership formed for the purposes specified in Section 2.05. To that end, the Partners desire to enter into this Agreement to set forth more fully the rights and obligations of the Partners in the Partnership.

Accordingly, the CIRRUS Partner and the IBM Partner agree as follows:

ARTICLE I

Definitions, Rules of Construction and

Documentary Conventions

SECTION 1.01. Certain Definitions. (a) Capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to them in Appendix A.

(b) As used herein, the term "Agreement" means this Partnership Agreement together with any Exhibits, Schedules, Appendices and Attachments hereto.

SECTION 1.02. Additional Definitions. The following capitalized terms used generally in this Agreement shall have the respective meanings assigned in this Agreement:

Term Defined in

"Breaching Partner" Section 11.01

"Capital Account" Section 7.01(a)

"Change of Control Procedure" Section 10.08(a) "CIRRUS Nominee" Section 5.02(a)(iii) "Claim" Section 12.04(a)

"Code" Section 6.01(a)

"Deadlock"	Section 10.07
"Defaulting Parent"	Section 10.10
"Defaulting Partner"	Section 10.10
"Defaulting Party"	Section 10.10
"Designated Members"	Section 5.01(b)
"Governing Board"	Section 5.01(a)
"Indemnified Party"	Section 12.04(a)
"Indemnifying Party"	Section 12.04(a)

"IRS" Section 6.02(e)

"Limiting Agreement Procedure" Section 10.11 "Losses" Section 12.01(a)

"Nondefaulting Partner" Section 10.10

"Remaining Partner"	Section 11.01
"Residual Shortfall"	Section 6.01(f)
"704(b) Regulations"	Section 7.02(b)(i)

"Standard Commercial Terms and Conditions" Section 3.01 "Tax Matters Partner" Section 8.05(b)

SECTION 1.03. Rules of Construction and Documentary Conventions. The rules of construction and documentary conventions set forth in Appendix A hereto shall apply to this Agreement.

ARTICLE II

The Partnership

SECTION 2.01. Formation. MiCrus is formed pursuant to this Agreement as a New York general partnership. Each of the CIRRUS Partner and the IBM Partner are admitted as, and shall be, general partners of the Partnership.

SECTION 2.02. Name; Qualification. (a) The name of the Partnership is "MiCrus". The Partnership may also do business under other names agreed to by the Partners.

(b) The Partnership shall, to the extent required by any applicable Governmental Rule, (i) file partnership certificates assumed name certificates, fictitious business name certificates or similar certificates with the appropriate Governmental Authorities and (ii) qualify to do business in all appropriate jurisdictions, in each case as expeditiously as possible.

(c) Each Partner shall, to the extent required by any applicable Governmental Rule, (i) qualify to do business and maintain itself in good standing in each jurisdiction where the Partnership conducts or proposes to conduct business and (ii) file assumed name certificates, fictitious business name certificates or similar certificates with the appropriate Governmental Authorities in all appropriate jurisdictions, in each case as expeditiously as possible.

SECTION 2.03. Principal Office. The principal office of the Partnership shall be located at 1580 Route 52, Hopewell Junction, New York 12533, or such other place as may be designated by the Governing Board.

SECTION 2.04. Term; Extension. (a) The term of the Partnership shall end on December 31, 2002, unless extended by mutual agreement of the Partners or earlier terminated in accordance with Article XI. Prior to December 31, 2000, the IBM Partner and the CIRRUS Partner will meet to initiate discussions regarding a potential extension of the term of the Partnership beyond December 31, 2002. Any such extension shall be effective only upon the written agreement of each of the IBM Partner and the CIRRUS Partner and shall be on such terms and for such period as set forth in such agreement. Production by the Partnership will cease upon termination of the Partnership for any reason.

(b) Prior to January 1, 1995, without the consent of each Partner, the Partnership shall not conduct any activities or enter into any obligations except as are specifically contemplated by the Operative Documents or as are incidental to its formation and qualification, unless responsibility for any monetary obligations arising with respect to the period prior to January 1, 1995, are adequately supported by a Partner or its Affiliates.

SECTION 2.05. Scope of Activity. The scope of activity of the Partnership shall be to manufacture Semiconductor Wafers for each of the Parents consistent with the Operative Documents.

SECTION 2.06. Powers. The Partnership shall have all the powers now or hereafter conferred by applicable law on general partnerships formed under the laws of the State of New York and may do any and all acts and things necessary, incidental or convenient to the purpose specified in Section 2.05. Notwithstanding anything to the contrary contained in this Agreement, the Partnership shall not take any action whatsoever or incur any liability or obligation whatsoever prior to the Closing without the express prior written consent of both of the Partners.

SECTION 2.07. Property Ownership. Except as may otherwise be provided in this Agreement or in any Operative Document to which the Partnership is or becomes a party, (a) all assets, property and rights, whether real, personal or mixed, tangible or intangible, owned, hold or possessed by the Partnership shall be owned, held or possessed in the name of the Partnership and not any Partner, (b) all such assets, property and rights shall be deemed to be owned, held or possessed by the Partnership as an entity and (c) the Partners individually shall not have any separate ownership in such assets, property or rights. Each Partner's partnership interest in the Partnership shall be personal property for all purposes.

SECTION 2.08. Waiver of Rights of Partition and Dissolution. Each Partner waives all rights it may have at any time to maintain any action for partition or sale of any Partnership assets as now or hereafter permitted under applicable law. Each Partner waives its right to seek a court decree of dissolution (other than a dissolution in accordance with Article XI) or to seek the appointment of a court receiver for the Partnership as now or hereafter permitted under applicable law. Each Partner acknowledges and agrees that Article XI provides the exclusive means for the dissolution and winding up of the Partnership by the Partners.

ARTICLE III

Business Operations

SECTION 3.01. Business Dealings with the Partnership. The Partnership may enter into contracts or agreements with, and otherwise enter into transactions or dealings with, either Parent (or any of its Affiliates), and derive and retain profits therefrom. The validity of any such contract, agreement, transaction or dealing or any payment or profit related thereto or derived therefrom shall not be affected by any relationship between the Partnership and either Partner or any of their respective Affiliates (including such Parent's Affiliated Partner). The Partners acknowledge and agree that IBM will be the supplier of information processing hardware, software and services to the Partnership under IBM's then standard customer agreements at those prices and upon those other terms and conditions that IBM offers to its most favored unaffiliated customers purchasing comparable quantities, except as may be otherwise provided in the Operative Documents. The Partnership may, however, contract with third party suppliers if the Governing Board determines that any products or services are necessary or appropriate for the business of the Partnership and are not reasonably available from IBM. Unless otherwise approved by the Partners or otherwise expressly provided in the Operative Documents, all business dealings of the Partnership with a Parent and its Subsidiaries shall be on Standard Commercial Terms and Conditions which shall mean those commercial terms and conditions that are not more favorable in any material respect to either party to the commercial transaction to which such terms and conditions apply than would customarily apply between two unaffiliated parties in a commercial transaction involving comparable types and quantities of goods or services.

SECTION 3.02. Other Activities. Each Partner (for itself and on behalf of the Partnership) acknowledges and agrees that:

(a) the other Partner's Parent and any of its Affiliates (other than the other Partner) may engage in other business ventures and dealings of every nature, independently or with others, including within the scope of the activities of the Partnership and whether or not competitive with the business of the Partnership (or any of its Affiliates) or of such Partner's Parent (or any of its Affiliates) and regardless of the effect on the Partnership, and none of the Partnership (nor any of its Affiliates) nor such Partner's Parent (nor any of its Affiliates) shall have any rights in such ventures or dealings or to the income and profits derived therefrom;

(b) the other Partner's Parent and its Affiliates, any of their respective employees, including any Seconded Employee or Liaison Representative, and any member of the Governing Board appointed by the other Partner shall not be obligated to refer to the Partnership any business opportunity presented to or developed by any of them; and

(c) it will not conduct any business or other activity other than being a general partner of the Partnership and performing its obligations under the Operative Documents to which it is or becomes a party.

SECTION 3.03. Waiver of Conflict of Interest, etc. (a) Subject to the terms of Section 3.03(b), each Partner (for itself and on behalf of the Partnership) hereby:

(i) waives any claim or cause of action against each of the other Partner, such other Partner's Affiliates, any member of the Governing Board appointed by such other Partner and any employee of such other Partner or any of its Affiliates (including any Seconded Employee or Liaison Representative) that may from time to time arise in respect of a breach of any duty to the Partnership or any of its Subsidiaries by any such Person as a result of a conflict of interest between the Partnership or any of its Subsidiaries and such other Partner or any of its Affiliates other than the breach of a duty expressly imposed pursuant to an Operative Document or other agreement to which the Partnership and the other Partner's Parent or any of its Affiliates are parties;

(ii) acknowledges and agrees that, except as expressly required by the Operative Documents, (i) in the event of any conflict of interest between the Partnership or any of its Subsidiaries and the other Partner or any of its Affiliates that may from time to time arise, each of such other Partner, such other Partner's Affiliates, any member of the Governing Board appointed by such other Partner and any employee of such other Partner or any of its Affiliates (including any Seconded Employee or Liaison Representative) may act in the best interests of such other Partner or any of its Affiliates and (ii) each such Person shall not be obligated (A) to reveal to the Partnership or any of its Subsidiaries confidential information belonging to or relating to the business of such other Partner or any of its Affiliates or (B) to recommend or take any action in its capacity as such Partner, member of the Governing Board or employee (including as a Seconded Employee or Liaison Representative), as the case may be, that prefers the interests of the Partnership or any of its Subsidiaries over the interests of such other Partner or any of its Affiliates; provided, however, that all business dealings of the Partnership with a Parent and its Subsidiaries shall be on Standard Commercial Terms and

Conditions, except as otherwise expressly provided in an Operative Document; and

(iii) acknowledges and agrees that, to the fullest extent permitted by applicable law, the other Partner and any member of the Governing Board appointed by such other Partner and any employee of such other Partner or employee of any of its Affiliates shall not, now or in the future, be liable, responsible or accountable in damages or otherwise to such Partner or the Partnership for any acts reasonably believed by such other Partner, member of the Governing Board or employee to be within the scope of the authority conferred on such Person by this Agreement, or for such Person's failure or refusal to perform any act except those expressly required by the terms of this Agreement, or for such Person's performance of, or omission to perform, any acts on advice of the Accountants or legal counsel for the Partnership, or for such Person's performance of any acts required by or such Person's omission to perform any acts prohibited by, any Governmental Rule.

(b) Each Partner agrees that the waivers, acknowledgments and agreements set forth in Section 3.03(a) shall not apply to (i) any act of fraud, gross negligence or willful misconduct by any member of the Governing Board in the performance of his duties as a member of the Governing Board or

(ii) any alleged claim or cause of action against a Partner, any of such Partner's Affiliates or any of their respective employees based upon the breach or nonperformance by such Person of an express contractual undertaking in an Operative Document.

SECTION 3.04. Business Plans and Related Matters. (a) Initial and Subsequent Business Plans. (i) The Initial Business Plan of the Partnership for the five year period commencing on January 1, 1995, shall be mutually agreed upon by the Partners in writing and delivered by them at the Closing.

(ii) The Partners acknowledge that the Initial Business Plan and each successive updated Business Plan will represent their then current estimate of the proposed operations of the Partnership, and that the failure to meet any of the projections, goals or milestones in such Plan shall not, in and of itself, constitute a default by the Partnership or either Partner.

(iii) An updated Business Plan covering the immediately succeeding 12-month period complying with Section 3.04(b) shall be prepared prior to the commencement of each fiscal quarter of the Partnership under the direction of the Chief Executive Officer and submitted to the Governing Board and the Partners for review and approval not later than [*] prior to the commencement of each fiscal quarter or [*] before the commencement of each fiscal year.

(iv) When the proposed Business Plan for a 12-month period is approved by the Governing Board and the Partners, it shall constitute the Business Plan and the Partnership and its officers and employees shall implement such Business Plan, which shall be the basis of the Partnership's operations for such 12-month period, except to the extent such Business Plan is superseded by a subsequently adopted 12-month Business Plan.

(v) The Partnership shall not adopt or be governed by any overall business plan or budget other than a Business Plan approved by the Governing Board and the Partners and meeting the requirements of Section 3.04(b).

(b) Form and Scope. Each Business Plan (other than the Initial Business Plan) shall contain (i) an annual operating budget for the Partnership for the relevant 12-month period, containing projections of consolidated income and loss, cash flow and ending balance sheets for such 12-month period, (ii) a business plan (including a narrative description) for the Partnership relating to the relevant 12-month period setting forth in reasonable detail the financial plan, executive compensation and benefits, if any, capital expenditures, expense budgets and manufacturing objectives, and

(iii) projections for the same items described in clauses (i) and (ii) for the immediately succeeding 12-month period. Each Business Plan also shall contain a statement of long-range (5-year) strategy and medium-range (2-year) tactics detailing quantitative and qualitative goals for the Partnership and relating attainment of those goals to the Partnership's manufacturing objectives. No Business Plan shall be deemed to be an amendment of this Agreement.

(c) Approval. Each Partner shall and shall request the members of the Governing Board appointed by it to cooperate in good faith to finalize and approve any Business Plan proposed pursuant to Section 3.04(a) by the fifteenth day before the beginning of the 12-month period to which such proposed Business Plan relates. Pending approval by the Governing Board and the Partners of any proposed Business Plan, the current Business Plan shall continue in effect.

SECTION 3.05. Intellectual Property. (a) The Partners shall cause the Partnership to take all reasonable steps necessary to avoid designing or developing any item that infringes or otherwise makes unauthorized use of any of the Intellectual Property rights of any Person (other than the Partnership and its Subsidiaries).

(b) All Intellectual Property developed by or for the Partnership shall be the property of IBM, subject to certain ownership and license rights in favor of CIRRUS set forth in the Confidentiality and Inventions Agreements. Each Partner shall have the right to secure all statutory protection for such Intellectual Property (if any), that such Partner shall own in accordance with the Confidentiality and Inventions Agreements, including appropriate copyright, patent and trademark registrations.

(c) Except as may be expressly provided in the Operative Documents, nothing in this Agreement shall be construed as conferring on the Partnership or either Partner the right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either Parent (or any of such Parent's Affiliates), including any contraction, abbreviation or simulation of any of the foregoing.

ARTICLE IV

Actions by the Partners

SECTION 4.01. Matters Requiring the Consent of the Partners. (a) Subject to Section 4.01(d), no action may be taken by or on behalf of the Partnership in connection with any of the following matters without the prior written consent of each Partner:

(1) any amendment to or renewal of this Agreement or any Operative Document between the Partnership and a Parent or other Affiliate of either Partner;

(2) with respect to the Partnership or any of its Subsidiaries, (A) the voluntary commencement of any proceeding or the voluntary filing of any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) the consent to the institution of, or causing it to fail to contest in a timely and appropriate manner, any involuntary proceeding or any involuntary filing of any petition of the type described in clause (A) above, (C) the application for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for it, or for a substantial part of its property or assets, (D) the filing of an answer admitting the material allegations of a petition filed against it in any such proceeding, (E) the consent to any order for relief issued with respect to any such proceeding, (F) the making of a general assignment for the benefit of creditors, (G) admitting in writing its inability or causing it to fail generally to pay its debts as they become due or (H) taking any action for the purpose of effecting any of the foregoing;

- (3) the merger or consolidation of the Partnership or any of its Subsidiaries with any Person;
 - (4) the winding up, dissolution or liquidation of the Partnership or any of its Subsidiaries (other than the dissolution of the Partnership pursuant to and as contemplated by Article XI);
 - (5) the admission of another Partner (except for a transfer of an interest in the Partnership to a Subsidiary of either Parent);
 - (6) with respect to the Partnership or any of its Subsidiaries, (i) the acquisition of or investment in any corporation, partnership or joint venture with any Person, (ii) the creation of any direct or indirect Subsidiary of the Partnership or (iii) the acquisition or sale of assets in any single transaction or in a series of related transactions (other than as set forth in the Initial Business Plan or a subsequently approved Business Plan) in an amount in excess of [*].
 - (7) the approval of any transaction between the Partnership and either Parent or its Affiliates (other than transactions described in an Operative Document, the Initial Business Plan or a subsequently approved Business Plan) if such transaction in either not (i) on Standard Commercial Terms and Conditions (except as expressly provided in an Operative Document) or (ii) in the ordinary course of the Partnership's business and such transaction and all related transactions with such Parent or its Affiliates have an aggregate value exceeding [*].
 - (8) the approval of or any amendment to the then current Business Plan of the Partnership (including any revisions or updates thereto pursuant to Section 3.04); and
 - (9) any reduction in force of the employees of the Partnership by [*] or more in a single lay-off or employee termination or a series of related lay-offs or employee terminations; provided, however, the Governing Board may take any such action without the consent of each Partner when such action is necessitated by the financial condition of the Partnership.
- (b) Each Partner shall designate one individual who shall be authorized to act on behalf of such Partner in connection with consents or approvals necessary or appropriate under Section 4.01(a), provided that all such acts on behalf of a Partner shall be in writing. Initially such designated individuals shall be the persons designated to receive notices for each Partner pursuant to Section 2.14 of Appendix A, and any such person may be replaced by the designating Partner on notice to the other Partner in accordance with said Section 2.14. Each Partner agrees to give any consent or approval required under this Section 4.01, or to indicate that such consent or approval will not be given, within [*] days of written request by the other Partner or the Partnership.
- (c) Notwithstanding the requirements of Section 4.01(a) relating to agreements between the Partnership and either Parent or its Affiliates, any question regarding a material default or alleged material default (including any question regarding a breach of representation or alleged breach of representation) under any Operative Document or other agreement between the Partnership and either Partner or its Affiliates shall be subject to the dispute resolution process in Section 2.15 of Appendix A. If such question is not thereby resolved and the material default or alleged material default (or misrepresentation or alleged misrepresentation) remains uncured, the other Partner shall have the right to enforce the subject agreement or breach of representation for the benefit of the Partnership.
- (d) If there has occurred and is continuing an Event of Default with respect to a Partner or its Parent, any action specified in Section 4.01(a), other than an amendment to this Agreement or any other Operative Document to which the Defaulting Partner or Parent may be a party (not including the Initial Business Plan or any subsequent Business Plan or any schedules or exhibits to any of the Operative Documents (other than any such exhibit that may require the agreement of such Defaulting Partner or Parent by its terms)), may be taken by or on behalf of the Partnership by the Nondefaulting Partner without the consent of the Defaulting Partner if the Nondefaulting Partner has exercised its right to reduce the number of members of the Governing Board appointed by the Defaulting Partner pursuant to Section 5.01(b)(xii).

SECTION 4.02. Matters Requiring the Consent of a Partner. (a) No action may be taken by or on behalf of the Partnership in connection with the following matters without the prior written consent of the relevant Partner:

- (1) the issuance of any public release, announcement or document by the Partnership or any of its Subsidiaries that refers to CIRRUS or IBM or any of their respective Subsidiaries (other than a general reference to CIRRUS's or IBM's affiliation with the Partnership), except as may be required by any Governmental Rule, in which case the Partnership shall allow such Partner reasonable time to comment on such release, announcement or document in advance of such issuance, and shall use reasonable efforts in good faith to accept the reasonable and good faith comments of such Partner; and
- (2) the incurrence of Indebtedness by the Partnership or any of its Subsidiaries which is not expressly without recourse to the Partners, whether by law or contract (unless such Indebtedness is recourse only to the Partner that has consented in writing to the incurrence of such Indebtedness).

(b) Each Partner shall designate one individual who shall be authorized to approve the issuance of any public release, announcement or document referred to in Section 4.02(a)(1). Initially such designated individuals shall be the persons designated to receive notices for each Partner pursuant to Section 2.14 of Appendix A, and any such person may be replaced by the designating Partner on notice to the other Partner in accordance with said Section 2.14. Each Partner agrees to give any approval required under this Section 4.02, or to indicate that such approval will not be given, within 30 days of written request by the other Partner or the Partnership.

SECTION 4.03. Restrictions on Partners. Neither Partner may, without the prior written consent of the other Partner:

- (a) confess a Judgment against the Partnership;
- (b) except as contemplated by Section 8.05(b) or (c), make any agreement on behalf of or otherwise purport to bind the other Partner or the Partnership;
- (c) do any act in contravention of this Agreement;
- (d) except as contemplated by Article XI, dispose of the good will or the business of the Partnership;
- (e) assign the property of the Partnership in trust for creditors or on the assignee's promise to pay any Indebtedness of the Partnership;
- (f) submit a Partnership claim or liability to arbitration or reference; or
- (g) release the other Partner from its obligations under this Agreement.

ARTICLE V

Management and Operations of Partnership

SECTION 5.01. The Governing Board. (a) General. (i) Except as otherwise provided herein, complete and exclusive power to direct and control the Partnership is delegated to a governing committee of six individuals appointed as provided in this Article V (the "Governing Board"). The Partnership shall be operated on a day-to-day basis by its officers and employees, governed by the Governing Board. (ii) Subject to Article IV, the Governing Board is authorized and directed, as soon as practicable, to delegate to the Chief Executive Officer responsibility for the day-to-day operation of the Partnership's business. Schedule 5.01 sets forth those responsibilities that shall initially be delegated to the Chief Executive Officer (subject to revision from time to time by the Governing Board in response to the Partnership's

operating requirements). Any power not delegated pursuant to a policy of delegation adopted by the Governing Board shall remain with the Governing Board. Approval by or action taken by the Governing Board in accordance with this Agreement shall constitute approval or action by the Partnership.

(b) Members of the Governing Board; Voting; etc. (i) Subject to Section 5.01(b)(xii) and Section 10.11(d), the IBM Partner shall appoint three members, and the CIRRUS Partner shall appoint two members, of the Governing Board. All such members appointed by either Partner are referred to herein as the "Designated Members".

(ii) Each Partner shall be entitled to name an alternate member (who shall be reasonably satisfactory to the other Partner) to serve in the place of any Designated Member appointed by such Partner should any such Designated Member not be able to attend a meeting or meetings.

(iii) Each Designated Member or alternate member shall serve at the pleasure of the designating Partner and may be removed as such, with or without cause, and his successor designated, by the designating Partner.

(iv) Each Partner shall bear any cost incurred by any Designated Member designated by it to serve on the Governing Board, and no member of the Governing Board shall be entitled to compensation from the Partnership for serving in such capacity.

(v) Each Partner shall notify the other Partner and the Partnership of the name, business address and business telephone and facsimile numbers of each Designated Member and each alternate member that such Partner has appointed to the Governing Board. Each Partner shall promptly notify the other Partner and the Partnership of any change-in such Partner's appointments or of any change in any such address or number.

(vi) The sixth member of the Governing Board will be, ex officio, the Chief Executive Officer of the Partnership from time to time, who will not be entitled to vote at meetings of the Governing Board. Upon ceasing to be Chief Executive Officer for any reason, such person shall automatically cease to be a member of the Governing Board. The Partnership shall bear any cost incurred by the Chief Executive Officer to serve on the Governing Board. The Chief Executive Officer shall not be entitled to any additional compensation from the Partnership for serving as a member of the Governing Board.

(vii) For purposes of any approval or action taken by the Governing Board, each member of the Governing Board (with the exception of the Chief Executive Officer) shall have one vote. Subject to Section 5.01(c)(v), a majority of the votes eligible to be cast at any meeting shall be required for purposes of approving any action to be taken by the Governing Board at such meeting.

(viii) At any meeting of the Governing Board, a Designated Member, in the absence of another Designated Member appointed by the same Partner or an alternate member, may cast the vote such absent Designated Member would otherwise be entitled to cast.

(ix) The quorum necessary for any meeting of the Governing Board shall be those members entitled to cast a majority of the votes held by the members of the Governing Board. A quorum shall be deemed not to be present at any meeting for which notice was not properly given under Section 5.01(c), unless the member or members as to whom such notice was not properly given attend such meeting without protesting the lack of notice or duly execute and deliver a written waiver of notice or a written consent to the holding of such meeting.

(x) Any action taken by a Designated Member of the Governing Board in such Designated Member's capacity as such shall, so far as the Partners are concerned, be deemed to have been duly authorized by the Partner that appointed such Designated Member; provided, however, that any such action shall not be deemed to be an approval, consent or agreement of such Partner for any purposes of this Agreement (including under Section 4.01), which approval, consent or agreement must be separately obtained in writing.

(xi) Each appointment by a Partner to the Governing Board shall remain in effect until the Partner making such appointment notifies the other Partner of a change in such appointment. The resignation or removal of a member of the Governing Board shall not invalidate any act of such member taken before the giving of such written notice of the removal or resignation of such member.

(xii) If there has occurred and is continuing an Event of Default with respect to a Partner or its Parent, the number of members to be appointed to the Governing Board by such Partner (and the aggregate number of votes they are entitled to cast) may be reduced at the election of the Nondefaulting Partner by two if such Partner is the IBM Partner and by one if such Partner is the CIRRUS Partner, and the total number of members of the Governing Board will be correspondingly reduced so long as such Event of Default is continuing. Such Partner shall immediately designate which of its appointees shall be removed, failing which the other Partner may make such designation.

(c) Meetings, Notice, etc. (i) Meetings of the Governing Board shall be held at the principal offices of the Partnership or at such other place as may be determined by the Governing Board.

(ii) Regular meetings of the Governing Board shall be held at least quarterly on such dates and at such times as shall be determined by the Governing Board.

(iii) Notice of any regular meeting or special meeting pursuant to Section 5.01(c)(iv) shall be given to each member and alternate member of the Governing Board by the Partnership or any Partner at least ten Business Days prior to such meeting in the case of a meeting in person or at least five days prior to such meeting in the case of a meeting by conference telephone or similar communications equipment pursuant to Section 5.01(c)(vi).

(iv) Special meetings of the Governing Board may be called by any Designated Member by notice given in accordance with the notice requirements set forth in Section 5.01(c)(iii), which notice shall state the purpose or purposes for which such meeting is being called. No action may be taken and no business may be transacted at such special meeting which is not identified in such notice unless (a) such action or business is incidental to the action or business for which the special meeting is called or (b) such action or business does not materially adversely affect either Partner or the Partnership.

(v) The actions taken by the Governing Board at any meeting, however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, any member as to whom it was improperly held duly executes and delivers a written waiver of notice or a written consent to the holding of such meeting; provided, however, any member that is present at a meeting shall be deemed to have received adequate notice thereof. A vote of the Governing Board may be taken either in a meeting of the members thereof or by written consent of the Designated Members eligible to cast a majority of the votes on the Governing Board without a meeting, which majority for a written consent shall be required to include, at a minimum, one member of the Governing Board appointed by each Partner.

(vi) A meeting of the Governing Board may be held by conference telephone or similar communications equipment by means of which all members participating in the meeting can be heard by all other participants. Any member of the Governing Board may elect to participate in a meeting by conference telephone or similar communications equipment upon sufficient advance notice to permit arrangements therefor to be made.

(vii) The Governing Board shall, from time to time, elect one of its members to preside at its meetings. The Governing Board may establish reasonable rules and regulations to (A) require officers to call meetings and perform other administrative duties, (B) limit the number and

participation of observers, if any, and require them to observe confidentiality obligations and (C) otherwise provide for the keeping and distribution of minutes and other internal Governing Board governance matters not inconsistent with the terms of this Agreement.

(d) Partners May Act. Nothing in this Section 5.01 shall derogate from the power of the Partners, which is absolute, to agree in writing to cause the Partnership to act or refrain from acting as to any specific item or matter.

SECTION 5.02. Officers; Employees. (a) General. (i) The officers of the Partnership shall be the Chief Executive Officer and such other officers as may be determined by the Governing Board from time to time to be necessary or advisable in the conduct of the business and affairs of the Partnership. The Partnership shall at all times have a Technical Coordinator to be selected in accordance with Section 5.02(b). Any individual may hold more than one office. The initial officers of the Partnership are listed in Schedule 5.02.

(ii) The Chief Executive Officer shall be appointed and shall be subject to removal with or without cause by the Governing Board and shall be reasonably acceptable to the IBM Partner and the CIRRUS Partner. The Chief Executive Officer will also be subject to removal as provided in Section 5.02(c).

(iii) The CIRRUS Partner shall have the right to nominate for appointment by the Governing Board one of the senior members of the staff reporting to the Chief Executive Officer (the "CIRRUS Nominee"), which person shall be reasonably acceptable to the IBM Partner. The CIRRUS Partner shall have the right to appoint the CIRRUS Nominee to the position of chief technical officer or chief operating officer, as determined by the CIRRUS Partner upon the nomination of the initial CIRRUS Nominee, and if such CIRRUS Nominee resigns or is removed from office, the CIRRUS Partner shall have the right to nominate a replacement CIRRUS Nominee to the same position, it being understood that, at all times, the CIRRUS Partner shall be entitled to have one CIRRUS Nominee serving on the senior staff reporting to the Chief Executive Officer but shall not have the right to have more than one CIRRUS Nominee serving on such senior staff without the agreement of the IBM Partner. Annually, if such senior member of the staff nominated by the CIRRUS Partner is no longer acceptable to the CIRRUS Partner, the CIRRUS Partner shall have the right to nominate a replacement, who shall also be reasonably acceptable to the IBM Partner.

(iv) Partnership officers and employees will be solely employed by the Partnership. An officer or an employee of the Partnership or any of its Subsidiaries may not serve as an officer, employee or agent of, or be on the payroll of, or receive any other compensation from, a Partner, Parent or any of its Subsidiaries other than previously granted compensation which may vest with the passage of time or otherwise.

(v) Employees of the Parents (or any of their Subsidiaries) may provide services to the Partnership as Seconded Employees. Any such Seconded Employees will be solely employed by the relevant Parent (or Subsidiary), which will retain all liabilities relating to such Seconded Employees. Any Seconded Employee shall be subject to removal from all activities related to the Partnership with or without cause by the Partner that employs or whose Subsidiaries employ such Seconded Employee.

(vi) All officers of the Partnership shall (A) report to the Chief Executive Officer or other officer designated by the Chief Executive Officer (except that the Chief Executive Officer shall report to the Governing Board), (B) have the powers, duties and responsibilities set forth in this Section 5.02 or as otherwise prescribed by the Governing Board, (C) serve for the term designated by the Governing Board, subject to removal with or without cause by the Governing Board and as provided in Section 5.02(a)(v) and Section 5.02(c), and (D) attend meetings of the Governing Board as requested.

(vii) The Partnership will have agreements and policies with each of its officers, employees and consultants with respect to (A) protection of confidential information, (B) patent and copyright assignment and (C) invention disclosure.

(b) Chief Executive Officer. The Chief Executive Officer shall

(i) be the chief executive officer of the Partnership who shall have the usual powers, duties and responsibilities incident thereto, subject to additions, modifications and deletions thereof from time to time by the Governing Board and those powers, duties and responsibilities specifically reserved hereunder to the Partners and the Governing Board, (ii) subject to Section 5.02(a)(iii), be responsible for the hiring and firing of all other officers of the Partnership or any of its Subsidiaries, (iii) oversee the conduct of the business and affairs of the Partnership and manage the day-to-day operations of the Partnership, subject to the control of the Partners and the Governing Board, and (iv) see that all orders and resolutions of the Partners and the Governing Board are carried into effect.

(c) Performance Goals. The Chief Executive Officer will be subject to a performance plan tied to attaining the production cost set forth in the Partnership's then current Business Plan. [*]

SECTION 5.03. Insurance. The Partnership shall maintain insurance against such liabilities and other risks associated with the conduct by the Partnership of its business and in such amounts and against such risks as agreed by the Partners, and in any event as is generally maintained by companies engaged in a business similar to that of the Partnership.

ARTICLE VI

Capital Contributions and Distributions

SECTION 6.01. Capital Contributions. (a) Pursuant to the Participation Agreement, on the Initial Funding Date, each Partner shall cause the Assets (including cash) to be transferred by it to the Partnership on the Initial Funding Date so to be transferred, and each Partner shall be assigned its Percentage interest in the Partnership. The Partners agree that the aggregate fair market value of the Assets, at the time of their contribution to the Partnership (net of all liabilities secured by such Assets that the Partnership is considered to assume or take subject to under Section 752 of the Internal Revenue Code of 1986, as amended (including the regulations promulgated thereunder, the "Code")), is and will be \$21,424,000 (after giving effect to any distribution to be made pursuant to Section 6.02(b)) in the case of the IBM Partner (or 52% of total capitalization) and \$19,776,000 in the case of the CIRRUS Partner (or 48% of total capitalization).

(b) The Partners shall each make equal additional capital contributions in cash in respect of estimated requirements of the Partnership following the Initial Funding Date as set forth in the Initial Business Plan. Such additional contributions shall be made on the dates and in the respective amounts reflected on Schedule 6.01(b).

(c) Upon receipt of at least five Business Days written notice from the Governing Board, the IBM Partner shall make additional contributions from time to time during the period ending on December 31, 1995, up to an aggregate amount equal to the lesser of (i) the excess, if any, of (A) the Partnership's Cost incurred in connection with the manufacture of Semiconductor Wafers to be purchased by IBM and by CIRRUS pursuant to the IBM Sales Agreement and the CIRRUS Sales Agreement during the period ending on December 31, 1995, over (B) the sum of the amounts payable by CIRRUS pursuant to Section 8.2 of the CIRRUS Sales Agreement (without any reduction or modification pursuant to Section 8.9 of the CIRRUS Sales Agreement) and by IBM pursuant to Section 8.2 of the IBM Sales Agreement and (ii) [*].

(d) In the event that, in accordance with Section 8.9 of the CIRRUS Sales Agreement, CIRRUS becomes entitled to purchase Semiconductor Wafers for

[*] plus amounts payable pursuant to Sections 5.1, 8.4 and 13 of the CIRRUS Sales Agreement, the IBM Partner, upon receipt of at least five Business Days written notice from the Governing Board, shall make additional capital contributions as required in an aggregate amount equal

to the difference between the aggregate amount payable by CIRRUS for such Semiconductor Wafers purchased pursuant to Section 8.9 of the CIRRUS Sales Agreement and the aggregate amount that would have been payable by CIRRUS for such Semiconductor Wafers if said Section 8.9 had not been applicable.

(e) In the event that, in accordance with Section 8.07 of this Agreement, any costs incurred by the Partnership with respect to Indebtedness specifically attributable to the IBM Partner's partnership interest (or any costs incurred or revenues or gains recognized by the Partnership with respect to assets acquired with such Indebtedness) are treated as attributable solely to product to be purchased by IBM pursuant to Section 8.3 of the IBM Sales Agreement, the IBM Partner, upon receipt of at least five Business Days written notice from the Governing Board, shall make additional capital contributions as required in an aggregate amount equal to the difference between the price received by the Partnership for such product under the IBM Sales Agreement and the total cost of such product, including the total costs (net of total revenues or gains) allocated under Section 8.07 of this Agreement to the cost of such product.

(f) Upon receipt of at least 10 Business Days written notice from the Governing Board given at any time after the Initial Funding Date, each Partner shall make additional capital contributions in cash from time to time in an amount equal to 50 percent of the Residual Shortfall of the Partnership; provided, however, in the event that the CIRRUS Sales Agreement has been terminated for any of the reasons specified in Section 12 thereof arising from a default or breach by CIRRUS or the CIRRUS Partner and the Partnership has not been dissolved, the CIRRUS Partner shall be responsible for that portion of the Residual Shortfall equal to the sum of (i) the amount CIRRUS would have been required to pay pursuant to Section 7.14 of the CIRRUS Sales Agreement and (ii) 50 percent of any remaining Residual Shortfall; and provided, further, however, in the event that the IBM Sales Agreement has been terminated for any of the reasons specified in Section 12 thereof arising from a default or breach by IBM or the IBM Partner and the Partnership has not been dissolved, the IBM Partner shall be responsible for that portion of the Residual Shortfall equal to the sum of (i) the amount IBM would have been required to pay pursuant to Section 7.5 of the IBM Sales Agreement and

(ii) 50% of any remaining Residual Shortfall. As used herein, the term "Residual Shortfall" means the excess, if any, of (i) the total expenses of the Partnership incurred in connection with its operations as contemplated by the Operative Documents including the Initial Business Plan and subsequent Business Plans over (ii) the sum of (A) the amounts payable therefor by CIRRUS and IBM pursuant to the CIRRUS Sales Agreement and the IBM Sales Agreement (after taking into account all adjustments and credits to payments provided for in the CIRRUS Sales Agreement and the IBM Sales Agreement) plus (B) amounts required to be contributed by the Partners pursuant to Sections 6.01(c), (d) and (e); provided, however, "Residual Shortfall" shall exclude obligations for extraordinary third-party liabilities arising from matters such as torts or environmental claims in an amount per occurrence in excess of [*] and provided, further, however, that the foregoing exclusion from "Residual Shortfall" shall not apply to claims against the Partnership by IBM for indemnification pursuant to Section 30 of the IBM Real Estate Lease. Residual Shortfall shall include the amount (if any) by which the balance referred to in Section 6.01(c)(i) exceeds [*].

(g) No further capital contributions shall be required, unless otherwise agreed upon by the Partners in writing, in which case such additional contributions shall be made in equal amounts.

SECTION 6.02. Distributions. (a) General. Subject to Sections 6.02(b), 6.02(c), 6.02(d), 6.02(e) and 11.04, all distributions of Partnership cash or other property to the Partners shall be made at the times and in the amounts determined by the Governing Board. Except as provided in this Section 6.02 and Section 11.04, each distribution to the Partners shall be made pro rata in accordance with their respective Percentages.

(b) Special Distribution on Initial Funding Date. On the Initial Funding Date, the Partnership shall make a distribution in cash to the IBM Partner in an amount equal to the excess, if any, of the aggregate fair market value of the Assets to be contributed by the IBM Partner over [*]. The Partnership shall comply with Treasury Regulation Sections 1.707-3 through 1.707-8 with respect to such compensatory distribution.

(c) Special Distributions to Adjust Certain Post-Closing Capital Contributions. In the event that either Partner makes any capital contribution in an amount set forth in a written notice issued by the Governing Board pursuant to Section 6.01(c), (d), (e) or (f) and the amount set forth in such written notice is subsequently determined to have been greater than the amount required as correctly calculated under Section 6.01(c), (d), (e) or (f), a distribution shall be made to such Partner in the amount of such excess capital contribution.

(d) Mandatory Distributions for Taxes. To the extent of available cash and cash equivalents, the Partnership shall make distributions in respect of each Fiscal Year to the Partners pro rata in accordance with the allocation of Net Profits and Net Losses as set out in Section 7.02(a) to the extent necessary to most the Partners' aggregate Federal, state and local income tax liabilities with respect to such Fiscal Year (including estimated payments), calculated as if the highest marginal statutory Federal and New York State and local corporate rates were applicable to each Partner for all periods, in respect of Net Profits for such Fiscal Year. Any distributions required pursuant to this Section 6.02(d) shall be made within a reasonable time prior to the due date of any such tax payment.

(e) Reallocation of Gross Income. To the extent of a reallocation of gross income from a Partner (or an Affiliate of a Partner) to the Partnership which is specially allocated under Section 7.02(c) of this Agreement, the Partnership shall seek approval from the Internal Revenue Service ("IRS") to establish an appropriate account receivable from the Partner (or an Affiliate of the Partner) under the principles of Rev. Proc. 65-17. Furthermore, any payment of an account receivable established under the principles of Rev. Proc. 65-17 shall, when received by the Partnership, be distributed to the Partner to which the income was specially allocated under Section 7.02(c) of this Agreement. In the event that no such account receivable is established, the Partnership shall be deemed to have distributed an amount to such Partner equal to the income which was specially allocated to that Partner under Section 7.02(c) of this Agreement.

SECTION 6.03. No Interest. No interest shall be payable to the Partners on their capital contributions or otherwise in respect of the capital of the Partnership.

SECTION 6.04. Withdrawal of Capital. No Partner shall be entitled to withdraw capital or receive distributions except as specifically provided herein.

ARTICLE VII

Capital Accounts and Allocations of Profit and Loss

SECTION 7.01. Capital Accounts. (a) The Partnership shall establish and maintain for each Partner on the books of the Partnership a capital account ("Capital Account") in accordance with Treasury Regulation

Section 1.704-1(b)(2)(iv)(b). A Partner's initial Capital Account shall be increased (without duplication) by (i) the amount of any cash contributions made by or on behalf of such Partner to the Partnership, (ii) the fair market value of any property contributed by or on behalf of such Partner to the Partnership (net of any liabilities secured by such property that the Partnership is considered to assume or take subject to under Code

Section 752), and (iii) the amount of all Net Profits (or items thereof) allocated to such Partner pursuant to Sections 7.02 and 7.04; and a

Partner's Capital Account shall be decreased by (x) the amount of any Net Losses (or items thereof) allocated to such Partner pursuant to Section 7.02 and (y) all amounts distributed by the Partnership to such Partner (including the fair market value of any property distributed in kind, net of all liabilities secured by such property that such Partner is considered to assume or take subject to under Code Section 752). Immediately following the Initial Funding Date and after giving effect to the special distribution to the IBM Partner pursuant to Section 6.02 (b), the Capital Account of the IBM Partner shall have a credit balance of [*], or 52% of the total capitalization of the Partnership, and the Capital Account of the CIRRUS Partner shall have a credit balance of [*], or 48% of the total capitalization of the Partnership.

(b) Upon the occurrence of any event specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the Capital Accounts of the Partners may (subject to both Partners' consent, which consent shall not be unreasonably delayed or withheld) be adjusted to reflect the fair market value of the Partnership's property at such time and in such manner as provided in such Regulation.

(c) In the event that any interest in the Partnership in accordance with the provisions hereof is transferred, the transferee of such interest shall succeed to the portion of the transferor's Capital Account attributable to such interest.

SECTION 7.02. Allocation of Net Profits and Net Losses. (a) General. Subject to Sections 7.02(b) and 7.02(c), the Net Profits and Net Losses of the Partnership for each Fiscal Year shall be allocated to the Partners pro rata in accordance with their respective Percentages.

(b) Special Allocations. Special allocations of specific items of income, gain, loss or deduction may be required for any Fiscal Year as follows:

(i) items of income and gain shall be allocated between the Partners at such time and in such amounts as necessary to satisfy the "minimum gain chargeback" requirements of the Treasury Regulations promulgated under Code Section 704(b) (the "704(b) Regulations");

(ii) nonrecourse deductions attributable to a "partner nonrecourse liability" of the Partnership (as defined in the 704(b) Regulations) shall be allocated among the Partners that bear the economic risk of loss for such partner nonrecourse liability in accordance with the ratios in which such Partners share such economic risk of loss and in a manner consistent with the requirements of the 704(b) Regulations;

(iii) items of income, gain, loss and deduction shall be allocated to the extent required to satisfy the "qualified income offset" provisions of the 704(b) Regulations;

(iv) in the event that the IBM Partner is required to make capital contributions to the Partnership pursuant to Section 6.01(c), (d) or (e), an aggregate amount of losses equal to the aggregate amount of said contributions shall be allocated solely to the IBM Partner;

(v) in the event that the Partners are required to make capital contributions to the Partnership in respect of Residual Shortfalls pursuant to Section 6.01(f), an aggregate amount of losses equal to the aggregate amount of said contributions shall be allocated in the same proportion to the IBM Partner and the Cirrus Partner; and

(vi) in the event that the Partnership is required to make distributions to either Partner pursuant to Section 6.02(c), an aggregate amount of income equal to the aggregate amount of said distributions shall be allocated solely to such Partner.

(c) Reallocations Between the Partnership and a Partner. Any redistribution reappportionment or reallocation of gross income, deductions, credits or allowances between the Partnership and a Partner (or Affiliate of such Partner) effected pursuant to Code Section 482 (along with any penalties, charges, interest or additions relating thereto) with respect to any transaction between the Partnership and such Partner (or Affiliate of such Partner) shall be allocated in full to such Partner. The Partner to which reallocations under this Section 7.02(c) are made (as well as such Partner's Parent and Affiliates) shall indemnify and hold harmless the other Partner (as well as such Partner's Parent and Affiliates) and the Partnership for the effects of such reallocations (including any taxes, interest, penalties, charges or other additions), as well as any effects (including any taxes, interest, penalties, charges or other additions) arising from any adjustments, cancellations or revocations by the IRS of reallocations made under this

Section 7.02(c). If, as a result of any indemnification made pursuant to this

Section 7.02(c) (including the indemnification described in this sentence), the capital accounts of the Partners no longer reflect the Percentages of the Partners (i) such capital accounts will be adjusted to reflect such respective Percentages, (ii) any such capital account adjustment shall be treated as a guaranteed payment under Code Section 707(c) and the item of expense arising from such guaranteed payment shall be the means by which the capital account of the Partner with the disproportionately large capital account is reduced and (iii) the Partner to which reallocations under this Section 7.02(c) are made (as well as such Partner's Parent and Affiliates) shall indemnify and hold harmless the other Partner (as well as such Partner's Parent and Affiliates) and the Partnership for the effects of such capital account adjustments (including any taxes, interest, penalties, charges or other additions) arising from any adjustments, cancellations or revocations by the IRS of capital account adjustments made under this Section 702(c).

(d) Authority to Modify Allocations. In the event that the Tax Matters Partner determines that the allocations otherwise required pursuant to this Section 7.02 do not properly reflect the economic arrangement of the Partners or do not comply with the requirements of Code Section 704 (b), the Tax Matters Partner shall be authorized to modify such allocations as appropriate to more properly reflect the economic arrangement of the Partners or to comply with Code Section 704(b).

SECTION 7.03. Distribution in Kind. If any asset of the Partnership is to be distributed in kind, including pursuant to Section 11.04(a), such asset shall be valued to determine the amount of Net Profits or Net Losses that would result if such asset were to be sold at its fair market value, and such Net Profits or Net Losses shall be allocated to the Capital Accounts of the Partners in accordance with Section 7.02.

SECTION 7.04. Depreciation Recapture. Any Net Profits arising from a Capital Transaction that is characterized as ordinary income pursuant to Code Section 1245 or 1250 or any other applicable Code provision shall, to the extent possible, be allocated to the Partner who was allocated the depreciation deductions giving rise to such ordinary income; provided, however, that if the ordinary income that would otherwise be allocated to a Partner pursuant to this sentence would exceed the Net Profits otherwise allocable to such Partner pursuant to Section 7.02, such excess shall instead be allocated to the other Partner.

SECTION 7.05. Allocation Between Assignor and Assignee Partners. If any interest in the Partnership is assigned or transferred during any Fiscal Year, then the assignor and assignee shall each be entitled to receive distributions pursuant to Article VI and allocations of Net Profit and Net Loss pursuant to this Article VII, as follows:

(a) unless the assignor or assignee shall agree otherwise and so provide in the instruments of assignment, distributions shall be made to the Person owning such interest on the date of the distribution; and

(b) subject to applicable Treasury Regulations, Net Profit and Net Loss shall be allocated based upon the number of days each Person holds such interest during such Fiscal Year.

SECTION 7.06. Federal Income Tax Allocations. Sections 7.02 through 7.05 provide for the allocation of items of income, gain, losses and deductions for Capital Account maintenance purposes. The Partnership's ordinary income and losses and capital gains and losses as determined for Federal income tax purposes (and each item of income, gain, loss or deduction entering into the computation thereof) shall be allocated to

the Partners in the same proportions as the corresponding "capital account" items are allocated pursuant to this Article VII. Notwithstanding the foregoing sentence, Federal income tax items relating to Section 704(c) Property shall be allocated to the Partners in accordance with Code Section 704(c) to take into account the difference between the fair market value and the tax basis of such Section 704(c) Property as of the date of its contribution to the Partnership or revaluation pursuant to Section 7.01(b).

SECTION 7.07. Fiscal Year. Unless the Governing Board otherwise determines or unless otherwise required by the Code or applicable Treasury Regulations, the Fiscal Year of the Partnership shall end on the last day of December of each year.

SECTION 7.08. Elections. In the event of a transfer of all or part of a Partner's interest in the Partnership, the Tax Matters Partner shall at the request of the transferee cause the Partnership to elect (if such election is not already in effect) pursuant to Code Section 754 to adjust the basis of the Partnership's property in the manner provided in Code Section 743, provided that any such basis adjustment shall be allocated solely to such transferee.

ARTICLE VIII

Accounting and Taxation

SECTION 8.01. Accrual Basis; Financial Accounting Conventions. (a) The books and records of the Partnership shall be kept on an accrual basis.

(b) For financial accounting purposes, income and loss of the Partnership calculated in accordance with GAAP shall be allocated to the Partners in accordance with Section 7.02.

SECTION 8.02. Maintenance of Books of Account. (a) General. The Partnership shall keep or cause to be kept at its principal office or where the Governing Board shall designate full and complete books of account. The books of account shall be maintained in a manner that provides sufficient assurance that transactions of the Partnership are recorded so as to comply with all applicable laws and to permit (a) the preparation of the Partnership's consolidated financial statements in accordance with GAAP consistently applied and (b) the Partners to account for their interest in the Partnership in accordance with GAAP.

(b) Certain Pricing Documentation. In the case of any transaction between the Partnership and a non-U.S. Affiliate of a Partner, the Partner of such Affiliate shall, in accordance with Code Sections 482 and 6662 and the Treasury regulations thereunder, (i) determine the appropriate pricing method for such transfer and (ii) create and maintain for the Partnership any contemporaneous documentation required to support such pricing method; provided, however, that the Partner making such determination shall have no obligation to reveal to the Partnership or the other Partner any data or other information used in supporting such method which it regards as confidential. If the Partnership or either Partner is compelled by the IRS or other Governmental Authority to provide such data or other information, the Partner in possession of such data or information shall provide it to the IRS or such other Governmental Authority.

SECTION 8.03. Financial Statements. (a) Annual Statements. As soon as practicable following the end of each Fiscal Year (and in any event not later than 60 days after the end of such Fiscal Year), the Partnership shall prepare and deliver to each Partner and the Governing Board consolidated and consolidating balance sheets of the Partnership as of the end of such Fiscal Year and the related consolidated and consolidating statements of operations, Partners' capital accounts and cash flows of the Partnership for such Fiscal Year (or similar statements if such statements change as the result of changes in GAAP), together with appropriate notes to such consolidated financial statements, and in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Year and for the budget for the Fiscal Year just completed. Such consolidated financial statements shall be accompanied by the report of the Accountants to the effect that such consolidated financial statements (except for the comparison to the budget) have been prepared in conformity with GAAP applied on a basis consistent with prior years (except as otherwise specified in such report) and that the audit of such consolidated financial statements has been performed in accordance with GAAS. The Partnership shall conduct its business so that such report of the Accountants shall not contain any qualifications as to the scope of the audit or with respect to the Partnership's compliance with GAAP consistently applied, except for changes in methods of accounting in which such Accountants concur and except that the foregoing shall not be deemed to obligate either Partner to contribute any capital to the Partnership other than as provided in Section 6.01. At the same time, the Partnership shall deliver at the Partnership's sole expense to each Partner a report indicating such Partner's share of all items of income, gain, loss, deduction and credit of the Partnership for such Fiscal Year on a GAAP basis for financial reporting purposes and for Federal income tax purposes and any other financial information related to the Partnership which is reasonably requested by a Partner for Federal, state, local or foreign income or franchise or other tax purposes.

(b) Quarterly Statements. As soon as practicable following the end of each Fiscal Quarter (and in any event not later than 30 days after the end of such Fiscal Quarter), the Partnership shall prepare and deliver to each Partner and the Governing Board consolidated and consolidating balance sheets of the Partnership as of the end of such Fiscal Quarter and the related consolidated and consolidating statements of operations, Partner's capital accounts and cash flows of the Partnership for such Fiscal Quarter and for the Fiscal Year to date (or similar statements if such statements change as the result of changes in GAAP), in each case setting forth in comparative form the corresponding figures for the preceding Fiscal Quarter, for the Fiscal Quarter of the prior Fiscal Year corresponding to the Fiscal Quarter just completed and for the budget for such Fiscal Quarter and for the Fiscal Year to date. At such time, the Partnership shall deliver at the Partnership's sole expense to each Partner an estimate of such Partner's share of all items of income, gain, loss, deduction and credit of the Partnership for such Fiscal Quarter and for the Fiscal Year to date for Federal income tax purposes. Such consolidated financial statements shall be accompanied by a certificate of the principal accounting or financial officer of the Partnership to the effect that such consolidated financial statements have been prepared under such officer's supervision and that, although such financial statements do not contain the footnotes and other disclosures required to be presented in interim financial statements by GAAP, such financial statements, in such officer's judgment, fairly present the financial condition and results of operations of the Partnership as of the date and for the periods indicated, subject to normal recurring year-end audit adjustments.

SECTION 8.04. Other Reports and Inspection. The Partnership shall furnish promptly to the Liaison Representative of each Partner such other documents, reports, financial data and information relating to the Partnership as such Partner may reasonably request. The Partnership shall, upon reasonable prior notice and during normal business hours, make available to the Liaison Representative of each Partner all properties, assets, books of account, corporate records and contracts of the Partnership, and any other material requested by such Partner, for inspection and, in the case of books of account, corporate records and contracts, copying, and shall use reasonable efforts to make available to the Liaison Representative of such Partner the Accountants, the Chief Executive Officer and the key employees of the Partnership for interviews to verify any information furnished or to enable such Partner otherwise to review the Partnership and its operations. The Partnership may condition such availability upon the entry into reasonable and appropriate confidentiality agreements. Each Partner, at its own expense, shall also be entitled to audit the Partnership's books and records on an annual basis during normal working hours. The Liaison Representatives may make recommendations in written form to the Chief Executive Officer and the Partners concerning the operation of the Partnership, including with respect to the proposed annual Business Plan.

SECTION 8.05. Taxation. (a) **Characterization.** The Partners intend that the Partnership shall be treated as a partnership for Federal, state, local and foreign income and franchise tax purposes and shall take all reasonable action, including the amendment of this Agreement and the execution of other documents, as may be reasonably required to qualify for and receive treatment as a partnership for Federal income tax purposes.

(b) **Tax Matters Partner.** The IBM Partner shall be the Tax Matters Partner of the Partnership within the meaning of Code Section 6231(a)(7) and shall act in any similar capacity under applicable state, local or foreign law (in such capacity, the "Tax Matters Partner"). All reasonable expenses incurred by the IBM Partner while acting in such capacity shall be paid or reimbursed by the Partnership upon approval of the chief financial officer of the Partnership; provided, however, that with respect to any matter described in Section 7.02(c), the Partner to which is reallocated any item described in

Section 7.02(c) (whether or not such reallocation is adjusted, cancelled or revoked by the IRS) shall (i) pay or reimburse all expenses incurred by the IBM Partner while acting in its capacity as the Tax Matters Partner in connection with such matter and (ii) pay or reimburse all out of pocket costs incurred by the Partnership in connection with such matter.

(c) **Tax Returns.**

(1) The Tax Matters Partner shall prepare or cause the Accountants to prepare and file on a timely basis the Federal tax returns of the Partnership. The Tax Matters Partner shall cause state, local and any other tax returns required to be filed by the Partnership to be prepared and filed on a timely basis. The Tax Matters Partner shall consult with the CIRRUS Partner regarding all nonministerial decisions described below in

Section 8.05(c)(2)(iii). Any disagreement with respect to such consultation will be resolved in the manner described in Section 8.05(c)(3). No Partner shall file any tax return that is inconsistent with the tax returns filed by the Partnership except as provided in Section 8.05(c)(3).

(2) The Tax Matters Partner shall take such action as may be reasonably necessary to constitute the CIRRUS Partner as a "notice partner" within the meaning of Code Section 6231(a)(8). The Tax Matters Partner shall furnish to each Partner within five days (or within such shorter period as may be required by the appropriate statutory or regulatory provisions) (i) copies of all notices or other written communications received by the Tax Matters Partner from the IRS, (ii) written notice of all material communications the IRS has had with the Tax Matters Partner and (iii) written notice of all non-ministerial decisions to be made regarding tax elections, tax returns, tax audits, tax litigation, tax settlements and other tax matters that may come to the attention of the Tax Matters Partner in its capacity as Tax Matters Partner.

(3) The Tax Matters Partner shall deliver to each other Partner a copy of all written materials (including tax returns) proposed to be filed with or submitted to the IRS or any other taxing authority at least 30 days prior to the date such filing or submission is required to be made. If the CIRRUS Partner does not notify the Tax Matters Partner of its objection to such filing or submission in writing before the fifteenth day before the date for such filing or submission, the CIRRUS Partner will be considered to have approved such filing or submission. If the CIRRUS Partner provides such timely notice of objection, the CIRRUS Partner and the Tax Matters Partner will negotiate in good faith to reach agreement with respect to such filing or submission. If the CIRRUS Partner and the Tax Matters Partner are unable to reach such an agreement within 30 days, the CIRRUS Partner and the Tax Matters Partner shall appoint a "Big Six" accounting firm (except any "Big Six" accounting firm that is one of the Accountants) to determine the position that should be taken by the Partnership. Each Partner shall retain the right to take a position inconsistent with such determination to the extent allowed under Section 6222 of the Code or comparable provisions of state or local law.

SECTION 8.06. Deposit Of Funds. All funds of the Partnership and its Subsidiaries not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or other depositories or invested in such other short-term investments held as cash equivalents as the Governing Board shall authorize. The funds of the Partnership and its Subsidiaries shall not be commingled with the funds of either Partner or any Affiliate of either Partner.

SECTION 8.07. Partnership Borrowings. The incurrence by the Partnership or any of its Subsidiaries of any Indebtedness for money borrowed in a transaction approved by a majority of the members of the Governing Board appointed by the IBM Partner but not approved by any member of the Governing Board appointed by the CIRRUS Partner (other than as set forth in the Initial Business Plan or a subsequently approved Business Plan) will be treated as indebtedness specifically attributable to the IBM Partner's partnership interest. Unless such Indebtedness has been approved by both Partners,

(i) any costs (including interest and repayment of principal) incurred by the Partnership with respect to such Indebtedness will be treated as a cost attributable solely to product to be purchased by IBM pursuant to Sections 8.3 and 8.5 of the IBM Sales Agreement, (ii) any costs (including depreciation) incurred by the Partnership with respect to assets purchased with such Indebtedness will be treated as a cost attributable solely to product to be purchased by IBM pursuant to Sections 8.3 and 8.5 of the IBM Sales Agreement and (iii) any revenues or gains recognized by the Partnership with respect to assets purchased with such Indebtedness will be treated as a reduction in cost attributable solely to product to be purchased by IBM pursuant to Sections 8.3 and 8.5 of the IBM Sales Agreement.

ARTICLE IX

Initial Actions

SECTION 9.01. Partnership Actions. The Partners hereby authorize the Partnership to, and ratify (including for purposes of Section 4.01) all action having been taken to, execute and deliver the Operative Documents to which it is or is specified to be a party, including all certificates, agreements and other documents required in connection therewith on the Closing Date.

SECTION 9.02. Initial Members of the Governing Board. (a) The initial representatives of the IBM Partner on the Governing Board shall be those individuals specified by the IBM Partner in writing at the Closing.

(b) The initial representatives of the CIRRUS Partner on the Governing Board shall be those individuals specified by the CIRRUS Partner in writing at the Closing.

ARTICLE X

Certain Agreements of the Partners

SECTION 10.01. Transfer of or Liens on Partners' Interests. Each Partner agrees that it shall not Transfer, or grant or permit to exist any Lien (except Permitted Liens) on, all or any part of its right, title or interest in, to or under the Partnership or this Agreement without the prior written consent of the other Partner (which may be withheld in its sole discretion), and any such purported Transfer or Lien made without such consent shall be void; provided, however, that a Partner may assign any part or all of its interest in the Partnership to a United States Subsidiary of such Partner's Parent if (i) the assignee agrees in writing to become a party hereto and assumes all the obligations of the assigning Partner hereunder and under each other Operative Document to which the assigning Partner is a party and (ii) immediately after giving effect to such assignment, an Event of Default or an event or condition that with the giving of notice or lapse of time or both would constitute an Event of

Default shall not exist. Following the effectiveness of any such assignment, the assigning Partner shall no longer have the assigned right, title or interest in the Partnership or under this Agreement and the assignee shall be substituted as a Partner for all purposes of this Agreement to the extent of the assigned interest. The assigning Partner shall not, however, be released or discharged from any existing liability or obligation to any Person. Except as provided above in this Section 10.01 or as otherwise agreed by the Partners, no Person shall be admitted as an additional or substituted general partner of the Partnership. Except to the extent required by law, the Partnership shall have no obligation to recognize or to furnish information or make distributions to any assignee of a Partner who does not become a substituted Partner in accordance with this Section 10.01. This Section 10.01 shall not apply to any assignment or transfer pursuant to Section 10.08, Section 10.10 or Section 10.11. SECTION 10.02. Code Section 708 Limitation. Notwithstanding any provision of this Agreement to the contrary, no Partner may Transfer all or any part of its interest in the Partnership, other than pursuant to Section 10.08, Section 10.10, Section 10.11 or Article XI, without the prior written consent of the other Partner (which consent may be withheld in its sole discretion), if such Transfer would cause a termination of the Partnership within the meaning of Code Section 708(b)(1)(B).

SECTION 10.03. Special Purpose Covenant. Neither Partner shall

(a) conduct any business other than being a general partner of the Partnership and performing its obligations under the Operative Documents to which it is or becomes a party, (b) issue or become liable in respect of any Indebtedness or other obligations or become a party to or bound by any contract or other document other than (i) any necessary or appropriate incidents of corporate existence and qualification, (ii) pursuant to the Operative Documents to which it is or becomes a party or other documents delivered at the Closing, (iii) as a result of its status as a general partner of the Partnership or (iv) as a result of its status as a consolidated subsidiary of its Parent for income tax purposes, (c) offer, sell or issue any of its securities, except to its Parent or any of such Parent's Subsidiaries, or (d) own or hold any assets other than (x) \$10,000 or less in capital and surplus, (y) its right, title and interest in and to the Partnership and under this Agreement and (z) distributions received from the Partnership, which, when received, immediately shall be (1) distributed or dividended to the owners of its equity securities, (2) applied to reduce or discharge an obligation or liability, (3) contributed to the Partnership or (4) otherwise disposed of so that such Partner will then be in compliance with this Section 10.03(d).

SECTION 10.04. Maintenance of Existence; Consolidation, Merger or Sale. Each Partner shall maintain its existence and shall not dissolve or merge with or into or consolidate with any Person.

SECTION 10.05. Taxes and Charges; Governmental Rules. Each Partner shall (a) promptly pay all applicable Taxes and other governmental charges except to the extent any such Taxes or other charges are being contested in good faith by appropriate proceedings and (b) comply with all applicable Governmental Rules, except to the extent that such noncompliance will not have a material adverse effect on the Partnership.

SECTION 10.06. Further Assurances. Following the Closing, each Partner shall, at its own cost, do, execute and perform all such other acts, deeds and documents as the other Partner or the Partnership may from time to time reasonably require in order to carry out fully the intents and purposes of this Agreement or to comply with any applicable Governmental Rule, provided that no Burdensome Condition shall exist with respect to such Partner or any of its Affiliates in connection therewith.

SECTION 10.07. Escalation; Deadlock. If the Partners are unable to agree on any matter requiring the approval of the Partners pursuant to Section 4.01 or Section 4.02, then either Partner may, by written notice to the other Partner, elect to invoke the escalation procedure set out in Section 2.15(b) of Appendix A. The Partners shall attempt to resolve the issue or proposed action in question, to the extent practicable, in a manner that is consistent with the Partnership's then effective Business Plan. If within 30 days after the initiation of such escalation procedure (or such longer period as may be agreed in writing by the Senior Executives), the Partners do not agree with respect to the subject matter of such disagreement, then within 10 Business Days thereafter either Partner may elect by written notice to the other Partner to declare a deadlock ("Deadlock"). So long as a Deadlock continues to exist with regard to any action proposed to be taken by the Partnership, the Partnership shall not undertake such action; provided, however, in the event of a Deadlock subsequent to December 31, 1999, involving an action described in Section 4.01(a)(6), but with a threshold amount exceeding [*] in case of Section 4.01(a)(6)(iii), either Partner may elect by written notice to the other Partner given within 30 days following the declaration of the Deadlock to cause the dissolution of the Partnership pursuant to Article XI.

SECTION 10.08. Change of Control of CIRRUS. Upon the notification to the IBM Partner by the CIRRUS Partner of a Change of Control or a proposed Change of Control pursuant to Section 10.08(d), subject to the consummation of such Change of Control (or in the absence of such notification, 30 days following the occurrence of such Change of Control), the IBM Partner shall have the option to invoke the termination process set forth in this Section 10.08 (referred to as the "Change of Control Procedure").

(a) If the IBM Partner elects to invoke the Change of Control Procedure, the IBM Partner (or any of its Affiliates) may, but shall not be required to, acquire the entire interest of the CIRRUS Partner in the Partnership subject to the following:

(i) the CIRRUS Partner shall be paid cash in an amount equal to the balance in its Capital Account; and
(ii) CIRRUS and IBM shall enter into an indemnity and release agreement in a form reasonably satisfactory to each party indemnifying CIRRUS and holding CIRRUS harmless for liabilities under the Joint and Several Lease Guarantees for lease payment obligations arising for periods after the date the CIRRUS Partner's interest is so acquired. Following the purchase of the CIRRUS Partner's interest in the Partnership, the CIRRUS Equipment Lease with respect to equipment then installed and leased by the Partnership from CIRRUS shall continue in accordance with the terms then in effect. During the 24-month period following the purchase of the CIRRUS Partner's interest in the Partnership, the CIRRUS License Agreements with the Partnership shall continue in accordance with their terms and then terminate upon expiration of said 24-month period. In the event that the IBM Partner (or any of its Affiliates) purchases the CIRRUS Partner's interest in the Partnership pursuant to this Section 10.08, CIRRUS shall be entitled to Proration of Payments and CIRRUS shall thereafter purchase the Semiconductor Wafers from the Partnership (or its successor) during the 24-month wind-down period at Partnership Cost as estimated in the then-current approved Business Plan plus the per wafer payment specified in Sections 8.4.1 through 8.4.3 of the CIRRUS Sales Agreement.

(b) If the IBM Partner elects to invoke the Change of Control Procedure but does not elect to acquire the CIRRUS Partner's interest in the Partnership pursuant to Section 10.08(a), then the CIRRUS Partner (or any of its Affiliates) may, but shall not be required to, acquire the entire interest of the IBM Partner in the Partnership subject to the following:

(i) the IBM Partner shall be paid cash in an amount equal to the balance in its Capital Account; and
(ii) CIRRUS and IBM shall enter into an indemnity and release agreement in a form reasonably satisfactory to each party indemnifying IBM and holding IBM harmless for liabilities under the Joint and Several Lease Guarantees for lease payment obligations arising for periods after the date the IBM Partner's interest is so acquired. Following the purchase of the IBM Partner's interest in the Partnership, the IBM Real Estate Lease, the IBM Site Services Agreement and the IBM Equipment Leases with respect to equipment then installed and leased by the Partnership

from IBM shall continue in accordance with the terms then in effect. During the 24-month period following the purchase of the IBM Partner's interest in the Partnership, the per-wafer payments payable to IBM pursuant to Section 4.1.2 of the IBM Patent License shall be reduced to [*] per wafer (which change shall apply only to those wafers not produced for IBM) and the IBM Patent License and the IBM Know-How License shall continue for such 24-month period on the same terms, conditions and limitations that were in effect immediately prior to the Change of Control of CIRRUS but only with respect to Intellectual Property owned by IBM. The parties acknowledge and agree that, subsequent to the purchase of the IBM Partner's interest, the Partnership will not have the opportunity to qualify as a subsidiary of IBM within the meaning of various third-party cross-licenses to which IBM is a party and, accordingly, will not be entitled to patent licenses available under such cross-licenses to such IBM subsidiaries. In the event that the CIRRUS Partner (or any of its Affiliates) purchases the IBM Partner's interest in the Partnership pursuant to this Section 10.08(b), IBM shall be entitled to Proration of Payments and shall purchase the Semiconductor Wafers from the Partnership (or its successor) during the 24-month wind-down period at the Partnership Cost, as estimated in the then current approved Business Plan.

(c) In the event that the IBM Partner invokes the Change of Control Procedure and neither the IBM Partner nor the CIRRUS Partner (or any of their respective Affiliates) elects to purchase the Partnership interest of the unaffiliated Partner pursuant to Section 10.08(a) or 10.08(b), then the Partnership shall be dissolved in accordance with Section 11.02.

(d) The CIRRUS Partner shall notify the IBM Partner in writing not later than 30 days following the occurrence of a Change of Control of CIRRUS and, in such event, the CIRRUS Partner shall cause CIRRUS to provide IBM with a binding offer of a volume wind-down plan for a 24-month transition period for purchases of wafers from the Partnership by CIRRUS. Any such notice and the information contained therein shall be deemed "Confidential Information" for all purposes of the Confidentiality and Inventions Agreements. Within 60 days of IBM's receipt of such notice and wind-down plan (or within 120 days following the last date on which such notice was due if not delivered), the IBM Partner shall notify the CIRRUS Partner in writing as to whether it has decided to continue the Partnership or invoke the Change of Control Procedure and, if electing to invoke the Change of Control Procedure, whether or not it (or any of its Affiliates) elects to acquire the Partnership interest of the CIRRUS Partner. If the IBM Partner elects to invoke the Change of Control Procedure but does not wish to acquire the Partnership interest of the CIRRUS Partner, the IBM Partner shall also include in such written notification to the CIRRUS Partner IBM's binding offer of a volume wind-down plan, for a 24-month transition period for IBM's purchase of wafers from the Partnership in the event the CIRRUS Partner (or any of its Affiliates) should elect to acquire the Partnership interest of the IBM Partner. In the latter case, the CIRRUS Partner shall have a 60-day period following receipt of IBM's notification and volume wind-down plan to notify the IBM Partner in writing as to whether or not it (or any of its Affiliates) is electing to purchase the Partnership interest of the IBM Partner pursuant to Section 10.08(b).

SECTION 10.09. Additional Arrangements. The CIRRUS Partner acknowledges and agrees that for so long as IBM directly or indirectly owns more than 50 percent the Partnership, the Partnership will, for various purposes, be required to take actions as a Subsidiary of IBM, including complying with contracts and obligations that apply to IBM Subsidiaries generally, and that the obligations of the Partnership as a Subsidiary of IBM may adversely affect its business, operations and affairs. Neither the Partnership nor the CIRRUS Partner shall have any claim or rights against the IBM Partner or IBM (or any of its Affiliates) as a result of such requirements and obligations.

SECTION 10.10. Remedies upon Event of Default; Termination on Breach. If there has occurred and is continuing an Event of Default with respect to a Partner or its Parent (upon such occurrence with respect to either a Partner or its Parent, each is referred to herein as the "Defaulting Partner" and the "Defaulting Parent," respectively, and collectively as the "Defaulting Party"), in addition to all other remedies available to the Partnership or the other Partner (the "Nondefaulting Partner") or its Parent, whether under any of the Operative Documents or other agreements or by law, the Nondefaulting Partner (and, in the case of Section 10.10(e) or (f), its Parent) shall have the option to take one or more of the following actions:

(a) acquire the Defaulting Partner's ownership interest in the Partnership by payment in cash of an amount equal to 100% of the Defaulting Partner's Capital Account balance, as adjusted to reflect the actions specified below, if applicable;

(b) cause the Partnership to immediately cease shipment of Semiconductor Wafers to the Defaulting Parent;

(c) cause the Partnership to selectively terminate up to half of all the Partnership's leases (based upon total remaining monetary obligations assuming that such leases had not been terminated or prepaid) within six months of the Defaulting Partner's or Parent's agreement (or judicial determination) that it has failed to timely cure the Event of Default, with the Partnership and the Nondefaulting Partner and its Parent to be indemnified by the Defaulting Partner and Parent for all amounts payable upon such termination (provided that the CIRRUS Partner and CIRRUS, as the Defaulting Party, will not be liable for the payment of termination fees under the IBM Real Estate Lease) together with all claims arising from such termination up to a total dollar amount equal to one-half of the then current total remaining lease obligations of the Partnership under all such leases (including the leases to be so terminated and including the IBM Real Estate Lease, all facilities leases, clean rooms and equipment leases), it being understood that: (i) the Joint and Several Lease Guarantees shall remain in effect for the IBM Real Estate Lease and the IBM Equipment Leases (other than the IBM Supplemental Equipment Lease and other than for payment of the termination fee referred to above) and the Third Party Lease whether or not terminated and

(ii) the Defaulting Parent shall be entitled to an offset against amounts that it may otherwise be required to pay as reimbursement under Section 9.02 of the Participation Agreement equal to 50 percent of the amounts paid by the Defaulting Partner or Parent in respect of leases of the Partnership terminated pursuant to this Section 10.10(c);

(d) cause the termination and winding up of the Partnership pursuant to Section 11.03;

(e) if IBM or the IBM Partner is the Defaulting Party, CIRRUS may also:

(i) terminate all intellectual property licenses by CIRRUS to the Partnership;

(ii) invoke Proration of Payments if the CIRRUS Partner terminates the Partnership; and

(iii) have the right, upon acquiring the IBM Partner's ownership interest in the Partnership, to continue the IBM License Agreements for a 24-month period, but only with respect to Intellectual Property owned by IBM, upon the same terms, conditions and limitations that were in effect prior to the occurrence of such default except that the per-wafer payments payable to IBM pursuant to Section 4.1.2 of the IBM Patent License shall be reduced to [*] per wafer; and

(f) if CIRRUS or the CIRRUS Partner is the Defaulting Party, IBM may also:

(i) terminate all intellectual property licenses by IBM and IBM cross licenses from third parties to the Partnership;

(ii) invoke Proration of Payments if the IBM Partner terminates the Partnership; and

(iii) have the right, upon acquiring the CIRRUS Partner's ownership interest in the Partnership, to continue the CIRRUS License Agreements for a 24-month period upon the same terms, conditions and limitations that were in effect prior to the occurrence of such default. In the event that the IBM Patent License, the IBM Know-How License or the IBM Real Estate Lease shall be terminated in accordance with the terms of

such agreement as a result of a default or breach by a party thereto (whether or not such default or breach constitutes an Event of Default), the CIRRUS Partner and the IBM Partner agree that the Partnership shall be wound up and dissolved within six months of the date of such termination.

SECTION 10.11. Limiting Agreements. Under the circumstances contemplated by Section 5.10(c) or 5.10(d) of the Participation Agreement, the CIRRUS Partner shall have the option to invoke the process set forth in this Section 10.11 (the "Limiting Agreement Procedure").

(a) If the CIRRUS Partner elects to invoke the Limiting Agreement Procedure by reason of Section 5.10(c) of the Participation Agreement, the IBM Partner (or any of its Affiliates) may, but shall not be required to, acquire the entire interest of the CIRRUS Partner in the Partnership subject to the following:

(i) the CIRRUS Partner shall be paid cash in an amount equal to the balance in its Capital Account; and

(ii) CIRRUS and IBM shall enter into an indemnity and release agreement in a form reasonably satisfactory to each party indemnifying CIRRUS and holding CIRRUS harmless for liabilities under the Joint and Several Lease Guarantees for lease payment obligations arising for periods after the date the CIRRUS Partner's interest is so acquired. Following the purchase of the CIRRUS Partner's interest in the Partnership, the CIRRUS License Agreements with the Partnership and the CIRRUS Equipment Lease with respect to equipment then installed and leased by the Partnership from CIRRUS shall continue in accordance with the terms then in effect. In the event that the IBM Partner (or any of its Affiliates) purchases the CIRRUS Partner's interest in the Partnership pursuant to this Section 10.11(a), CIRRUS shall be entitled to Proration of Payments and shall, subject to the terms of the Limiting Agreements, purchase the Semiconductor Wafers from the Partnership (or its successor) during the 24-month wind-down period at the Partnership Cost (provided that CIRRUS shall not be required to purchase Semiconductor Wafers that CIRRUS is unable to purchase from the Partnership as a result of the Limiting Agreements that caused the Limiting Agreement Procedure to be invoked), as estimated in the then current approved Business Plan plus the per wafer payment specified in Sections 8.4.1 through 8.4.3 of the Cirrus Sales Agreement.

(b) If the CIRRUS Partner elects to invoke the Limiting Agreement Procedure by reason of Section 5.10(c) of the Participation Agreement but the IBM Partner does not elect to acquire the CIRRUS Partner's interest in the Partnership pursuant to Section 10.11(a), then the CIRRUS Partner (or any of its Affiliates) may, but shall not be required to, acquire the entire interest of the IBM Partner in the Partnership subject to the following:

(i) the IBM Partner shall be paid cash in an amount equal to the balance in its Capital Account; and

(ii) CIRRUS and IBM shall enter into an indemnity and release agreement in a form reasonably satisfactory to each party indemnifying IBM and holding IBM harmless for liabilities under the Joint and Several Lease Guarantees for lease payment obligations arising for periods after the date the IBM Partner's interest is so acquired. Following the purchase of the IBM Partner's interest in the Partnership, the IBM Real Estate Lease, the IBM Services Agreement and the IBM Equipment Leases with respect to equipment then installed and leased by the Partnership from IBM shall continue in accordance with the terms then in effect. The per-wafer payments payable to IBM pursuant to Section 4.1.2 of the IBM Patent License shall be reduced to [*] per wafer (which change shall apply only to those wafers not produced for IBM) and the IBM Patent License and the IBM Know-How License shall continue for the remainder of the term of the Partnership (i.e., December 31, 2002, unless the Partnership is terminated earlier in accordance with the terms hereof) on the same terms, conditions and limitations that were in effect immediately prior to the purchase of the IBM Partner's interest in the Partnership but only with respect to Intellectual Property owned by IBM. In the event that the CIRRUS Partner (or any of its Affiliates) purchases the IBM Partner's interest in the Partnership pursuant to this Section 10.11(b), IBM shall be entitled to Proration of Payments and IBM shall thereafter purchase the Semiconductor Wafers from the Partnership (or its successor) during the 24 month wind-down period at Partnership Cost as estimated in the then-current approved Business Plan. The parties acknowledge and agree that, subsequent to the purchase of the IBM Partner's interest, the Partnership will not have the opportunity to qualify as a subsidiary of IBM within the meaning of various third-party cross-licenses to which IBM is a party and, accordingly, will not be entitled to patent licenses available under such cross-licenses to such IBM subsidiaries.

(c) In the event that the CIRRUS Partner invokes the Limiting Agreement Procedure and neither the IBM Partner nor the CIRRUS Partner (or any of their respective Affiliates) elects to purchase the Partnership interest of the unaffiliated Partner pursuant to Section 10.11(a) or 10.11(b), then the Partnership shall be dissolved in Accordance with Section 11.02.

(d) If the CIRRUS Partner elects to invoke the Limiting Agreement Procedure by reason of Section 5.10(d) of the Participation Agreement, the CIRRUS Partner (or any of its Affiliates) shall acquire all or a portion of the interest of the IBM Partner in the Partnership as specified by the IBM Partner within 10 Business Days of the receipt of notice from CIRRUS invoking the Limited Agreement Procedure (but in any event not less than [*] of the total interests in the Partnership) subject to the following:

(i) the IBM Partner shall be paid cash in an amount equal to the balance in its Capital Account multiplied by the portion of its interest transferred, and this Agreement will be amended to adjust Percentages to reflect the portion sold, to adjust future capital contributions correspondingly and to make other conforming changes to reflect the revised ownership structure including the appointment by the CIRRUS Partner of a majority of the Governing Board; and

(ii) in the event of the sale of the entire interest of the IBM Partner, CIRRUS and IBM shall enter into an indemnity and release agreement in a form reasonably satisfactory to each party indemnifying IBM and holding IBM harmless for liabilities under the Joint and Several Lease Guarantees for lease payment obligations arising for periods after the date the IBM Partner's interest is so acquired; and in the event of a partial sale of the interest of the IBM Partner, Section 5.12 and Article IX of the Participation Agreement will be appropriately amended to reflect the revised ownership percentages. Following the purchase of the IBM Partner's interest in the Partnership, the IBM Real Estate Lease, the IBM Services Agreement and the IBM Equipment Leases with respect to equipment then installed and leased by the Partnership from IBM shall continue in accordance with the terms then in effect. The per-wafer payments payable to IBM pursuant to Section 4.1.2 of the IBM Patent License shall be reduced to [*] per wafer (which change shall apply only to those wafers not produced for IBM) and the IBM Patent License and the IBM Know-How License shall continue for the remainder of the term of the Partnership (i.e., December 31, 2002, unless the Partnership is terminated earlier in accordance with the terms hereof) on the same terms, conditions and limitations that were in effect immediately prior to the purchase of the IBM Partner's interest in the Partnership but only with respect to Intellectual Property owned by IBM. In the event that the CIRRUS Partner (or any of its Affiliates) purchases all or a portion of the IBM Partner's interest in the Partnership pursuant to this

Section 10.11(d), IBM shall be entitled to Proration of Payments. In the event of the sale of the entire interest of the IBM Partner, IBM shall thereafter purchase the Semiconductor Wafers from the Partnership (or its successor) during the 24-month wind-down period at Partnership Cost as estimated in the then-current approved Business Plan. In the event of a partial sale of the interest of the IBM Partner, the IBM Sales

Contract and the CIRRUS Sales Contract will be amended so as to revise the CIRRUS Capacity Allocation and the IBM Capacity Allocation to reflect the new ownership percentages and to make all other changes required to be consistent with the revised allocations. The parties acknowledge and agree that, subsequent to the purchase of all or a portion of the IBM Partner's interest, the Partnership will not have the opportunity to qualify as a subsidiary of IBM within the meaning of various third-party cross-licenses to which IBM is a party and, accordingly, will not be entitled to patent licenses available under such cross-licenses to such IBM subsidiaries.

ARTICLE XI

Dissolution

SECTION 11.01. Dissolution. Unless extended by mutual agreement of the Partners or earlier dissolved, the term of the Partnership shall end as provided in Section 2.04, and thereupon the Partnership shall be dissolved and its affairs wound up. Prior to such dissolution, no Partner shall withdraw from the Partnership and no Partner shall permit to exist any event of dissolution under applicable law within its control (other than a technical dissolution resulting from a permitted transfer of an interest in the Partnership and the admission of the transferee and a corresponding withdrawal of the transferor, and in the event of the dissolution of the Partnership other than a dissolution caused by a permitted transfer or by agreement of the Partners as provided in Section 11.02 or as a result of an Event of Default as provided in Section 11.03, the Partners agree to use their good faith efforts to cause the reformation of the Partnership in the form existing immediately prior to such event of dissolution forthwith; provided, however, that if the Partnership is dissolved by operation of applicable law (whether as the result of a voluntary or involuntary event affecting a Partner or the Partnership other than a dissolution caused by a permitted transfer or as provided in Section 11.02 or Section 11.03), and the Partnership cannot be reformed with the Partners existing prior to such dissolution due to failure or refusal so to reform the Partnership by a Partner (the "Breaching Partner") within 15 Business Days following written notice from the other Partner (the "Remaining Partner") (and an additional 30-day period if (i) the Partnership is capable of being reformed and (ii) the Breaching Partner has been engaging in good faith efforts to reform the Partnership) then the Remaining Partner may, after complying with any requirement of law, continue the business of the Partnership with the property of the Partnership and under the same name and the Breaching Partner shall be deemed to have withdrawn from the Partnership effective as of the date of such dissolution of the Partnership; and provided, further, however, that the Remaining Partner shall pay to the Breaching Partner an amount equal to the positive value, if any, of the Capital Account of such Breaching Partner, and such Breaching Partner shall have no further right, title and interest in, to or under this Agreement or the Partnership. The Breaching Partner shall not, however, be released or discharged from any existing liability or obligation to any Person. The Remaining Partner shall have, in addition, full rights to seek damages from the Breaching Partner for breach of its obligations hereunder.

SECTION 11.02. Dissolution by Agreement. (a) In the event that either Partner gives the other Partner notice prior to December 31, 2000, that it elects to terminate the Partnership for any reason permitting termination without mutual agreement of the Partners other than an Event of Default, a 24-month transition period shall begin upon the effective date of such notice. In addition, if the Partners have not agreed by December 31, 2000, to extend the term of the Partnership beyond December 31, 2002, and unless notice for termination has already been given, a 24-month transition period shall begin upon December 31, 2000. During the transition period, the Partners and their respective Parents may negotiate the terms of a mutually agreeable private sale among themselves.

(b) At the end of the transition period provided for by Section 11.02(a), at the expiration of the term of the Partnership under Section 2.04, if the Partners decide to dissolve and wind up the Partnership at any earlier time or if the Partnership is to be dissolved and wound up pursuant to Section 10.07, 10.08 or 10.11 or this Article XI, the Partners shall proceed as promptly as practicable to (i) terminate the business and operations of the Partnership and cease all operations as a going concern,

(ii) wind up the affairs of the Partnership in accordance with Section 11.02(d) and (iii) liquidate the Partnership's tangible personal property through individual asset sales and not as a going concern. In connection with any such sale under clause (iii) of the preceding sentence, either Partner or any Affiliate of either Partner shall have a right of first offer to acquire the Partnership's tangible personal property in the liquidation process and may also acquire such property through participation at auction. Each of the Partners shall be furnished with a statement setting forth the assets and liabilities of the Partnership as of the date of the complete liquidation of the Partnership. The Accountants shall review the final accounting and shall render their opinion with respect thereto.

(c) If agreed by the Partners in writing at the time, upon the dissolution and winding up of the Partnership, if the assets of the Partnership are insufficient to pay and discharge all debts, liabilities and obligations of the Partnership as to which the Partners have joint liability, the Partners shall pay such liabilities in the proportion of their respective Percentages. Such payments shall be deemed to be capital contributions to the Partnership by the payor. A Partner paying more than its proportion shall have a right of contribution from the other Partner, and payments in respect of such contribution obligations shall be deemed to be capital contributions to the Partnership by the payor and distributions by the Partnership to the payee.

(d) The following principles shall apply to the liquidation and winding up of the Partnership:

(i) IBM shall be responsible for, and shall indemnify CIRRUS and its Affiliates against, all claims arising out of the Partnership's obligations under the IBM Real Estate Lease and the IBM Equipment Losses other than the IBM Supplemental Equipment Lease;

(ii) CIRRUS shall be responsible for, and shall indemnify IBM and its Affiliates against, all claims arising out of the Partnership's obligations under the Third Party Lease;

(iii) each Parent shall be equally responsible for, and shall reimburse the other Parent and its Affiliates with respect to its share of, all claims arising out of the Partnership's obligations under the CIRRUS Equipment Lease and the IBM Supplemental Equipment Lease and any additional, equally shared capital expenditures;

(iv) IBM shall be responsible for any Indebtedness of the Partnership to be treated as a liability specifically attributable to the IBM Partner pursuant to Section 8.07; and

(v) all Intellectual Property licenses to the Partnership shall terminate.

SECTION 11.03. Dissolution upon Event of Default. During the occurrence and continuation of an Event of Default with respect to a Partner or its Parent, the other Partner may elect by written notice to the Defaulting Partner to dissolve the Partnership, in which event the Partnership shall be dissolved and the Partners shall forthwith take all actions necessary to wind up the affairs of the Partnership. This Section 11.03 shall not be construed to limit the rights of the Nondefaulting Partner under Section 10.10 or to seek damages from the Defaulting Partner or any other Person for the breach of its obligations.

SECTION 11.04. Liquidation Proceeds.

(a) In the case of the dissolution and liquidation of the Partnership, any cash or other property that would otherwise be distributed pursuant to

Section 6.02(a) shall instead be distributed to the Partners pro rata in accordance with their respective positive Capital Accounts, an adjusted pursuant to Section 7.01 to reflect all prior Partnership operations (including any gains or losses arising from the sale of any assets of the Partnership in connection with such dissolution and liquidation and any hypothetical gains or losses as provided in Section 7.03 with respect to any asset distributed in kind). In the event that the value of any cash or other property to be distributed exceeds the sum of the Partners' aggregate positive Capital Account balances as so adjusted, such excess shall be distributed to the Partners pro rata in accordance with their respective allocations of Net Profits and Net Losses as set out in Section 7.02.

(b) Unless otherwise agreed by the Partners and to the extent permitted under any agreements with third parties, all assets to be distributed to the Partners upon the dissolution and liquidation of the Partnership shall be distributed as follows:

(i) first, cash and cash equivalents shall be distributed to the Partners separately in the proportions provided pursuant to Section 11.04(a); and

(ii) second, all remaining assets shall be distributed in kind to the Partners as they shall agree, provided that absent agreement such assets shall be distributed in kind to the Partners as provided pursuant to Section 11.04(a) (with the allocation of specific items being made in the good faith determination of the Governing Board). For purposes of this Section 11.04(b), instruments of transfer and other documents reasonably requested by the distributee shall be executed by the Partnership or the other Partner, or both.

(c) Any distribution made pursuant to this Section 11.04 shall be made no later than the later of (i) the end of the calendar year during which the dissolution occurs and (ii) 90 days after the date of such dissolution.

ARTICLE XII

Indemnification and Insurance

SECTION 12.01. Indemnification. (a) The Partnership (but not any Partner) shall indemnify each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of a Partner or the Partnership), by reason of the fact that he is or was or has agreed to become a member of the Governing Board or an officer of or Seconded Employee to the Partnership or is or was serving or has agreed to serve at the request of the Partnership as a director, officer, employee or agent of another partnership, corporation, joint venture, trust or other enterprise, by reason of any action alleged to have been taken in any such capacity, against any and all losses, damages, liabilities, costs, charges, expenses (including interest, penalties and reasonable attorneys' fees and expenses), judgments, fines and amounts paid in settlement (collectively, "Losses") actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom if such Person acted in good faith and in a manner reasonably believed by such Person to be in or not opposed to the best interests of the Partnership, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

(b) The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the indemnified Person did not meet the standard set forth in Section 12.01(a).

(c) The indemnification provided under this Section 12.01 shall inure to the benefit of the successors, heirs and personal representatives of any Person entitled to the benefit of such indemnification. Such indemnification shall be a contract right and shall include the right to be paid advances of reasonable expenses incurred by any such Person in connection with such action, suit or proceeding.

SECTION 12.02. Insurance. The Partnership may, to the fullest extent permitted by law, purchase and maintain insurance against any liability that may be asserted against any Person entitled to indemnity pursuant to Section 12.01.

SECTION 12.03. Indemnification by and of the Partners. (a) Each Partner agrees to, and does hereby, indemnify and hold harmless the Partnership and the other Partner from and against any and all Losses arising out of, or based upon, the gross negligence or wilful misconduct of such Partner or such Partner exceeding its authority under this Agreement.

(b) The Partnership agrees to, and does hereby, indemnify and hold harmless each Partner, and, to the extent set forth in Section 12.03(c), each Affiliate of such Partner, from and against any and all Losses (except items indemnified under Section 7.02(c)) arising out of (i) its status as a general partner, (ii) acts or omissions or alleged acts or omissions of either Partner in its capacity as general partner or on behalf of the Partnership or

(iii) any liability or obligation of the Partnership. Without limiting the generality of the foregoing, any of such Losses shall be deemed to arise out of a Partnership liability or obligation if it arises out of or is based upon the conduct of the business of the Partnership (or any of its Subsidiaries) or the ownership of the property of the Partnership (or any of its Subsidiaries).

(c) The indemnification set forth in Section 12.03(b) shall be available to any Affiliate of a Partner with respect to any of such Losses arising out of a Partnership liability or obligation which is paid or incurred by such Affiliate as a result of such Affiliate directly or indirectly owning or controlling a Partner or as a result of the fact that an individual employed or engaged by the Partnership (or any of its Subsidiaries), or a Seconded Employee or member of the Governing Board, is also a director, officer or employee of such Affiliate. The indemnification set forth in

Section 12.03(b) shall not inure to the benefit of either Partner (or any of its Affiliates) in respect of any of such Losses to the extent that such Losses (x) arise out of or are based upon the gross negligence or wilful misconduct of such Partner (or an Affiliate of such Partner) or such Partner exceeding its authority under this Agreement or defaulting in the performance or observance of any of its covenants or agreements expressly set forth herein or (y) constitute a tax, levy or similar governmental charge not imposed upon the Partnership (or any of its Subsidiaries) or on their respective properties. It is understood and agreed that, for the purposes of the preceding sentence, Losses shall be deemed not to arise out of or be based upon the gross negligence or wilful misconduct of a Partner (or any of its Affiliates) solely because it arises out of or is based upon the gross negligence or wilful misconduct of a director, officer or employee of such Partner (or any of its Affiliates) if at the time of such gross negligence or willful misconduct such director, officer or employee was also a Seconded Employee or a member of the Governing Board of the Partnership acting in his capacity as such.

(d) The provisions of this Section 12.03 shall survive each of the termination of this Agreement, the dissolution of the Partnership and the withdrawal of either Partner.

SECTION 12.04. Assertion of Claims. (a) In the event that a Person (the "Indemnified Party") desires to assert its right to indemnification from a Person (an "Indemnifying Party") required to indemnify such Indemnified Party under this Article XII, the Indemnified Party will give the Indemnifying Party prompt notice of the claim giving rise thereto (a "Claim"), and the Indemnifying Party will undertake the defense thereof (unless the Claim is asserted against or related to or results from any action or failure to take action by such Indemnifying Party). The failure to promptly notify the Indemnifying Party hereunder shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is actually prejudiced by the failure to so notify promptly.

(b) The Indemnified Party shall not settle or compromise any Claim without the written consent of the Indemnifying Party unless the Indemnified Party agrees in writing to forego any and all claims for indemnification from the Indemnifying Party with respect to such Claim. However, if the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to defend such Claim, the Indemnified Party will have the right to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Claim at any time prior to settlement, compromise or final determination thereof.

(c) If the Indemnifying Party has undertaken the defense of a Claim and (i) if there is a reasonable expectation that (x) a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments or (y) the Indemnified Party or Parties may have legal defenses available to it or them that are different from or additional to the defenses available to the Indemnifying Party, or

(ii) if the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party, the Indemnified Party shall nevertheless have the right, at the Indemnified Party's cost and expense, to defend such Claim.

ARTICLE XIII

Withdrawal Prohibited

SECTION 13.01. Withdrawal Prohibited. Except as otherwise specifically permitted by this Agreement, neither Partner may withdraw from the Partnership and neither Partner may effect or cause a termination or dissolution of the Partnership without the prior written consent of the other Partner (which consent may be withhold in its sole discretion).

ARTICLE XIV

Miscellaneous

SECTION 14.01. Amendments. This Agreement may be amended from time to time as mutually agreed upon by the Partners. No amendment to this Agreement shall be effective unless it shall be in writing and signed by each Partner and state that it constitutes an amendment to the Sections of this Agreement specified therein.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by each party as of the date first above written.
CIREL INC.,

By:
Name:
Title:

MICRUS HOLDINGS INC.,

By:
Name:
Title:

PARTNERSHIP AGREEMENT

Dated as of September 30, 1994
between
CIREL INC.
and
MICRUS HOLDINGS INC.

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